

## COUNCIL ACTION FORM

**REQUEST: APPROVAL OF A REQUEST FOR PROPOSALS (RFP) TO SOLICIT A PARTNER IN CONNECTION WITH THE DEVELOPMENT OF LOW-INCOME HOUSING TAX CREDIT (LIHTC) UNITS IN THE BAKER SUBDIVISION.**

### **BACKGROUND:**

On December 22, 2020, as part of the City Council goal to create more affordable housing for both owner-occupied and rental households, the City Council entered into a partnership agreement with Prairie Fire corporation and Builder's Development Corporation (BDC) to submit an 9% LIHTC application to the Iowa Finance Authority (IFA) for thirty-six (36) multi-family housing units in the Baker Subdivision (321 State Avenue). IFA's application deadline was March 10, 2010.

In late September 2021, staff learned that our 9% LIHTC application was not funded due to the large group of disaster set-aside projects that absorbed most of the funding allocation. However, staff was informed by the developer that 4% LIHTC funds were available, and that the Governor's priority was to allocate an additional \$100 million dollars to affordable housing that the state was eligible to receive through the US Treasury. This additional state funding would have approximately equaled the original 9% LIHTC request if the final guidelines supported this approach. Unfortunately, the final US Treasury guidelines did not permit for the State to use the funds as they hoped. As a result, the State is only using the funds from previously awarded 9% LIHTC projects and our submittal would not qualify for additional assistance. **Therefore, in December 2020 it became apparent that the agreement between the City and Prairie Fire and BDC that was predicated on a 9% LIHTC award was no longer valid.**

**At the April 12, 2022 meeting, the City Council directed staff to proceed with utilizing \$1.8 million of the City's HOME allocations and update the Developer's Agreement with Prairie Fire Development Group (PFDG) and Builder's Developers Group (BDG) to submit an application to the Iowa Finance Authority (IFA) for a 4% Low-Income Housing Tax Credit (LIHTC) to develop thirty (30) units in the Baker Subdivision, with hopes that construction could begin this coming Fall of 2022.**

**In June 2022, staff was notified by Prairie Fire that they intended to introduce a new partner from Minnesota into the project. It was explained that this new company would bring property management and construction management experience to the**

project. Staff also was informed that this new partner, “Titan,” would take over as the major developer and guarantor role, and that PFDG and BDG would take on a reduced co-developer role. It was further stated that the developers might want to use a special purpose entity (e.g., “Ames Housing Partners, LP”) as the contracting entity that would be made up PFDG/BDG and this new partner.

In accordance with our Purchasing Policy, staff believes that this change in partnership/owner would require us to resolicit proposals for our project. After sharing this opinion with Prairie Fire, they stated that they would understand if the City would choose to pursue different option and not revise the existing agreement with them.

Because the original agreement has expired, no further action as it relates to Prairie Fire and Builders Developers is needed.

### **REQUEST FOR PROPOSALS:**

In order to move forward, staff has prepared an updated Request for Proposal (RFP) to solicit for a new partner developer to pursue a 4% LIHTC application utilizing the \$1.8 million incentive from the available City’s HOME allocations. Staff believe pursuing the 4% credits, rather than the 9% credits, is the better option to assure that the units are developed faster because it is a non-competitive process.

The RFP is attached for City Council review and approval (See Attachment A). The following notable revisions were made from the original RFP:

### **Under Section III. Minimum Development Requirements (page 6):**

- A. A target development intensity with a minimum of 30 dwelling units and a maximum of 50 dwelling units for a minimum affordability period of thirty (30) years. (The original RFP allowed up to 15 to 50 dwelling units for 30 years).
- B. Require a minimum of 10% of the units to be set aside for Section 8 Housing Choice Voucher participants (not in the original RFP).

### **Under Section IV. Developer Minimum Responsibilities/ Requirements (pages 6-7):**

- D. Enter into a developer’s agreement with the City of Ames, to prepare a 4% LIHTC application, that includes the terms for the developer’s construction and operation of the project, the City’s participation in the project, transfer of land for the development of the project, and anticipated start date of the construction. (start date of the construction language was not in the original RFP).

- E. The agreement shall be completed with the City of Ames within 45 days from the date of acceptance of the proposal by the City Council. The application shall be submitted to the Iowa Finance Authority (IFA) on or about 60 days after a developer's agreement has been signed with the City of Ames. (not in the original RFP).

**Under Section V. Financial Incentives (page 7):**

- B. The City is willing to offer up to \$1.8 million of the HOME allocated funds as an incentive to this project. (substantial increase from original RFP, which did not identify an amount).

**Under Section VI. Competitive Requirements and Scoring (page 8):**

6. Additional points will be given based on the percentage of affordable housing units for either Section 8 Housing Choice Voucher participants or households with income at 50% or less of the Ames Metropolitan Statistical Area Income Limits beyond the required 10% for Section 8 Housing Choice Voucher participants. (3 bonus points only - was not in original RFP).

The above revisions have been reviewed by Legal, Purchasing, Public Works, Electric and Planning Departments. Staff will also be meeting with the Old College Creek Neighborhood Association regarding this new development prior to Tuesday's City Council meeting.

**ALTERNATIVES:**

1. The City Council can approve proceeding with a Request For Proposals (RFP) to solicit for a partner developer in connection with the development of 4% Low-Income Housing Tax Credit (LIHTC) units in the Baker Subdivision which includes a City incentive amount up to \$1.8 million.
2. The City Council can approve proceeding with a Request For Proposals (RFP) to solicit for a partner developer in connection with the development of 4% Low-Income Housing Tax Credit (LIHTC) units in the Baker Subdivision which includes a City incentive amount up to \$1.8 million, with modifications.
3. The City Council can refer this request back to staff for additional information.

### **CITY MANAGER'S RECOMMENDED ACTION:**

Staff believes that pursuing a 4% LIHTC application for medium density rental housing on this site will best meet the immediate affordable housing needs of the City. It will also increase the likelihood of be funded due the non-competitiveness of these credits and allow for a sooner construction start date.

