

PENNSYLVANIA HOUSING FINANCE AGENCY

ADDENDUM TO AIA DOCUMENTS A101 AND A201, 2017 EDITION FOR PHFA FUNDED DEVELOPMENTS

This Addendum shall amend the American Institute of Architects Document A101, Standard Form of Agreement Between Owner and Contractor, 2017 Edition ("the Agreement") and the American Institute of Architects Document A201, General Conditions of the Contract for Construction, 2017 Edition, between the parties named herein and shall be binding unto the parties as part of the whole. This Addendum supplements and amends the Agreement to include the following:

Contractor and Owner agree that the provisions of this Addendum and the Agreement and the rights and obligations of the parties hereunder shall at all times be subject to and in conformity with the provisions of the Housing Finance Agency Law (the "Act") and the rules, regulations and guidelines of the Pennsylvania Housing Finance Agency ("PHFA"); and

The provisions of this Addendum and any applicable attachments incorporated herein supersede and void all inconsistent provisions in the Agreement or in any prior contract or understanding between the parties for the services to be performed hereunder.

ARTICLE I - DEFINITIONS

1. **Actual Construction Completion Date** - The date upon which PHFA certifies in writing that the entire Development, as further described in the Contract Documents, is completed (except for minor incomplete items) in accordance with the Contract Documents, and all units are ready for occupancy.

2. **Contract Documents** - AIA Document A101 Standard Form of Agreement Between Owner and Contractor, 2017 Edition, AIA Document A201 General Conditions of the Contract for Construction, 2017 Edition, the Pennsylvania Housing Finance Agency Addendum to AIA Documents A101 and A201, the PHFA Supplemental General Conditions, the drawings, the specifications, PHFA Submission Guide for Architects, The General Payout Procedure for Mortgagors and Contractors, and all Addenda issued prior to and all modifications issued after execution of the Construction Contract; and any other items that may be specifically stipulated as being included in the Contract Documents. Any other agreement or understanding between the parties shall not be considered part of the Contract Documents, will not be included in the Contract Sum and will not be eligible for project funds.

3. **Latent Defects** - Defects in materials, equipment or completed work which reasonably careful observation could not have discovered.

ARTICLE II - PAYMENTS

1. All amounts to be paid by Owner to Contractor under the Contract Documents shall be paid in accordance with the PHFA Application for Payment submitted to Architect by Contractor and Certificate for Payment issued by Architect and are subject to the approval of PHFA. In the event Contractor fails to comply with all federal, state and local laws, ordinances, rules or regulations, with all PHFA requirements or guidelines or with all terms and conditions of the Contract Documents, progress payments may be withheld until Contractor has fully complied with the aforementioned, subject to the approval of PHFA, or, if payment has been previously made, such funds may be subject to reimbursement upon demand.

2. The period covered by each Application for Payment shall be one month ending on the last day of the month unless otherwise agreed upon by all parties.

3. Subject to the provisions of the Contract Documents, the amount of each progress payment shall be based on:

A. The total schedule of values of the work acceptably completed as approved by PHFA, Architect, Owner and any other necessary contract parties; plus

B. The value of materials and equipment delivered and suitably stored at the site that shall become part of the permanent structure within thirty (30) days after delivery; less

C. **At a minimum, ten percent (10%) of each payment request for a construction item shall be retained by PHFA.** The percentage retained may be reduced to five percent (5%) after construction has been fifty percent (50%) completed. Upon Substantial Completion, the percentage retained may be reduced to two and one-half percent (2.5%). In the event of multiple Certificates of Substantial Completion being issued for phased projects, reduction to two and one-half percent (2.5%) will be considered only after the final phase of the whole is accepted. The balance due to Contractor hereunder shall be payable at final loan closing provided the work is fully completed and Contractor has complied with all provisions of the Agreement and this Addendum to Owner's and PHFA's satisfaction, including, but not limited to, submission and approval of the Contractor's Certificate of Actual Cost to PHFA at final loan closing and receipt of all certificates of occupancy for all units by Owner and PHFA.

4. All payouts are subject to Contractor's compliance with all wage determination processing and record keeping requirements. In the event any submitted supporting material is incomplete or deemed to be inaccurate or inconsistent with the requisite processing requirements, Contractor's payouts may be withheld until such discrepancies and processing requirements are met to PHFA's satisfaction. Under no circumstances shall such suspension or withholding of funding relieve Contractor from performance under the Agreement.

