

**NOTICE
REQUEST FOR
COMPETITIVE SEALED
PROPOSALS**

FOR

CONSTRUCTION MANAGER AT RISK

Cancer Treatment Center

Baptist Hospitals of Southeast Texas

Beaumont, Texas 77701

Baptist Hospitals of Southeast Texas will accept Proposals from Construction Managers in a one-step process until 11:00 AM , August 3, 2023 in the Facilities Management Office at Baptist Hospital, Beaumont, Texas. Address all Submittals to:

Mr. Justin Doss, CEO
Baptist Hospitals of Southeast Texas
3080 College Street
Beaumont, Texas 77701

Reference: **RFP for CMaR Cancer Treatment Center**

Baptist Hospitals of Southeast Texas has a construction budget of \$18,900,000.00 for this project. The project is being funded by the Hospital Mortgage Insurance Program and HUD. The Construction Manager must adhere to all HUD requirements throughout the project.

The Request for Proposals may be obtained by contacting

Architectural Alliance, Inc.
Ronnie Jones, AIA
409 866-7196
rjones@architect-aia.com

Baptist Hospitals of Southeast Texas reserves the right to waive any informalities and to reject any or all Proposals.

CONSTRUCTION MANAGER AT RISK SELECTION SCHEDULE

- Request for Proposals Released July 11, 2023
- CMaR Pre-Proposal Meeting July 18, 2023 2:00 PM
- Receive Proposals August 3, 2023 11:00 AM
- Interviews, if required August 7, 2023
- Notification of successful CMaR August 8, 2023

Proposed Construction Budget - \$18,900,000.00

Five (5) bound hard copies and 1 electronic copy on a flash drive shall be submitted.

SCOPE OF WORK

- 43,350 square foot three story building new construction with associated sitework.
 - First Floor – 15,821 sf
 - Second Floor – 13,765 sf
 - Third Floor – 13,765 sf

Copies of the preliminary plans and the HUD Construction Guide can be downloaded from:

[Architectural Alliance Baptist Hospital Cancer Treatment Center \(architectall.com\)](http://architectall.com)

Password: BaptistCTC

PROGRAM OF REQUIREMENTS

The Program of Requirements for this project are available at the link above and shall constitute the basis for the project. The Program of Requirements is in narrative form and is supported by diagrammatic sketches to the extent necessary to describe the physical characteristics of the project. The Program of Requirements will be appended to the Construction Manager's Form of Agreement as a part of the formal contract.

CONSTRUCTION MANAGER AT RISK

REQUEST FOR COMPETITIVE SEALED PROPOSALS

Construction Manager Defined:

Construction Management is a procedure by which an Owner, desiring to construct a facility of unusual scope and complexity, with a critical completion schedule, contracts for specialized services to provide the expertise, management, and guarantees necessary to produce a quality facility, on time and within the constraints of a budget. These critical elements of quality, schedule and costs are interrelated. The Construction Manager's job is to keep them under control from the beginning of design through completion of construction. A Construction Management firm employed under the CM/GMP method of CM contracting functions acts as an independent contractor, under contract to the Owner, and as such does not function as an agent of the Owner. Under this procedure, the Construction Manager is responsible for cost estimates and cost control, review of design with a view toward value engineering, consultation on construction techniques, construction coordination and scheduling, and direction of all construction activities.

The HUD Construction Management (CM) approach to execution of a building program requires unique qualifications and capabilities on the part of the Construction Manager. It requires that the selected Construction Management firm have the qualifications to influence design decisions, the management capabilities to carry out the construction phase of the project, and the capacity to assume financial risks for completing the construction.

Adding the Construction Manager's talents to the design team enhances the Architect's design capabilities by providing knowledgeable consultation in the areas of construction costs, materials and methods of construction, manpower utilization, and scheduling of the work. One of the important benefits which come from the application of the Construction Management (CM) process is the acceleration of the project construction schedule through the use of phased construction. Finally, the Construction Manager can provide a vital connecting link between the designer and those who will be bidding the work. This should be effective in eliminating many of the conflicts and resulting expensive change orders which are prevalent in the traditional contracting method.

Construction Manager's Agreements

PART A Construction Manager's Consultation Services

The Primary purpose of this document is to secure the services of a Construction Manager to (1) prepare cost estimates; (2) schedule the project efficiently for both the design development and construction phases; and (3) assist in achieving the most efficient use of materials and methods of construction.

PART B Construction Manager's Management Services

The primary purpose of this document is to secure the services of a Construction Manager to organize and direct the complete construction of the project within prescribed costs and time limitations. The PART B document shall not be executed until the Owner and the Construction Manager have agreed on a GMP and specific time for completion. design phase of a project with the option to award the construction phase (PART B) at an appropriate time when construction cost estimates can be reasonably determined.

The two-part document provides for the orderly development of the construction cost estimates, bid packages and GMP through the design phase and allows construction to start prior to completion of the final construction documents for the entire project. HUD can, therefore, authorize the start of construction early with the assurance that sufficient financial resources will be available to the Owner to complete the project.

Using the two-part document for Construction Management Agreements allows the Owner to enter into a limited obligation with the Construction Manager during the design phase of a project with the option to award the construction phase (PART B) at an appropriate time when construction cost estimates can be reasonably determined.

The two-part document provides for the orderly development of the construction cost estimates, bid packages and GMP through the design phase and allows construction to start prior to completion of the final construction documents for the entire project. HUD can, therefore, authorize the start of construction early with the assurance that sufficient financial resources will be available to the Owner to complete the project.

The Construction Manager System will be used in which the CM performs professional management services, but does not perform with the CM's own resources any of the construction work with the exception of General Conditions. The CM shall operate as a member of an Owner-Architect-CM

team which will be involved with production of the project. It is the intent of the Owner to provide for early consolidation of the team of Owner, Architect and CM to allow acceleration of project development, early commencement of certain elements of construction, reduction in construction costs, and final, early occupancy.

The CM is essentially an organization which has proven ability to provide technical consultation during the design stage of the project and to act as manager of construction in organizing and directing construction activities on a project of the scope and complexity similar to that identified above. He shall be responsible for cost estimates and budget control, review of design during the entire process with a view towards value engineering, life-cycle costing, construction coordination and scheduling, and direction of all construction activities. The function of the CM, coupled with the above, shall be the assumption of administrative duties in conjunction with the Owner and Architect towards procurement, bidding and contracting as required for construction of the project.

Construction Manager's Task

CM tasks will include but are not limited to the following:

- 1) Consultation related to building systems, sequences of events, materials and components.
- 2) Implementation of a management control system (MCS) for use in meeting the objectives of the project in a timely, economical, and acceptable manner.
- 3) Preparation of cost estimates and cost comparisons, including long-term cost effects of various alternatives.
- 4) Inspection of the work from start of construction until completion.
- 5) Management and general direction of the entire construction work performed by contractors whose separate bids will be offered to the Owner.

REQUIREMENTS FOR FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

Those firms requested to submit proposals are cautioned that participating Federal funds require that all contracts between the Owner and contractors, and between the contractors and lesser tiers of subcontractors, for work on this project shall require compliance of all parties thereto with provisions of HUD 2554-Supplementary Conditions to the Contract for Construction.

Request for Proposals
Construction Manager At Risk
Baptist Cancer Treatment Center

It is the intention of Baptist Hospitals of Southeast Texas to select via a One Step Request for Proposal process, a Construction Manager at Risk for the construction of the previously stated project for Baptist Hospitals of Southeast Texas in Beaumont, Texas.

Proposals are to include the information requested in the Qualification Statement & Proposal below in the sequence and format prescribed. In addition to and separate from the requested information, organizations submitting may provide supplementary materials further describing their capabilities and experience.

Proposals (5 copies) and one digital copy on a flash drive are to be submitted to:

Mr. Justin Doss, CEO
Baptist Hospitals of Southeast Texas
3080 College Street
Beaumont, Texas 77701

Immediately thereafter, Baptist Hospitals of Southeast Texas and its Architect will review the information submitted and make a recommendation to the Administrative staff.