It is the recommendation of the City Manager that the City Council adopt Alternative #1.

A meeting with the adjacent neighborhood residents has scheduled for Monday, July 25<sup>th</sup> via Zoom to update them on the entire status of the Baker Subdivision.

The RFP includes a minimum number of design expectations that address pedestrian scale features of site and architectural design. These guidelines are consistent with the Single-Family Conservation Overlay District compatibility standards, even though they would not be formal requirements of the zoning. Scoring of the proposals will rely upon the experience and financial stability of the applicant, design quality of the project, use of green building techniques, type of affordable housing, number of low-income units and level of financial incentives requested. These broad parameters should encourage a variety of proposals for redevelopment of the site.



**Request for Proposals  
for Low-Income Housing Tax Credit (LIHTC)  
Developers  
in Partnership with the City of Ames**

**Baker Subdivision  
321 State Avenue  
Ames, Iowa  
August 2, 2022**

**For questions concerning the request for proposal, project requirements and procedures,  
please contact:**

**Purchasing Division:** Karen Server, Purchasing Manager  
Phone: 515-239-5127  
E-mail: karen.server@city.ames.ia.us



## Table of Contents

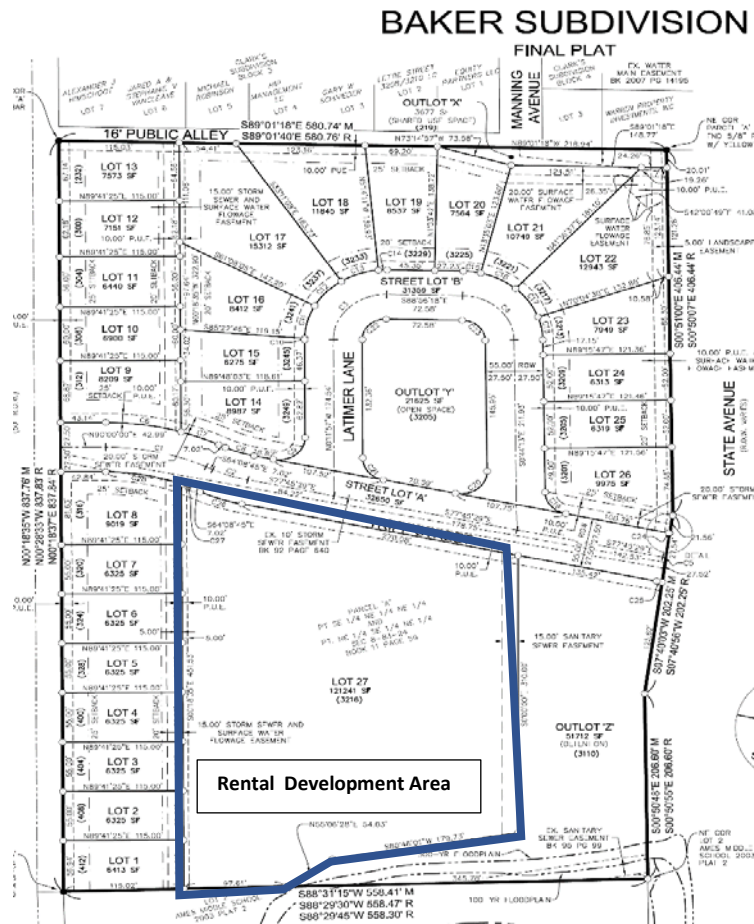
<b>I. Introduction.....</b>	<b>Error! Bookmark not defined.</b>
<b>II. General Information.....</b>	<b>Error! Bookmark not defined.</b>
<b>III. Minimum Development Requirements .....</b>	<b>Error! Bookmark not defined.</b>
<b>IV. Developer Minimum Responsibilities/Requirements.....</b>	<b>Error! Bookmark not defined.</b>
<b>V. Financial Incentives .....</b>	<b>Error! Bookmark not defined.</b>
<b>VI. Competitive Requirements and Scoring.....</b>	<b>Error! Bookmark not defined.</b>
<b>VII. Security Requirements .....</b>	<b>8</b>
<b>VIII. Submittal Requirements .....</b>	<b>9</b>
<b>IX. Review Process and Selection Criteria.....</b>	<b>10</b>
<b>X. Contract Negotiations:.....</b>	<b>11</b>
<b>XI. Questions/Contact Persons: .....</b>	<b>11</b>
<b>XII. Definitions.....</b>	<b>11</b>
<b>Attachment A .....</b>	<b>Error! Bookmark not defined.</b>
Ames Metropolitan Statistical Area (MSA) Income Limits	
<b>Attachment B .....</b>	<b>14</b>
321 State Avenue Site & Development Information	
<b>Attachment C .....</b>	<b>15</b>
District Geothermal Heating & Cooling System	
<b>Attachment D .....</b>	<b>16</b>
CDBG Special Terms and Conditions	

## I. Introduction

The City of Ames, Iowa is accepting proposals from qualified and experienced affordable housing developers utilizing the Iowa Finance Authority's 4% Low-income Housing Tax Credit (LIHTC) program. The successful developer would enter into a partnership with the City of Ames for the construction of low-income rental housing on a 2.78-acre site within the City's affordable housing development known as the Baker Subdivision.

Ames, like many communities across America, has a continuing need for more affordable housing for low-income households. One of the major goals and priorities of the City's Adopted 2019-23 CDBG/HOME Five-year Consolidated Strategic Plan is **"To create, expand, and maintain Affordable Housing for Homeless and Low-income persons"**.

Through the use of its Community Development Block Grant (CDBG) funding, the City of Ames has secured ownership of a 10+ acre tract of infill land called the Baker Subdivision located at 321 State Avenue in West Ames. The tract of land is also located in the City's first Neighborhood Revitalization Strategy Area (NRSA), which will allow for a greater flexibility in the development of mixed-income housing units that meet CDBG program requirements.