ARTICLE III - SCOPE OF AGREEMENT

Changes in the drawings and specifications or any terms of the Contract Documents, orders for extra work, alterations or additions to the work or any other changes which materially alter the obligations of Owner or alter the design or materially reduce the quality or amenities of the Development shall be submitted to Owner and PHFA for written approval. Contractor covenants to fully indemnify Owner and PHFA against losses or damages or suspension of warranties and other possible consequence associated with any changes made without prior written approval of Owner and PHFA.

ARTICLE IV - TIME

Contractor shall promptly proceed with and complete the Development within the time period specified in the Contract Documents, in accordance with the approved drawings and specifications and the Contract Documents.

ARTICLE V - REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants to Owner and PHFA that:

1. Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Agreement; that it is able to furnish the plant, tools, materials, supplies, equipment, and labor, and is experienced in and competent to perform the work; and that it is qualified to do the work and is authorized to do business in the Commonwealth of Pennsylvania (the "Commonwealth"); and

2. Contractor holds a license, permit or other special license, to perform the services included in the Agreement, as required by applicable law, or lawfully employs or works under the general supervision of the holder of such license, permit or special license; and

3. Contractor is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government and Contractor has paid (or has made arrangements to pay) all taxes due and owing to the Commonwealth; and

4. Contractor has inspected the development site within thirty (30) days of signing this Addendum and represents and warrants that the site conditions have not changed so as to result in an increase in the scope of work or in the Contract Sum; and

5. Contractor understands that the Development under the Agreement is to be financed by loan(s) from PHFA to Owner and the loan(s) will be secured by mortgages, and that the terms of the loan(s) are set forth in loan documents between Owner as borrower and PHFA as lender. Contractor further understands that the loan documents provide that in the event of the failure of Owner to perform its obligations to PHFA thereunder, PHFA may as attorney-in-fact for Owner elect to undertake the completion of the Development in accordance with the Contract Documents.

The warranties in the Agreement shall not limit or exclude any other warranties, express or implied, which arise by operation of law.

ARTICLE VI - GUARANTEE PERIOD

Contractor covenants that it shall correct, at its sole expense, any of the work that is found to be not in accordance with the requirements of the Contract Documents, including any Latent Defects resulting from faulty materials or workmanship which appear within one (1) year from the Actual Construction Completion Date (the "Guarantee Period"). Upon written notice from Owner or PHFA, Contractor shall proceed with due diligence, at its sole expense, to replace any defective material or perform any labor necessary to correct any defect in the work. In case Contractor fails to correct or commence correction of defects within seven (7) days after receipt of written notice to replace defective materials or perform any labor required, Owner or PHFA may furnish whatever material or labor it deems necessary in its sole opinion. If Owner or PHFA determines that the condition poses a threat to the health, safety or welfare of the occupants, Contractor shall correct any defects within forty-eight (48) hours of written notice. Contractor agrees to make prompt reimbursement upon demand. If Contractor fails to promptly and properly perform, as determined by Owner and PHFA, during this Guarantee Period, Owner and PHFA may reduce the Contract Sum in an amount equal to the cost of curing any Latent Defects.

ARTICLE VII - REQUIREMENTS OF CONTRACTOR

1. Contractor agrees, upon request by Owner and at the sole expense of Contractor, to secure occupancy permits from any state or local authority necessary to secure from PHFA the required permission for occupancy of the buildings in the Development. Owner agrees to be responsible for the maintenance and utilities for all such dwelling units turned over to and accepted by Owner. Contractor further agrees that it will at its own expense provide safe and adequate approaches and assure uninterrupted access to all dwelling units which have been approved for occupancy by PHFA or turned over to and accepted by the Owner.

2. Upon the Actual Completion Date, Contractor shall furnish to Owner, PHFA and title insurer, a Record Drawing showing all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements.

3. Contractor shall obtain and pay for and keep in effect from the inception of construction, or from such time as PHFA may require, insurance in a form and amount acceptable to PHFA. If Contractor fails to provide and maintain such insurance, Owner may, without notice to Contractor, procure such policies and deduct any monies expended from any amount otherwise due to Contractor.

4. Contractor further agrees to indemnify and save and hold harmless Owner, the Commonwealth and PHFA against loss or expense by reason of the liability imposed by law upon Owner, Contractor, the Commonwealth or PHFA, for damages because of bodily injuries, including death at any time resulting

therefrom, sustained by any person or persons or on account of damage to property arising out of or in consequence of the performance or non-performance of the Agreement, whether such injuries to persons or damage to property are due or claimed to be due as a result of negligence or willful misconduct of Contractor, its subcontractors, employees or agents.

