

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Sitting/Acting as:
Board of Commissioners of the Housing Authority of Clackamas County

Study Session Worksheet

Presentation Date: 12/17/2019 **Approx Start Time:** 1:30 PM **Approx Length:** 30 minutes

Presentation Title: Housing Development Center (HDC) Contract for Owner's Rep Services at Hillside Manor rehab project

Department: H3S/Housing Authority of Clackamas County (HACC)

Presenters: Stephen McMurtrey and Jill Smith

Staff is requesting the Board of County Commissioners approve HACC to move forward with the HDC contract for Owners Representation Services at Hillside Manor, by placing the contract on consent agenda for the December 19, 2019 HACC Board meeting.

EXECUTIVE SUMMARY:

Background:

The Housing Authority of Clackamas County has the oldest Public Housing in the State of Oregon. A Capital need assessment at Hillside Manor showed annual capital need of \$437,813 while HUD funding is generally 20% of that. Public Housing is not authorized to secure any debt on the property so over time this property will fall into disrepair. HACC intends to take advantage of the financing tools the U.S. Department of Housing and Urban Development (HUD) is providing through the RAD/Section 18 blend program. This program enables HACC to transition out of the Public Housing program, conduct an extensive rehabilitation of the property, and place Project Based vouchers at each of the 100 units. This strategy will ensure deep affordability is retained as we continue to serve the current population.

Preservation of the Hillside Manor Apartments is a critical component of HACC's strategy to reposition our public housing units during a time of HUD's continued disinvestment in public housing. By capitalizing on beneficial financing, HACC is able to perform an exhaustive rehab of Hillside Manor while retaining ownership of the property and maintaining essential rental subsidy so that we can continue to serve the property's existing population for generations to come.

Due to the complexity of this project and staff capacity, HACC wishes to enter into a contract for owners' representation services provided by the Housing Development center (HDC). HDC was the successful awardee of a competitive Request for Participation (RFP) process engaged by HACC in May of 2019. The RFP was advertised in the Daily Journal of Commerce (DJC) and on the HACC website. Submissions were scored by a selection committee based on established evaluation criteria that gave points to each respondent based on experience and expertise. The Housing Development Center (HDC) met all the criteria of this RFP.

Hillside Manor is currently in pre-construction with an anticipated construction closing date in April of 2020. HACC recognizes the complexity of the Hillside Manor renovation and the need to complete the work on time and within budget. Therefore, HACC is seeking owner's representative services to ensure a successful outcome for the project. HDC will act as an agent for HACC beginning with the design phase through to the completion of construction. They are an extension of HACC, working as an integral member of the project team with a focus on acting in HACC's best interests. Their role is steeped in best-practices for affordable housing

development where complex projects are provided additional capacity and security through a highly skilled owner's representative. HDC's duties will include but are not limited to:

- Review of tax credit financial modeling
- Document submission and coordination with all funding partners including HUD, OHCS, US Bank, Banner Bank, etc.
- Project management from preconstruction to project completion
- Relocation assistance
- Compliance and tax credit certification assistance
- Other duties as required.

Upon approval, HDC will represent the interest of HACC throughout all phases of the Hillside Manor rehabilitation project and will serve as the central point of direction, management and coordination, and are responsible for issue identification, evaluation and resolution throughout the duration of the project. HDC will perform these services for a 'not-to-exceed' amount of \$500,000.00 for a duration of time not to exceed three years or to a point where the project has successfully achieved all necessary benchmarks and regulatory criteria to receive its full award of Low Income Housing Tax Credits (LIHTC). The scope of work and fee are based on an April 2020 financial closing date and a 14-month construction period. Construction services will be provided by Walsh Construction.

Next Steps

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the funding source? Developer Fee earned from project rehabilitation, (Hillside Manor)

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
 - Sustainable and Affordable Housing
 - Efficient & effective services
- How does this item align with the County's Performance Clackamas goals?
 - Public trust through good government
 - Ensure safe, healthy and secure communities

LEGAL/POLICY REQUIREMENTS: HACC staff worked with Procurement and County Counsel to draft the contract. County Counsel approved the contract on November 27, 2019.

PUBLIC/GOVERNMENTAL PARTICIPATION:

OPTIONS:

Option A

Authorize HACC to move forward with the Professional Services Contract with the Housing Development Center for owner's representative services, for the rehabilitation of the Hillside Manor, placing the contract on the December 19, 2019 consent agenda.

Option B

Request HACC to revise Scope of Work

Option C

Request HACC select a different Owner's Representative Firm from the Request for Proposals.

RECOMMENDATION:

HACC is requesting the Board approve option A, which authorizes HACC to move forward with the Professional Services Contract with the Housing Development Center for owner's representative services, for the rehabilitation of the Hillside Manor, placing the contract on the December 19, 2019 consent agenda.

ATTACHMENTS:

- HACC – HDC Owner's Representative Services Contract

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Jill Smith @ 503-742-5336



CLACKAMAS COUNTY
PROFESSIONAL SERVICES CONTRACT

This Professional Services Contract (this "Contract") is entered into between Housing Development Center (HDC) ("Contractor"), and the Housing Authority of Clackamas County (referred to herein as "HACC"), a public corporation organized under ORS Chapter 456.

ARTICLE I.