Queries about the Project should be addressed to:

Ronald M. Jones, AIA
Architectural Alliance, Inc.
350 Pine Street, Suite 720
Beaumont, Texas 77701
409-866-7196

Queries about the Request for Proposal (RFP) should be addressed to:

Mr. Jeromy Jenkins, Administrative Director of Facilities
Baptist Hospitals of Southeast Texas
3080 College Street
Beaumont, Texas 77701

CONSTRUCTION MANAGER AT RISK

Qualification Statement & Proposal

Please provide the following information in the tabbed sequence and format prescribed by this questionnaire. Supplemental materials providing additional information may be attached, but the information requested below is to be provided in this format.

1. Firm Information:

Name of firm:

Address of principal office:

Phone, Fax:

Form of Business Organization (Corporation, Partnership, Individual, Joint Venture, Other?):

Year founded:

Primary individual to contact:

2. Organization:

2.1 How many years has your organization been in business in construction in its current capacity?

2.2 How many years has your organization been in business under its present name?
Under what other or former names has your organization operated?

2.3 If your organization is a corporation, answer the following: Date of incorporation, State of incorporation, President's name, Vice-President's name(s), Secretary's name, Treasurer's name.

2.4. If your organization is a partnership, answer the following: Date of organization, type of partnership (if applicable), names of general partner(s).

2.5 If your organization is individually owned, answer the following: Date of organization, name of owner.

- 2.6 If the form of your organization is other than those listed above, describe it and name the principals.

3. Licensing:

- 3.1 List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable.
- 3.2 List jurisdictions in which your organization's partnership or trade name is filed.

4. Experience & Capabilities:

- 4.1 List the categories of work that your organization normally performs with its own forces. Would you propose to do any work with your own forces or to bid all work to subcontractors?
- 4.2 List any subcontractors in which your organization has some ownership and list the categories of work those subcontractors normally perform.
- 4.3 Claims and suits. (If the answer to any of the questions below is yes, please attach details.)
- 4.3.1 Has your organization ever failed to complete any work awarded to it?
- 4.3.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?
- 4.3.3 Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?
- 4.4 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)
- 4.5 Current work:

List the major construction projects your organization has in progress, giving the name and location of project, owner, architect, contract amount, percent complete and scheduled completion date.

4.6 Work over last 5 years:

Construction experience in the past five years in which your firm acted as prime contractor or construction manager on projects in excess of Ten Million Dollars (\$10,000,000).

		Number of Projects						
		None	1	2	3	4	5	More
4.6.1	Educational							
4.6.2	Commercial & Office							
4.6.3	Industrial							
4.6.4	Medical							
4.6.5	Other							

4.7 Attach a detailed list of above projects indicating whether your organization was prime contractor or construction manager. Give location and description of project including construction cost and date of completion. Also include name, address, and telephone numbers of owner-client for each project.

4.8 Construction cost estimating and cost control capabilities: _____

IN-HOUSE CAPABILITY YES PARTIAL CONSULTANT ONLY

4.8.1 During Construction

4.8.2 During Construction

4.8.3 If partial performed in-house, what percentage of time do you use consultants during design _____: during construction _____

4.9 Number of staff personnel normally assigned to a project:

4.9.1 Design _____

4.9.2 During Construction _____

5. Financial Information:

5.1 Provide name, address, and phone for bank reference.

5.2 Surety: Name of bonding company, name and address of agent. A bond for 100% of the construction cost will be required upon submission of the GMP.

5.2.1 Bonding Limits.

5.2.2 Proof of ability of bond will be required prior to selection.

6. Experience with Concepts for working as a Construction Manager at Risk:

6.1 Describe your organization's concepts for working in a team relationship with the Owner and Architect during the design and construction of major projects. Describe your organization's methods for estimating costs, and for scheduling during the design/documents phases. Which (one or more) of your projects listed above best exemplify these concepts and experience?

6.2 Cost Estimates:

Attach a sample conceptual cost estimate prepared during the design phase of a project, and a sample of the final cost estimate/breakdown used to fix the contract amount for the construction of the same project. (The identity of the project may be concealed. The intent is to see the nature and format of the cost information provided).

6.3 Savings:

Describe your organization's concept for the disposition of savings realized during construction. Is it acceptable to return the full amount of the savings to the owner as required by HUD?

6.4 Contingencies:

Describe your organization's concept for cost contingencies during design? During construction? Do you agree to return 100% if unused contingency funds after the completion of the project back to the Owner?

6.5 Cost Information:

Your firm would be required to make all cost information during design and

construction available to owner and architect. Describe how this information would be furnished and how the owner and architect would be assured that it is complete and accurate.

6.6 Davis-Bacon:

The Hospital and CM must verify that wages are not less than those shown on the applicable Federal wage determination issued by the U.S. Department of Labor. Ensure that all classifications employed are listed, requirements are met if apprentices are employed, and that all laborers and mechanics have been paid not less than 1 ½ times their basic rate of pay for all hours worked in excess of eight hours in any workday or 40 hours in any work week.

7. Personnel:

Given the scope and schedule of the project, identify the specific Project Manager, Estimator, and Superintendent who would be assigned to this project. Provide a resume and references for each individual.

8. Owner/Construction Manager Agreement:

Exhibit 4

Fees:

It is anticipated that Baptist Hospitals of Southeast Texas will enter into a Cost of the Work plus a Fee with a Guaranteed Maximum Price (GMP) contract with the construction manager at risk. A proposed fee quote is required and should be divided into two parts:

Pre-construction Services Fee

For services specified under Part A, Article 2, of the Construction Manager’s Agreement, we propose to provide Pre-Construction Services for a fixed fee of

(\$ _____) _____ dollars

Construction Phase Services Fee

For services during construction, as defined under Part B, Article 3, “Construction Manager’s Task”, we propose to provide Construction Phase Services for a fixed fee of

(\$ _____) _____ dollars

PROJECT CONSTRUCTION SCHEDULE

A maximum construction period of 16 months is envisaged. Every effort shall be made to reduce this figure by optimum scheduling of work sequences. See Liquidated Damages Clause.

GUARANTEE: The undersigned guarantees this proposal for a period of 60 days from date designated for receipt of proposals and agrees not to withdraw this proposal during this period.

General Conditions:

Please provide the anticipated costs for the following general condition items. If you anticipate that you will require additional direct project costs, please list them on a separate, attached sheet. If the list contains an item which you do not feel is necessary please indicate as not required.

NOTE!

Items under Division 0-1, proposed to be self performed, shall be required to be competitively bid by a minimum of (3) three bidders. Related documents to the bidding of these items shall be submitted to Baptist Hospitals of Southeast Texas for review prior to award of the Project.

Any and all rates listed below shall be total rate to be billed to the Hospital, including all associated labor burdens, insurance, taxes, Worker's Comp or any other cost that Baptist Hospitals of Southeast Texas will be billed for.

Anticipated General Conditions – Reimbursable Costs

P&P Bonds		\$ _____/Project
General Liability Insurance		\$ _____/Project
Builder's Risk Insurance		\$ _____/Project
Project Manager	\$ _____/Month	\$ _____/Project
Project Manager Vehicle Allowance	\$ _____/Month	\$ _____/Project
Job Superintendent	\$ _____/Month	\$ _____/Project
Superintendent Vehicle Allowance	\$ _____/Month	\$ _____/Project
Job Layout	\$ _____/Month	\$ _____/Project
Field Office (Including Mobilization & Demobilization)	\$ _____/Month	\$ _____/Project
Portable Chemical Toilet	\$ _____/Month	\$ _____/Project
Temporary Electrical to Site Job	\$ _____/Month	\$ _____/Project
Telephone	\$ _____/Month	\$ _____/Project
Ice/Cups/Water	\$ _____/Month	\$ _____/Project
Gas/Oil/Diesel	\$ _____/Month	\$ _____/Project
Small Tool Rental	\$ _____/Month	\$ _____/Project
Office Equipment and Supplies	\$ _____/Month	\$ _____/Project
Cleanup	\$ _____/Month	\$ _____/Project
Safety Equipment & First Aid	\$ _____/Month	\$ _____/Project
Dumpster	\$ _____/Month	\$ _____/Project
Silt Fence		\$ _____/Project
Temporary Electric Bill	\$ _____/Month	\$ _____/Project

Total Anticipated Reimbursable General Conditions \$ _____ /Month \$ _____ /Project
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CRITERIA FOR SELECTION

Baptist Hospitals of Southeast Texas may consider the following in determining to whom to award the contract for Construction Manager at Risk services for the construction of the previously stated projects. Baptist Hospitals of Southeast Texas will select a Construction Manager At Risk whose goods or services provide the best value for the Hospital based on the following:

Baptist Hospitals of Southeast Texas		
Selection Criteria		Total
1	CMAR's reputation / references	15
2	CMAR's experience with project of similar scope and complexity	10
3	CMAR's past experience working with Baptist Hospitals of Southeast Texas and Architect	05
4	CMAR's demonstration of how the goods and services will meet the Hospital's needs	10
5	CMAR's Proposed Fees	45
6	Any other relevant factors that a private business entity would consider in selecting a CMAR	15
Total		100

Extrapolated from this list, the following criteria will be considered in selecting the construction manager.

