

**Part II of the  
Agreement to Enter into a  
Project Assistance Contract**

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

Section 202 Housing for Nonelderly Handicapped Families and Individuals

Type of Project: <input type="checkbox"/> New Construction <input type="checkbox"/> Substantial Rehabilitation <input type="checkbox"/> Acquisition	PAC Contract No :	HUD Project No :
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**2.1 Schedule of Completion.**

- (a) **Timely Performance of Work.** The Owner agrees to begin work no later than the time indicated in section 1.1. The Owner shall report to HUD the date work has commenced and shall thereafter furnish HUD with periodic progress reports (quarterly unless more frequent reporting is required by HUD). In the event the work is not commenced, diligently continued, or completed as required under this Agreement, HUD reserves the right to rescind this Agreement or take other appropriate action in accordance with section 2.13.
- (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 B. 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 a 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 HUD, the time for completion shall be extended to the extent that HUD 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 A ("Contract Rents") may be granted except in accordance with section 2.2(c).

**2.2 Construction or Rehabilitation Period.**

- (a) **Inspections.** HUD will inspect project records periodically to determine compliance with Davis-Bacon Act requirements, if applicable. HUD may conduct a review to determine contractor compliance with equal opportunity requirements at any time.
- (b) **Changes.** The Owner shall submit for HUD approval, any changes from Exhibit B 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 prior HUD approval, 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. The Owner must notify HUD of the date of commencement of marketing. Marketing and leasing

must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan, all Fair Housing and Equal Opportunity requirements, and the applicable provisions of Exhibit A, the proposed Contract.

(2) 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.

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

- (a) **Conformance to Application.** The completed project shall be in accordance with the application. The Owner shall be solely responsible for completion of the project.
- (b) **Notification and Evidence of Completion.** The Owner shall notify HUD 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 and acquisition projects).
  - (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) other than changes approved in writing by HUD, in accordance with section 2.2(b);
    - (v) It has complied with the provisions of section 2.12 of this Agreement, if applicable, 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, the Owner shall be required to place a sufficient amount in escrow, as directed by HUD (in accordance with section 2.12), to assure payments of such claims;
    - (vi) In the case of substantial rehabilitation, 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.

(4) For new construction and substantial rehabilitation projects, 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 judgement, and that to the best of his knowledge, belief, and professional judgement:

- (i) The project has been completed in conformance with the accepted working drawings and specifications for the project or approved changes (such changes to be listed) and with HUD Minimum Property Standards (4910.1);
  - (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.
- (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.
  - (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 judgement 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 paragraph (e) and (f) of this section.
  - (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 shall not be relieved of its 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 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, HUD may use the escrow fund to complete the project, or 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. If the Parties agree, HUD and the Owner 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 project assistance payments with respect to any unit will be the monthly amount of the debt service on the loan amount 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 the 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 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 Project Assistance 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 HUD.
- (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, HUD 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. HUD 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 project 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 (and in the case of group homes residential spaces), amounts of project assistance payments, and any other applicable terms and conditions shall be as specified in the proposed Project Assistance Contract, except as provided in section 2.2(c) and in paragraph (f) 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.

(1) Reduction of Contract Rents. If the Owner's certified costs provided in accordance with 24 CFR 885.825, as approved by HUD, are less than the HUD-approved cost estimates in the Firm Commitment, the Contract Rents will be reduced commensurately.

(2) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (f)(1) of this section, the maximum Contract commitment will be reduced. If Contract Rents are reduced based on certification after Contract execution, HUD will recover from the Owner any overpayment since the effective date of the Contract.

## 2.5 Cooperation in Equal Opportunity Reviews:

(a) The Owner agrees to cooperate with HUD in conducting monitoring and compliance reviews and complaint investigations pursuant to all applicable civil rights statutes and regulations, Executive Orders, and civil rights related program requirements.

(b) In carrying out the obligations under this Agreement, the Owner will comply with:

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and its implementing regulations at 24 CFR Part 100; Executive Order No. 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8.

(3) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and the implementing regulations at 24 CFR Part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women's Business Enterprises);

(6) The affirmative fair housing marketing requirements of 24 CFR Part 200, Subpart M and the implementing regulations at 24 CFR Part 108.

(7) The fair housing advertising and poster guidelines, 24 CFR Parts 109 and 110.

(8) The civil rights and Equal Opportunity reporting requirements at 24 CFR Part 885.940 (f).