- 1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on July 1, 2022.
2. Scope of Work. Contractor will provide the following owner's representative personal services further described in Exhibit A ("Work").
3. Consideration. The HACC agrees to pay Contractor, from available and authorized funds, a sum not to exceed Five Hundred Thousand dollars (\$500,000), for accomplishing the Work required by this Contract.
4. Invoices and Payments. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed.
5. Travel and Other Expense. Authorized: Yes [] No [X]
6. Contract Documents. This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and HACC's Request for Proposals and Contractor's response to the same, attached hereto as Exhibit B.

7. Contractor and HACC Contacts.

Table with 2 columns: Contractor and Housing Authority of Clackamas County. Contractor info: Administrator: Joni M. Hartmann, Phone: 503-335-3668, Email: joni@hdc-nw.org. HACC info: Administrator: Jill C. Smith, Phone: 503-742-5336, Email: jsmith6@clackamas.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. HACC and their duly authorized representatives shall have access upon reasonable notice to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts; provided, however, that HACC and its duly authorized representatives shall not request access more than two (2) times per calendar year. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the HACC in its sole administrative discretion. The HACC shall immediately notify Contractor in the event that appropriations have not been granted.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans’ Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xii) County Local Contract Review Board Rules, containing language required to be in all public contracts, which is specifically incorporated by reference as if set forth herein.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between HACC and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the HACC of any form of defense or immunity, whether sovereign immunity, governmental immunity,

immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Subject to Article II Section 10, Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, Contractor's conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees (except where caused by or arising out of the negligence or willful misconduct of HACC or any of its officers, elected officials, agents or employees). Subject to Article II Section 10 the Contractor agrees to indemnify, hold harmless and defend the HACC, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses arising out of or based upon damage or injuries to persons or property caused by the intentional misconduct or negligence of the Contractor or the Contractor's employees or agents (except where caused by or arising out of the negligence or willful misconduct to the HACC or any of its officers, elected officials, agents or employees). In the event HACC's acts contributed to such claims, then Contractor's indemnification obligations shall be based on the level of fault assigned to Contractor. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of HACC or any department of HACC, nor purport to act as legal representative of HACC or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for HACC, nor shall Contractor settle any claim on behalf of HACC without the approval of the Clackamas County Counsel's Office. HACC may, at its election and expense, assume its own defense and settlement.

Subject to Article II Section 10, the HACC agrees to indemnify, hold harmless and defend the Contractor, and its members, agents and employees harmless from and against all claims and actions, and all expenses arising out of or based upon damage or injuries to persons or property caused by the intentional misconduct or negligence of the HACC of the HACC's employees or agents (except where caused by or arising out of the negligence or willful misconduct of the Contractor or any of its members, agents or employees). In the event Contractor's acts contributed to such claims, then the HACC's indemnification obligations shall be based on the level of fault assigned to the HACC.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the HACC reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, HACC cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of HACC for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to HACC employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the Clackamas County, Procurement and Contract Services, 20151 Kaen Road, Oregon City, OR 97045, and Housing Authority of Clackamas County, 13930 Gain Street, Oregon City, OR 97045, as additional insureds on said policies. Proof of

insurance and notice of any material change should be submitted to the following address: Housing Authority of Clackamas County, PO Box 1510 Oregon City, OR 97045 or asully@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.
<input type="checkbox"/>
<input type="checkbox"/>

The insurance described in this section shall not be cancelled or materially changed without Contractor providing at least sixty (60) days written notice to the HACC. This policy(s) shall be primary insurance as respects to the HACC. Any insurance or self-insurance maintained by the HACC shall be excess and shall not contribute to it.

10. LIMITATION OF LIABILITIES. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. The total out-of-pocket amount that Contractor shall owe under this Contract will not exceed the maximum limits of Contractor's insurance policies actually available under the Contractor's insurance policies. Notwithstanding the foregoing, the total out-of-pocket amount that Contractor shall owe for any claims for bodily injury or property damage shall be limited to the amount of Contractor's insurance proceeds actually available under the Contractor's insurance policies or the amount of consideration actually paid to Contractor, whichever is greater. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

11. NOTICES. Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section **Error! Reference source not found.** If notice is sent to HACC, a copy shall also be sent to: Housing Authority of Clackamas County, PO Box 1510 Oregon City, OR 97045, or asully@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during HACC's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

12. OWNERSHIP OF WORK PRODUCT. Intentionally deleted.

13. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to HACC that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be

qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties specifically provided in this Contract.

- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 6, 10, , 11, 13, 14, 15, and 20, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the HACC's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the HACC, which shall be granted or denied in the HACC's reasonable discretion and not to be unreasonably withheld, conditioned, or delayed. In addition to any provisions the HACC may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 6, 8, 10, 13, 15, and 27 as if the subcontractor were the Contractor. HACC's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle HACC to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated by mutual agreement of the parties or by the HACC or the Contractor for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor or HACC; (ii) at any time the HACC fails to receive funding, appropriations, or other expenditure authority as solely determined by the HACC. Upon receipt of written notice of termination from the HACC, Contractor shall immediately stop performance of the Work. If Contractor breaches any Contract provision or is declared insolvent, HACC may terminate after thirty (30) days written notice specifying the nature of the failure, breach, or default, and providing an opportunity to cure; provided, however that if such breach or default cannot reasonably be cured within thirty (30) days, Contractor shall not be deemed in default if it commences such cure

or remedy within said thirty (30) day period and diligently prosecutes such cure or remedy to completion . If HACC fails repeatedly to perform its obligations under this Contract in a timely or satisfactory fashion and thereby materially interferes with the Work, then Contractor may terminate this Contract after thirty (30) days written notice to HACC. Upon termination of this Contract, Contractor shall deliver to HACC all documents, information, works in progress and other property that are or would be deliverable had the Work been completed. Upon HACC's reasonable request, Contractor shall surrender to anyone HACC designates, all documents, research, objects or other tangible things needed to complete the Work. Notwithstanding the foregoing, in no event shall the Contractor be required to deliver to the HACC or to anyone the HACC designates its financing formula.

