

Financial Assistance Contract

Flexible Subsidy Program

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



This Agreement (herein called the "Contract") entered into by and between _____ (herein called "Housing Owner") and the Secretary of Housing and Urban Development, acting by and through the Assistant Secretary of Housing-Federal Housing Commissioner (herein called the "Commissioner"), and his/her successors, Witnesseth:

Whereas, the Secretary is authorized, pursuant to Section 201 of the Housing and Community Development Amendments of 1978, to provide financial assistance to owners of eligible projects to restore or maintain the financial soundness, to assist in improvement of the management; and to maintain the low-to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act or under the Housing and Urban Development Act of 1965; and

Now Therefore, in consideration of the mutual promises set forth, the parties hereto agree as follows:

Section 1. Definitions

(a) Management Improvement and Operating (MIO) Plan - a plan which has been approved by the Commissioner and is designed to correct the physical and financial deficiencies of the project, improve project management and restore or maintain the financial soundness of the project. The MIO Plan consists of a Part I and a Part II. Part I is a plan for day-to-day project operations and Part II consists of a series of detailed one-time actions that will be taken by the Housing Owner to improve project operations and which will be funded, at least in part, by the assistance provided in this Contract. An outline of the MIO Plan's parts is given below.

Part I. Plan for Daily Operation of the Project

Section A. Operating Procedures

Section B. Budget (Form HUD-9824)

Part II. Project Improvement Program

Section A. Action Items (Form HUD-9835)

Section B. Management Objectives (Form HUD-9835-A)

Section C. Sources and Uses of Funds (Form HUD-9835-B)

Section D. Miscellaneous Plans

(b) Quarterly Period - the first full three-month period from the commencement date of the term of this agreement and each succeeding three-month period thereafter.

(c) Flexible Subsidy Assistance - funds awarded to the project by the Commissioner, pursuant to Section 201 of the Housing and Community Development Amendments of 1978, for the purposes specified in Part II, Section A of the MIO Plan. The amount of assistance is determined by the Commissioner's assessment of the project's needs, the availability of other funds, and the terms of the MIO Plan negotiated by the Housing Owner and the Commissioner.

(d) Financial Relief - any funds included on Lines 2 through 6 of the sources portion of Part II, Section C of the MIO Plan. These funds are usually derived from releases from project escrows or reserves or retroactive mortgage modifications. The funds are deposited in the Project Improvement Account and are used for the purposes specified in Part II, Section A of the MIO Plan.

(e) Project Improvement Account - an escrow account established to hold and administer the Flexible Subsidy Assistance, Financial Relief funds and owner contributions made available or required by this Contract and included on Part II, Section C of the MIO Plan. Funds deposited in the Project Improvement Account, regardless of their source, are collectively referred to as Project Improvement Funds.

(f) Working Capital - refers to any monies which are included on Line 4 of Part II, Section C of the MIO Plan, and which will be disbursed at the end of the contract term and used to increase the project's checking account balance or to purchase a small amount of supplies.

(g) Mortgage - includes Deed of Trust.

(h) Identity-of-Interest - any relationship which would give the Housing Owner control or influence over its Management Agent or any relationship which would give the Housing Owner or its Management Agent control or influence over the price paid to an individual or business supplying goods and/or services to the project. Usually, the relationship would be created by the mortgagor or management agent having a financial interest in the contractor or supplier, but it could be by such means as family relationship. An identity-of-interest may be construed to exist under any of the following conditions:

(1) When the Housing Owner or its Management Agent, if any, or any officer, director or stockholder of the Housing Owner or its Management Agent, if any, has a financial interest (other than the fee for services or supplies) in the contractor, subcontractor or supplier;

(2) When the Housing Owner or its Management Agent, if any, or any officer, director, stockholder or partner of such Housing Owner or Management Agent, if any, is also an officer, director or stockholder of the contractor, subcontractor or supplier;

(3) When the phrase "or its Management Agent, if any," is deleted from, and the words "The Management Agent" are substituted for the words "the contractor, subcontractor or supplier" in paragraphs (1) and (2) above.