The City's overall vision for this 10+ acre parcel of land is to create a mixed-income housing subdivision that will not only address the affordable housing needs of low- and moderate income households, but also market rate housing through the development of a variety of housing types. To this end the City has created the Baker Subdivision for development of single-family ownership housing lots and for rental housing (2.78 acres). The City has completed all of the public infrastructure improvements for the single-family housing units, and some of the public improvements to the multi-family site. It is anticipated that construction of the single-family home will start in the spring of 2023.

The City is currently interested in receiving proposals to develop the 2.78-acre Lot 27 located on the south side of the site, with **multi-family housing types**. The City’s main objectives for proposals to develop the site include the following:

- A. Creating affordable rental housing units that meet the 4% low-income housing tax credit program (Typically incomes equal to or less than **60%** of the Ames Metropolitan Statistical Area (AMSA) See **Attachment A** for income limits)
- B. Maximizing the number of affordable housing units in relation to the City 2019-2023 Five-Year Consolidated Plan affordable housing goals.
- C. Addressing affordable housing needs for families and workforce housing needs.
- D. Includes high quality design features for the buildings and site layout as part of an integrated subdivision with adjacent single-family homes.

To meet these objectives the City will accept proposals of a development intensity between low and medium density for approximately 30-50 dwelling units. The developer may propose housing types that include townhomes, duplexes, or multi-family apartment units that best meet the listed objectives and formulate a highly fundable LIHTC application.

Proposals will be evaluated and scored on a competitive basis. Once all proposals are scored, a report will be prepared for City Council that will contain background information and factual data for each proposal, a scoring of the attributes of the proposals, and the evaluation committee recommendation regarding which developer’s proposal should be selected as the preferred developer for the most desirable project.

The City reserves the right to waive any minor informalities or irregularities, which do not address the heart of the proposal, or to reject, any and all proposals. **Proposals, which take exception to the Request for Proposal (RFP), may be considered non-responsive and may be rejected.**

## II. General Information

The following information is provided to assist the developer by summarizing the important facts regarding the criteria and format by which the RFP process will proceed.

- A. Tentative Timetable of Events:
  - RFP Issued: Monday, August 2, 2022
  - Pre-Proposal Meeting: Thursday, August 11, 2022\*\*  
(VIA ZOOM) 1:30-3:00 p.m.
  - Questions Due: Thursday, August 18, 2022
  - Responses By: Thursday, August 25, 2022
  - Proposal Deadline: Tuesday, September 13, 2022  
by 2:00 p.m. local time**
  - Proposal Selection Interviews (if needed): Thursday, September 22, 2022
  - Committee Evaluation (Tentative): Friday, September 30, 2022
  - City Council Approval Tuesday, October 25, 2022

**\*\*THIS WILL BE AN VIRTUAL MEETING.**



Join us for a Pre-Proposal LIHTC Meeting via Zoom at: <https://us02web.zoom.us/j/4559172641>

Meeting ID: 455 917 2641

OR

call: 1-646-931-3860,4559172641# US

C. **All proposals with supporting documentation must be a delivered to the City of Ames no later than 2:00 p.m. (local time) on Tuesday, September 13, 2022 in one of the following formats:**

1. E-mail submission in pdf format to Karen Server at [karen.server@cityofames.org](mailto:karen.server@cityofames.org)
2. Mail to and postmarked to the City of Ames, Purchasing Division (1<sup>st</sup> Floor), City Hall, PO 811, Ames, IA 50010.
3. Delivered to the City of Ames Purchasing Division (1<sup>st</sup> Floor), City Hall, 515 Clark Ave, Ames, IA.

**No verbal or faxed submittals will be accepted. Submittals shall have a subject line of "Baker Subdivision-Ames, IA" LIHTC Housing Development Proposal.**

- D. Proposals may be withdrawn only by written request of the developer prior to the opening of the proposals. After the opening of the proposals, all offers shall remain valid and irrevocable for a period of 60 days from the date of the submittal and through negotiations on a final agreement with the selected developer.
- E. Proposals not meeting the minimum requirements or submittal requirements will not be considered.
- F. Copies of the City's Zoning Ordinances, Subdivision Regulations, Storm Water Management, and Building Codes are available at the Department of Planning & Housing, City Hall, 515 Clark Avenue, Room 214, Ames, Iowa or on the City's website at [www.cityofames.org](http://www.cityofames.org) search for Municipal Code. **Attachment B** includes additional information on development requirements.
- G. The Site is currently zoned R-L (Residential Low Density). Any rezoning request for the selected development concept will need to be approved by the Ames City Council.
- H. The City will make available information pertaining to existing and completed infrastructure improvements for connection of the site to the systems. **NOTE:** that the City intends to install a Geothermal System on the site that the developer will be required to connect to, additional information included in **Attachment C**.
- I. The site (Lot 27) is intended to use the abutting regional storm water treatment facility as its primary means of meeting storm water treatment and control requirements, the developer will verify as part of the development review adequate capacity exists within the regional facility or accommodate storm water requirements on site. The developer will be required to provide for regular maintenance and upkeep of storm water facilities. Long term maintenance of the regional facility is the responsibility of the City.
- J. The City of Ames reserves the right to require additional information at any time during this process to help clarify the intent of the developer or project details.
- K. The Geographic Information Systems (GIS) information regarding site (maps & data) is located on the city's website at: [www.cityofames.org/living/maps-gis](http://www.cityofames.org/living/maps-gis).

### III. Minimum Development Requirements

#### Proposals submitted shall meet the following minimum unit and site requirements:

The City will remain flexible to allow a developer to create an innovative design, however, the following minimum design guidelines will be required;

- A. A target development intensity with a minimum of 30 dwelling units and a maximum of 50 dwelling units. For a minimum affordability period of thirty (30) years.

Ineligible Home Types: Senior Housing, Nursing homes, board and care facilities, and supervised living facilities licensed by the State of Iowa, or a delegated local Department of Health are not eligible for funding, nor are properties where residents require a 24-hour plan for supervision and/or medical/health care. Rooming or Boarding Houses, Transitional Housing Units, Homeless Shelters, or Permanent supportive housing units are also not eligible.