20. REMEDIES. If terminated by the HACC due to a breach by the Contractor, then, subject to the limitation of liability in Article II Section 10, the HACC shall have any remedy available to it in law or equity. If this Contract is terminated by the Contractor due to a breach by HACC, then, subject to the limitation of liability in Article II, Section 10, Contractor shall have any remedy available to it in law or equity, including, without limitation payment for the goods and services delivered and accepted by the HACC.

21. NO THIRD PARTY BENEFICIARIES. HACC and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

22. TIME IS OF THE ESSENCE. Intentionally deleted.

23. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. FORCE MAJEURE. Neither HACC nor Contractor shall be held responsible for delay or default caused by events outside the HACC or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor and HACC shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

25. WAIVER. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by the other party of that or any other provision.

26. PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against HACC on account of any labor or material furnished.

- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing HACC may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling HACC to terminate this Contract for cause.
- g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. CONFIDENTIALITY. Intentionally deleted...

28. KEY PERSONS. Intentionally Deleted.

29. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

30. COUNTERPARTS. This Contract may be signed in two (2) or more counterparts, each of which will be deemed an original but all of which together will constitute the same instrument. The parties may sign and deliver this Contract by facsimile or emailed portable document format (PDF) and a reproduction of the Contract made by facsimile or PDF will have the same effect as a signed and delivered original version

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Housing Development Center

Housing Authority of Clackamas County

Authorized Signature

Date

Authorized Signature

Date

Joni-Marie Hartmann, Executive Director
Oregon Business Registry # 93-1116265
An Oregon nonprofit Corporation

Approved as to Form:

**EXHIBIT A
PROFESSIONAL SERVICES CONTRACT
SCOPE OF WORK**

1. INITIAL INFORMATION

1.1 Property Location (Site).

2889 SE Hillside St.
Milwaukie, OR 97222
Clackamas County

1.2 Site Description. Hillside Manor is an existing 9-story, 78,500 sq. ft., 100-unit residential tower, originally constructed in 1970. The building is a concrete frame with lightweight cast-in-place concrete floor. The property surrounding the tower includes about 60 parking spaces, storage and utility space, community gardens and patios, walking paths and landscaped area. The site slopes towards the tower providing two levels of access; the main public entrance is on the second floor and the back, utility entrance is on the ground floor. The tower is part of a larger development that also includes small 1 and 2 bedroom, single-family/duplexes referred to as Hillside Park. This contract focuses on the renovation of Hillside Manor only (the "Project").

1.3 Anticipated Program. The existing building has been evaluated by the A&E Team (led by Scott Edwards Architecture). The proposed renovation work includes:

- Voluntary seismic upgrade
- Replacement of plumbing system and fixtures
- Upgrading outlets to GFCI and installation of LED fixtures
- Replacing and repairing select elements of the HVAC system
- Unit upgrades to flooring, cabinetry and fixtures
- Reconfiguration of common spaces and replacement of flooring, cabinetry and fixtures
- Select replacement of exterior elements
- Modernization of elevators

1.4 Estimated Project Budget.

Residential: \$31.4 Million
Total: \$31.4 Million

1.5 Anticipated / Secured Funding Sources.

- 4% Low Income Housing Tax Credits
- Tax Exempt Bonds
- Commercial Permanent Loan
- Oregon Affordable Housing Tax Credits
- Lottery-Backed Bonds
- Housing Authority Capital Funds
- Project-Based Vouchers

1.6 Selected Team Members.

Architect: Scott Edwards Architecture

General Contractor: Walsh Construction

Relocation: Darcy Vincent, Inc.