5. Contractor shall abide by all minority and disadvantaged business enterprise outreach programs as required by PHFA throughout the Construction Period – defined as the date on which the Contractor is given its notice to proceed until the final closeout conducted by the Agency.

6. Contractor shall comply with all other applicable federal and state laws, regulations and guidelines required to construct and/or rehabilitate the Project in accordance with PHFA financing. This includes such work coordination, record keeping, inspection and reporting regiments as may be required for any of the energy efficiency, Green Building, and/or sustainability certification programs the Development is participating in.

ARTICLE VIII - RECEIPTS AND RELEASES OF LIENS

Contractor hereby specifically agrees to pay the expenses of and do what is necessary to promptly remove or bond (to PHFA's and Owner's satisfaction) any mechanic's claim or lien against the Development for or on account of any work or labor done or materials furnished under the Contract Documents or otherwise, for, toward, in or about the erection and construction of the Development. In addition, Contractor shall not, at any time, suffer or permit any claim, lien, attachment, or other encumbrance, under the laws of the Commonwealth or pursuant to federal law, by any person or persons whomsoever, to remain on file against any money due or to become due, for any work done or materials furnished under the Agreement and, until such claim, lien, attachment, or other encumbrance, is removed, Owner or PHFA shall have the right to preclude any payment to Contractor. Upon delivery of payment and performance bonds to PHFA, Contractor shall execute a waiver of liens that shall be recorded in the Office of the Prothonotary of the county in which the Development is located.

ARTICLE IX - ASSURANCE OF COMPLETION

Contractor shall furnish to Owner and PHFA assurance of completion of the work in the form of a Performance Bond and a Payment Bond, each in the amount of one hundred percent (100%) of the Contract Sum or an unconditional and irrevocable letter of credit in the amount of twenty-five percent (25%) of the Contract Sum. Such assurance of completion shall run to Owner and PHFA as dual obligees and shall extend one (1) year from the day on which final payment under the Agreement falls due. The Payment Bond and Performance Bond shall be posted at the job site during construction by Contractor.

ARTICLE X - RIGHT OF ENTRY

PHFA and Owner or their agents or assigns, shall, at all times during construction have the right of entry and free access to the Development and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the Development. For such purpose, Contractor shall furnish such enclosed working space as PHFA and Owner may require and find acceptable as to location, size, accommodations and furnishings.

ARTICLE XI - COST CERTIFICATION

1. Contractor shall keep accurate records of account of the Actual Cost of Construction and shall, upon demand, make such records and invoices, receipts, subcontracts and other information pertaining to the construction of the Development available for inspection by Owner, PHFA, and the Commonwealth.

2. Upon completion of the Development, Contractor shall furnish to Owner and PHFA a completed "Contractor's Certificate of Actual Cost" which shall be in form acceptable to PHFA.

3. Contractor shall include in all subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier to certify its costs incurred in connection with the Development. In the event PHFA determines there is an identity of interest between either the Owner or Contractor and any such subcontractor, equipment lessor or supplier, PHFA will require additional bidding information and protocols to ensure that the costs are not above market.

ARTICLE XII - CONTRACTOR INTEGRITY

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

- a. “Affiliate” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- b. “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
- c. “Contractor” means the individual or entity that has entered into this contract with the Commonwealth.
- d. “Contractor Related Parties” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- e. “Financial Interest” means either:
 - (1) Ownership of more than a five percent (5%) interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee or holding any position of management.
- f. “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- g. “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - (3) had any business license or professional license suspended or revoked;
 - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

ARTICLE XIII - CONTRACTOR RESPONSIBILITY

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

**Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138**

The Contractor agrees that the Commonwealth of Pennsylvania (Commonwealth) may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

ARTICLE XIV - NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their in writing employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
4. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information

Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities, for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Contractor’s and each subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
8. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the Agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

ARTICLE XV - ASSIGNMENTS AND SUBCONTRACTORS

1. The Agreement shall not be assignable by either party, except that Owner may assign the Agreement, or any rights hereunder, to PHFA, subject to the rights of PHFA, and shall be deemed to have made such assignment of the Agreement to PHFA upon PHFA sending written notice to Owner invoking said assignment and setting forth the breach by Owner of the loan documents between Owner and PHFA.

2. Contractor understands that the Development under the Agreement is to be financed by funds from PHFA to Owner and the loans will be secured by mortgages, and that the terms of the loans are set forth in an agreement between Owner as borrower and PHFA as lender. Contractor further understands that the agreement provides that in the event of the failure of Owner to perform its obligations to PHFA thereunder, PHFA may as attorney-in-fact for Owner elect to undertake the completion of the Development in accordance with the Contract Documents.