(i) Construction Work - the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings or roads, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(j) Exhibits - the following documents are attached hereto and made part of this Contract:

Exhibit I - Part I, Section B of the MIO Plan - Budget Worksheet (Form HUD-9824);

Exhibit II - Part II, Section A, B, C of the MIO Plan-Project Improvement Program (Forms HUD-9835, 9835-A, and 9835-B) or the Work Write-up (if MIO Plan is not required);

Exhibit III - List of Non-Cash Contributions To Be Provided by The Housing Owner, if applicable;

Exhibit IV - Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity;

Exhibit V - Standard Federal Equal Employment Opportunity Construction Contract Specifications;

Exhibit VI - Specify additional Exhibits, if any. If none, enter "none."

(k) Part I, Section A of the MIO Plan is incorporated in this contract by reference and any violation of that Section shall constitute a violation of this Contract.

Section 2. Description of Project - The housing project covered by this Contract (hereinafter called the "Project") is identified as follows:

Project Name FHA Project No.

Address City & State.

Section 3. Housing Owner's Certification of Authority - The Housing Owner certifies that it has the legal authority to enter into this Contract and to own, operate and manage the Project in accordance with this Contract and applicable regulations and program requirements.

Section 4. Term of Contract - This Contract shall run for a period of twelve (12) months commencing the first day of _____, 19__ through the last day of _____, 19__.

Section 5. Management Improvement and Operating (MIO) Plan-The Housing Owner agrees that, during the term of this Contract, the Project will be operated in accordance with the procedures included in Part I, Section A of Exhibit I, and the Budget included in Part I, Section B of Exhibit I. The Housing Owner further agrees to complete the action items and pursue the management goals specified in Part II, Sections A and B of Exhibit II (if MIO required). If actual costs or time schedules required to complete the action items in Part II, Section A of Exhibit II differ from the original estimates set by the Housing Owner and the Commissioner, the Housing Owner agrees that the Commissioner may amend the MIO Plan by reapportioning, reducing or increasing the Flexible Subsidy Assistance and/or Financial Relief Funds listed on Part II, Section C of Exhibit II accordingly. The Housing Owner agrees that the MIO Plan may be amended quarterly by the Commissioner or at such other interval of time as determined by the Commissioner.

Section 6. Amount of Assistance Payments - The maximum amount of Flexible Subsidy Assistance that may be paid under this Contract during the term of the Contract is \$ _____. In addition, the Commissioner agrees to approve the type and amounts of Financial Relief specified in Part II, Section C of Exhibit II. The amount of Flexible Subsidy Assistance and Financial Relief are based upon the Housing Owner's and the Commissioner's best estimate of the time and cost required to complete the action items specified in Part II, Section A of Exhibit II and of the operating deficit calculated in the

Budget included in Part I, Section B of Exhibit I. If the estimated amounts for improvements or operating deficits exceed the actual costs for those items, the Housing Owner agrees that the Commissioner may reduce the maximum amount of the Flexible Subsidy assistance and/or Financial Relief by an amount equal to the difference between the estimated and actual costs.

Section 7. Owner Contributions - The Housing Owner agrees to contribute \$ _____ to the Project. Such payment shall be considered to be a contribution to the Project's capital and the Housing Owner hereby waives any repayment rights to which it might otherwise be entitled. In addition, the Housing Owner agrees to provide the services and meet the commitments listed in Exhibit III. The Housing Owner further agrees that reduction or reapportionment of the Assistance Payments, as determined by the Commissioner, shall not necessarily result in a reapportionment or reduction of the contributions required from the Housing Owner by this Section.

