

Part II of the  
Agreement to Enter into a  
Housing Assistance  
Payments Contract

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

Section 8 Housing Assistance Payments Program

By and between \_\_\_\_\_ (CA)

and \_\_\_\_\_ (Owner).

Type of Project:  **Private-Owner / HUD** or  **PHA-Owner / HUD**  
(HUD is the Contract Administrator or "CA.")

or  **Private-Owner / PHA**  
(The PHA is the CA.)

New Construction or Substantial Rehabilitation or Previously HUD-Owned  
 Part 880  Part 881  Part 886, Subpart C  
 Part 885  Part 885

Section 8 Project Number :

HUD Project Number (if applicable) :

## 2.1 Schedule of Completion.

- (a) **Timely Performance of Work.** The Owner agrees to begin work no later than by the time indicated in section 1.1. The Owner shall report to the CA the date work has commenced and shall thereafter furnish the CA with periodic progress reports (quarterly unless more frequent reporting is required by the CA). In the event the work is not commenced, diligently continued, or completed as required under this Agreement, the CA, subject to HUD approval or direction where the CA is the PHA, reserves the right to rescind this Agreement or take other appropriate action in accordance with section 2.16.
- (b) **Time for Completion.** The project shall be completed in accordance with section 2.3 no later than the end of the period indicated in section 1.1, or in stages as provided for in Exhibit C. Where the Agreement provides for completion in stages, all references to project completion shall be considered to refer to project completion or completion of any stage, as appropriate.
- (c) **Delays.** In the event there is delay in the completion due to strikes, lockouts, labor union disputes, fire, unusual delays in transportation, unavoidable casualties, weather, acts of God, or any other causes beyond the Owner's control, or by delay authorized by the CA, the time for completion shall be extended to the extent that the CA determines that completion is delayed due to one or more of these causes. No increase in the rents set forth in the Contract attached as Exhibit B ("Contract Rents") may be granted except in accordance with section 2.2(c).

- (b) **Changes.** The Owner shall submit for approval, and for PHA approval where the CA is a PHA, any changes from Exhibit A and Exhibit C which would materially reduce or alter its obligations, or any changes which would alter the design of the project or materially reduce the quality or amenities of the project. Approval of changes may be conditioned on a reduction of Contract Rents. If the Owner makes any changes without the prior approval of HUD, and the PHA, if appropriate, the Owner may be required to reduce Contract Rents or to remedy the defects or deficiencies as a condition for acceptance of the project.

- (c) **Increases in Contract Rents or Utility Allowances.** Increases in contract rents or utility allowances during the construction or rehabilitation period are permitted only with HUD approval consistent with HUD regulations.

(d) **Marketing.**

(1) The Owner shall commence and diligently continue marketing as soon as possible, but in any event no later than 90 days prior to the anticipated date of availability for occupancy of the first unit in the project, or 60 days prior to the estimated completion date for previously HUD-owned projects. The Owner must notify the CA of the date of commencement of marketing. Marketing and leasing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan (if required), all Fair Housing and Equal Opportunity requirements, Exhibit A and the applicable provisions of Exhibit B, the proposed Contract.

(2) Except in the case of previously HUD-owned projects, the Owner must undertake marketing activities for nonelderly family units in advance of marketing to other prospective tenants to provide opportunities to reside in the project to:

(i) Nonelderly families who are least likely to apply as determined in the Affirmative Fair Housing Marketing Plan, and

## 2.2 Construction or Rehabilitation Period.

- (a) **Inspections.** HUD will inspect project records periodically to determine compliance with Davis-Bacon Act requirements, if applicable. Projects which involve HUD mortgage insurance, or other financing requiring HUD inspection during construction or rehabilitation, are subject to the applicable inspection requirements. HUD may conduct a review to determine contractor compliance with equal opportunity requirements at any time.

(ii) Nonelderly families expected to reside in the community by reason of current or planned employment.

(3) At the time of Contract execution, the Owner must submit a list of leased and unleased units, with justification for the unleased units, to qualify for vacancy payments for the unleased units in accordance with the Contract.

(4) In the case of previously HUD-owned projects requiring substantial or moderate rehabilitation after purchase, in order to be eligible for payments for units vacant at the time the Contract is executed, the Owner also shall notify the PHA(s) in the area of any units which the Owner anticipates will be vacant on the anticipated effective date of the Contract. The Owner shall provide this notification to PHA(s) 60 days prior to completion of the rehabilitation or the effective date of this Agreement, whichever is later. The Owner shall also have taken all feasible actions to fill the vacancies, including but not limited to: contacting applicants on the Owner's waiting list, if any, requesting the PHA, and other appropriate sources to refer eligible applicants, and advertising the availability of units in a manner specifically designed to reach low income families. The Owner also shall not have rejected any eligible applicant except for good cause acceptable to HUD.