1. The reputation of the vendor and of the vendor's goods or services.
 - a. References for projects of similar size and scope. Provide list of all project over the last 3 years. Include initial budget/costs, cost for change orders, and final construction cost.
2. Experience with projects of similar scope and complexity using the Construction Manager At-Risk delivery method.
 - a. Is the firm knowledgeable about and experienced in the Southeast Texas construction market?
 - b. How substantial is the firm's recent experience in providing pre-construction

- c. Does the description provided by the firm of its pre-construction services evidence both understanding and a capability of the process in general and as it applies to this specific project?
 - d. Does the construction manager appear to have the capability to meet the Hospital's schedule objectives?
 3. The CMAR's past experience working with the Hospital and the Architect.
4. Does the CMAR clearly demonstrate that they understand the CMAR delivery method, and HUD requirements?
 - a. How does the proposed methodology meet with the Hospital's needs?
 - b. Does the CMAR understand the HUD requirements for operating under the HUD guidelines? List applicable projects completed under this arrangement.
5. How competitive is the CMAR?
 - a. Pre-Construction Services
 - b. Construction Phase Services
 - c. General Conditions
6. Any other relevant factors that a private business entity would consider in selecting a CMAR
 - a. Financial Status
 - b. Bonding Capacity
 - c. Work Load
 - d. Proposed Superintendent, Project Manager, etc.
 - e. How long has the firm been in business providing the type of services sought by the Hospital?
 - f. Does the firm's organizational structure, licensing and financial information indicate that the firm is capable of undertaking this project?
 - g. Do the personnel proposed for the project appear to have the appropriate experience, capabilities?
 - h. Did the references listed (both owner's and architect's) have a favorable experience with the organization? Would they work with them again? How comparable was their project to this project?
 - i. Past experience working with HUD.
 - j. Any other factors that the Hospital deems important.

EXECUTION OF CONTRACT: If written notice of acceptance of this proposal is mailed, certified, or delivered to the undersigned within the time stated in the Invitation for Proposals for Construction Manager, or any time thereafter before this proposal is withdrawn, the Undersigned shall, within 10 calendar days after the date of receipt of such written notice, deliver Part A of the Construction Manager's Agreement as issued with the invitation for proposals document.

This Proposal is Submitted By:

() AN INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME

(Firm Name)

() A PARTNERSHIP

(Partnership Name)

() A CORPORATION

(Full Name of Corporation)

() JOINT VENTURE

(Full Name of Joint Venture)

Workmen Compensation Insurance is placed with:

Public Liability and Property Damage Liability Insurance is placed with:

SIGNATURE (Affix Corporate Seal if incorporated):

Signed _____

Title _____

Signed _____

Title _____

Name of Firm, Partnership, or Corporation:

Business Address

Mailing address or number to which notice of acceptance may be mailed or faxed:

Attachments:

Exhibit 4 – Construction Manager Agreement

Exhibit 5 – Performance Bond and Payment Bond Sample Form

Exhibit 7 – Contract Time and Substantial Completion.

Exhibit 8 – Sample Pre-Qualification Statement for Sub-Contractors

HUD-2554 – Supplementary Conditions of the Contract for Construction

**EXHIBIT 4
CONSTRUCTION MANAGER AGREEMENT**

PART A - CONSTRUCTION MANAGER'S CONSULTATION SERVICES

THIS AGREEMENT, entered into this _____ day, 20____, is by and between _____,
hereinafter called the OWNER, and _____,

CONSTRUCTION MANAGER:

WHEREAS the Owner intends to erect

Herein after called the PROJECT, according to construction contract documents to be prepared by
_____, hereinafter called the ARCHITECT:

THEREFORE, the Owner and the Construction Manager agree as follows:

ARTICLE 1 PURPOSE AND INTENT

The primary purpose and intent of Part A of this Agreement is to secure the services of a Construction Manager to provide design consultation on the project; to monitor project costs and endeavor to keep costs within established limitations; to schedule the project efficiently for both design development and construction phases so that the project will be ready for occupancy at the earliest possible date; and to review the design of the project with the intent that the most efficient use of materials and methods will be employed to provide quality construction at the least cost.

ARTICLE 2 CONSTRUCTION MANAGER'S TASKS

2.1 Review of Plans and Specifications

- 2.1.1 Review of all plans and specifications during the design development and advise on site, foundations, systems and materials, construction feasibility, availability of labor and materials, time requirements for procurement, installation and construction, relative costs, and provide recommendations for economies as appropriate.
- 2.1.2 Technical consultation to the Architect or other professional disciplines shall not infringe upon the design responsibility of those disciplines. The Construction Manager may make recommendations relating to the cost of a particular design or material selection; however, if such recommendations are accepted for incorporation into the project design, their application with regard to structural stability and life safety shall be the responsibility of the Architect. The Construction Manager shall not be assigned responsibilities which duplicate those assigned in the contract for architectural services.

2.2 Technical Proposals

Participate with the Architect, as a consultant, in the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems components of the construction and for procurement of long lead time equipment and materials. The Construction Manager shall issue requests for technical proposals to qualified sources and shall receive proposals and assist in their evaluation; conduct formally advertised procurement by

assembling the contractual documents and issuing invitations for bids; and be prepared to proceed with the several contracts immediately upon notification to proceed with PART B of this agreement.

2.3 Cost Consultation

The Construction Manager shall provide a continuous cost consultation service for the duration of this agreement and shall prepare, and be responsible for, all procurement and construction cost estimates. The Construction Manager shall prepare preliminary estimates as requested in support of the design process and shall prepare final cost estimates for all early procurement of equipment and materials; for all systems components contracts; and for all out of system construction work. The Construction Manager shall notify the Owner whenever the estimated construction cost is tending to exceed the budget or whenever the design is such as to preclude meeting the completion schedule.

2.4 Long Lead Time Procurement

Identify, recommend for purchase, and expedite the procurement of equipment, materials and supplies which require long lead time for procurement or manufacture.

2.5 Construction Contract Documents

Make recommendations to the Owner regarding the division of work into separate contracts to effect economy and permit phasing of procurement and construction. The Construction Manager shall consider such factors as type and scope of work, time of performance, availability of labor and materials, community relations, factory vs. on-site production costs, shipping costs and size limitations, building code restrictions, and other limiting factors.

2.6 Interfacing Separate Contracts

Review plans, specifications and schedules for the project to minimize conflict and overlap of jurisdiction between separate contractors.

2.7 Job Site Facilities

Review the specifications to ensure that they contain provision for all temporary facilities necessary to enable contractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect and supervise construction.

2.8 Bidding Documents and Advertisement for Bids

Review the bidding documents with the Architect, assemble bid data including copies of drawings and specifications provided by the Architect, to obtain competitive bids on appropriate segments of construction, including procurement of equipment, materials and supplies purchased under separate requisition.

2.9 Management Control System

The Construction Manager shall implement a management control system (MCS) for the design and construction of the project using both guide and automated procedures to support such functions as planning, organizing, scheduling, budgeting, reporting construction progress and expenditures, accounting, documentation, identifying variances and problems, decision making,

and decision implementation. The data provided by the management control system must be timely, must be responsive to the needs of management at all levels, and must be fully capable of providing a sound basis for management decisions.

2.9.1 Nature of Services to be Performed

The management control system shall incorporate three major subsystems, for use in meeting the objectives of the project in a total economical and acceptable manner. The Construction Manager shall provide the services, facilities and support equipment necessary to implement the MCS on the project.

2.9.2 Planning and Progress Monitoring Subsystems

Produce a preliminary construction schedule for initial review and approval.

Produce a final construction schedule that integrates the various construction contractors' plans into one complete and realistic schedule.