Section 8. Project Improvement Account - The Housing Owner agrees to establish and maintain a Project Improvement Account as a restricted cash account separate and apart from other cash accounts of the Project and to assign an account number in accordance with HUD's financial reporting requirements. All funds in Part II, Section C of Exhibit II shall be deposited in the Project Improvement Account and, thereafter, collectively shall be referred to as Project Improvement Funds. All deposits to the Project Improvement Account shall be made in accordance with the procedures and time schedules specified in Exhibit II. However, if all required Housing Owner Contributions have not been deposited in the Project Improvement Account by the due date or if the Commissioner becomes aware of any violation of the Contract or of any financial or technical default under either the Regulatory Agreement or the Mortgage, the Housing Owner agrees that the Commissioner may delay the deposit of Flexible Subsidy Assistance or Financial Relief funds until the Contract violation or technical or financial default has been cured to the satisfaction of the Commissioner.

Section 9. Transfer of Funds From the Project Improvement Account - The Housing Owner shall request transfer of funds only for action items included in Part II, Section A of Exhibit II. The Housing Owners shall include in the Requisition for Advance of Flexible Subsidy Funds (form HUD-9823-A) only that portion of the MIO Plan repair items for which work has been completed and for which payment is due.

No funds shall be approved for transfer until all Housing Owner Contributions have been expended. The Housing Owner agrees that all funds transferred from the Project Improvement Account must be used for the purposes indicated as specified in Part II, Section A of Exhibit II.

Furthermore, the Housing Owner agrees that the Commissioner, upon becoming aware of any violation of the terms of this Contract or any technical or financial default under the Mortgage or Regulatory Agreement, may delay further transfer of funds until the Contract violation or technical or financial default under the Mortgage or Regulatory Agreement has been cured to the satisfaction of the Commissioner.

Section 10. Bids and Purchase Discounts, Rebates or Commissions - The Housing Owner agrees to obtain contracts, materials, supplies and services at the lowest possible cost and on terms most advantageous to the Project and to secure and credit to the Project all discounts, rebates or commissions obtainable with respect to purchases, service contracts and other transactions on behalf of the Project. The Housing Owner shall solicit written cost estimates (i.e., bids) from at least three contractors or suppliers for any work item which the Housing Owner and the Commissioner estimate will cost \$5,000 or more. The Housing Owner agrees to accept the bid which represents the lowest price taking into consideration the bidder's reputation for quality or workmanship or materials, timely performance and the work schedule specified in Part II, Section A of Exhibit II. On MIO Plan work items obtainable from more than one source and estimated to cost less than \$5,000, the Housing Owner shall solicit verbal or written cost estimates, as necessary to assure that the Project is obtaining services, supplies and purchases at the lowest possible cost. The Housing Owner must make a written record of any verbal estimate obtained. Copies of all required bids and documentation of all other written or verbal cost comparisons made by the Housing Owner shall be made part of the Project's financial records and shall be retained for three years from the date the work was completed. This information shall be subject to inspection by the Commissioner or her/his designee.

The Housing Owner agrees that all goods and services purchased from individuals or companies having an identity of interest with the Housing Owner or its Managing Agent shall be purchased at costs not in excess of those that would be incurred in making arms-length purchases on the open market. If the Housing Owner purchases goods or services from such identity-of-interest entities, it agrees to also obtain a written price or estimate for the same goods or services from a non-identity-of-interest concern or such other documentation that the Commissioner shall require and shall, upon request by the Commissioner, submit such documentation to the Commissioner. In addition, the Housing Owner agrees to:

(a) Include the following clause in any contract entered into with an identity-of-interest firm for provision of goods or services to the Project, which goods and service are to be paid from Project funds:

"Upon request by the Housing Owner or its Management Agent or the Commissioner, (name of contractor or supplier) will make available to the Commissioner, at a reasonable time and place, (name of contractor or supplier) records which relate to goods and services provided to the project;" and

(b) Request such records from the contractor or supplier within seven (7) days of receipt of a written request from the Commissioner; and

(c) Include the following clause in any management contract entered into with an identity-of-interest agent:

"The Agent will make available to the Commissioner all records of the Agent's management company and its identity-of-interest company(s) which relate to the provision of goods or services to the project whenever project funds have been used to pay for such goods and/or services (other than management services)."