**2.3 Project Completion.** (If the project is completed in stages, the procedures of this section apply to each stage.)

(a) **Conformance to Final Proposal.** The completed project shall be in accordance with Exhibit A. The Owner shall be solely responsible for completion of the project.

(b) **Notification and Evidence of Completion.** The Owner shall notify HUD and the PHA, where the CA is the PHA, when the work is completed and provide HUD with:

(1) A set of as-built drawings (except where not required for certain substantial rehabilitation projects, for previously HUD-owned projects, and for projects with HUD-insured mortgages).

(2) A certificate of occupancy and/or other official approvals necessary for occupancy.

(3) A certification by the Owner, which will be supported by the Owner's warranty in the Contract, that:

(i) The project has been completed in accordance with the requirements of this Agreement, including all management and equal opportunity requirements;

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project, except for items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case do not preclude or unacceptably affect occupancy; any excepted items shall be specified (see section 2.3(e));

(iv) There has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in Exhibit A other than changes approved in writing by HUD and the PHA, if the CA is the PHA, in accordance with section 2.2(b);

(v) (See section 1.4 for applicability of this paragraph.) It has complied with the provisions of section 2.10 of this Agreement, and that to the best of its knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner or HUD or the PHA, if the CA is the PHA, the Owner shall be required to place a sufficient amount in escrow, as directed by HUD (in accordance with section 2.10), to assure payments of such claims;

(vi) In the case of substantial rehabilitation and previously HUD-owned projects, the project has been rehabilitated in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials; and

(vii) In the case of substantial rehabilitation and previously HUD-owned projects, the project was treated and is in compliance with applicable HUD Lead Based Paint regulations (24 CFR, Part 35) and that if the property was constructed prior to 1950, each Family prior to rental will receive the notice required by HUD Lead Based Paint regulations and procedures regarding the hazards of lead based paint poisoning, the symptoms and treatment of lead poisoning and precautions to be taken against lead poisoning and that records showing receipt of such notice by each tenant will be maintained.

(4) (See section 1.4(a) for applicability of this paragraph (b)(4).) A Certification by the registered architect responsible for inspection of the work that such inspection was performed by him or under his supervision with the frequency and thoroughness required by the generally accepted standards of professional care and judgment, and that to the best of his knowledge, belief, and professional judgment;

(i) The project has been completed in conformance with the certified working drawings and specifications for the project or approved changes (such changes to be listed) and with the HUD Minimum Property Standards (4910.1) or Minimum Design Standards for Rehabilitation for Residential Properties (4940.4);

(ii) The project is in good and tenantable condition;

(iii) There are no defects or deficiencies in the project, except for items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case do not preclude or unacceptably affect occupancy. Any excepted items shall be specified. See section 2.3(e).

(iv) The project has been constructed or rehabilitated in accordance with applicable zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials.

(5) (This paragraph applies to projects subject to Part 811 which are not PHA-Owner/HUD projects.) Prior to execution of the Contract or, for HUD-insured projects, prior to final endorsement, the Owner agrees to submit the certified statements required by Part 811 as to amounts actually expended or to be expended for the financing of the project. Records documenting this cost data shall be available to HUD for inspection upon request.

(6) (This paragraph applies only to PHA-Owner/HUD Projects subject to Part 811.)

(i) Prior to execution of the Contract or, for HUD-insured projects, prior to final endorsement, the PHA-Owner agrees to submit or to require the Agency or Instrumentality PHA to submit to HUD the certified statements required by Part 811 as to amounts actually expended or to be expended for the financing and other costs of the project, including use of excess funds and the other terms of the financing. Records of this cost data shall be available to HUD for inspection upon request.

(ii) The PHA-Owner agrees:

(a) That disbursements from the escrow of the proceeds of the permanent obligations shall be for the purpose and in the amounts approved by HUD in accordance with Part 811;

(b) That if the PHA or the Agency or Instrumentality PHA receives any compensation in connection with the financing in excess of its expenses as approved by HUD, the excess shall be applied in accordance with the trust indenture; and

(c) That if the obligations are resold within 60 days of the issuance, the PHA shall report to HUD the terms and conditions of such resale. This requirement is applicable only to the initial resale.