- B. As part of maximizing the number of affordable housing units developed, the developer will be required to include **a minimum of 10% of the total number of units be set aside for Section 8 Housing Choice Voucher participants.**
- C. Proposals with floor plans designed as student housing or units with multiple suites per unit will **not** be considered.
- D. Preference for smaller scale buildings transitioning to the surroundings, in no event shall a building exceed three (3) stories.
- E. The design of buildings shall take great care to include high interest design features and building materials that integrate with the residential surroundings. The development features need to be supportive of an integrated environment, such as an orientation to public streets and open spaces, minimize the appearance of large parking areas, include architectural relief and façade treatments that create visual interest, or provide for multiple building of varying types as appropriate to integrate with the surroundings.
- F. All applicable provisions of the City of Ames Municipal Code, including Zoning Ordinances, Subdivision Regulations, Stormwater, and Building Codes shall apply.
- G. Installation of a Radon System that meets State and EPA requirements if units require basements.
- H. Provide High Speed Broadband internet to each dwelling unit.
- I. Due to CDBG funds used to acquire the site, improvements are subject to Davis Bacon Wage rate and Related Acts as well as other applicable Federal Requirements.

### IV. Developer Minimum Responsibilities/Requirements

As part of this request for proposal, the developer agrees to the following minimum responsibilities/requirements as part of the RFP and to develop the project:

- A. The selected developer will be responsible for the preparation of conceptual and final development plans at their cost, including but not limited to subdivision, grading, storm water management, building, public improvements, and site development plans. There will be no reimbursement for any expense as part of responding to this RFP.
- B. The selected developer will be responsible for preparation and submission of the 4% LIHTC application materials at their cost. There will be no reimbursement for any expense as part of

the LIHTC application process or for final development plans and permits to be issued by the City.

- C. The selected developer will be responsible to pay for the construction of any additional infrastructure required to serve the development that is not part of the Baker Subdivision Final Plat.
- D. Enter into a developer's agreement with the City of Ames, to prepare a 4% LIHTC application, that includes the terms for the developer's construction and operation of the project, the City's participation in the project, transfer of land for the development of the project, and anticipated start date of the construction.
- E. The agreement shall be completed with the City of Ames within 45 days from the date of acceptance of the proposal by the City Council. **The application shall be submitted to the Iowa Finance Authority (IFA) on or about 60 days after a developer's agreement has been signed with the City of Ames.**
- F. Ensuring consistency with federal requirements and special terms and conditions that will be applicable to all projects due to the use of CDBG funds to acquire the parcel. (**See Attachment D**).
- G. The developer will be responsible to ensure that the housing units are constructed on the site as outlined in their proposal through a developer's agreement with the City of Ames.

## V. Financial Incentives

In support of development of affordable housing on the site, the City will offer the following incentives to the selected developer.

- A. Lot 27 of the Baker Subdivision (approximately 2.78 acres) for a reduced or no cost. The proposal shall indicate the assumed purchase price of Lot 27.
- B. The City of Ames through its HOME program in support of the affordable housing will provide a financial incentive in an amount up to \$1.8 million towards the cost of the project.

## VI. Competitive Requirements and Scoring

### A. Competitive Requirements

The City of Ames is seeking to maximize its development efforts. Developers are urged to create an exciting and imaginative project. The Evaluation Committee will evaluate the elements of the proposal related to design, style, features, costs, timing, in relation to the described criteria.

1. Applicant/Developer Capability and Track Record (including partners). The applicant's track record, including whether the applicant and/or development team has successfully completed and/or operated a similar type LIHTC project. Capacity to undertake new or additional projects; ability to secure construction financing; the developer's approach, plan of work, recommended schedules, and suggested responsibility assignments (30 points);
2. Quality of References. Qualification and experience in providing the requested development as exemplified by past projects and client contracts. (including other

communities, Iowa Finance Authority, Federal Home Loan Bank and or Iowa Department of Economic Development) (20 points);

3. Housing variety and architectural styles (5 points)
4. Property management experience – number of units managed; years of experience; the number of affordable units managed and the performance record. Familiarity of the various funding sources for housing development and rental subsidies. (20 points)
5. Feasibility (pro-forma including project funding sources) (25 points);
6. Additional Percentage of Affordable Housing Units for either Section 8 Housing Choice Voucher participants or households with income at 50% or less of the Ames Metropolitan Statistical Area Income Limits (3 bonus points)

## **VII. Security Requirements**

The City of Ames has a performance responsibility to ensure that that the affordable rental housing units are constructed consistent with the LIHTC program and CDBG/HOME program rules and regulations. As a means to ensure that the City's investment in land and infrastructure creates the desired types of housing, the City will require security in the following form:

- A. As security for the performance for the construction of all rental housing units, the City will retain ownership of the parcel, and convey by quit claim deed to the Developer as those rental units are substantially completed in accordance with this Request for Proposal and the Development Agreement. The Developer may propose an alternative performance security for consideration with the RFP.

### VIII. Submittal Requirements

All proposals with supporting documentation must be a delivered to the City of Ames no later than 2:00 p.m. (local time) on Tuesday, September 13, 2022 in one of the following formats:

1. Email submission in pdf format to Karen Server at [karen.server@cityofames.org](mailto:karen.server@cityofames.org)
2. Mail to and postmarked to the City of Ames, Purchasing Division (1<sup>st</sup> Floor), City Hall, PO 811, Ames, IA 50010.
3. Delivered to the City of Ames Purchasing Division (1<sup>st</sup> Floor), City Hall, 515 Clark Ave, Ames, IA.

**No verbal or faxed submittals will be accepted. Submittals shall have a subject line of “Baker Subdivision-Ames, IA” LIHTC Housing Development Proposal”.**

**All late or incomplete submittals will be rejected.**

The following information is provided for guidance to prospective Builders/Developers.