2. HDC RESPONSIBILITIES.

- 2.1 General. HDC will provide affordable housing and community facility development services as set forth in this Contract.
- 2.2 HDC Skill and Care. HDC's work will be performed with the skill and care ordinarily provided by professionals providing the services agreed to in this Contract in the Portland, Oregon metropolitan area under the same or similar circumstances. HDC shall perform its services on a timely basis. Except as set forth in this Contract, HDC makes no warranties express or implied, including without limitation warranties of merchantability, fitness for a particular purpose, or otherwise.
- 2.3 Risk. As a consultant to HACC, HDC offers no assurance that the Project will be funded or constructed. HACC assumes all risks in proceeding with the development of this Project.
- 2.4 HDC's Project Representative. HDC shall designate an employee to be its sole representative to organize and be responsible for the completion of HDC Services. The person initially designated shall be Andrea Sanchez. HACC acknowledges that HACC's Representation Services described in Exhibit A of this Contract will be led by additional HDC staff, and that person named above may be assisted by other HDC staff. There will be no change to HDC's designated representative without HACC's express consent, which consent shall not be unreasonably withheld, conditioned, or delayed.
- 2.5 Excluded Services. Notwithstanding any other provision of this Contract, HACC understands and agrees that HDC is not providing accounting, legal, tax, architectural, engineering, soils analysis, environmental consulting, real estate brokerage, relocation and property management services ("**Professional Services**") to HACC relating to the Project. HDC strongly recommends that HACC retain professionals to provide any appropriate Professional Services including without limitation professional advice relating to legal and tax matters prior to executing any contracts, funding agreements, loan documents, partnership or operating agreements, use covenants, or other legal documents related to this Project.
- 2.6 Authority. HDC has no authority to bind or execute documents on behalf of HACC or Project ownership entity.
- 2.7 Conflict of Interest. HDC understands and agrees that engaging a person or entity with a conflict of interest to perform services on a Project could substantially imperil the ability of a Project to be funded and completed. With respect to any Project, HDC agrees that if it becomes aware that HDC has a conflict of interest relationship with respect to the Project, it shall immediately inform HACC and, if requested by HACC, shall take reasonable actions to mitigate the conflict of interest or HDC's work in the Project can be terminated under Section **Error! Reference source not found.** (without the 30-day waiting period). HDC shall advise HACC if its work on behalf of HACC for a particular Project would materially and adversely affect HDC's current work on behalf of another HDC client. A conflict of interest relationship shall include an entity that is owned or controlled by HDC, a person or entity that is directly or indirectly owned (more than 5 percent) by an owner including a member or shareholder, officer or director of HDC. Indirect ownership shall include ownership through a spouse, lineal descendant or the spouse of a lineal descendent, sibling or the spouse of a sibling, aunt or uncle or the spouse of an aunt or uncle, and ancestor or the spouse of an ancestor. If HACC is seeking a loan from the HDC Community Fund LLC, it shall not be considered to be a conflict of interest relationship of HDC.

3. SCOPE OF HDC SERVICES

3.1 HDC Project Financing Services

3.1.1 Project Coordination

- 3.1.1.1 General. Assist in performing all responsibilities imposed on HACC with respect to financing of the Project by any contract or agreement and help ensure that all contractual requirements associated with financing, lease up or compliance are being met. Notify HACC immediately in the event that HDC believes that any such requirements are not being met.
 - 3.1.1.2 Compliance with Funder Requirements. Assist HACC in performing all obligations of HACC with respect to the financing of the Project and requirements contained in any loan agreement or security agreement entered into in connection with any construction or long-term financing, or commitment therefore, for the Project, or any agreement entered into with any governmental body or agency relating to the terms and conditions of such construction.
 - 3.1.1.3 Coordinate Team. With HACC, coordinate the work of the Project financing team, including owner's (HACC's) representatives, architect, general contractor, property manager, funders, lenders and other development team members, throughout the predevelopment, construction and closeout phases of the Project.
 - 3.1.1.4 Project Schedule. Provide input on or prepare Project schedule as determined by team. Secure HACC input and keep current as necessary.
 - 3.1.1.5 Meetings. Meet bi-weekly or as necessary to coordinate team during predevelopment, and meet as required during the closeout period. HDC shall advise and assist HACC in connection with all matters and questions pertaining to HDC work under this Contract.
- 3.1.2 **Selection of Team Members**. As requested by HACC, assist in identification, selection and engagement of development team members with experience in anticipated financing for the Project, including legal counsel, accountant, property manager, market analyst, appraiser, underwriters, capital campaign managers and other consultants.
- 3.1.3 **Budget, Draws, Audits and Occupancy**. Prepare and maintain Project budget as follows:
- 3.1.3.1 Prepare and Maintain Budget. Prepare and update Project budget with input from architect, general contractor and other consultants. The budget shall set forth the estimated costs of design, construction and related financing and development costs broken down by line item, including a reasonable allowance for contingencies; sources of financing; detailed operating budget showing revenues, operating expenses and debt service calculations; long-term operating projections; LIHTC credit calculations; and development flow of funds/ cash flow including projections and, based on HACC's Project accounting, actual Project expenditures by financing source and development cost line items. Inform HACC of any deviations from projected budget and update budget monthly or more frequently as major changes occur in assumptions and expenditures. Provide final sources and uses and operating budget to HACC at Project completion.
 - 3.1.3.2 Draw Requests. Prepare monthly disbursement requests (or less often as needed during predevelopment and closeout) for all sources of Project financing and

submit to HACC for approval and final submission to funders. Coordinate draws for repayment of the predevelopment and construction loans to the Project. Advise HACC on actuals to budget and use of reserves and contingencies during development.