(7) In the case of previously HUD-owned projects to be substantially or moderately rehabilitated by the Owner, the Owner shall submit certified statements of the actual costs, including interest rate incurred for the rehabilitation loan, Contract Rent shortfalls and HUD-approved relocation. HUD shall review and approve the costs subject to post audit.

(c) **Review and Inspection.**

(1) Within 10 working days of the receipt of the notification and the evidence of completion, HUD shall review the evidence of completion for adequacy. For previously HUD-owned projects, HUD shall have 15 working days.

(2) Within the same time period, a HUD representative shall inspect the project in a manner sufficient to enable the inspector to report that he or she has inspected the observable elements and features of the project in accordance with professional standards of care and judgment and that, on the basis of the inspection,

(i) the project has been completed in accordance with the Agreement and that

(ii) there are no observable conditions inconsistent with the evidence of completion, including the certifications of the Owner and the design or inspecting architects, where appropriate. If the inspection discloses defects or deficiencies, the inspector shall report these with sufficient detail and information for purposes of paragraphs (e) and (f) of this section. In the case of projects with HUD-insured mortgages or loans, a prior HUD inspection establishing substantial completion shall be acceptable.

(3) At the time of the HUD inspection, the Owner shall furnish evidence satisfactory to HUD of correction of all deficiencies included in any HUD notifications to the Owner during the

course of construction. The Owner and lender (in the case of Part 811 financing) shall not be relieved of their obligation to complete the project in accordance with the Agreement because of failure by HUD or any other party to inspect during the course of construction or rehabilitation.

(d) **Unconditional Acceptance.** If HUD determines from the review and inspection that the project has been completed in accordance with the Agreement, the project shall be accepted and the Contract executed.

(e) **Acceptance Where Defects or Deficiencies Are Items of Delayed Completion.** (See sections 2.3(b)(3)(iii) and (4)(iii)). If the only defects or deficiencies with regard to the physical completion of the project are items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or unacceptably affect occupancy, and if the Owner has met all other requirements of the Agreement, the Project will be accepted and the Contract executed, subject to the following:

(1) The Owner will establish an escrow fund in an amount approved by HUD to be sufficient to assure completion of any items of delayed completion.

(2) The Owner and the CA will enter into a written agreement, to be included as an exhibit to the Contract, specifying the schedule for completion. If the Owner does not complete the items specified in the agreement within the agreed time period, the CA may use the escrow fund to complete the project, or the CA may terminate the Contract or exercise other rights under the Contract.

(f) **Acceptance Where Other Defects or Deficiencies Reported.** If the defects or deficiencies with regard to the physical completion of the project are other than items of delayed completion under paragraph (e), HUD will determine whether and to what extent the defects and deficiencies are correctable and whether the Contract Rents should be reduced. HUD will notify the Owner of its decision, with a copy to the PHA where it is the CA. If the Parties agree, HUD, the Owner, and the PHA, where it is the CA, will enter into a written agreement for the correction of the deficiencies specifying the schedule for completion. If the deficiencies are corrected within the agreed time period, HUD will accept the project and the Contract will be executed.

(g) **Acceptance with Regard to Physical Completion of the Project and Execution of Contract.**

(1) If HUD finds that the evidence of completion under section 2.3 is acceptable (including acceptance under section 2.3(e)) with respect to the physical completion of the project, including the certificate of occupancy and other official approvals required for occupancy, but the evidence of completion in other respects is not acceptable, HUD will, upon request by the Owner, execute or approve the execution of the Contract.

(2) Until the remaining evidence of completion is submitted to and found acceptable by the HUD Field Office:

(i) The Contract Rents for the purpose of computing housing assistance payment with respect to any unit will be the monthly amount of the debt service on the amount of permanent obligations attributable to the unit; and

(ii) Rent-up and occupancy of the project will be subject to such conditions as HUD may require in an exhibit to the Contract setting forth the rents and conditions.

(h) **Notification of Nonacceptance.** If HUD determines that, based on the review of the evidence of completion and inspection, the project cannot be accepted, the Owner (and the PHA where it is the CA) shall be promptly notified of this decision with a statement of the reasons.

(i) **Arbitration.** In the event the Owner disputes the HUD determinations, it may submit the controversy to a mutually acceptable third-party arbitrator at its expense, provided that the arbitration is advisory only.