A. Proposals must contain, at a minimum, the following information:

- \_\_\_\_\_ 1. Developer’s statement providing an overview of their proposed project including goals and timelines.
- \_\_\_\_\_ 2. A development plans, including the following items:
  - \_\_\_\_\_ a. Conceptual site layout that identifies building size and locations, access point, parking, landscaping, and storm water.
  - \_\_\_\_\_ b. Representative architectural elevations and floor plans.
  - \_\_\_\_\_ c. Summary of plan types for total finished square footage, number of bedrooms, number and type of bathrooms, and square footage of any unfinished areas; and
- \_\_\_\_\_ 3. A statement reflecting the proposed timing of improvements and the proposed date of completion of these improvements for the site
- \_\_\_\_\_ 4. Summary of energy conservation and green building features.
- \_\_\_\_\_ 5. Explanation of expected success for 4% LIHTC application.

- \_\_\_\_\_ B. The proposal must be signed by an official of the corporation authorized to bind the offer.
- \_\_\_\_\_ C. The proposal must contain a statement to the effect that the proposal is firm for a period of not less than 60 days after the closing date of this request and through negotiations.
- \_\_\_\_\_ D. **The proposal must be submitted in pdf or in hard copy.**
- \_\_\_\_\_ E. The proposal shall contain the full name of the person, firm, or corporation submitting the proposal and the address of the person, firm, or president of the corporation.
- \_\_\_\_\_ F. No officer, member, or any other person holding any position with the City of Ames, Iowa, either appointed or elected, shall be or shall become interested directly or indirectly with the person, firm, or corporation submitting a proposal or in any portion of the profits derived by the selected developer from this project. This exclusion does not pertain to persons who are appointed to State-created authorities.

- \_\_\_\_\_ G. Project Pro Forma and Estimated Construction Costs. Include which incentives are requested to support the proposed project. Remember to account for construction estimates with federal Prevailing Wage requirements for any, and all site related improvements and building construction as required per HUD CDBG requirements.
- \_\_\_\_\_ H. Identify partners and members of the development team.
- \_\_\_\_\_ I. Submit a portfolio of successful projects for the development team from the last 10 years, identify any representative examples similar to the scope of the submitted proposal.
- \_\_\_\_\_ J. Identify in a separate document the areas where the proposal meets each of the selection criteria.

### **IX. Review Process and Selection Criteria**

- A. All proposals will be reviewed by City staff for eligibility, completeness, and feasibility.
- B. Proposals that are deemed ineligible or infeasible will not be considered and will not be forwarded to the Evaluation Committee. The developer will be notified by e-mail.
- C. Proposals which pass the minimum requirements will be evaluated by the Evaluation Committee. The members of the committee will score each proposal. A proposal must be deemed responsive to the Request for Proposal to be referred to the City Council.

D. Evaluation of Proposals:

Applications will be evaluated on the scoring criteria outlined under Section VII “Competitive Requirements and Scoring”. The Evaluation Committee will have the option to conduct on site interviews with developers.

E. Evaluation Selection Process

The selection of the preferred developer will utilize the following steps:

After the staff review, the Evaluation Committee evaluates each proposal, a report will be prepared for City Council that will contain background information and factual data for each proposal, a scoring of the attributes of the proposals, and the Evaluation Committee recommendation regarding which developer’s proposal should be selected as the preferred developer.

The final selection will be based on:

1. The City Council’s determination of the best proposal that meets the goals and objectives of the City;
2. A satisfactory agreement between the preferred developer and the City is finalized;
3. A completed verification of the qualifications of the proposed developer.

## **X. Contract Negotiations:**

The City reserves the right to reject any and all proposals and to negotiate the terms of the contract, including the award amount, with the selected developer(s) prior to entering into a written agreement.

## **XI. Questions/Contact Persons:**

Questions concerning the content of this proposal, or the review process may be directed to Karen Server, by mail at City of Ames, Planning & Housing Department; P.O. Box 811, Ames, IA 50010; by email at karen.server@cityofames.org; or by phone at 515-239-5127.

## **XII. Definitions**

Certain words or phrases in this document are critical to a thorough understanding of the objectives and goals of the City for this project. The following definitions are offered to aid prospective developers in the preparation of this Request for Proposals.

- A. Builder/Developer: Any individual, corporation, partnership, non-profit organization, or similar entity that has expressed an interest, or has been identified as having an interest, in providing those private services that are necessary in creating housing.
- B. City: This means the City of Ames, Iowa, its elected and appointed officials, and all staff persons employed by the City of Ames.
- C. Community Development Block Grants (Entitlement). Under this program HUD directly provides annual CDBGs on a formula basis to “entitled” communities (populations over 50,000) to carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services.
- D. Davis-Bacon and Related Acts. The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the “Related Acts,” under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

- E. HUD: The Department of Housing and Urban Development or its designee.
- F. HOME: The HOME Investment Partnerships Program (HOME) is a type of United States federal assistance provided by the U.S. Department of Housing and Urban Development (HUD) to States in order to provide decent and affordable housing, particularly housing for low- and very low-income Americans.[1] It is the largest Federal block grant to States and local governments designed exclusively to create affordable housing for low-income families.
- G. Low Income Housing Tax Credit (LIHTC): The federal low-income housing tax credit program acts as an incentive for property owners to invest in the development of rental housing for individuals and families with fixed or limited incomes. The housing tax credit provides a dollar-for-dollar reduction (or credit) to offset an owner's federal tax liability on ordinary income for a 10-year period. This tax credit often provides the last critical element to ensure the financial feasibility of the project.
- H. Lower-Income Family: A family whose annual income does not exceed 80% of the median income for the Ames Metropolitan Statistical Area (MAS), as determined by HUD.
- I. Project: Those activities, whether public or private, that have been determined to be necessary to complete the Housing Development.
- J. Restrictive Covenant. A provision in a deed limiting the use of the property and prohibiting certain uses.
- K. Subdivision Ordinance: Chapter 23 of the Ames Municipal Code.
- L. Submittals: Those written and graphic documents prepared by developers that explain the strategy, approach, and specific elements that a developer proposes to use in meeting the City's goals for the affordable housing subdivision.
- M. Zoning Ordinance: Is defined as Chapter 29 of the Municipal Code, which is to include all amendments thereto.



