

**ATTACHMENT D:
SMALL PURCHASE CONTRACT GENERAL TERMS AND CONDITIONS**

1. INDEMNIFICATION

Contractor hereby agrees to protect, defend, indemnify and hold harmless CMHA, its officers, employees, agents, and Board of Commissioners from and against all losses, liabilities and any and all claims of whatever kind, nature or description which may be asserted or claimed against CMHA indemnities which arise from any act or omission of Contractor, its subcontractors, directors, officers and employees or results from any breach or violation by Contractor, its directors, officers, or employees. Contractor agrees, at its own expense, to pay the full cost thereof, including attorney's fees, if any, incurred by CMHA in defending any claim and shall pay any judgment rendered, with respect to the subject of the indemnity contained herein as well as any allegation of libel, slander, invasion of privacy, any failure to obtain any necessary release, permission or clearance, or any other cause of action or claim arising out of materials and elements provided for by Contractor under this Contract. Contractor will be liable, at all times, for damages or destruction of Contractor's equipment and materials, regardless of how such damage occurs. CMHA will be under no liability to reimburse Contractor for any such loss. If Contractor insures its equipment and material against physical loss of damage, then Contractor agrees to secure, if required in such insurance, a waiver of subrogation in favor of CMHA.

2. INSURANCE REQUIREMENTS

Contractor shall obtain and maintain at all times during the term of this contract, insurance in the following kinds and amounts:

- a) Workers' Compensation Insurance as required by state statute and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of this Contract.
- b) Commercial General Liability Insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;

- c. \$ N/A products and completed operations aggregate; and
- d. \$50,000 damage to premises and fire damage; and
- e. \$5,000 medical expenses for any one person.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to CMHA a certificate of insurance showing compliance with this provision. The deductible shall not be greater than \$1,000.

- c) Professional liability and/or "errors and omissions" coverage with minimum limits as follows:
 - a. \$1,000,000 each occurrence;
 - b. \$1,000,000 general aggregate.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to CMHA a certificate of insurance showing compliance with this provision. The deductible shall not be greater than \$1,000. This coverage is required for vendors who render observational services to the Authority such as appraisers, inspectors, attorneys, engineers, or consultants.

- d) Automobile Liability Insurance with CMHA named as an additional insured with minimum limits as follows:
 - a. \$1,000,000 combined single limit;
 - b. \$50,000/\$100,000 for vehicles utilized during the contract when not owned by the Contractor;
 - c. \$5,000 medical pay.

CMHA shall be named as additional insured on the Commercial General Liability Insurance policy. Coverage required of this Contract will be primary over any insurance or self-insurance carried by CMHA.

The Insurance shall contain provisions preventing cancellation or non-renewal without at least 45 days notice to CMHA and stating that the carrier will waive all rights of recovery, under subrogation or otherwise, against CMHA, its office, agents, employees or Board of Commissioners.

Contractor shall provide certificates evidencing such coverage as required by this Contract to CMHA upon execution of this Contract and annually thereafter evidencing renewals thereof. At any time during the term of this Contract, CMHA may request, in writing, and the Contractor shall thereupon within 10 days supply to CMHA evidence satisfactory of compliance with the provision of this section.

3. GOVERNING LAW

This Contract must be governed and construed exclusively by its terms and by the laws of the State of Ohio and any suit filed to enforce any term of this Contract shall be filed only in a court of competent jurisdiction in Hamilton County, Ohio.

4. ASSIGNABILITY

The rights and obligations of Contractor are personal and may be performed only by Contractor. Contractor shall not assign any interest rights or obligations under this Contract without prior written consent of CMHA. Any purported assignment that does not comply with this provision is void. This Contract is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

5. SEVERABILITY

If any provision of this Contract is determined by a court having jurisdiction to be unenforceable to any extent, the rest of the provisions of this Contract will remain enforceable to the fullest extent permitted by law.

6. FORCE MAJEUR

Neither party shall be liable for failure to perform if such failure is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

7. AMENDMENTS/MODIFICATIONS

Any amendments or modifications of this Contract must be made in writing and signed by all Parties.

8. WAIVERS

If either party does not seek compensation for breach or insist upon strict performance of any provision of this Contract, that Party is not prevented from seeking compensation or insisting upon strict performance for a future breach of the same or similar provision.

9. HEADINGS

The headings, titles, and captions in this Contract are inserted for convenience only and are in no way intended to describe, interpret, define, prioritize or limit the scope, extent, or intent of this Contract or any provision herein.

10. NONDISCRIMINATION

During the performance of this Contract, Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

Further, Contractor agrees to both of the following:

- a) That, in the hiring of employees for the performance of work under the contract or any subcontract, no contractor or subcontractor, by reason of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Ohio Revised Code, national origin, or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which the contract relates;
- b) That no contractor, subcontractor, or person acting on behalf of any contractor or subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the contract on account of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Ohio Revised Code, national origin, or ancestry.

11. PRIVACY

Any Personal information collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure that its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor agrees not to release, divulge,

publish, transfer, sell or otherwise make known to unauthorized persons personal information without express written consent of CMHA or otherwise required by law. Contractor agrees to indemnify and hold harmless CMHA for any damages related to Contractor's unauthorized use of personal information.

12. PUBLICITY

Contractor agrees to submit to CMHA all advertising and publicity related matter relating to this Contract wherein CMHA's name is mentioned or language used from which the connection of CMHA's name may, in CMHA's judgment, be inferred or implied. Contractor shall not publish or use such advertising and publicity matters without prior express written consent of CMHA.