## 2.4 Execution of Housing Assistance Payments Contract.

(a) **Time of Execution.** Upon acceptance of the project by HUD pursuant to sections 2.2 and 2.3 the Contract shall be executed first by the Owner and then by the CA (and then be approved by HUD, where the CA is the PHA).

(b) **Completion in Stages.** If completion is in stages, the Contract and the signature block for the first stage shall be executed upon completion of the first stage, and the number and types of completed units and their Contract Rents shall be shown in Exhibit 1 of the Contract. Thereafter, upon completion of each successive stage, the signature block provided in the Contract for that stage shall be executed, and additional Exhibits 1a, 1b, etc., covering the additional units, shall become part of the Contract.

(c) **Unleased Units at Time of Execution.** At the time of execution of the Contract, the CA shall examine the lists of dwelling units leased and not leased, referred to in section 2.2(d), and shall determine whether or not the Owner has met its obligations under that section with respect to any unleased units. The CA shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments pursuant to the Contract. The Owner shall indicate in writing concurrence or nonconcurrence with this determination, reserving its right to claim housing assistance payments for the unleased units under the Contract, without prejudice by reason of signing the Contract.

(d) **Contract Rents.** The Contract Rents by unit size, amounts of housing assistance payments, and all other applicable terms and conditions shall be as specified in the proposed Housing Assistance Payments Contract, except as provided in section 2.2(c) and in paragraphs (f) - (i) of this section (where applicable).

(e) **No Changes in Contract.** Each party has read or is presumed to have read the proposed Contract. It is expressly agreed that there shall be no change in the terms and conditions of the Contract other than as provided in this Agreement.

(f) **Adjustment of Contract Rents Based on Cost Certification for Projects Not Subject to Part 811.** (See section 1.4 for applicability of this paragraph.)

(1) **Submission by Owner.** Within 60 days after HUD accepts the project (or accepts the last stage, where applicable), or any

extension approved by HUD for good cause, the Owner will certify the actual costs of the replacement cost, operating expenses, income, and debt service, and submit a cost certification including the certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

(i) Projects which involve HUD mortgage insurance or a HUD loan will be subject to the cost certification requirements of the applicable insurance or loan program.

(ii) For projects not insured by HUD, a simplified form of cost certification prescribed by HUD will be completed and submitted.

(iii) For previously HUD-owned projects, in accordance with HUD requirements.

(2) **HUD Review.** Cost certifications will be subject to review by HUD. As part of this review, the Owner and/or contractor may be required to submit additional documentation.

(3) **Reduction of Contract Rents.** If the Owner's certified costs provided in accordance with paragraph (f)(1) of this section, as approved by HUD, are less than the HUD-approved cost estimates in the final Proposal, the Contract Rents will be reduced commensurately.

(4) **Reduction of Maximum Annual Commitment.** If the Contract Rents are reduced pursuant to paragraph (f)(3) of this section, the maximum Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PHA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.

(g) **Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Obligations Issued by a Participating State Agency Not Subject to Part 811.** After the project is permanently financed, the financing agency shall submit a HUD-prescribed certification to HUD specifying the actual financing terms. If the actual debt service to the Owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents or the Contract Rents then in effect shall be reduced commensurately, and the amount of the savings credited to the project account. The maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PHA projects) will not be reduced.

(h) **Adjustment to Reflect Actual Cost for Projects Subject to Part 811.** (See section 1.4 for applicability.)

(1) The Owner and the financing agency shall submit certified statements as to the financing and other costs. Based on the certified statements, HUD will determine whether any reduction in initial Contract Rents is required under 24 CFR Part 811. Promptly after HUD notification, the Owner and the financing agency agree to amend the Contract to reduce the initial Contract Rents to the extent required by HUD. See sections 2.3(b)(5) and (6), as appropriate.

**(2) Reduction of Maximum Annual Commitment.** If the Contract Rents are reduced pursuant to paragraph (h)(1) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PHA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayments since the effective date of the Contract will be recovered from the Owner by the CA.

**(i) Adjustment of Contract Rents in Previously HUD-Owned Projects.**

**(1)** For previously HUD-owned projects requiring substantial or moderate rehabilitation, the Contract Rents will be the amount established by HUD at sales closing except:

**(i)** When, during rehabilitation, work items are discovered which:

**(a)** could not reasonably have been anticipated or are necessitated by a change in local codes or ordinances,

**(b)** were not listed in the work write-up prepared by HUD and

**(c)** will require additional expenditures which would make the rehabilitation infeasible at the Contract Rents established in this Agreement.

