

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING—FEDERAL HOUSING COMMISSIONER

STANDARD CONTRACT FOR HOUSING CONSULTANT
SERVICES FOR NONPROFIT PROJECTS UNDER HUD PROGRAMS
EXCLUSIVE OF SECTION 202 OF THE HOUSING ACT OF 1950, AS AMENDED

This Agreement made this _____ day of _____, 19____, by and between _____, a nonprofit entity, (hereinafter referred to as the Sponsor) and _____, (hereinafter referred to as the Housing Consultant).

WHEREAS, the Sponsor has formed or intends to form a nonprofit mortgage corporation or association (the term "Sponsor" shall also include said mortgage) to construct, own, operate and maintain a rental housing project, and to make or cause to be made an application to the Secretary of Housing and Urban Development (hereinafter referred to as Secretary) for a commitment to insure a loan for the development of a housing project under the provisions of the National Housing Act, as amended, and the regulations issued pursuant thereto, and

WHEREAS, the Sponsor desires to avail itself of the services of a Housing Consultant to assist and counsel the Sponsor in matters affecting the initiation, processing, financing, design, construction, equipping, operation and management of the housing project.

NOW, THEREFORE, the parties mutually agree as follows.

1. The Housing Consultant agrees to provide the following services for or on behalf of the Sponsor in a manner satisfactory to Sponsor and acceptable to the Secretary, which may include guidance in the selection of other persons, firms or organizations with the capability of performing one or more of the services required to:

- (a) Assist the Sponsor in making an analysis of available market reports and other pertinent data to determine the type of housing suitable for the neighborhood or area where the project is to be located, the number of units planned and appropriate to the zoning applicable to the site and the approximate rentals to be charged and in collecting all information required to establish the feasibility of the project;
- (b) Assist the Sponsor in selecting a suitable site for the development of a rental housing project and obtaining, if necessary, appraisals of the land from a qualified appraiser, and obtaining an option to purchase the land or otherwise arranging suitable terms for the purchase of the real property or, where appropriate obtaining a long-term lease acceptable to the Secretary;
- (c) Assist the Sponsor in negotiations with either the Local Public Agency or with the city when the site is within an approved Urban Renewal Project area or a Neighborhood Strategy Area (NSA), respectively;
- (d) Assist in the conferences and discussions with the representatives of the Secretary to obtain site approval and feasibility approval of the project;
- (e) Assist in the selection of a qualified architect and in the negotiations for a contract to prepare preliminary and final drawings and specifications and provide contract administration during construction;
- (f) Assist in the preparation of an application for project mortgage insurance to be executed by the Sponsor and the proposed mortgagee;
- (g) Assist in obtaining a construction contract, either through a competitive bidding process or negotiation, which contract will incorporate the drawings and specifications accepted by the Secretary and provide for the construction of the project within a period allowed by the Secretary;
- (h) Assist in the selection of and arrangements with an attorney to render to the nonprofit Sponsor such legal services as are necessary to form an eligible nonprofit owner-mortgageor legal entity, to conclude an initial and final closing of the mortgage loan transaction;
- (i) Assist in obtaining an acceptable commitment from a qualified lender or lenders to make the construction or interim loan and the permanent loan;
- (j) Assist in organizing an eligible nonprofit owner-mortgageor entity to hold title to the real property, in fee or leasehold, and maintain and operate the project over the life of the mortgage in accordance with the requirements of the Secretary, the National Housing Act, as amended, and the Regulations applicable thereto;
- (k) Assist the nonprofit owner/mortgageor during the construction phase of the project in matters relating to filing applications for and obtaining monthly construction funds; coordinating and implementing changes in construction; and obtaining the service of a qualified person or firm to prepare the cost certification.

HUD-62821-A (8-61)

Appendix 69

- (l) Assist the Sponsor in establishing sound management and operating procedures, including the selection of a qualified management agent; and
- (m) Assist and counsel the Sponsor in establishing appropriate methods of keeping records and accounting procedures to meet the requirements of the Secretary.

Delete any of the above duties which are inapplicable and state on an addendum to this contract other duties which the Housing Consultant will perform.