## 2.6 National Environmental Policy.

The Owner agrees to comply with all applicable requirements under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) and HUD regulations at 24 CFR Parts 50, including related environmental laws, Executive Orders and HUD standards in 24 CFR 50.4

## 2.7 Flood Disaster Protection Act.

If the Project is located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, the Owner agrees that it will obtain coverage of the Project, 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.

## 2.8 Clean Air Act and Federal Water Pollution Control Act.

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 subcontract which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list.

(b) Promptly to notify HUD 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 Facility;

(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 provision of this section in every nonexempt subcontract and take such action as HUD may direct as a means of enforcing such provisions.

## 2.9 Displacement and Relocation Assistance.

The Owner agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) as amended by the Uniform Relocation Assistance Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub.L. 100-17, approved April 2, 1987) (URA) and government-wide implementing regulations at 49 CFR Part 24 which set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part.

## 2.10 Lead Based Paint.

The Owner agrees to comply with requirement of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35 to the extent they are applicable to housing under the Contract

## 2.11 Lobbying.

The Owner agrees to comply with the prohibitions against lobbying the Executive or Legislative Branches of the Federal Government contained in Pub. L. 101-121 (31 USC 1352) and implementing regulations at 24 CFR Part 87.

## 2.12 Labor Standards.

- (a) For projects that are designed for dwelling use by 12 or more handicapped families (other than projects acquired without rehabilitation), not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276s-276a-5), must be paid to all laborers and mechanics employed in the construction or rehabilitation of the project. HUD may waive the Davis-Bacon requirements if laborers or mechanics voluntarily donate their services without full compensation for the purpose of lowering the costs of construction or rehabilitation; the laborers or mechanics are not otherwise employed in the construction or rehabilitation of projects that are assisted under this part and designed for dwelling use by 12 or more families; and HUD-determines that any amounts saved are fully credited to the Borrower undertaking the construction or rehabilitation.
- (b) Except where the Davis-Bacon requirements have been waived under paragraph (a) of this section, contracts involving employment of laborers and mechanics shall be subject to provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).
- (c) Owners contractors and subcontractors must comply with all related rules, regulations, and requirements.
- (d) For the purpose of this section (2.12), an independent living complex is designed for use by 12 or more families if the complex includes 12 or more units. Section 2.12 does not apply to group homes.

## 2.13 Defaults by Owner.

- (a) Rights of 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) If the Owner has violated or failed to comply with HUD regulations for the Section 202 loan program, or with the regulatory agreement; or the Owner has filed any false statement or misrepresentation with HUD in connection with the loan.

- (2) HUD Determination of Default. Upon a determination by HUD that a default has occurred, HUD shall notify the Owner of:

- (i) The nature of the default,
    - (ii) The action required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default),
    - (iii) The time within which the Owner shall respond with a showing that all the required actions have been taken.

If the Owner fails to respond or take action to HUD's satisfaction, HUD shall have the right to take corrective action to achieve compliance, in accordance with paragraph (3) of this section, or to terminate this Agreement, in whole or in part, or to take other corrective action to achieve compliance, in its discretion.

- (3) Corrective Actions. Pursuant to paragraph (2) of this section, HUD in its discretion may take the following corrective actions:

- (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 any 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 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.

- (b) Remedies not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this Agreement shall not preclude the exercise of any other remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any 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.

## 2.14 Disputes.

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 or a designee. Both parties shall proceed diligently with the performance of this Agreement and in accordance with the decision of the Field Office, pending resolution of the appeal.

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**2.15 Conflict of Interest.**

Officers, directors, stockholders, and authorized representatives of the Owner may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development or operation of the project.

**2.16 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.

**2.17 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, or the project or any part of them or any of its interest in them, without the prior written consent of HUD.
- (b) The Owner agrees that it will not change to a different contractor, except with HUD's prior written consent.

- (c) The Owner agrees that the approved contractor has not made and will not make, except with HUD's prior written consent, 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 promptly of any proposed action covered by paragraph (a), (b), or (c) of this section, and further agrees to request the prior written consent of HUD. For purposes of this section, a sale, assignment, conveyance, or transfer includes but is not limited to a transfer by the Owner, in whole or in part.
  - (e) The provisions of this section also shall apply to transfers of interest by the contractor and by persons having interests in the contractor.
  - (f) Except where otherwise approved by HUD, this Agreement and the Contract shall continue in effect in the event:
    - (1) Of assignment, sale, or other disposition of the project or this Agreement or the Contract,
    - (2) Of foreclosure, including foreclosure by HUD,
    - (3) Of assignment of the mortgage or deed in lieu of foreclosure,
    - (4) HUD takes over possession, operation or ownership, or
    - (5) The Owner prepays the mortgage.
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