- 3.1.3.3 **Accounting Coordination.** Work with HACC to establish a common chart of accounts and consistent cost allocation methodology for the Project; coordinate draw processes to assist HACC's tracking on accounts of record for the Project; assist HACC's legal counsel to prepare assignment of assets and liabilities and other documents related to accounting for separate legal ownership entities; and coordinate HDC's development activities for the Project with those of the HACC's accountant and auditor.
- 3.1.3.4 **Audits.** Assist HACC to prepare for and coordinate any required third-party audits of Project expenditures during the development and closeout phases of the Project.
- 3.1.3.5 **Monitor Lease up.** Review rent rolls, rents and monthly operating statements provided by HACC in relation to projections for lease up and stabilization, LIHTC credit delivery (if applicable), reserve balances and cash flow assumptions in Project budget and funder agreements.
- 3.1.4 **Predevelopment Financing.** If required, assist HACC in the completion of up to two applications for predevelopment financing for the Project. If applicable, review proposed predevelopment loan terms and conditions, and with HACC's legal advisor, assist HACC in the negotiation of the predevelopment loan documents. Assist HACC with due diligence leading to closing of the predevelopment loan(s).
- 3.1.5 **Primary Public Financing.** Assist HACC in the completion of an application to state housing finance agency (HFA) for an award of 4% LIHTC and other available resources.
- 3.1.6 **Other Affordable Housing Public Funding.** Assist HACC in the completion of the RAD Financing Plan application for RAD conversion rental assistance. Review proposed loan or grant terms and conditions with the HACC's legal advisor. Assist HACC and HACC's legal advisor in the negotiation of the loan or grant documents. Assist HACC with due diligence leading to closing of other public financings.
- 3.1.7 **Private Residential Lenders.** Lead in securing necessary private loans to complete the Project as follows:
 - 3.1.7.1 **Construction Financing.** Assist HACC in the selection of financial institution that will provide construction period financing, including the preparation of Requests for Proposals, review of lender proposals and recommendations to the HACC. Review with HACC's legal advisor proposed construction loan documents for financing terms and conditions, assist HACC in the negotiation of the construction loan documents. Coordinate due diligence activities to achieve Construction Loan Closing, draw processes and activities necessary to pay off the construction loan and convert to permanent financing.
 - 3.1.7.2 **Permanent Financing.** Assist HACC in the selection of financial institution that will provide permanent financing, including the preparation of requests for proposals, review of lender proposals and recommendations to the HACC. Review proposed permanent loan documents for financing terms and conditions, and with HACC's legal advisor, assist HACC in the negotiation of the Permanent loan documents. Coordinate activities to achieve Permanent Loan Closing.

- 3.1.8 **Low Income Housing Tax Credits and Equity Investment.** Lead in securing an allocation of and LIHTC equity investment for the Project:
- 3.1.8.1 Timelines. Track timelines, compliance deadlines, and performance of key development requirements associated with the LIHTC.
 - 3.1.8.2 Allocation Requirements. Assist HACC to secure required documentation associated with the allocation of LIHTC's, including but not limited to award letter, reservation agreement, carryover allocation, cost certification(s), final application to state housing agency, recordation of restrictive covenants and other documents and state housing agency issuance of Form(s) 8609.
 - 3.1.8.3 Equity Investor Selection and Negotiation. Assist HACC in the selection of an equity investor to the Project. Review investor proposals for LIHTC pricing, business terms and other investor conditions, and make recommendation to HACC. With HACC's legal advisor, assist in negotiation of the business terms contained in investor's proposed letter of interest, commitment letter and partnership/operating agreement.
 - 3.1.8.4 Due Diligence and Compliance. Complete due diligence and other work necessary to close the LIHTC partnership or limited liability company, admit the equity investor and secure investor equity pay-in(s) through Permanent Loan Closing and final equity contribution to the Project.
 - 3.1.8.5 Monitor Credit Delivery. Assist and advise HACC on credit delivery, including monitoring qualified basis during construction and review of occupancy during lease-up for credit delivery.
 - 3.1.8.6 HACC Assistance. Assist HACC to understand its responsibilities during the LIHTC compliance period as defined in Section 42(i)(1) of the Internal Revenue Code through provision of allocation and partnership documents, and through additional summaries of requirements for credit delivery, reporting requirements, reserve requirements, waterfall provisions, and income and rent restrictions. Advise HACC on these issues in consultation with the HACC's legal advisor, tax accountant, equity investor, asset manager, and property manager.**

3.2 HDC Owner's Representation/Construction Management Services

3.2.1 Project Coordination

- 3.2.1.1 General. Assist in performing all responsibilities imposed on HACC with respect to design, entitlements and construction of the Project by any contract or agreement and help ensure that all contractual requirements applicable to any general contractor, architect, any subcontractors or other consultants are being met. Notify HACC immediately in the event that HDC believes that any such requirements are not being met. HDC shall coordinate with HACC and any consultants or representatives of HACC at each stage of the Project for review and approval before proceeding to a subsequent phase, provided that HDC will not be responsible for any third parties' failure to meet applicable deadlines.
- 3.2.1.2 Compliance with Funder Requirements. Assist HACC in performing all obligations of HACC with respect to the design, entitlement or construction of the Project as contained in any loan agreement or security agreement entered into in connection with any construction or long-term financing, or commitment

therefore, for the Project, or any agreement entered into with any governmental body or agency relating to the terms and conditions of such construction.

- 3.2.1.3 Coordinate Team. With HACC, coordinate the work of the Project team, including owner's (HACC's) representative, architect, general contractor, property manager, relocation specialist, funders, lenders and other development team members, throughout the predevelopment, construction and closeout phases of the Project.
- 3.2.1.4 Project Schedule. Prepare a Project schedule with Project team input and keep current as necessary.
- 3.2.1.5 Meetings. Meet bi-weekly or as necessary to coordinate team during predevelopment; meet weekly onsite during Project construction and meet as required during the closeout period. HDC shall advise and assist HACC in connection with all matters and questions pertaining to HDC and HDC's work.