Provide for an occupancy schedule prepared in coordination with the Owner.

2.9.3 Budget Control and Accounting Subsystem

Provide for the periodic collection of proposed changes in the approved budget for all uncompleted tasks. The proposed but unapproved new budget figure is identified as the "current working estimate."

Identify variances between "current working estimate" and the approved budget. These variances are project cost overruns (under runs).

2.9.4 Documentation and Historical Subsystem

Provide documentation of all changes made in the approved schedule and approved budget so that complete traceability is maintained between the original plan (schedule and budget) and the latest approved plan.

2.9.5 Reports

The MCS, when fully implemented, will generate reports necessary for effective cost control of the overall construction Program.

Reports will be provided to management in summary form which will allow for management by exception. Reports will be provided to subordinate levels of management in sufficient detail consistent with their respective requirements and responsibilities.

2.10 Preparation of The Guaranteed Maximum Price

- 2.10.1 On or before the date given in Article 3 of this Agreement, the Construction Manager shall prepare an itemized Guaranteed Maximum Price for the entire project, clearly summarizing the costs for each component of the work as it will be packaged and bid. Such Guaranteed Maximum Price shall be the sum of:

- a. Reimbursable - An estimate of the cost of the reimbursable items as defined in Article 4 of PART B of this Construction Manager's Agreement; plus
- b. Cost of the Work - The Construction Manager's estimate of the cost of the work to be performed and materials to be purchased by separate contract including the cost of any separate contract, permits, fees, taxes, patents, copyrights, royalties, and performance and payment bonds to complete construction of the project, plus
- c. The cost of the Construction Manager's services as a fixed fee as set forth in PART B, Article 11.1.

2.10.1(a) Alternate to 2.10.1

When the design has been sufficiently developed, in the opinion of the Architect, Construction Manager and OAE, the Construction Manager shall prepare an itemized Guaranteed Maximum Price for the entire project, clearly summarizing the costs for each component of the work as it will be packaged and bid. Such Guaranteed Maximum Price shall be the sum of:

- a. Reimbursable - An estimate of the cost of the reimbursable items as defined in Article 4 of PART B of this Construction Manager's Agreement; plus
- b. Cost of the Work - The Construction Manager's estimate of the cost of the work to be performed and material to be purchased by separate contract, including the cost of any separate contract, including the cost of any separate contract permits, fees, taxes, patents, copyrights, royalties, and performance and payment bonds to complete construction of the project; plus
- c. The cost of the Construction Manager's services as a fixed fee, as set forth in PART B, Article 11.1.

2.10.2 The Guaranteed Maximum Price shall not include such Project expenses as cost of site, site survey and investigations, of professional design fees, construction testing and inspection, Owner's Project Inspector, moveable equipment, finance costs and furnishings. Cash allowances are prohibited in establishing the Guaranteed Maximum Price.

ARTICLE 3 TIME FOR PERFORMANCE

The Construction Manager shall submit a Guaranteed Maximum Price for acceptance by the Owner by (date) or within thirty (30) days after receiving the contract documents from the Architect, whichever is later. Upon submission of the GMP, the Owner shall accept or reject the offer submitted by the Construction Manager, as to proceeding with PART B of the Construction Manager's Agreement, within sixty (60) days after submission of the GMP, during which period the offered GMP may not be withdrawn or modified. Should the Owner not accept the GMP offered within such 60-day period, this Agreement shall be terminated.

ARTICLE 4 EXECUTION OF PART B OF THIS AGREEMENT

- 4.1 Upon the Owner's timely acceptance of the Guaranteed Maximum Price provided under Article 2.10 of this Agreement, the Construction Manager agrees to enter into PART B of this Agreement on the basis of the Construction Manager's offer to the Owner dated ____, 20__ .
- 4.2 Upon Execution of PART B of this Agreement the Construction Manager shall not be considered an

employee of the Owner. The Construction Manager shall perform his or her tasks and duties consistently in such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the Owner, including, but not limited to, workman's compensation, disability benefits, accident or health insurance, unemployment insurance, social security or retirement membership.

ARTICLE 5 CONSTRUCTION MANAGER'S COMPENSATION

5.1 The Owner will pay the CM as total compensation for services under Article 2 of this Agreement the fee of:

_____ dollars (\$_____).

1/ See Exhibit 3 - Construction Manager's Proposal.

5.2 Payments under this Agreement will be made for services under PART A, Article 2, after receipt of properly executed requests for payment as follows:

- a. 25% of the fee shown in Article 5.1 upon completion and acceptance of the services required to complete the preliminary drawings and specifications for the project
- b. 25% of the fee shown in Article- 5.1 upon completion and acceptance of the services required to develop the drawings and specifications to 50% completion.
- c. 25% of the fee shown in Article 5.1 upon completion and acceptance of an itemized Guaranteed Maximum Price as specified in Article 2.10.
- d. Upon satisfactory completion and acceptance of all design phase services specified under Article 2, the CM shall be paid the balance due under Article 5.1 of this Agreement.

ARTICLE 6 ASSIGNMENT AND TERMINATION

The Owner may, at its option, terminate this Agreement by giving the Construction Manager written notice of such termination and paying the Construction Manager for agreed services rendered to date of termination. Payment will be based upon the nearest level of completion specified in Article 5.2.

THE OWNER AND CONSTRUCTION MANAGER have, on this day, month and year first above written, executed this Agreement in two counterparts, each of which shall, without proof or accounting for the other counterparts, be deemed an original thereof.

OWNER:

CONSTRUCTION MANAGER:

By: _____

By: _____

Attest: _____

Attest: _____

PART B

PART B - CONSTRUCTION MANAGEMENT SERVICES WITH GUARANTEED MAXIMUM PRICE

THIS AGREEMENT, entered into this _____ day of _____, 20__, is by and between _____, hereinafter called the OWNER, and _____, hereinafter called the CONSTRUCTION MANAGER.

WHEREAS the Owner intends to erect a _____, hereinafter called the PROJECT, according to construction contract documents prepared by _____, hereinafter called the ARCHITECT: which documents are titled: _____, are identified by the Project Number _____, are listed with dates for each in the General Conditions.

THEREFORE, the Owner and the Construction Manager agree as follows:

ARTICLE 1 PURPOSE AND INTENT

- 1.1 The primary purpose and intent of PART B of this Agreement is to secure the services of a Construction Manager to organize and direct the complete construction of the project and to assume all risks and responsibilities of producing the project within a Guaranteed Maximum Price.
- 1.2 Upon notice that the Owner elects to proceed with PART B of this Agreement, the Construction Manager shall post performance and payment bonds each in the amount of 100% of the Guaranteed Maximum Price, and on written notice to proceed shall immediately accept assignment of and administer those contracts for which acceptable bids are in hand as provided under Article 2 of this Agreement.

ARTICLE 2 COMPETITIVE BIDDING

- 2.1 The bidding on construction contracts must be conducted so as to achieve maximum competition among qualified bidders in order to obtain the most reasonable price for acceptable work. Therefore, competitive bidding by formal advertising is the preferred method of contracting under a Construction Management Agreement.
- 2.2 Formal Advertising - For the purpose of this policy, the term "formal advertising" entails:
 - a. Preparation of the invitation for bids describing the building design and specifications clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders.
 - b. Publicizing the invitation for bids through distribution to prospective bidders, posting in public places, publication in newspapers and trade journals, and such other means as may be

appropriate, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

- c. Awarding the contract, after sealed bids are publicly opened, to that responsible bidder whose bid, conforming to the invitation for bids, contains the lowest price offered.

2.3 Selective solicitation of bids—When selective solicitation of bids is permitted, the Construction Manager shall:

- a. Establish reasonable pre-qualification standards for bidders, acceptable to the Office of Architecture & Engineering, which shall be included in the "Information for Bidders" document. The Construction Manager shall forward a list of recommended bidders to the Owner for approval. (See Appendix A - Exhibit 8 - Sample pre-qualification statement for sub-contractors.)
- b. Solicit by written invitation and receive positive bid responses from three or more sub-contractors. Should less than three responsive bids be received, the Project shall be publicly advertised as described herein.
- c. Consider bids from any sub-contractor who requests permission to bid and who is determined by the Owner after consultation with the Construction Manager to meet bidding pre-qualification requirements set forth in the "Information for Bidders" document.