**(ii)** When the actual cost of the rehabilitation performed is less than that specified in the Purchase and Use Plan.

**(iii)** When the actual certified relocation payments made by the Owner to temporarily displaced Families varies from the cost estimated by HUD.

**(2)** If the change is due to circumstances set out in paragraph (i)(1) of this section, HUD will:

**(i)** Approve a change order to the rehabilitation contract, or amend the work write-up if there is no rehabilitation contract, specifying the additional work to be accomplished and additional cost for this work.

**(ii)** Recompute the Contract Rents within the limits set out in (i)(4) of this section based upon the revised cost estimate.

**(iii)** Execute an amendment to this Agreement and the appropriate exhibits stating the additional work required and the revised Contract Rents and maximum annual Contract commitment.

**(3)** If the change is due to circumstances set out in paragraph (i)(1)(ii) or (i)(1)(iii) (either an increase or decrease), HUD may recalculate the Contract Rents and amend this Agreement as appropriate to reflect the revised rents. The Contract Rents shall not be recalculated based on increased costs to maintain rents to tenants at the level required under section 8 of the Act during the rehabilitation period.

**(4)** In establishing the revised Contract Rents, HUD shall determine that the Contract Rents shall not exceed rents which are reasonable for the location, quality, amenities, facilities and management and maintenance services in relation to the rents paid for comparable units, nor shall the Contract Rents exceed the rents charged by the Owner to unassisted families

for comparable units. Also, the sum of the Contract Rent plus an Allowance for Utilities and Other Services (where utilities and other services are not included in the Contract Rent) shall not exceed the published section 8 Fair Market Rents or the exception rents in effect at the time of the execution of the Agreement.

**2.5 Cooperation in Equal Opportunity Compliance Reviews: Nondiscrimination.**

**(a)** The Owner and the PHA, where it is the CA, agree to cooperate with HUD in the conducting of the compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations.

**(b) (1)** In carrying out the obligations under this Agreement, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, handicap or national origin. The Owner will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, handicap or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**(2)** The Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. The Owner will in all solicitations or advertisements for employees placed by or on behalf of the Owner state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. The Owner will incorporate the foregoing requirements of this paragraph in all of its contracts for project work except contracts for standard commercial supplies or raw materials and contracts for construction work or modification of it covered under section 2.7, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work.

**(c)** The Owner shall comply with any rules and regulations issued or adopted by HUD under the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*, which prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

**2.6 Training, Employment and Contracting Opportunities for Businesses and Lower Income Persons.**

(See section 1.4 for applicability of this section.)

**(a)** The project assisted under this Agreement is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

- (b) Notwithstanding any other provision of this Agreement, the Owner shall carry out the provisions of section 3 and the regulations issued by HUD as set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement. The requirements of the regulations include, but are not limited to, making a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the “section 3 clause” specified by section 135.38 of the regulations and paragraph (d) of this section in all contracts for work in connection with the project. The Owner certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.
- (c) Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders issued by HUD thereunder prior to execution of this Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, its contractors and subcontractors, its successors and assigns. Failure to fulfill these requirements shall subject the Owner, its contractors and subcontractors, its successors, and assigns to the sanctions specified by this Agreement, and to such sanctions as are specified by 24 CFR, section 135.135.
- (d) The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$100,000 cost, the following clause:

**"Employment of Project Area Residents and Contractors**

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b)."

- (e) The Owner agrees that it will be bound by the above section 3 clause with respect to its own employment practices when it participates in federally assisted work.

**2.7 Equal Employment Opportunity.**

- (a) The Owner shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this Agreement, the following Equal Opportunity clause:

**“Equal Employment Opportunity**

“During the performance of this contract, the contractor agrees as follows:

“(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including appren-

ticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Equal Opportunity clause.

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

“(3)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 or at the direction of the Government advising the said labor union or workers representative of the contractor’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

“(4)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.

“(5)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 its books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

“(6)In the event of the contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, the contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

“(7)The contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the 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 subcontract or purchase order as the Secretary of Labor may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interest of the United States.”

(b) The Owner agrees that it will be bound by the above Equal Opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.

(c) The Owner agrees that it will assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish HUD and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist HUD in the discharge of HUD’s primary responsibility for securing compliance.

(d) The Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Owner agrees that if it fails or refuses to comply with these undertakings, HUD may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this Agreement; refrain from extending any further assistance to the Owner under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## 2.8 Flood Insurance. (See section 1.4 for applicability.)

The Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

## 2.9 Clean Air Act and Federal Water Pollution Control Act. (See section 1.4 for applicability of this section.)

In compliance with regulations issued by the Environmental Protection Agency (“EPA”), 40 CFR, Part 15, pursuant to the Clean Air Act, as amended (“Air Act”), 42 U.S.C. 7401, *et seq.*, the Federal Water Pollution Control Act, as amended (“Water Act”), 33 U.S.C. 1251, *et seq.*, and Executive Order 11738, the Owner agrees:

- (a) Not to utilize any facility in the performance of this Agreement or any nonexempt subcontractor which is listed on the EPA List of Violating Facilities pursuant to section 15.20 of the regulations;
- (b) Promptly to notify the CA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities;
- (c) To comply with all the requirements of Section 114 of the Air Act and section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Air Act and section 308 of the Water Act, and all regulations and guidelines issued thereunder; and

- (d) To include or cause to be included the provisions of this section in every nonexempt subcontract and take such action as HUD may direct as a means of enforcing such provisions.

## 2.10 Prevailing Wage Rates.

(Sections 2.10 applies to projects with 9 or more assisted units. See Section 1.4. Other programs require coverage for projects with fewer than 9 units.)

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

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

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

1 The work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

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

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

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

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

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

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



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

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

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

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

1 That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(i) and that such information is correct and complete;

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

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

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

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

**(iii)** The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be

necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

#### **(4) Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S.

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

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

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

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

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

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

**(9) Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of

the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**(10)(i) Certification of Eligibility.** By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

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

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

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

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

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

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written

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

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

## 2.11 Reserved

## 2.12 Reserved

## 2.13 Reserved

## 2.14 Wage Claims and Adjustments.

**(a)** The Owner shall be responsible for the correction of all violations under section 2.10, including violations committed by other contractors. In cases where there is evidence of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the Owner or other contractor or a failure by the Owner or other contractor to submit payrolls and related reports, the Owner shall be required to place an amount in escrow, as determined by HUD, sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked and the full amount of wages required under this Agreement, as well as an amount determined by HUD to be sufficient to satisfy any liability of the Owner or other contractor for liquidated damages pursuant to section 2.10. The amounts withheld may be disbursed by HUD for and on account of the Owner or other contractor to the respective employees to whom they are due, and to the Federal Government in satisfaction of liquidated damages under section 2.10.

**(b)** The escrow required by paragraph (a) shall be paid to HUD, as escrowee, or to an escrowee designated by HUD, and the conditions and manner of releasing such escrows shall be designated and approved by HUD.

## 2.15 Reserved.

## 2.16 Defaults by PHA and/or Owner.

**(a)** Rights of Owner if PHA Defaults under Agreement (for Private-Owner/PHA Projects).

**(1) Events of Default.** The occurrence of any of the following events, if the Owner is not in default, is defined as default under the ACC.

(i) If the PHA fails to perform or observe any term or condition of this Agreement;

(ii) If the Agreement is held to be void, voidable, or ultra vires;

(iii) If the power or right of the PHA to enter into the Agreement is drawn into question in any legal proceeding; or

(iv) If the PHA asserts or claims that the Agreement is not binding upon the PHA for any such reason.

**(2) Owner Request for HUD Determination of Default.** If the Owner believes that an event as specified in paragraph (a)(1) has occurred, and the Owner is not in default, the Owner may, within 30 days of the initial occurrence of the event:

(i) Notify HUD of the occurrence of the event;

(ii) Provide supporting evidence of the default and of the fact that the Owner is not in default; and

(iii) Request HUD to determine whether there has been a default.

**(3) HUD Determination of Default and Curing of Default.** HUD, after notice to the PHA giving it a reasonable opportunity to take corrective action, or to demonstrate that it is not in default, shall make a determination whether the PHA is in default and whether the Owner is not in default. If HUD determines that the PHA is in default and that the Owner is not, HUD shall take appropriate action to cure the default. If necessary for the prompt continuation of the project, HUD shall assume the PHA's rights and obligations under the Agreement, including any funds and including the obligation to enter into the Contract and to pay annual contributions with respect to the units covered by the Contract in accordance with the ACC and the Contract until reassigned to the PHA. All rights and obligations of the PHA assumed by HUD will be returned as constituted at the time of the return:

(i) When HUD is satisfied that all defaults have been cured and that the project will thereafter be administered in accordance with all applicable requirements, or

(ii) When the Contract is at an end, whichever occurs sooner.