3.2.2 Coordination of Team Members

- 3.2.2.1 General Contractor. Working with HACC legal counsel, assist in obtaining general contractor rates and cost estimates, negotiating contract amendments and defining construction strategy in terms of schedule, scope and team procurement.
- 3.2.2.2 Consultant Services. Secure proposals from, and assist HACC in the selection and supervision of any soils or environmental contractors, special inspectors, surveyors or other professional consultants that may be required to complete the Project.

3.2.3 Establishing Scope of Construction

- 3.2.3.1 Scope. Work with HACC, the development team, Project funders, and other stakeholders during Project design, general contractor bidding and negotiations to refine a scope of work desired by HACC within the established budget and designated schedule:
- 3.2.3.2 Contract Review. Assist HACC in reviewing contract documents and securing a schedule of values and construction schedule from the general contractor.
- 3.2.3.3 Specifications and Drawings. Assist HACC with reviewing product samples, specifications and progress drawings provided by architect, general contractor, subcontractors, and material suppliers for use at the Project. Review of specifications and drawings will be for compliance with HACC's building program and project goals.
- 3.2.3.4 Value Engineering. Participate in the value engineering process and submit suggestions or requests for changes that will improve the design, efficiency, or cost of the Project. Develop and maintain an add back/alternate list of Project items that may be included or reinstated if the construction budget allows.
- 3.2.3.5 Sub-Contract Bids. Assist HACC at the opening and analysis of the sub-contract bids.

- 3.2.3.6 Pre-construction Conference. With HACC and architect, conduct a pre-construction conference with the general contractor, major sub-contractors, and lender representatives within one week of a notice to proceed.
- 3.2.3.7 Shop Drawings and Submittals. Review log prepared by architect or general contractor prior to the start of construction for all items that will require shop drawings and submittals during the Project. Assist HACC in selecting items for which the HACC elects to receive copies of shop drawings or submittals for review. Assist HACC in the review of such shop drawings and submittals. In collaboration with HACC, architect, and general contractor establish and implement procedure for expediting the processing and approval of shop drawings and review submittals for evidence that all items have been properly approved by the Project architect and HACC, where required, prior to the start of related work.

3.2.4 Entitlements, Utilities and Public Jurisdictions

- 3.2.4.1 Public Jurisdictions. Meet with, negotiate and interact with all appropriate governmental officials who have jurisdiction over the construction, development and initial operation of the Project.
- 3.2.4.2 Entitlements. Assist HACC, architect and/or HACC's entitlement consultant to receive necessary entitlements (partition, lot line adjustments, preliminary plat, or final plat, and related entitlements and the engineering, plans, and specifications as necessary to commence onsite development) from jurisdiction of authority over Project.
- 3.2.4.3 Utilities. Assist HACC in identifying needed public utilities and other such site or building services, applying for such services, coordinating their installation with the appropriate agency and general contractor, and ensuring proper completion.
- 3.2.4.4 BOLI/ Wage Determinations. Assist HACC in obtaining a wage determination from Oregon Bureau of Labor and Industry and/or funding agencies with wage determination requirements.

3.2.5 Surveys and Title

- 3.2.5.1 Survey. Assist HACC to secure required surveys and to address, or cause to be addressed, at HACC's expense, any title matters on the Project.

3.2.6 Funding Applications and Draws

- 3.2.6.1 Application Support. Prepare, or cause to be prepared at HACC's expense, information and documents for funding applications, including site, design, zoning, construction cost, schedule, and other construction related information.
- 3.2.6.2 Due Diligence. Prepare or cause to be prepared, at HACC's expense, any site evaluation, entitlement, design or construction related studies or reports that may be required in connection with the financing and construction of the Project, including but not limited to: environmental (phase I, phase II, underground storage tanks, lead paint, and asbestos) and neighborhood impact studies or reports (wetlands, shorelines and watershed restrictions, flood zones, seismic safety zones, endangered species, FAA restrictions, noise restrictions, historic

and open space preservation restrictions), engineering surveys, hazardous waste substance reports, construction related information to secure appraisals or market studies, geotechnical reports, traffic studies, construction estimates, and preliminary plans and specifications.

3.2.6.3 Draws. Coordinate and deliver to HACC and/or its agent(s) appropriate documentation for funding draws and disbursements.

3.2.7 Construction Period Oversight

3.2.7.1 Onsite Observations. Perform on-site observations of the progress and quality of the work to determine if the work is being performed in a manner indicating that the work, when completed, will be in conformance with the contract documents; provided however that HDC's review thereof shall in no way be construed to be a warranty of the Work performed. Help to assure that HACC's interests and requirements are met by the general contractor, architect and other parties that are under contract to HACC in relation to the Project. Notify HACC if, in HDC's opinion, Work does not conform to the contract documents or requires special inspections or testing.

3.2.7.2 Payment Requests. Review all general contractor payment requests and make recommendations to HACC concerning the HACC's approval or modification of such payment requests. It shall be the HACC's responsibility to make timely disbursements in response to such payment requests.

3.2.7.3 Budget. Monitor the Project budget during construction. Review all change order requests issued by general contractor and render advice to the HACC about the form, content and appropriateness of pricing of such change orders in relation to the contract documents. Assist HACC to monitor status of change orders, including approval or rejection thereof, and ensure that adequate contingencies remain in the Project budget to cover the cost of approved change orders.