2.4 The general function of the Construction Manager is to serve as the Owner's representative with responsibility directly to the Owner. The CM's employment should be such to preclude any conflict of interest. In particular, the Construction Manager shall not bid any work in competition with bidding contractors. Neither the Construction Manager nor any firm in which a principal (i.e., over 10%) stockholder or member of the Construction Management firm has a financial interest, shall during the term of the contract, make or cause to be made any bid for construction work of the project referred to in this contract. Notwithstanding the foregoing, however, if the low bid for any bid package exceeds the Construction Manager's budget line item price for such package, or if less than three bids are received in response to the advertisement of any bid package, with the Owner's approval, one of the following procedures shall be followed:

- a. The CM shall negotiate with the low bidder to reduce the price of the bid package to a cost which will not exceed the budget line item price: or
- b. The CM shall reject all bids and issue a revised invitation to bid prepared by the project Architect and approved by the Owner: or
- c. The CM shall award to the low bidder for a price above the budget line item: or
- d. The CM shall perform the work for the amount of the budget line item price, or the Construction Manager's actual cost if lower than the budget price.

2.5 The Construction Manager may only perform work on the project under the provisions described in Article 2.4 above. Whichever of the foregoing procedures is followed, there shall be no reduction of the scope or quality of the project for any bid package in order to accomplish the project within the Guaranteed Maximum Price.

The CM shall be obligated to perform such work with the CM's own resources when it is necessary to

complete the project within the Guaranteed Maximum Price.

2.6 Contract Awards

- 2.6.1 The Owner shall be responsible for approving awards of all contracts after evaluation and recommendation by the Construction Manager and concurrence of the Project Architect. After Owner approval the Construction Manager shall make the award.
- 2.6.2 Participating Federal funds in this project require that all construction contracts between the Owner and contractors, between the Construction Manager and contractor, subcontractors and lesser tiers of subcontractors, incorporate the provisions of the current edition of the Department of Housing and Urban Development, Form HUD-2554. *Note: If construction does not begin within 90 days of initial endorsement, any modifications to a wage decision that occur after initial endorsement, any modifications to a wage decision that occur after initial endorsement become applicable to the construction work unless DOL approves a request from HUD for an extension. (See DOL regulations 29 CFR 1.6(c)(3)(ii) and (iv). In the less likely cases of a “project” wage determination issued upon request for an individual project the wage determination is effective for 180 days from the date of the determination. [29 CFR 1.6(a)(1)].*

2.7 Surety Bonds and Insurance

- 2.7.1 Construction Manager's Performance and Payment Bond - Upon notice that the Owner elects to proceed with PART B of the Construction Manager Agreement, the Construction Manager shall post performance and payment bonds each in the amount of 100% of the Guaranteed Maximum Price. HUD bond forms are required for Section 242 projects.

2.7.2 Insurance

- a. Construction Manager's Liability Insurance - Construction Managers shall be required to purchase and maintain such insurance as will protect them from claims set forth below which may arise out of or result from the Construction Manager's operations under the contract whether such operations be by the Construction Manager or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.
1. Claims under workmen's compensation, disability benefit and other similar employee benefit acts;
 2. Claims for damage because of bodily injury, occupational sickness or disease, or death of the Construction Manager's employees;
 3. Claims for damages because of bodily injury, sickness or disease, or death or any person other than the Construction Manager's employees;
 4. Claims for damages insured by usual personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by the Construction Manager, or (b) by any other person; and
 5. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.

- b. The Construction Manager's Comprehensive General Liability Insurance and Automotive Liability Insurance shall be in an amount not less than \$3,000,000 for injuries, including accidental death, to any one person and subject to the same limit for each person, and in an amount not less than \$3,000,000 on account of one occurrence.
 - c. The Construction Manager's Property Damage Liability Insurance shall be in an amount not less than \$1,000,000. The Construction Manager shall either (1) require each subcontractor to procure and to maintain during the life of the subcontract, Subcontractor's Comprehensive General Liability, Automotive Liability, and Property Damage Liability Insurance of the type and in the same amounts as specified in this Article, or (2) insure the activity of subcontractors in the Construction Manager's own policy. The Construction Manager's and subcontractors' liability insurance shall include adequate protection against special hazards.
 - d. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the work. These certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least fifteen day notice has been given to the Owner. *Evidence of Builder's Risk Insurance must be made available to HUD prior to HUD-242 initial endorsement.*
 - e. Owner's Liability Insurance - The Owner shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect against claims which may arise from operations under the Contract.
 - f. Property Insurance - Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Construction Manager, subcontractors, and sub-subcontractors in the work and shall insure against the perils of fire, extended coverage, vandalism and malicious mischief. In addition, if the property is located in a Special Flood Hazard Area (SFHA) designated on a Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA), the Owner shall purchase flood insurance on any building located in the SFHA.
 - g. The Owner shall purchase and maintain such steam boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the Owner, the Construction Manager, subcontractors and sub-subcontractors in the work.
- 2.7.3 Each trade contract awarded by the Construction Manager is a separate contract awarded on the basis of competitive bidding. These contracts are referred to as subcontracts to conform to insurance terminology utilized in standard insurance policies. For insurance purposes the relationship of the Construction Manager to the trade contractor is the same as that of a general contractor to a subcontractor.
- 2.7.4 Bonding of trade contractors should be required when recommended by the Construction Manager. A specific statement with reference to bonding requirements shall be included in the information to bidders on each separately bid trade contract. Where bonding is not required, it should be stated clearly.

ARTICLE 3 CONSTRUCTION MANAGER'S TASKS

3.1 Obtain Separate Bids

- 3.1.1 Conduct with the Architect, pre-bid conferences to inform prospective bidders of requirements and answer questions concerning the bidding requirements for those parts of the work which have not been bid under PART A of the Agreement. The pre-bid conference may also serve as a means for obtaining comment from prospective bidders to clear up any ambiguities in the IFB documents. The requirements of Executive Order 11246, Equal Employment Opportunity (EEO) should be emphasized at the pre-bid conference. Where plans exist for affirmative action programs in "target areas" all prospective bidders shall be informed of the special requirements of such plans. The Owner and the Architect shall be represented at pre-bid conferences.
- 3.1.2 Award the separate contracts as required to provide all labor and materials for the construction of the project, including those parts of the work which have been paid under PART A of this Agreement.

3.2 Establishment of Construction Manager Organization

- 3.2.1 Establish organization and lines of authority required to carry out requirements of this Agreement in order to organize and direct the complete construction of the Project. A list of personnel, approved by the Owner, shall be included as a separate attachment to this Agreement, and shall be the key personnel to be used on the project.
- 3.2.2 Under the basic fee the Construction Manager will furnish the services of the key personnel named in the list of personnel attached hereto. No substitution of any of the key personnel will be made by the Construction Manager without the prior written consent of the Owner. Before any such substitution, the Construction Manager shall submit to the Owner a detailed justification supported by the qualification of any proposed replacement.
- 3.2.3 The services to be performed hereunder shall be performed by the Construction Manager's own staff, unless otherwise authorized by the Owner. The employment of, contract with, or use of the services of any other person or firm by the Construction Manager, as consultant or otherwise, shall be subject to the prior written approval of the Owner. Such approval shall not be construed as constituting an agreement between the Owner and any such person or firm.
- 3.2.4 All services under the contract shall be performed in a competent and efficient manner. The Owner may, in writing, require the Construction Manager to remove from the work any employee the Owner deems incompetent, careless, or otherwise objectionable and replace any such employee with suitable personnel.
- 3.2.5 Prepare and publish a field operation guide to implement the administration of the work to be performed under the terms of this Agreement. The guide shall include the following data:
- | | |
|------------------------------------|--------------------------------|
| a. Directory of Personnel | g. Contract Changes |
| b. Correspondence | h. Extensions of Time |
| c. Reports and Records | i. Progress Payments |
| d. Inspection Procedures | j. Final Acceptance Procedures |
| e. Shop Drawing Submittal | k. Additional Instructions |
| f. Testing Laboratories Procedures | |

3.3 Pre-Construction Conference

Conduct pre-construction conferences with successful bidders. Schedule and conduct meetings to be attended by the separate contractors and representatives of the Owner and Architect to discuss such matters of procedures, progress, problems, scheduling, labor standards (including overtime) and equal employment opportunity provisions. The Construction Manager shall take, transcribe, and distribute minutes of such meetings to principals in attendance.