3. Contractor shall not employ any subcontractors that Owner or PHFA within a reasonable amount of time, object to as incompetent, unfit or objectionable for any other reason.

4. Contractor agrees that it is fully responsible to Owner for the acts and omissions of its subcontractors, suppliers and persons directly or indirectly employed by it. Nothing contained in the Contract Documents shall create privity of contract between any subcontractor and Owner or PHFA.

5. All work performed for Contractor by a subcontractor shall be pursuant to an appropriate agreement between Contractor and subcontractor (and where appropriate, between subcontractor and subcontractor). PHFA reserves the right to review and approve any such agreement.

ARTICLE XVI – FEDERAL PROGRAM FUNDING REQUIREMENTS

(applicable with HOME, HTF, CMF and other federal funding programs)

If the Owner is receiving financing from PHFA made available through the federal HOME Investment Partnerships Program (“HOME”), the National Housing Trust Fund, Capital Magnet Funds, or other federal funding programs, Contractor and subcontractors shall comply with all of the following requirements, as applicable:

1. Section 3 – Section 3 of the Housing and Urban Development Act of 1968, as amended, and the implementing regulations at 24 CFR Part 135 require that to the greatest extent feasible opportunities for training and employment be given to low and moderate income residents of the county in which the Development is located and contracts for work in connection with the Development be awarded to eligible businesses.

2. Federal Labor Standards – The Federal Labor Standards contained in HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs). Contractor shall be responsible for the full compliance of all employers (Contractor, subcontractors and any lower-tier subcontractors) with the labor standards identified therein.

3. Davis-Bacon Compliance – If the Development has 12 or more HOME assisted units, Contractor shall comply with the Davis-Bacon Act and regulations promulgated by the U.S. Department of Labor at Title 29 CFR Parts 1, 3, 5, 6 and 7, as amended, which includes, but is not limited to, compliance with the Davis-Bacon wage decision/determination, requirements for payroll deductions, submission of weekly certified payroll reports and labor standards relating to Davis-Bacon wage rates.

4. The Copeland Act – The Copeland (Anti-Kickback) Act prohibits anyone to require any laborer or mechanic to give up or pay back any part of their wages. Contractor and subcontractors shall comply with all requirements of the Copeland Act and any and all regulations promulgated therewith as amended from time to time.

5. Contract Work Hours and Safety Standards Act – The Contract Work Hours and Safety Standards Act requires that no Contractor or subcontractor under the Agreement may require or permit laborers or mechanics to work in excess of 40 hours in any workweek unless said 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 40 hours in such workweek.

6. Byrd Anti-Lobbying Certification – Contractor and any subcontractor who receives more than \$100,000 in federal funds must submit an executed Byrd Anti-Lobbying Certification Form regarding compliance with 24 CFR Part 87 with each request for payment.

ARTICLE XVII – RIGHT-TO-KNOW LAW

Contractor understands that this Agreement and records related to or arising out of this Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”). Contractor is required to adhere to the following requirements:

1. Contractor shall notify the Agency in writing of any change in the name or the contact information within a reasonable time prior to the change.
2. If Contractor fails to provide access to, and copies of the requested information to the Agency, within the period specified by the Agency, the failure shall be considered an event of default and Contractor shall pay, indemnify and hold the Agency harmless for any damages, penalties, detriment or harm that the Agency may incur as a result of Contractor’s failure to produce the requested information.

3. Contractor agrees not to challenge the Agency's decision to deem the requested information a Public Record as defined by the RTKL, or in any way hold the Agency liable for such a decision. However, if Contractor believes the requested information to be a Trade Secret as defined by the RTKL, then Contractor will provide a statement signed by a representative of Contractor explaining why the requested material is exempt from public disclosure under the RTKL within the timeframe prescribed by the Agency. The Agency's determination as to whether the requested information is a Public Record is dispositive of the question as between the parties to this Contract.

ARTICLE XVIII - MISCELLANEOUS

1. The Agreement shall be governed by the laws of the Commonwealth and may be amended only in writing signed by both parties hereto.

2. The invalidity of any clause, part or provision of this Addendum and the Agreement shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Addendum on the ____ day of _____, 20__.

WITNESS (ATTEST)

CONTRACTOR:

_____.

By: _____

Title: _____

WITNESS (ATTEST)

OWNER:

_____.

a Pennsylvania _____

By: _____

By: _____

Title: _____

WITNESS (ATTEST)

By: _____

By: _____

Title: _____