# Attachment A

2022

## Program Income Limits (subject to change)

<b>60% of Ames, Iowa MSA</b>	
Family Size	Gross Income Cannot Exceed
1	\$42,240
2	\$48,240
3	\$54,300
4	\$60,300
5	\$65,160
6	\$69,960
7	\$74,820
8	\$79,620

<b>50% of Ames, Iowa MSA (Very Low Income)</b>	
Family Size	Gross Income Cannot Exceed
1	\$35,200
2	\$40,200
3	\$45,250
4	\$50,250
5	\$54,300
6	\$58,300
7	\$62,350
8	\$66,350

<b>30% of Ames, Iowa MSA (Extremely Low Income)</b>	
Family Size	Gross Income Cannot Exceed
1	\$21,150
2	\$24,150
3	\$27,150
4	\$30,150
5	\$32,600
6	\$35,000
7	\$37,400
8	\$39,800

Effective June 15, 2022

## **Attachment B**

### **Rental Housing Development for Baker Subdivision located on Lot 27 Site & Development Information**

The following items are intended to help provide initial background on development constraints or requirements that may affect proposals for development of the property. The list below is preliminary guidance for prospective developers. The guidance should not be viewed as final or a complete assessment of requirements to meet all development standards. All improvements must meet the City's standard specifications.

#### **Streets**

- Tripp Street will be the only access to this site. The developer is responsible for the driveway approach connection to Tripp Street and necessary sidewalk replacement.

#### **Storm water**

- All impervious surfaces (public improvements and private improvements) must meet the storm water control and treatment requirement of Chapter 5b of Ames Municipal Code. This includes sizing and development controls for storm water facilities.
- Regional stormwater detention facilities about the site in Outlot Z and are intended to meet the primary storm water treatment needs for this site. The developer will need to confirm the sizing of the facility in Outlot Z meets their needs or provide for storm water treatment on site. The owner of Lot 27 will be required to do regular maintenance of the storm water facility, e.g., mowing, while the City is responsible for long term maintenance.

#### **Utilities**

- The area is within the Ames Electric Service Territory and will be served by Ames Electric. Developer is responsible for provide service to the project. See note below on Geothermal.
- Natural Gas does not about the site. Any desired extension of natural gas service to the site would be a cost of the development.
- Water lines exist along Tripp Street. Water to the site must be provided by the developer by connecting to the existing public water main underneath Tripp Street. Note that any fire hydrant located on site requires a public water main connection.
- Sanitary sewer lines exist along the east property line of the site. The developer will be responsible for connecting the site to the sanitary sewer along the east property line.

**Flood Plain-** College Creek abuts the site to the south. Lot 27 was designed to be located outside of the 100-year flood plain based upon current flood plain insurance rate maps (FIRM).

**Zoning-** The Site is zoned R-L. The City understands rezoning of the site is necessary to provide for multi-family or attached single-family housing. The City will be responsible for rezoning of the site to an appropriate zoning district to match the proposed development concept. Compliance with City parking, landscaping, setbacks, and other development standards will be required regardless of the underlying zoning district.

# Attachment C

## District Geothermal Heating & Cooling System

Ames Electric will be installing a geothermal heating & cooling system in Baker Subdivision which will serve this property. This system will deliver an environmentally friendly reliable heating and cooling source year-round. Ames Electric will determine the location of the system once the final building designs and locations have been approved by the City of Ames.

- The developer is responsible for providing adequate space for geothermal metering equipment and heat exchanger(s) within the building's mechanical room.
- The developer is responsible for providing the appropriate mechanical systems in each unit or building (heat pump(s) to properly deliver the heating and cooling process from the district geothermal heating & cooling system to each unit.
- The water heating systems for the building(s) will be required to be connected to the district geothermal heating & cooling system.



## **Attachment D**

### **City of Ames and CDBG Special Terms and Conditions**

## City of Ames and CDBG Special Terms and Conditions

### CITY OF AMES SPECIAL CDBG CONTRACT PROVISIONS

***All contracts as a result from the submittal of this proposal will be subjected to the following contract conditions for Rehabilitation/New Construction/Demolition Projects: \$100,000+***

***\*\*Provisions apply to projects less than 8 units.***

#### **I. ACCESS TO RECORDS AND RECORDS RETAINAGE.**

**A. Records to be kept.** Records shall be maintained in accordance with requirements prescribed by HUD or the City with respect to all matters covered by this contract. Except as otherwise authorized by HUD, such records shall be maintained for a period of five (5) years after receipt of the final payment under this contract.

**B. Documentation of Costs.** All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents. All documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

**C. Inspection of Records.** At any time during normal business hours and as often as the City, HUD and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available to the City, HUD and/or representatives of the Comptroller General for examination all of its records, with respect to all matters covered by this contract, and will permit the City, HUD and/or representatives of the Comptroller General to audit, examine and make excerpts or transcripts from such records including contracts, invoices, materials, payrolls, records

#### **II. LOBBYING.**

**A.** The Contractor certifies, to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements.

4. This certification is a material representation of fact upon which reliance was placed when this contract was made or entered into. Agreement to this certification is a prerequisite for making or entering into this contract imposed by Section 1352, title 31, U.S. Code. Any person or agency that makes an expenditure prohibited by this section is subject to a civil penalty from \$10,000 up to \$100,000 for each failure. This penalty also applies to any person or agency that fails to submit or amend the disclosure form (LLL), when required. Failure to submit the required certification may result in payment under this contract being delayed or denied.