3.4 Construction Estimate Revisions

Review and refine construction estimates as construction proceeds, and as required to incorporate approved changes to the Project as they occur. The Construction Manager shall advise the Architect and the Owner whenever construction costs deviate from the costs set forth in the itemized Guaranteed Maximum Price.

3.5 Shop Drawings, Materials, and Supplies

Establish and implement procedures to be followed for expediting the processing and approval of shop drawings, catalog, and samples, and the scheduling of material requirements.

3.6 Supervision of Separate Contractors

- 3.6.1 Maintain a competent full-time supervisory staff at the job site for the coordination and direction of the work of the separate contractors. Determine the adequacy of the separate contractor's personnel and equipment and the availability of necessary materials and supplies; take the action necessary to maintain the job schedule.
- 3.6.2 It is the responsibility of the Owner to maintain an inspection staff at the job site for the inspection of the work of the Construction Manager and the separate contractors, and to conduct factory inspections as required. The Construction Manager will participate with the Owner and the Architect in performing full project inspections at required intervals of completion as well as a pre-final and final inspection. The purpose of such inspections is to assure that the materials furnished and work performed are in accordance with the working drawings, specifications, and other contract documents and that the work on the project is progressing on schedule. The Architect shall have the authority to reject work which does not conform to the contract requirements. In the event an interpretation of the meaning and intent of the working drawings and specifications becomes necessary during the construction, the Construction Manager shall consult with the Owner and the Architect, obtain the interpretation in writing, and transmit the same to the appropriate separate contractor.

3.7 Comprehensive Safety Program

The Construction Manager shall review the safety programs developed by each of the separate contractors and prepare and submit to the Owner a recommended comprehensive safety program which complies with the requirements of the Occupational Safety and Health Act of 1970 (Performance of such services will not relieve the separate contractors of their respective responsibilities for safety of persons and property or from compliance with all applicable statutes, rules, regulations or orders). During construction, the Construction Manager shall monitor compliance by the separate contractors with their contractual safety requirements and report deficiencies.

3.8 Labor Relations

Make recommendations and render assistance as necessary for the development and administration of an effective labor relations program for the Project and the avoidance of labor disputes during construction.

3.9 Job Site Records

- 3.9.1 Maintain at the job site on a current basis records of all contracts including shop drawings; samples; purchases; subcontracts; materials; equipment; applicable handbooks; Federal, commercial and technical standards and specifications; and any other related documents and revisions thereto which arise out of this contract or the construction work. Prior to final payment, the records will be delivered to the Owner.
- 3.9.2 Maintain cost accounting records in accordance with established procedures with respect to portions of the work to be performed by change orders or otherwise on a time and materials, unit cost, or similar basis requiring the keeping of records and computation there from.
- 3.9.3 Keep accurate and detailed written records of the progress of the project during all stages of construction; submit monthly written progress reports to the Owner including, but not limited to, information concerning the work of each of the separate contractors, the percentage of completion and the number and amount of change orders. Maintain a daily detailed log of all events occurring on the job site or connected with progress of the project. The log shall be open to the Owner and the Architect at all times and shall be turned over to the Owner at the completion of the construction.
- 3.9.4 Maintain copies of the progress schedule at the job site to reflect current conditions and provide copies to the Owner with periodic reports as to deviations from the schedule, the causes of the deviations and the corrective action taken.
- 3.9.5 Maintain at the job site a current marked set of working drawing prints and specifications to facilitate the preparation of as-built drawings.
- 3.9.6 Furnish certified records in duplicate of building and approach lines; elevations of bottoms of footings, floor levels and approaches made as the work progresses.

3.10 Changes in the Work

- 3.10.1 Make recommendations to the Owner after consultation with the Architect for such changes in the work as the Construction Manager may consider necessary or desirable or as requested by the Owner.
- 3.10.2 Provide to the Architect such information including costs as he may require preparing necessary change orders and insuring that all change orders are properly carried out.

3.11 Payments to the Separate Contractors

Review and process all applications by the separate contractors for progress payments and final payments and make recommendations to the Owner for approval thereof. Upon approval, if duly authorized make payment to the separate contractors.

3.12 Storage of Materials and Equipment

Accept receipt of materials and equipment purchased by the Owner; provide storage and protection for materials and equipment until turned over to the separate contractors for installation.

B

ARTICLE 4 **REIMBURSABLE COSTS**

4.1 Reimbursable costs are defined as those costs and expenses incurred by the Construction Manager (exclusive of profit and overhead) for which reimbursement may be authorized in advance, in writing, by the Owner. Reimbursable costs shall be limited to General Condition Items and salaries for personnel employed on the project including the level of the Project Superintendent. Reimbursable may also include travel and per diem costs by the home office or job-site management personnel required to fulfill the Construction Management-Agreement Reimbursable costs shall include the following:

- a. The costs of all job site materials used in providing the general condition items
- b. The costs of all job site labor used in providing the general condition items, including the salaries of foreman and other employees below the level of the Project Superintendent including the salaries of specialized employees such as estimators, expeditors, and labor relations specialists used on an as-needed basis), subject to the prior approval of the Owner of all job site personnel, including the number of such personnel, their job classification and salaries.
- c. All payroll charges for job site personnel, such as FICA and other payroll taxes, workmen's compensation, disability benefits and unemployment insurance as required by law and wage supplements paid to labor organizations in accordance with current labor agreements: vacation expenses and sick leave allowances for such personnel not covered by labor agreements shall be reimbursed in accordance with the policy and trade practices applicable to wages or salaries paid to such employees for work in connection with the Project, subject to the prior approval of the Owner, provided, however, the contractor must comply with the Labor Standards Provisions applicable to the contract.
- d. The cost of all plant equipment owned by the Construction Manager at rental rates to be determined by the Owner in accordance with established principles for the derivation of costs of plant properly chargeable to job-site operations. The Construction Manager shall furnish its own plant and equipment, if available. For these purposes the rental rate on self-owned equipment shall be computed in accordance with market rates within the region of the project, and within industry standards, for the particular item of equipment, and any item of equipment required for a period of less than one month shall be prorated accordingly. However, the total amount of rental to be allowed by the Project Manager hereunder for any item of self-owned equipment shall not exceed the fair market value of such item at the time of its first use on the Project. The options for purchase of Construction Manager owned equipment shall be the same as provided for rental equipment under 4.1 e.
- e. Rental costs for equipment rented from others; provided, however, that every agreement under which the Construction Manager rents equipment from others shall contain an option or options for the Construction Manager's purchase of such equipment, if available. A copy of each such agreement shall be filed promptly with the Owner. The Construction Manager shall exercise any such option at the request of the Owner. In such event the Owner shall

reimburse the Construction Manager for such purchase price and the Construction Manager shall dispose of such equipment as directed by the Owner and shall credit the proceeds thereof to the Owner.

- f. Transportation costs on equipment and materials.
 - g. Restricted quantities of small tools and supplies, which shall include among other items, all fire extinguishers and all special and protective wearing apparel.
 - h. The cost of fuel and lubricants, power, light, water, and telephone service if not provided directly by the Owner.
 - i. The amount of all sales and use taxes paid by the Construction Manager in connection with general condition items.
 - j. The amounts paid in accordance with subcontracts for General Condition items approved in advance by the Owner.
- 4.1.2 PROVIDED, however, that on all of the aforesaid items the Owner shall be credited with (a) such discounts of invoices as may be obtainable: (b) the salvage value of materials charged to the Owner and taken over by the Construction Manager for its use or sale when no longer needed by it in its performance of this Agreement: and (c) any rebates, refunds, returned deposits or other allowances properly credited to the Construction Manager's reimbursable costs and expenses hereunder.

4.2 Personnel Hourly Rate Schedule

- 4.2.1 A personnel hourly rate schedule shall be appended to this Agreement. The rate schedule shall be prepared by the Construction Manager and shall include the following data:
- a. A classification for each category of labor to be employed by the Construction Manager in performance of the General Condition items.
 - b. A specific rate for reimbursement of labor expended under each classification of labor in the performance of the General Condition items.
- 4.2.2 The personnel hourly rate schedule shall be used in determining the reimbursable amount due the Construction Manager in performance of General Condition items. The personnel hourly rate schedule shall not include the rates for officers, general supervisory employees, the construction executive, or engineering staff which have been provided for the Construction Manager's fee to organize and direct the complete construction of the project.