Section 11. Surplus Cash and Distribution to Owners Receiving Operating Assistance - The Housing Owner agrees:

(a) In preparing the operating Budget set forth in Part I, Section B of Exhibit I, return on equity investment shall not be included;

(b) Repayment of previous advances or loans made by the Housing Owner may be included in the operating expense estimate only if the Commissioner approved a plan for repayment prior to considering the Project for the Flexible Subsidy Assistance authorized by this Contract and only if the Commissioner does not require waiver or deferment of such repayment as part of the Housing Owner's contribution;

(c) Any balance of funds in the Project Improvement Account shall not be included in the computation of surplus cash;

(d) Any surplus cash generated during any project fiscal year overlapping the Contract term provided herein, or any fiscal year ending during the one-year period following the end of this Contract term, shall be returned by the Housing Owner to the Commissioner as reimbursement of the Flexible Subsidy Assistance provided herein, and

(e) Any distributions to which the Housing Owner would otherwise be entitled will not be paid either during or at the end of the project fiscal years referred to in (d) above. The Housing Owner may accrue distributions for payment in subsequent years.

Section 12. Records and Reports - The Housing Owner Agrees:

(a) That no later than the fifth calendar day from the beginning of each month, it shall provide the Commissioner with:

(1) A Monthly Accounting Report (Forms HUD-93479, 93480, and 93481) for the previous month;

(2) A copy of any Requisition for Advance of Flexible Subsidy Funds (Form HUD-9823-A) processed by the Commissioner during the previous month.

(3) A copy of the supporting schedule of action items (form HUD-9835)

(b) That, no later than the fifth calendar day from the beginning of each quarterly period of this Contract, it shall provide the Commissioner with a Quarterly Performance Report (Form HUD-9824-A)

(c) To maintain accurate records, books and accounts in the form and manner prescribed by the Commissioner and to make such records, books, and accounts available for inspection and audit when required by the Commissioner or her/his designee.

Section 13. Termination of Contract-

(a) Payments under this Contract may be terminated by the Commissioner if:

(1) The Housing Owner violates any term of this Contract or defaults under the Mortgage or Regulatory Agreement. If the Commissioner terminates the Contract because of a violation of one of the above documents, the Commissioner will so notify the Housing Owner in writing. The Housing Owner agrees, if the Contract is terminated, that the Commissioner may withdraw the balance in the Project Improvement Account and may distribute the balance in the following order:

(A) To providers of services or goods for work performed or services delivered but for which payment had not been made by the Housing Owner;

(B) To repayment of any Flexible Subsidy Assistance deposited in the Project Improvement Account during the term of this Contract;

(C) To repayment of any principal, interest or MIP/service charges deferred for the Contract term; and

(D) Deposit any balance remaining after disbursement to items(A), (B), and (C) above to the Reserve Fund for Replacement Account. In no event shall any funds be returned to the Housing Owner.

(2) The mortgage is paid in full. Any Project Improvement Funds remaining in the Project Improvement Account and derived from Flexible Subsidy Assistance and Financial Relief included in Part II, Section C of Exhibit II shall be returned to the Commissioner. In calculating the amount due the Commissioner, expenses charged to the Project Improvement Account shall be assumed to have been paid first from Housing Owner contributions.

(3) The Housing Owner transfers ownership to another mortgage entity; and

(b) The Contract shall terminate, unless extended, upon completion of the term.

Section 14. Close-out of the Project Improvement Account - The Housing Owner agrees that:

(a) Upon receipt of the Housing Owner's final quarterly performance report, the Commissioner shall assess the financial condition of the Project and the Housing Owner's compliance with the terms of this Contract. If the Commissioner determines that the Housing Owner has complied with the terms of this Contract and that the need still exists for the Working Capital and Replacement Reserve Funds included in Part II, Section C of Exhibit II, the Commissioner shall transfer the Working Capital and Replacement Reserve Funds to the Project's checking and replacement reserve accounts, respectively;

(b) The Commissioner may withdraw any funds remaining in the Project Improvement Account after the contract expiration date, regardless of the source from which they were received. Any recaptured funds will be distributed as provided in Section 13 above; and

(c) Upon request of the Commissioner, the Housing Owner will return to HUD any funds which have been transferred from the Project Improvement Account to the Project's checking account and remain in the checking account 30 days after the contract termination date.