- 2. (a) The Sponsor agrees to compensate the Housing Consultant by payment of a fee in the amount of \$_____.

- (b) The fee provided herein shall be due and payable in the following manner:

Up to sixty percent (60%) of the consultant's fee at Initial Endorsement.

During construction, up to seventy-five percent (75%), less any previous payments. This represents an additional fifteen percent (15%) to be paid during the construction period. Payment of this portion of the fee shall be made at the time construction draws are made and amount will be based on percentage of completion.

The balance remaining shall be approved for payment at Final Endorsement.

- (c) If a retainer fee in the amount of \$_____, as mutually agreed to between the Sponsor and the Housing Consultant, has been paid by the Sponsor to the Housing Consultant, it shall become a part of the total fee due hereunder. In the event the mortgage is insured by the Secretary, the first payment of the fee, as provided in Section 2(b) of this Contract, shall be reduced by the amount of the retainer fee already paid. In the event the application for mortgage insurance is rejected or the mortgage is not endorsed for insurance by the Secretary, the Sponsor agrees to forfeit the retainer and the Housing Consultant agrees to accept the retainer as full compensation under this Contract. This Contract will then become null and void, and the Sponsor shall have no further liability for payments due hereunder.

- (d) The fee shall include all those expenses of the Housing Consultant which are reasonably related to providing the services for the Sponsor as set forth herein, including such items as travel and telephone expenses.

- 3. The services of the Housing Consultant are to commence upon the execution of this Contract and the work required shall be undertaken and completed in an expeditious and business-like manner. Failure to do so, or violation of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant shall give the Sponsor the right to terminate this Contract provided the Housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Sponsor shall have no further liability for payments due under this Contract. The Sponsor reserves the right to reduce the total amount of the fee, based on its determination of poor performance or nonperformance of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant; provided, the Housing Consultant is notified in writing of the basis for this determination and the amount of the reduction.
- 4. The Housing Consultant shall periodically submit written narrative progress reports to the Sponsor.
- 5. The Sponsor agrees to cooperate with the Housing Consultant in carrying out the purposes of this Contract. Failure to do so, or violations of any of the covenants, agreements or stipulations of this Contract by the Sponsor shall give the Housing Consultant the right to terminate this Contract provided the Sponsor is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.
- 6. If any time the Sponsor decides not to proceed with the housing project, the Sponsor shall have the right to terminate this contract provided the housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.
- 7. The Sponsor may from time to time request changes in the scope of the services of the Housing Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Housing Consultant's compensation, which are mutually agreed upon by and between the nonprofit Sponsor and the Housing Consultant, and are approved by the Secretary, shall be incorporated in written amendments to this Contract.
- 8. To induce the Secretary to insure a mortgage loan financing the development of the project, the Housing Consultant:
 - (a) Agrees to avers that the statements certified to on Form HUD-92531 under date of _____ are true, correct and complete to the best of his/her knowledge and belief; and
 - (b) Agrees upon final payment of the fee provided above, to furnish to the Sponsor a certified receipt on Form HUD-92531-B provided by the Secretary reaffirming the statements made in the aforesaid certificate.

HUD-92531-A (8-81)

- 9 In no event shall the parties to this Contract have or assert any claim against the Federal Government or the Secretary by reason of this Contract, or any action taken by the Federal Government with respect to the mortgage insurance application, including disapproval of the application.
- 10 The terms and conditions of this Contract are subject to the review and approval of the Secretary, including HUD-2530 Previous Participation review.
11. Notwithstanding the execution of this Contract by the Nonprofit Sponsor and the Housing Consultant and the fact that work has commenced hereunder, the terms and conditions may be amended upon review and approval by the Secretary.

IN WITNESS WHEREOF, the nonprofit Sponsor and the Housing Consultant have executed this Contract the date first above written.

(Housing Consultant)

(Nonprofit Sponsor)

(NOTE: Appropriate additional provisions may be added as required and agreed upon by the parties to the Contract and approved by the Secretary.)

WARNING

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) shall apply to such statements. (18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.)