ARTICLE 5 GENERAL CONDITION ITEMS

- 5.1 General condition items shall be restricted to support type operations and shall not include labor and material utilized in construction of the project and resulting in a permanent part of the total facility.

5.2 General Condition items include, but are not limited to the following:

- | | |
|------------------------|---|
| a. Watchmen | j. Cleaning |
| b. Temporary toilets | k. Trucking |
| c. Temporary fencing | l. Refuse disposal |
| d. Sidewalk bridges | m. Temporary heat, water and electricity |
| e. First aid station | n. Field office and its related costs, equipment and furnishings |
| f. Temporary elevators | o. Messenger service |
| g. Signs | p. Limited rental of automobiles for employee use only with prior approval of Owner |
| h. Safety barricades | |

ARTICLE 6 ADJUSTMENT FOR CHANGES IN SERVICES

The Owner may, at any time, by written order, make changes to this contract for the services to be performed. If such changes cause a substantial increase or decrease in the Construction Manager's cost of performance of any services under this contract, the changes shall be indicated in writing. Exception: No increase in the Construction Manager's fee shall be permitted when the cost for such services results from changes in work generated from return of savings expected and agreed upon with the Owner. Any claim of the Construction Manager for adjustment must be asserted in writing within 30 days from the date of receipt by the Construction Manager of the notification of change unless the Owner grants a further period of time before the date of final payment under this contract. No services for which an additional cost or fee will be charged by the Construction Manager shall be furnished without prior written authorization of the owner. If a change occurs due to an excess in work and cost beyond the GMP, the additional cost including any proposed fee must be reviewed on a case by case basis, by the Owner, CM and HUD as are all changes, and in no case will the fee or general conditions be preset by the CM contract on a percentage basis. On HUD - 242 projects this agreement shall not be assignable by either party without the prior consent of the other party, the Lender and the Secretary of DHUD, except that the Owner may assign the Agreement to the Lender or the Secretary of Housing and Urban Development.

ARTICLE 7 SUSPENSION OF WORK - DELAYS

The Owner may order the Construction Manager in writing to suspend, delay, or interrupt all or any part of the part on the project for such period of time as he may determine to be appropriate for the convenience of the Owner.

If the performance of all or any part of the work on the Project is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner in the administration of the Project, an adjustment shall be made for any increase in the cost of performance of this contract necessarily caused by such unreasonable suspension, delay or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Construction Manager, or (b) for which an equitable adjustment is provided for or excluded under any other provision of the contract.

In the event work on the Project is suspended or otherwise delayed, the Owner shall reimburse the Construction Manager for the costs of his or her full job site staff provided for by this Agreement for the first 30 days of such delay. The Construction Manager shall reduce the site of the job site staff for the remainder of the delay period as directed by the Owner, and during such period, the Owner shall reimburse the Construction Manager for the costs of such reduced staff plus an amount not to exceed 30% for related payroll taxes, insurance, pensions, and fringe benefits. Upon the termination of the delay the

Construction Manager shall restore the job site staff to its former size, subject to the approval of the Owner.

ARTICLE 8 ARBITRATION

Any controversy arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration in accordance with the rules then obtaining of the American Arbitration Association and judgment upon the award may be entered in any court having jurisdiction thereof.

ARTICLE 9 TERMINATION

The Owner may terminate all or any portion of the services to be performed by the Construction Manager under this Agreement, or any additions or modifications thereof, upon giving the Construction Manager 30 days written notice of such termination. In the event of termination, the Construction Manager shall deliver to the Owner all reports estimates, schedules and other documents and data prepared pursuant to this Agreement.

The Construction Manager shall be entitled to receive payments for services provided to date of termination (including payment for the period of the 30-day notice) plus the percentage retained thereon and reimbursement for approved reimbursable costs and expenses incurred by the Construction Manager to the date of termination. Prior to payment, the Construction Manager shall furnish the Owner with a release of all claims against the Owner, other than claims in stated amounts as may be specifically excepted by the Construction Manager from the operation of the release.

ARTICLE 10 TIME FOR COMPLETION

10.1 The Schedule showing required design and construction completion dates is included in Appendix ____ attached to this Agreement and incorporated herein by reference. In the absence of a specified completion date, the construction shall be substantially completed within calendar days.

ARTICLE 11 CONSTRUCTION MANAGER'S COMPENSATION

11.1 The Owner will pay the Construction Manager as total compensation for services under PART B, Article 3, the fee of:
_____ Dollars (\$_____)

11.2 The Owner will pay the Construction Manager, on a reimbursable basis, for services provided under PART B, Article 4, Reimbursable Costs, and Article 5, General Conditions Items, an amount not to exceed the sum of:
_____ Dollars (\$_____)

11.3 The Owner will pay the Construction Manager a sum equal to the cost of all separate contracts awarded and materials purchased or the construction of the project not to exceed the sum of:
_____ Dollars (\$_____).

Subject to prior formal approval by the Owner, based on reasonable justification by the Construction Manager, excess funds may be transferred between Article 11.2 and Article 11.3. Attached is a breakdown showing the dollar amount allotted to each bidding package; all of which total this amount.

- 11.4 The amounts paid to the Construction Manager under Article 11.1 thru 11.3 of PART B of this Agreement shall not exceed the Guaranteed Maximum Price of:
_____ Dollars (\$_____)
- 11.5 Payments to the Construction Manager will be made for services under PART B of this Agreement consistent with the Department of Housing and Urban Development's ' retainage requirement as defined below, on a monthly basis after receipt of properly executed application for payment. Retainage retention is mandatory in the Section 252 HUD Program.
- a. Retainage requirement for the purposes of this Article is defined as the withholding of 10% on the entire request for payment by the Construction Manager
1. The fee for services performed.
 2. The cost of the work performed.
 3. The reimbursement of general condition items.
- Retainage will be held as described herein up to 50% of the GMP on a cumulative basis. Thereafter, with the approval of the Architect, the Owner, the *Lender*, the Department of Housing and Urban Development, and the Surety, no further retainage maybe required on the balance.
- b. After completion and acceptance of all construction work and upon receipt of a release of claims pertaining to all work performed under the terms of this Agreement, the full amount including retainage due the Construction Manager shall be paid at the time of final endorsement of the mortgage.
- 11.6 The Construction Manager shall file no mechanic's or material man's lien or maintain any claim against the Owner's real estate or improvements for or on account of any work done, labor performed or materials furnished under this Construction Management Agreement.

ARTICLE 12 GUARANTEE AND CORRECTION OF WORK

- 12.1 The Construction Manager warrants and guarantees that title to all work, materials and equipment covered by an application for payment, whether incorporated in the project or not, will pass to the Owner upon the receipt of such payment by the Construction Manager, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens" and that no work, materials or equipment covered by an application for payment will have been acquired by the Construction Manager; or by any other person performing the work at the site or furnishing materials and equipment for the project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager or such other person.
- 12.2 Correction of Work
- 12.2.1 The Construction Manager shall promptly provide for correction of all work rejected by the Architect as defective or as failing to conform to the Construction Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear all cost of correcting such rejected work, including the cost of the Architect's additional services thereby made necessary.
- 12.2.2 If, within one year after the Date of Substantial Completion or within such longer period of time

as may be prescribed by law or by the terms of any applicable special guarantee required by the Construction Documents, any of the work is found to be defective or not in accordance with the Construction Documents, the Construction Manager shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition.

- 12.2.3 If the Construction Manager does not remove such defective or non-conforming work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Construction Manager. If the Construction Manager does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days written notice sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Construction Manager including compensation for additional Architectural services. If such proceeds of sale do not cover all costs which the Construction Manager should have borne, the difference shall be charged to the Construction Manager and an appropriate Change Order shall be issued.

ARTICLE 13 BONDS

The CM Agreement must be executed by both parties and a 100% Performance and Payment Bond acquired prior to submittal to OAE for final approval. Included shall be a statement that this executed document is conditioned upon a successful execution of a loan agreement between the Owner and HUD when Section 242 of the FHA Hospital program is used. Be advised that DHUD requires DHUD approved bond forms, for Section 242 Hospital projects.