**(4) Enforcement by Owner.** The provisions of this paragraph (a) are made for the benefit of the Owner, the lender, the PHA where it is the lender and then only in its capacity as lender, and the Owner's other assignees, if any, who have been specifically approved by HUD prior to the assignment. These provisions shall be enforceable by these parties against HUD by suit at law or in equity.

**(b) Rights of PHA and HUD if Owner Defaults under Agreement.**

**(1) Events of Default.** A default by the Owner under this Agreement shall result if:

(i) The Owner has violated or failed to comply with any provision of, or obligation under, this Agreement; or

(ii) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this Agreement; or

(iii) For projects with mortgages insured by HUD or loans made by HUD, the Owner has violated or failed to comply with the regulations for the applicable insurance or loan program, with the insured mortgage, or with the regulatory agreement; or the Owner has filed any false statement or misrepresentation with HUD in connection with the mortgage insurance or loan.

**(2) CA Determination of Default.** Upon a determination by the CA that a default has occurred, the CA shall notify the Owner and the lender, with a copy to HUD where the CA is a PHA, of:

(i) The nature of the default,

(ii) The actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner and/or the lender to cure the default),

(iii) The time within which the Owner and/or the lender shall respond with a showing that all the required actions have been taken.

If the Owner and/or the lender fail to respond or take action to the satisfaction of the CA (and HUD where the CA is a PHA), the CA shall have the right to take corrective action to achieve compliance, in accordance with paragraph (b)(3), or to terminate this Agreement with HUD approval, in whole or in part, or to take other corrective action to achieve compliance, in its discretion, or as directed by HUD (where CA is a PHA).

**(3) Corrective Actions.** Pursuant to paragraph (b)(2) of this section the CA, in its discretion or as directed by HUD (where the CA is a PHA), may take the following corrective actions either directly or in conjunction with or acting through a PHA:

(i) Take possession of the project, bring any action necessary to enforce any rights of the Owner, complete the project in accordance with the terms of this Agreement, execute the Contract on behalf of the Owner, and operate the project in accordance with the terms of the Contract until such time as HUD determines that the Owner is again in a position to complete or operate the project, as appropriate, in accordance with the Agreement or Contract.

(ii) Apply to ant court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and complete the project in accordance with this Agreement and to execute the Contract and operate the project in accordance with the Contract, or for such other relief as may be appropriate. These remedies are appropriate since the injury to the PHA and/or HUD arising from a default under any of the terms of this Agreement could be irreparable and the amount of damage would be difficult to ascertain.

**(4) HUD Rights.** (For Private-Owner/PHA projects where the PHA is the lender.)

(i) Notwithstanding any other provisions of this Contract, in the event HUD determines that the Owner is in default

of its obligations under this Contract, HUD shall have the right, after notice to the Owner, the trustee, if any, and the PHA giving them a reasonable opportunity to take corrective action, to proceed in accordance with paragraph (b)(3).

(ii) In the event HUD takes any action under this section, the Owner and the PHA hereby expressly agree to recognize the rights of HUD to the same extent as if the action were taken by the PHA. HUD shall not have the right to terminate the Contract except by proceeding in accordance with paragraphs (b)(1), (2), and (3) of this section and with the ACC.

- (c) **Remedies not Exclusive and Non-Waiver of Remedies.** The availability of any remedy under this Agreement or the ACC, where applicable, shall not preclude the exercise of any other remedy under this Agreement or the ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any of other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## 2.17 Disputes.

### (a) For Private-Owner/PHA Projects:

(1) Any dispute concerning a question of fact arising under this Agreement which cannot be resolved by the PHA and the Owner may be submitted by either party to the HUD Field Office which will promptly make a decision and furnish a written copy to the Owner and the PHA.

- (2) The decision of the Field Office will not be reviewable unless, within 30 calendar days from the date of receipt of the Field Office's determination, either party mails or otherwise furnishes to HUD a written appeal with written justification addressed to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the Field Office, pending resolution of the appeal.

- (b) **For Private-Owner/HUD or PHA-Owner/HUD Projects:** Any dispute concerning a question of fact arising under this Agreement which cannot be resolved by agreement between the HUD Field Office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the Agreement and in accordance with the decision of the Field Office, pending resolution of the appeal.

## 2.18 Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials.

- (a) No person or entity in the following classes shall have an interest, direct or indirect, in this Agreement or in any proceeds or benefits arising from it, during his or her tenure or for one year thereafter.