### III. DISCRIMINATION

Contractors shall comply with all relevant requirements of the following federal laws and regulations dealing with discrimination in federally assisted programs:

1. **Title VI of the Civil Rights Act of 1964 (42 U.S.C. 20000d)** which provides that no person shall, on the ground of race, color, or national origin, be excluded from employment or participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
2. **Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309) and regulations at CFR 570.602** which provide that no person shall on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, be denied employment in, or be subjected to discrimination under any CDBG program or activity.
3. **Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794)** which provides that no otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, be denied employment in, or be discriminated against under any program or activity receiving federal assistance.
4. **Age discrimination Act of 1975, as amended (42 U.S.C. 6101)** which provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.
5. **Americans with Disabilities Act** (P.L. 93-112, 29 U.S.C. 794). Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
6. Federal Executive Order 11246, as amended by Executive Order 11357. Provides that no one be discriminated in employment.
7. Executive Orders 11625, 12432, 12138 provide that, the City of Ames, shall take affirmative steps to ensure that small, minority, and women owned businesses and enterprises are utilized when possible as sources of supplies, equipment, construction, and services. You are encouraged to solicit minority and women businesses for any subcontract work that maybe needed on this project. A List of Minority Business Enterprises/Women-Owned Business Enterprises and clearinghouses are included in this bid pack, and are also available at: [www.dia.iowa.gov/tsbl/](http://www.dia.iowa.gov/tsbl/).
8. Iowa Code Section 19B.7. This prohibits discriminatory and unfair practices within any program receiving or benefiting from state financial assistance in whole or in part.
9. Iowa Code chapter 216 Effective July 1, 2007, the Iowa Civil Rights Act was expanded to add sexual orientation and gender identity to the list of protected classes.
10. **Executive Order 11246, as amended by Executive Order 12086, and regulations in 41 CFR 60**, which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally-assisted construction contracts and subcontracts. Contractors and subcontractors shall take affirmative action to ensure fair treatment in employment, including recruitment, training, promotion, demotion, transfer, layoff, termination, and pay.
  - 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 of 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 by the contracting officer setting forth the provisions in this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisement 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 he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advertising the labor union or worker's representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order No. 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 No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, and 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 in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the provisions of paragraphs (1) through (7) 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 No. 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 subcontractor or purchase order as the contracting agency, and may direct the subcontractor or vendor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

**IV. SECTION 3 of the HOUSING AND URBAN DEVELOPMENT ACT of 1968, as amended (12 U.S.C. 1701u), and regulations at 24 CFR Part 135.**

The Contractor shall comply with the following provisions:

- a. Section 3 requires that, to the greatest extent possible:
  - i. Training and employment opportunities shall be made available to low- income residents of the metropolitan area in which the project is located; and
  - ii. Subcontracts shall be awarded to businesses owned by low income residents or to businesses in which at least 30% of their permanent employees are low-income residents.

- b. Contractors and subcontractors shall be required to provide to the City plans for complying with these provisions and reports on the extent to which they have met them.
- c. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project. The Contractor will not subcontract with any subcontractor where it has notice that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided a preliminary statement of ability to comply with the requirements of these regulations.

**V. LABOR STANDARDS.** Contractors shall comply with all relevant requirements of the following federal laws and regulations dealing with labor standards in federally assisted programs:

**A. Copeland "Anti-Kick Back Act" (18 U.S. C. 876) as supplemented in Department of Labor regulations (29 CFR Part 3).** This Act provides that the Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

**B. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.).**

Contracts awarded by grantees and subgrantees in excess of \$2,000 which involve the employment of mechanics or laborers shall comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor Regulations contained in 29 CFR Parts 3, 5 and 5a.

1. Under Section 103 Of the Act, the Contractor and any of his subcontractors, shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty hours. Work in excess of the standard work week is permissible, provided the worker is compensated 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 any work week.

2. Section 107 of the Act provides that 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. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market.

**VI. CLEAN, WATER, CLEAN AIR, E.O. 11738 and EPA Regulations Provision Compliance with Air and Water Acts** apply to assisted construction contracts and related subcontracts exceeding **\$100,000**. In compliance with Section 306 of the Clean Air Act, as amended, (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended, (33 U.S.C. 1368), Executive Order 11738, and the EPA Regulations (40 CFR, part 15) of the Environmental Protection Agency with respect thereto the Contractor agrees that during the performance of this contract, the Contractor agrees as follows:

- 1. The Contractor will certify that any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.5
- 2. The Contractor agrees to comply with all requirements of Section 306 of the Clean Air Act, as amended, and Section 508 of the Clean Water Act, as amended, and all regulations and guidelines issued there under.
- 3. The Contractor agrees that as a condition for the award of the contract, prompt notice will be given to the City of any notification received from the EPA Office of Federal Activities, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.



4. The Contractor agrees that it will include or cause to be included the criteria and requirements in the provisions of paragraph 1 through 4 of this subpart in every nonexempt subcontract, and take such action as the Government may direct as a means of enforcing such provisions.

**VII. LEAD BASED PAINT.** The use of lead-based paint in the federally assisted construction or rehabilitation of residential structures (including day cares, senior centers, and community facilities) is prohibited by Section 401(b) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4831(b)] and regulations in 24 CFR 35B. To the extent that contracted work involves residential structures, the Contractor and subcontractors must follow the new regulations issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X ("ten") of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally associated housing. The new regulation appears within title 24 of the Code of Federal Regulations as part 35 (24 CFR 35).

1. The Contractor and subcontractors shall not use lead-based paint in residential structures and shall eliminate any lead-based paint hazards in residential structures rehabilitated.
2. At a minimum the Contractor and subcontractors must comply with the Lead Hazard Reduction Methods in 24 CFR 35.1330 and 1325.
3. All workers involved in the disturbance of lead-based paint bearing surfaces should be trained in lead safe work practices.
4. At the conclusion of residential rehabilitation, the property must pass a lead hazard clearance test by a certified technician and lab. The lead level must meet the federal and North Carolina standard lead level threshold for Childhood Lead Exposure Act of North Carolina and the Environmental Protection Agency. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in 24 CFR 35.1350(d).

**VIII. USE OF DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS.** CDBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Contractor or sub-recipient during any period of debarment, suspension or placement in ineligibility status under the provisions of 24 CFR Part 24. (Government Debarment and Suspension Regulations).

**IX. CONFLICT OF INTEREST.**

**A. Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials.** No member, officer, or employee of the recipient, sub-recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. This provision shall be incorporated in all such contracts or subcontracts.