Section 15. Civil Rights requirements - The Housing Owner agrees to:

(a) Comply with the provisions of any Federal, State or local law prohibiting discrimination in Housing on the grounds of race, color, religion, creed, sex, handicap, familial status or national origin, including The Fair Housing Act, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1968, Executive Order 11063, and all regulations implementing those laws.

(b) Incorporate or cause to be incorporated into any contract for construction work or modification of a contract for construction work, which is over \$10,000 or can reasonably be expected to exceed \$10,000 and which is to be paid in whole or in part from the Project Improvement Funds made available by this Contract, the following equal opportunity clause:

"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 apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination 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 it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives 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 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 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency 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 the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted-construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The contractor will include that 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 rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 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 administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(c) Be bound by the above equal opportunity clause with respect to its own employment practices while it participates in construction work which is to be paid from Project Improvement Funds made available by this Contract.

(d) Assist and cooperate actively with the Secretary of 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; to furnish HUD and the Secretary of Labor with such information as they may require for the supervision of such compliance; and otherwise assist the Secretary of Labor in the discharge of the Secretary's primary responsibility for securing compliance with the equal opportunity clause.

(e) Refrain from entering into any contract or contract modification subject of Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally-assisted construction contracts pursuant to Executive Order 11246 and to 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 11246. In addition, the Housing Owner agrees that if it fails or refuses to comply with these undertakings, HUD may cancel, terminate or suspend in whole or in part this Contract as authorized in Section 8,9, or 13; refrain from extending any further assistance to the Housing Owner under Section 201 of the Housing and Community Development Amendments of 1978 until satisfactory assurance of future compliance has been received from the Housing Owner; or refer this case to the Department of Justice for appropriate legal proceedings.

(f) Include the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications," published at 41 CFR 60-4.2 and -4.3, in all solicitations for offers and bids on federally-assisted construction contracts or subcontracts in excess of \$10,000.

These amendments shall be effective only during the term of this Contract, or such other term specified in this Contract. Upon termination of this Contract for any reason, the provisions of this Contract insofar as they affect the provisions of any other agreement shall be null and void.

Section 16. Effect on Other Agreements - Except as provided herein, this Contract shall have no effect on any other existing agreement(s) between the Housing Owner and the Commissioner. To the extent that this Contract does specifically conflict with any such agreement(s), the provisions of this Contract shall be controlling. The provision(s) of the other agreement(s) shall be considered to be amended by the terms of this Contract. Such amendments shall be valid as if such amendments had actually been made to such agreement(s). These amendments shall be effective only during the term of this Contract, or such other term specified in this Contract. Upon the termination of this Contract for any reason, the provisions of this Contract insofar as they affect the provisions of any other agreement shall be null and void.

Section 17. Preservation of the Low-and Moderate-Income Character of the Project. - In compliance with the provisions of Section 201 of the Housing and Community Development Amendments of 1978 as amended by Section 211(c) of the Housing and Community Development Amendments of 1979, the Housing Owner, for itself and its successors and assigns, covenants and agrees that it will maintain the low-and moderate-income character of the project and will continue to operate the project in accordance with the provisions of Section _____* of the National Housing Act and the regulations thereunder until _____**. In order to assure this undertaking, the Housing Owner has amended the Note secured by the Mortgage on the project to prohibit payment in full prior to its maturity without the written approval of the Commissioner. A copy of the amended Note certified to by the Mortgagee is attached hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be executed on their behalf and their seals affixed the day and year written below.

(Seal)
Witness

Witness:

(Housing Owner)

By _____

Secretary of Housing and Urban Development acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner

By _____

*Insert section under which the Mortgage is or was insured

**Insert maturity date of Mortgage note