(1) any member or officer of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;

(2) (i) any employee of the PHA (where it is the CA or the Owner), who formulates policy or influences decisions with respect to the section 8 project;

(ii) any other employee of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;

(3) any member of the governing body or the executive officer of the locality (city or county) in which the project is situated;

(4) any member of the governing body or executive officer of the locality (city or county) in which the PHA (where it is the CA or the Owner) was activated;

(5) any other State or local public official (including State legislators), who exercises any functions or responsibilities with respect to the section 8 project;

(6) any PHA (which is not the CA), where any of its members, officers, or employees has a personal interest in the project, including an interest by reason of membership on the board of the PHA which is the CA (except an employee who does not formulate policy or influence decisions with respect to the section 8 project may have an interest as a tenant).

- (b) Members of the classes described in paragraph (a) who involuntarily acquire an interest in the section 8 program or in a section 8 project, or who had acquired prior to the beginning of their tenure any such interest, must disclose any interest or prospective interest to the PHA (where it is the CA or the Owner) and the HUD Field Office, and may, with appropriate justification, if consistent with State law, apply to the HUD Field Office (through the PHA where it is the CA) for a waiver. Any other requests for waivers of paragraph (a) must be referred to the HUD Headquarters, with appropriate recommendations from the Field Office, for determination of whether a waiver will be granted.

- (c) No person to whom a waiver is granted shall be permitted (in his or her capacity as member of a class described in paragraph (a)) to exercise responsibilities or functions with respect to an Agreement or a Contract executed, or to be executed, on his or her behalf, or with respect to an Agreement or a Contract to which this person is a party.

- (d) The Owner shall insert in all contracts, subcontracts, and arrangements entered into in connection with the project or any property included or planned to be included in the project, and shall require its contractors and subcontractors to insert in each of the subcontracts, the provisions of paragraphs (a) through (d).

- (e) The provisions of paragraph (a) through (d) of this section shall not apply to a utility service if the rates are fixed or controlled by a governmental agency or applicable to the Depository Agreement.

## 2.19 Interest of Member of or Delegate to Congress.

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 Agreement or to any benefits which may arise from it.

## 2.20 Assignment, Sale or Foreclosure.

- (a) The Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this Agreement, the Contract, the ACC (if applicable), or the

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project or any part of them or any of its interest in them, without the prior written consent of HUD (and the PHA where it is the CA). However, in the case of an assignment as security for the purpose of obtaining financing of the project, HUD (and the PHA where it is the CA) shall consent in writing if HUD has approved the terms of such financing.

- (b)** The Owner agrees that it will not change to a different contractor from the one named in the Final Proposal or Purchase and Use Plan in the case of previously HUD-owned projects, except with the prior written consent of HUD (and the PHA where it is the CA).
- (c)** The Owner agrees that the approved contractor has not made and will not make, except with the prior written consent of HUD (and the PHA where it is the CA), any assignment or transfer in any form of the contractor's contract to construct or rehabilitate the project, or of any part of it, or any of the contractor's interests in it.
- (d)** The Owner agrees to notify HUD (and the PHA where it is the CA) promptly of any proposed action covered by paragraph (a), (b), or (c) of this section. The Owner further agrees to request the prior written consent of HUD (and the PHA where it is the CA).
- (e)** **(1)** For purposes of this section, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:
  - (i)** A transfer by the Owner, in whole or in part,
  - (ii)** A transfer by a party having a substantial interest in the Owner.
  - (iii)** Transfers by more than one party of interests aggregating a substantial interest in the Owner,
  - (iv)** Any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution of interests, by any other method or means, and
  - (v)** Any refinancing by the Owner of the project.

**(2)** An assignment by the Owner to a limited partnership, in which no limited partner has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer. An assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.

**(3)** The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.

- (f)** The Owner, and the party signing this Agreement on behalf of the Owner, represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect to it.
- (g)** The provisions of this section shall also apply to transfers of interest by the contractor and by persons having interests in the contractor.
- (h)** Except where otherwise approved by HUD, this Agreement, the Contract, and the ACC (if applicable) shall continue in effect in the event:
  - (1)** Of assignment, sale, or other disposition of the project or this Agreement, the Contract, or the ACC,
  - (2)** Of foreclosure, including foreclosure by HUD,
  - (3)** Of assignment of the mortgage or deed in lieu of foreclosure,
  - (4)** The PHA or HUD takes over possession, operation or ownership, or
  - (5)** The Owner Prepays the mortgage.