

DRAFT

Housing Authority
Certifications And
Assurances For Projects In
Volving Public Housing
Rental Units

**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing
Office of Public Housing Investments

OMB Approval No. 2577-0157
(Draft)

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This collection of information is required for developing a Mixed-Finance project pursuant to HUD regulations 24 CFR 941. The information will be used to provide HUD with sufficient information to enable a determination that the proposed fulfills HUD's statutory and regulatory requirements.

THIS CERTIFICATION (the “**Certification**”) is provided by _____

(the “**Authority**”) to the United States Department of Housing and Urban Development (“**HUD**”) in connection with a mixed finance proposal being submitted for the development of **[Name of the Development]** (the “**Development**”), located in **[name of city and State]**, to be owned by **[Authority and/or Owner – use both names if title to land and improvements is split]** as required by 24 CFR § 941.606(n)(1). The Authority hereby certifies that it:

RECITALS

WHEREAS, the Authority has received financial assistance from HUD pursuant [to an annual contributions contract (“**ACC**”) and/or under a HOPE VI Revitalization Grant, Grant No., _____, to carry out **[development or revitalization]** in connection with the _____ Development;

WHEREAS, the Authority is authorized to engage or assist in the development and operation of low-income housing under the United States Housing Act of 1937. (“the **Act**”);

WHEREAS, the Authority proposes to develop and/or operate **[number]** housing units, including, **[number]** public housing units;

CERTIFICATION

NOW, THEREFORE, the Authority certifies and agrees as follows:

1. This Certification may not be altered, modified, or rescinded without the prior written approval of HUD;
2. The Project will be included in and be consistent with the Authority’s PHA Plan;
3. The Authority has the legal authority under State and local law to develop the Project, including through the establishment or selection of an Owner Entity, and to enter into all agreements and provide all assurances required under 24 CFR part 941, subpart F;
4. The Authority has the legal authority necessary to enter into any proposed partnership and to fulfill its obligations as a partner thereunder, and has obtained all necessary approvals for this purpose;
5. The Authority has (1) used an open and competitive process to select its partner (as that term is defined in 24 CFR 941.604; hereafter, the “**Partner**”) and/or Owner Entity, and has ensured that there is no conflict of interest involved in its selection of the Partner and/or Owner Entity to develop and operate the Project, or (2) an Authority agency or instrumentality was selected, in accordance with

85.36(d)(4)(i)(C), as the developer and agrees that it will follow 24 CFR 85.36 in the selection of contractors;

6. The Authority will require its selected Partner and/or Owner Entity to comply with all applicable State and local procurement and conflict of interest requirements with respect to the selection of entities to assist in the development, and to use a competitive process consistent with the requirements set forth in 24 CFR part 941, subpart F;
7. The Authority will require that if its selected Partner and/or Owner Entity (or any other entity with an identity of interest with such parties) wants to serve as the general contractor for the Project, it can award itself the construction contract only upon demonstrating to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids or the Authority has secured a waiver of the identity of interest provision from HUD;
8. The Authority is responsible to HUD for ensuring that the Project is developed, operated and maintained in accordance with the Act, HUD regulations thereunder, the ACC, the Mixed Finance ACC Amendment, the Declaration of Restrictive Covenants to be recorded against the Project (the "**Declaration**"), the Grant Agreement, and all pertinent Federal statutory, regulatory, and executive order requirements, as those requirements may be amended from time to time (hereafter collectively referred to as the "**Applicable Public Housing Requirements**");
9. The Authority assures HUD that any documents needed to establish its rights and responsibilities associated with the development and operation of the Project will be consistent with the applicable Public Housing Requirements; such documents shall include, but not be limited to:
 - a. A regulatory and operating agreement between the PHA and owner entity that provides binding assurances that the operation of the public housing units will be in accordance with applicable public housing requirements;
 - b. A partnership, development agreement, or other agreement between any of the participating parties, including an agreement between the Authority and the owner entity, its partner, or other participating parties, that establishes the rights and liabilities (financial and otherwise) of the parties;
 - c. A management agreement for the public housing units if by an entity other than the Authority;
 - d. A Cooperation Agreement or CHAS certification;
 - e. All financing documents, including mortgages, loan agreements or such other documents that evidence the availability of the participating party(ies) financing, the amount and source of financing committed to the Project;
 - f. The organizational documents of the owner entity;
 - g. Evidence of control of the site by the PHA, Partner, or Owner Entity for such a period of time as may be required by HUD;

- h. Evidence that all applicable permits and zoning requirements are in place or a certification that permits and zoning will be in place prior to construction start;
- 10. The Authority will ensure that any contracts or agreements providing for the development and operation (including management) of the Project by an entity other than the Authority shall require that such units be developed or operated in accordance with the applicable Public Housing Requirements for the full term of the low income use restrictions, as required by Law;
- 11. The Authority will assure to HUD's satisfaction, by the recordation of the Declaration in standard form as the first recorded document against the Project, that the Project will remain available for use by low-income families for the period required by the Act;
- 12. The Authority will ensure that operating funds provided under section 9 of the Act will only be used for, or in connection with, the eligible activities identified in the Authority's Grant Agreement. Additionally, operating funds shall not be used for exit taxes in connection with any low income housing tax credit program or to initially fund any operating reserve account. Finally, operating funds shall not be used for the payment of debt service without prior HUD approval;
- 13. The Authority shall not authorize a mortgage (other than those listed in exhibit E of the mixed-finance ACC amendment) or otherwise grant a security interest in the Project or other property of the Authority, including under section 30 of the Act without prior HUD approval;
- 14. The Authority will keep records in accordance with 24 CFR 85.20 and facilitate an effective audit to determine compliance with program requirements. All records, including any attachments to this Certification will be available at all times for HUD inspection and review.
- 15. The Authority will ensure that the development of the public housing units will be in compliance with labor standards applicable to the development of public housing including, but not limited to, wage rates under the Davis-Bacon Act (40 U.S.C. 276a et seq.). If the proposed development will include public housing units that are not specifically designated units, the PHA shall ensure that such labor requirements are met with respect to the development of all units that may, at any time, be used as the public housing units.
- 16. The Authority will ensure that wherever HUD financial assistance is expended for housing or community development, to the greatest extent feasible, economic opportunities will be made available to low and very low-income persons and businesses pursuant to Section 3 HUD Act of 1968.

17. The Authority will ensure the availability of the participating party(ies)'s financing, the amount and source of financing committed to the proposal by the participating party(ies), and the irrevocability of those funds. The Authority may certify through the submission of an opinion of the Authority's counsel attesting that counsel has examined the availability of the participating party(ies)'s financing, and the amount and source of financing committed to the proposal by the participating party(ies), and has determined that such financing has been irrevocably committed by the participating party(ies) for use in carrying out the proposal, and that such commitment is in the amount required under the terms of the proposal.

18. The Authority will ensure that, to the greatest extent feasible, none of the parties participating in this mixed-finance proposal and the Authority's HOPE VI development are suspended, debarred or subject to a limited denial of participation under Part 24 of 24 CFR Subtitle A.

19. The Authority will ensure that any transformation remedies made available to the owner-entity are consistent with 35(h) of the Act.

IN WITNESS WHEREOF, the Authority has caused this Certification to be duly executed as of the day and year first above written.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

By: _____

Name: _____

Title: _____