3.2.8 Project Closeout

3.2.8.1 Closeout Documents. Assist HACC in closing out construction of the Project, including punch list inspections, cost certifications, tracking of lien releases, and collection of contract-required documentation for the release of the retainage to the general contractor. Assist HACC in the filing of all notices of completion and/or certificates of occupancy or equivalent documents, as required by any local government jurisdiction in which the Project is located to permit occupancy of the Project.

3.2.8.2 Guaranty, Warranty and Instruction Manuals. Assist HACC in obtaining from general contractor, subcontractors, material suppliers or other consultants all such guarantees, instruction manuals and warranties pertaining to the Project that are required by the contract documents to be provided to HACC. Coordinate these documents with Property Management and Maintenance personnel.

3.2.8.3 Warranty Inspection. Coordinate and attend one year warranty inspection; monitor completion of warranty repair work by general contractor; assist HACC in addressing any warranty issues that arise prior to the Permanent Loan Closing, provided that HDC's supervision of such work shall in no way be construed to bind HDC or to constitute a representation or warranty of HDC of such work performed by third parties.

3.3 HDC Asset Management Services

- 3.3.1 Tax Credit Delivery Analysis. Analyze credit delivery in conjunction with relocation, construction, and lease-up schedules. Provide unit certification tracking templates to owner and management company.
- 3.3.2 Investor Negotiations. Assist HACC with Letter of Intent and investor Limited Partnership Agreement negotiations regarding credit delivery expectations. Confirm the lease-up schedule is reasonable and achievable. Advise on impact of relocation schedule and credit delivery.
- 3.3.3 State Allocating Agency Communications. Confirm Oregon Housing and Community Services Department (“OHCS”) preference on lease up approach, and communicate the preferred approach to owner and management agent. Advise owner, management company and relocation consultant on LIHTC certification details and lease-up approach, per OHCS instructions.
- 3.3.4 Ongoing Schedule Monitoring. In coordination with the HACC and other HDC staff, assess impacts of construction schedule changes in relation to relocation schedule and tenant certification, on an ongoing basis.
- 3.3.5 Compliance Training. Assess capacity and compliance knowledge of owner and or/management agent prior to lease up. If requested by the HACC, train all involved staff on program compliance, including file completion, appropriate staffing, and set-aside compliance in preparation for lease up.

3.4 Optional HDC Services.

The following services are not included in the base scope of services of this Contract. HACC may request in writing that the Optional HDC Services be provided with specific reference to “**Optional HDC Services**” or HDC may confirm in a writing to HACC the Optional HDC Services that HDC has been requested to provide. Any Optional HDC Services provided will be billed to HACC pursuant to Section 4.5.4.

- 3.4.1 Additional Applications. Assisting HACC in the completion of applications to financing sources other than those identified in Exhibit A.
- 3.4.2 Insurance Coverage. Assisting HACC in obtaining and maintaining insurance coverage for the Project in accordance with the requirements of the equity partner, Project funders, and Project lender(s).
- 3.4.3 Additional Green Building Funding. Researching or applying for any available funding to incorporate green building or other sustainable building technologies in the Project, except for Energy Trust of Oregon and Oregon Housing and Community Services Department (“OHCS”) Multifamily Energy Program Funds.
- 3.4.4 LEED Certification. Completing work necessary to secure LEED certification or other green building certification of the Project.
- 3.4.5 Other. Other services requested to be performed by HDC not identified in Sections 3.1, 3.2 or 3.3.

4. Compensation

- 4.1 Definitions. The following definitions shall apply to this Section 4 and as otherwise used in Exhibit A:
 - 4.1.1 “**Application Completion**” shall mean the date of completion of an LIHTC application for the Project with the state tax credit allocating agency for the state in

which the Project is located, or if no LIHTC application is prepared, the date of completion of an application for Major Financing.

- 4.1.2 “**Construction Loan Closing**” shall mean the date of closing of the primary construction loan for the Project, or if there is no construction loan or bond, upon issuance of a notice to proceed from the HACC to the general contractor to commence construction of the Project.
- 4.1.3 “**Construction Period**” shall mean the period commencing with Construction Loan Closing and end on substantial completion of the Project.
- 4.1.4 “**Feasibility Period**” shall mean the period commencing with the execution of this Contract and ending with Application Completion.
- 4.1.5 “**Leaseup and Conversion Period**” shall mean the period commencing with the first day of the month following the Construction Period and end on Permanent Loan Closing.
- 4.1.6 “**Minimum Fee**” shall mean \$410,000.
- 4.1.7 “**Major Financing**” shall mean the major public source of funding (whether as a loan, grant or otherwise) for the Project other than low-income housing tax credits.
- 4.1.8 “**Percentage Fee**” shall mean 50% of the Total Cash Development Fee, not to exceed \$500,000
- 4.1.9 “**Permanent Loan Closing**” shall mean:
 - 4.1.9.1 the date of closing of the primary permanent loan or bond financing (provided that the loan or bond is not closed during construction of the Project and is not structured to convert to permanent status) on the applicable residential portion of the Project;
 - 4.1.9.2 if Section 4.1.9.1 does not apply, conversion of a construction loan or bond financing to permanent status of the applicable residential Project;
 - 4.1.9.3 if Sections 4.1.9.1 and 4.1.9.2 both do not apply, upon substantial completion of the Project and release of the general contractor’s construction lien.
- 4.1.10 “**Predevelopment Period**” shall commence with upon execution of this Contract.
- 4.1.11 “**Total Cash Development Fee**” shall mean all development-type fees paid with respect to the development of the Project including without limitation development fees, guarantee fees, and overhead fee, whether paid to HACC, an affiliate of HACC, or HDC, LESS, as calculated at Permanent Loan Closing, development-type fees to be paid from operating cash flow after Permanent Loan Closing.
- 4.2 **Development Fee.** In consideration of the services provided under Section 3, Scope of HDC Services, HACC will pay HDC the greater of a) the Minimum Fee or b) the Percentage Fee. In no event will payments made by HACC to HDC exceed the sum of \$500,000.
- 4.3 **Payment of Development Fee.** HDC will bill HACC when each payment is due as set forth below. A payment made within thirty days of the due date will be considered to be paid on the due date.
 - 4.3.1 Feasibility Period.