ARTICLE 14 SAVINGS

In the event the aggregate, actual, construction costs are below the Guaranteed Maximum Price, all savings shall accrue 100% to the Owner. These savings can be made available, by the Construction Manager, to the Owner during the construction period so as to include items which were previously deleted. A mutually agreed upon procedure whereby the CM incrementally will make available to the Owner portions of the savings, during the construction period, should be agreed upon and included in the contract.

ARTICLE 15 FINAL DRAWINGS

The submittal of the Guaranteed Maximum Price is the total cost of construction of said project including all labor, materials and other items required to provide a complete, functional project whether shown on said plans and specifications or not and including compliance with all Local, State, and Federal requirements. The final plans and specifications will become part of this contract with no change in the Guaranteed Maximum Price or time period.

ARTICLE 16 LIQUIDATED DAMAGES

As stated previously in this guide, liquidated damages are recommended in all construction programs; however, they are mandatory in Department of Housing and Urban Development, FHA Section 242 projects. The Owner will suffer financial loss if the project is not substantially complete on the date set forth in the Contract Documents. The Construction Manager (and Surety) shall be liable for and shall pay to the Owner the sums hereinafter stipulated as fixed, agreed and liquidated damages for each calendar day of delay until the work is substantially

EXHIBIT 5
PERFORMANCE BOND AND PAYMENT BOND SAMPLE FORMS

Note: For HUD FHA-242 projects only HUD format of Performance and Payment Bonds are acceptable.

PERFORMANCE BOND FORM

FORM FOR-CONSTRUCTION MANAGER'S PERFORMANCE BOND

(Sample only, may vary depending on surety, format, etc)

KNOW ALL MEN BY THESE PRESENTS that we _____, as Principal, and _____, as Surety, are held firmly bound unto _____, as Obligee, hereinafter called the Owner, in the sum of _____ Dollars (\$ _____), for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the Principal entered into a contract in the prescribed Construction Manager's Agreement, PART B, with the Owner, dated _____, for _____, which contract is by reference incorporated herein and is made a part hereof as fully as if here set forth at length:

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof that may be granted by the Owner with or without notice of the Surety, and during the life of any guarantee required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, then this obligation shall be void; otherwise this obligation shall remain in full force and virtue.

IN WITNESS thereof, the above-bounded parties have executed this instrument under their several seals this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by each party's undersigned representative, pursuant to authority of its governing body

ATTEST: _____ (Principal)
_____ (Address)
_____ (By)
_____ (Title)

ATTEST: _____ (Surety)
_____ (Address)
_____ (By)
_____ (Title)

(To be filled in by Surety)

Rate of premium of this bond is \$_____ per thousand.

Total amount of premium charged is \$_____ .

PAYMENT BOND

FORM OF CONSTRUCTION MANAGER'S PAYMENT BOND

(Sample only, may vary)

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as Principal, and _____, As Surety are held and firmly bound unto _____, as Obligee, hereinafter called the Owner, in the sum of _____ Dollars (\$ _____), for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The conditions of this obligation are such that whereas the Principal entered into a contract in the prescribed Construction Manager's Agreement, PART B, with the Owner, dated _____ for _____, which contract is by reference incorporated herein and is made a part hereof as fully as if here set forth at length:

NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, then this obligation shall be void: otherwise this obligation shall remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals this _____ day of _____, 20 __, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by each party's undersigned representative, pursuant to authority of its governing body.

ATTEST: _____ (Principal)
_____ (Address)
_____ (By)
_____ (Title)

ATTEST: _____ (Surety)
_____ (Address)
_____ (By)
_____ (Title)

(To be filled in by Surety)

Rate of premium of this bond is \$ _____ per thousand.

Total amount of premium charged is \$ _____ .

EXHIBIT 7
CONTRACT TIME AND SUBSTANTIAL COMPLETION

Definitions:

The Contract Time is the period of time allotted in the Contract Documents for completion for the Work.

The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Agreement or such other date as may be established therein.

The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the Work or designated portion thereof for the use of which it is intended.

The term day as used in the Contract Documents shall mean calendar day.

Progress and Completion

All time limits stated in the Contract Documents are of the essence of the Contract.

The Contractor shall begin the Work on the date of commencement. He shall carry the Work forward expeditiously with adequate forces and shall complete it within the Contract time.

If a date or time of completion is included in the Contract, it shall be the date of Substantial Completion including authorized extensions thereto, unless otherwise provided.

Delays and Extensions of Time

If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by any cause which the Architect determined may justify the delay, then the Contract time shall be extended by Change Order for such reasonable time as the Architect may determine.

All claims for extensions of time shall be made in writing to the architect no more than twenty days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause of delay only one claim is necessary.

If no schedule of agreement is made stating the date upon which written interpretations shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after demand is made for them, and not then unless such claim is reasonable.

This paragraph does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

Substantial Completion and Final Payment

When the Contractor determines that the Work or a designated portion thereof acceptable to the Owner is substantially complete, the Contractor shall prepare for submission to the Architect a list of items to be

completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect on the basis of an inspection determines that the Work is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish a Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, if the Work is acceptable under the Contractor Documents and the Contract is fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of his or her knowledge, information and belief, and on the basis of observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable.

EXHIBIT 8
SAMPLE PRE-QUALIFICATION STATEMENT FOR SUB-CONTRACTORS

All Sub-Contractor Bidders must submit a sworn, notarized certificate stating that they comply * with the following pre-qualification.** Each bidder:

1. Must have completed a minimum of five hospital projects in the past 15 years, and one of which must have been completed within the past 5 years.
2. Must have completed a minimum of 10 projects of not less that \$3 million in cost within the last 10 years.
3. Must have completed at least 5 alteration projects in the last 5 years.
4. Must have been in the contracting business a minimum of 10 consecutive years under the present time.
5. Shall not now, nor have been in the past, disqualified for cause from bidding on any Federal, State or City Agency.
6. Must be capable of providing a performance bond equal to 100% of the contract and a labor and material payment bond of not less than 100% of contract.
7. Must be able to provide a bid bond to pay CM, should he fail to sign and execute the contract, an amount equal to 5% of his base bid.
8. Must have at least 5 full time field construction superintendents permanently employed on his active payroll.
9. Must provide a full time field construction superintendent having a minimum of 10 consecutive years' s experience on projects of \$5 million or more.
10. Must submit a detailed financial statement showing that his assets exceed his liabilities, and by how much.

* Revisions may be made to suit need of particular project.

** Pre-qualifications shall be submitted *for review and approval* to the Office of Architecture & Engineering **prior to issuance.**

Supplementary Conditions of the Contract for Construction

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0470
(Expires 12/31/2016)

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to set forth the obligations of the contractor or subcontractor performing under the covered contract. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

Article 1 – Labor Standards

Instructions

Whenever only FHA mortgage insurance is involved, use paragraph (A) and (C) of Article 1 – Labor Standards. Whenever any direct form of assistance (Section 8, Section 202/811 Capital Advance, grants etc.) is involved, use paragraphs (A) and (B) and (C) of Article 1 – Labor Standards.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted or insured by the United States of America and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification

requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs A.1.(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the

same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1)** That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;
- (2)** That each laborer or mechanic (including each

helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4. (i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau

of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm

ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages, liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

3. Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. The Contractor will be required to execute FHA Form No. 2403-A, Contractor's Prevailing Wage Certificate, as a condition precedent to insurance by the Federal Housing Administration of that certain mortgage loan, or an advance thereof, made or to be made by the mortgagee in connection with the construction of the project.

Article 2 – Equal Employment Opportunity

The applicant hereby agrees that it will incorporate or cause to be

incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

G. The Contractor will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary of Housing and Urban Development or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

H. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work:

Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

I. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

J. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Article 3 – Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

(Applicable to Section 236 projects, where the estimated replacement cost of the project as determined by the Secretary of Housing and Urban Development exceeds \$500,000, and to all projects, including Section 236 regardless of estimated replacement cost, receiving rent supplement assistance under Title I, Section 101 of the Housing and Urban Development Act of 1965.)

A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the unit of local government or the metropolitan area (or nonmetropolitan county) as determined by the Secretary of Housing and Urban Development in which the projects located and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.

Article 4 – Health and Safety

A. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

B. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

C. The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development of the Secretary of Labor shall direct as a means of enforcing such provisions.