**B. Contractor's Responsibilities.** The Contractor shall take appropriate steps to assure compliance with paragraph (A) of this section, and will incorporate the following provision into every sub-contract:

Interest of Sub-Contractor and Employees. The Sub-Contractor covenants that no person who presently exercises any functions or responsibilities in connection with the Community Development Block Grant Program has any personal financial interest, direct or indirect, in this Contract. Any interest on the part of the Sub-Contractor or his employees must be disclosed to the Recipient and the City, provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory

requirement that maximum opportunity be provided for employment of and participation by residents of the area."

## **X. DISPUTES, DEFAULT AND TERMINATION**

**A. Disputes.** In the event of dispute arising under this Contract, the Contractor shall notify the City promptly in writing of their contentions and submit the claim. If the dispute arises before performance of the related work, the written notice shall be submitted prior to commencing such work. In any event, the Contractor shall proceed with such work in compliance with the instructions of the City; such compliance shall not be a waiver of the Contractor's rights to make a claim, provided they have notified the City in writing as above stipulated.

### **B. Default and Remedies.**

1. Default shall consist of any failure by the Contractor to perform under this contract or written amendments thereto or any breach of any covenant, agreement, provision or warranty provided by the Contractor as a part of this contract. Actions which constitute a default include, but are not limited to:

- a. Failure to submit to the City reports which are required pursuant to this contract or the submission of required reports that are incorrect or incomplete.
- b. Submission of requests for payment or reimbursement of amounts that are incorrect or incomplete.
- c. The failure of the Contractor to accept any additional conditions which may be provided by law, by executive order, by regulation or by other policy announced by the City, the state or any federal agency.
- d. Failure to perform any activity required by this contract.

1. Upon occurrence of any default, the City shall advise the Contractor in writing of the action constituting the default, and specify the actions that must be taken to cure the default. The City may suspend payment under the contract. If a default is not cured within 30 days from receipt of written notice of such default by the Contractor, the City may continue the suspension or, by written notice of termination, may terminate the contract.

2. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damage sustained by the City by virtue of any default or breach of the contract; and the City may deduct the amount of damages from any outstanding payments to the Contractor or may withhold payments until such time as the exact amount of the damages is determined.

### **C. Termination.**

1. If federal funding for this project is terminated and no other funding is available for continuation of this project, the City will not be obligated to continue funding for the services contained in this contract and may terminate the contract.

2. In the event of termination, all property and finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by or purchased with CDBG funds by the Contractor under this contract shall, at the option of the City, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

3. Owner May Terminate for Cause

- a. The occurrence of any one of more of the following events will justify termination for cause:
  - i. Contractor's persistent failure to perform the work in accordance with the contract documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials);
  - ii. Contractor's disregard of laws or regulations of any public body having jurisdiction;
  - iii. Contractor's disregard of the authority of owner's representative; or
  - iv. Contractor's violation in any substantial way of any provisions of the contract documents.
- b. If one or more of the events identified in this section occur the Owner, after giving Contractor seven days written notice of its intent to terminate the services of Contractor, may:
  - i. Exclude Contractor from the site, and take possession of the work and of all Contractor's tools, appliances, construction equipment, and machinery at the site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  - ii. Incorporate in the work all materials and equipment stored at the site or for which Owner has paid Contractor but which are stored elsewhere; and
  - iii. Complete the work the Owner may deem expedient.
4. If Owner proceeds as provided in this section, Contractor shall not be entitled to receive any further payment until the work is completed. If the unpaid balance of the contract price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the work, such excess will be paid to Contractor. If such claims costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed as to their reasonableness and, when so approved, incorporated in a Change Order. When exercising any rights or remedies under this section, Owner shall not be required to obtain the lowest price for the work performed.
5. Notwithstanding section Standard Terms and Conditions, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure with no more than 30 days of receipt of said notice.
6. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

7. Owner May Terminate For Convenience

a. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

- i. Complete and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work;
- ii. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, material or equipment as required by the Contract Documents in connection with uncompleted work, plus fair and reasonable sums for overhead and profit on such expenses;
- iii. All claims, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with subcontractors, suppliers, and others; and
- iv. Reasonable expenses directly attributable to termination.

8. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

# Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development

U. S. Department of Housing and Urban Development  
Office of Public and Indian Housing

OMB Approval No. 2577-0157  
(exp. 3/31/2020)

Public reporting burden for this collection of information is estimated to average 3 hours 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 agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

These contracts between a HUD grantee (housing agency (HA)) and an architect/engineer (A/E) for design and construction services do not require either party to submit any materials to HUD. The forms provide a contractual agreement for the services to be provided by the A/E and establishes responsibilities of both parties pursuant to the contract. The regulatory authority is 24 CFR 85.36. These contractual agreements are required by Federal law or regulation pursuant to 24 CFR Part 85.36. Signing of the contracts is required to obtain or retain benefits. The contracts do not lend themselves to confidentiality.

## 1.0 Contract Provisions Required by Federal Law or Owner Contract with the U.S. Department of Housing and Urban Development (HUD).

1.1 Contract Adjustments. Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36 (f).

1.2 Additional Services. The Owner shall perform a cost or price analysis as required by 24 CFR 85.36 (F) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.

1.3 Restrictive Drawings and Specifications. In accordance with 24 CFR 85.36(c)(3)(i) and contract agreements between the Owner and HUD, the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.

1.4 Design Certification. Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235), the Design Professional shall provide such a certification to the Owner.

1.5 Retention and Inspection of Records. Pursuant to 24 CFR 85.26(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.

1.6 Copyrights and Rights in Data. HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfil the requirements of the construction contract.

1.7 Conflicts of Interest. Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to sub-agreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

No member, officer, or employee of the Owner, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

1.8 Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

1.9 Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

1.10 Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

1.11 Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriated funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

1.12 Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

A. The work to be performed under this contract 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). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. Reserved.

H. Reserved.

1.13 Reserved.

1.14 Clean Air and Water. (Applicable to contracts in excess of \$100,000). Because of 24 CFR 85.36(i)(12) and federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$100,000.

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1.15 Energy Efficiency. Pursuant to Federal regulations (24 C.F.R 85.36(i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservation, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

1.16 Prevailing Wages. In accordance with Section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

1.17 Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

1.18 Prohibition Against Liens. The Design professional is Prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all design professional subcontracts.