4.3.1.1 \$0 shall be due upon execution of this Contract.

4.3.2 Predevelopment Period.

4.3.2.1 \$8,000 shall be paid on the first day of each month during the Predevelopment Period, not to exceed the amount set forth in Section 4.3.2.2.

4.3.2.2 \$163,000, less all amounts previously paid with respect to the Predevelopment Period, shall be due at Construction Loan Closing.

4.3.3 Construction Period.

4.3.3.1 \$8,000 shall be paid on the first day of each month during the Construction Period, not to exceed the amount set forth in Section 4.3.3.2.

4.3.3.2 \$174,000, less all amounts previously paid with respect to the Construction Period, shall be due on the last day of the Construction Period.

4.3.4 Leaseup and Conversion Period.

4.3.4.1 \$5,000 shall be paid on the first day of each month during the Leaseup and Conversion Period, but these payments shall not cause the total of all payments made during Feasibility Period, Predevelopment Period, Construction Period, and Leaseup and Conversion Period to exceed the Minimum Fee.

4.3.4.2 The entire Minimum Fee, less all amounts previously paid with respect to the Feasibility Period, Predevelopment Period, Construction Period, and Leaseup and Conversion Period, shall be due on Permanent Loan Closing.

4.3.5 Percentage Fee.

In the event the Percentage Fee is greater than the Minimum Fee, then the excess of the Percentage Fee over the Minimum Fee, shall be due on Permanent Loan Closing, provided that in no event will the maximum compensation paid to HDC exceed \$500,000.

4.4 Fee Due on Termination Prior to Completion. HACC understands and agrees that the payment schedule described in Sections 4.3 understates the value of work required by HDC to achieve each of the payment milestones prior to final payment. In the event that this Contract is terminated by either party prior to Permanent Loan Closing, HDC shall render a bill which shall be due within 30 days, except as noted below. In this event, HDC's fee shall be equal to the sum of Sections 4.4.1, 0 and 4.4.3, less a credit for any amounts previously paid:

4.4.1 The progress milestone amount determined below:

Amount Earned	Progress Milestone
60% of Minimum Fee	Construction Loan Closing
90% of Minimum Fee plus, at the time of Permanent Loan Closing, the Percentage Fee as per Section 4.3.5	Substantial completion of the Project
100% of Minimum Fee plus the Percentage Fee as per Section 4.3.5.	Permanent Loan Closing

4.4.2 The hours spent on the Project by HDC staff subsequent to the last completed progress milestone, or in the case of termination prior to achieving the first progress

benchmark from the beginning of HDC's work on the Project, multiplied by the corresponding hourly rates as outlined in Section 4.5.2 below.

- 4.4.3 Fees or other amounts due pursuant to Sections **Error! Reference source not found.**, 4.5.1, and 4.5.3.

4.5 General.

- 4.5.1 Optional Services. Optional Services requested per Section 3.**Error! Reference source not found.** shall be billed at the hourly rates outlined in Section 4.5.2 below and payment is due within thirty days of the date of invoice. Such fees shall be in addition to the amount set forth in Section 4.2.
- 4.5.2 Hourly Rates. HDC services to HACC for Optional HDC Services in Section 3.4 and for purposes of calculating the fees in Sections 4.5.3, 4.5.1, and 0 shall be based on the following hourly fee schedule:

Executive Director	\$160
Director of Project Construction	145
Director of Project Finance	145
Development Advisor	145
Senior Project Manager	140
Housing Project Manager	120
Housing Project Assistant	100
Director of Asset Management	145
Asset Management Senior Project Manager	140
Asset Management Project Manager	120
Asset Manager Project Assistant	100
Clerical Assistant	85

This rate schedule will be increased by 5% at the beginning of each of HDC's June 30 fiscal years, beginning the first July 1 following the date of this Contract and each July 1 thereafter.

- 4.5.3 Interest. Any fee which is not paid when due shall accrue interest at the rate of ten percent per annum from the date it is due.
- 4.5.4 Tax-Credit Basis Allocation. The total developer fee related to the residential scope of services described in Sections **Error! Reference source not found.**, 3.2 and /or **Error! Reference source not found.** shall be allocated 90 percent to planning and coordinating the development and construction of the Project and obtaining the construction loan for the Project, and 10 percent to actual preparation of the LIHTC application, obtaining permanent financing, and other grants and loans to the Project.

5. TERMINATION

- 5.1 Completion of Contract. HDC's obligations to perform services under this Contract under all circumstances shall terminate on the one year warranty inspection, performed under Section 3.2.8.3.

Exhibit B
Request for Proposal

Exhibit C
Response to Request for Proposal