13. CONFLICTS OF INTEREST

The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest with regard to this contract.

The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer.

14. CONTRACTOR'S STATUS

It is understood that the Contractor is an independent contractor and is not to be considered an employee of CMHA, or assume any right, privilege or duties of an employee.

15. LIENS

The Contractor is prohibited from placing a lien on CMHA's property. This prohibition shall apply to all subcontractors.

16. WARRANTIES

Contractor warrants that its services and materials provided will be of good quality and consistent with the professional skill and care ordinarily provided by professionals performing the same or similar service and such services and materials shall be provided in accordance with generally accepted industry standards. At all times Contractor shall comply with all applicable federal, state and local laws, rules, regulations, ordinances and codes and obtain any

licenses or permits required to provide the services under this Contract.

17. IDENTIFICATION

CMHA may provide ID Badges for all contractors working on CMHA Properties. Employees of the Contractor may be prohibited from entering CMHA property without proper identification.

18. EXECUTIVE REVIEW

This Contract shall be subject to the written approval of CMHA's authorized representative and shall not be binding until so approved.

19. COMPENSATION AND PAYMENT

CMHA will pay Contractor within approximately 30 days of receipt of properly completed invoices or acceptance of deliverable, whichever is later. If a performance standard is not met, the invoice must reflect the appropriate deduction(s). Payment shall be contingent upon review and acceptance of the Contractor's Deliverables by CMHA. CMHA may, in its sole discretion, withhold payments claimed by Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract. Invoices shall be sent to Finance, 1635 Western Ave., Cincinnati, OH 45214 or accounts.payable@cintimha.com.

20. CRIMINAL HISTORY CHECKS AND DRUG SCREENING TESTS

Contractor shall perform criminal history checks and drug screening tests on all prospective employees performing work under this contract and provide summaries of the results to CMHA PO upon request, at the sole expense of the Contractor. Prospective employees whose criminal history check discloses a misdemeanor or felony involving crimes of moral turpitude, sexual assault or harm to persons or property will not be employed to perform work under this contract. Contractor is required to perform drug screening of all employees and to ensure acceptable test results.

21. INVOICE AUDITS

CMHA reserves the right to audit invoices for parts. Contractor shall provide invoices for parts within three (3) days of request by CMHA. Failure to provide invoices may result in withholding of payment for such parts.

22. TRASH DISPOSAL

Contractor shall legally dispose of all litter, trash and debris accumulated as a result of the services under this contract at an offsite location. The use of CMHA dumpsters or trash receptacles is strictly prohibited.

23. SAFETY

Contractor (including any and all contract or subcontract employees, etc. incidental to this contract) is to be cognizant of safety at all times and take necessary safety precautions, so as not to cause harm to any persons or property while performing service or while on site. Extreme care shall be maintained around pedestrians and personal belongings.

24. DAMAGE

Contractor shall repair or replace, at the contractor's expense, any and all items damaged or destroyed due to contractor's negligence.

25. CHANGE IN PERSONNEL

CMHA shall retain the right to demand and receive a change in personnel assigned to the work if CMHA believes that such change is in the best interest of CMHA and the completion of the contracted work.

26. EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS.

CMHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

27. ENERGY EFFICIENCY

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

28. PROCUREMENT OF RECOVERED MATERIALS

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

29. RIGHTS IN DATA (OWNERSHIP AND PROPRIETARY INTEREST)

CMHA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda, drawings or letters concerning the research and reporting tasks of this Contract. For data other than computer software, the Contractor grants to CMHA and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of CMHA.

30. TERMINATION FOR CAUSE AND FOR CONVENIENCE

- a) CMHA may terminate this contract in whole, or from time to time in part, for CMHA's convenience, whenever CMHA determines that such termination is in its best interest, or the failure of the Contractor to fulfill the contract obligations (cause/default). CMHA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent to which the performance of the work under this Contract is terminated, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to CMHA all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.
- b) If the termination is for the convenience of CMHA or when CMHA determined that such termination is in its best interest, CMHA 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 Contractor to fulfill its obligations under the contract (cause/default), CMHA may (1) require the Contractor to deliver to it, in the manner and to the extent directed by CMHA, any work described in the Notice of Termination including but not limited to all information, reports, papers, and other materials accumulated or generated in performing his contract whether completed or in progress; (2) take over the work and prosecute the same to completion by contract of otherwise, and the Contractor shall be liable for any additional cost incurred by CMHA; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by CMHA by the Contractor. In the event of termination for cause/default, CMHA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

If after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of CMHA.

31. PATENT RIGHTS

Both parties hereby agree to comply with HUD Bulletin 90-23, which is the (a) Notice of Assistance Regarding Patent and Copyright Infringement.

32. ORDER OF PRECEDENCE

The term "Contract Documents" shall include the documents listed in this Provision. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to provide for the entire agreement. In the event of any conflict among the Contract Documents, the order of precedence shall be:

- a) Applicable Federal and State of Ohio statutes and regulations
- b) Form HUD-5370-C General Conditions for Non-Construction Contracts, Section II (With Maintenance Work)
- c) This Agreement
- d) The Request for Quotations, including all addenda and attachments
- e) The Contractor's Fee Submission
- f) Contractor's Response subject to any limitations set forth in this Agreement
- g) Contractor form of Agreement, if applicable
- h) Other Documents incorporated by reference (if applicable)