

AGREEMENT/CONTRACT NUMBER: _____

U.S. Department of Housing and Urban Development
Section 8 Housing Assistance Payments Program

Section 8 Certificate Program
Project Based Assistance

**PART I OF THE
AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT**

This Agreement to Enter Into Housing Assistance Payments Contract (“Agreement”) is entered into between the _____ (“PHA”), and _____ (“Owner”).

The Owner agrees to complete the work on unit(s) in accordance with Exhibit B. When the work is completed, the Owner and the PHA will enter into a Housing Assistance Payments Contract (“Contract”) which will allow the Owner to receive housing assistance payments from the PHA on behalf of eligible Families (“Families”) so that they may afford to rent the unit(s). The PHA has executed an Annual Contributions Contract (“ACC”) with HUD by which HUD agrees to provide funds to the PHA to make these housing assistance payments.

1.1 Significant Dates: Contents of Agreement.

- A. Effective Date of Agreement: _____.
- B. Date of Commencement of Work. The date for commencement of work is not later than _____ calendar days after the effective date of this Agreement.
- C. Time for Completion of Work. The date for completion of work is not later than _____ calendar days after the effective date of this Agreement.
- D. Contents of Agreement. This Agreement consists of Part I, Part II, Form HUD 52531-B dated December 1988 (if applicable, see Section 1.2), and the following exhibits:

Exhibit A.- The approved Owner’s Application.

Exhibit B: Description of work to be performed under this Agreement. (If this Agreement is for rehabilitation of units, this exhibit shall contain the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. If this agreement is for new construction, this exhibit shall contain the drawings and specifications.)

Exhibit C: Identification of units by size and applicable initial Contract Rents.

Exhibit D: The Housing Assistance Payments Contract (“Contract”) complete with respect to the Agreement/Contract number, the identification of the PHA and Owner, and Exhibit B.

Exhibit E: The schedule of completion of stages, if applicable. (This exhibit shall identify the units in each stage.)

Exhibit F: Exhibit required if this Agreement is for new construction. This exhibit shall contain the design architect’s certification that the proposed new construction reflected in the working drawings and specifications complies with Housing Quality Standards, local codes and ordinances, and zoning requirements.

Additional Exhibits: (Specify additional exhibits, such as Davis-Bacon Wage Rate Schedule, if any. If none, insert “None”.)

This Agreement, including the exhibits, is the entire Agreement between the PHA and Owner.

E. Nature of Work. (Check which is applicable.)

- This Agreement is for rehabilitation of units to be assisted by project-based assistance under the Section 8 Certificate Program.
- This Agreement is for new construction of units to be assisted by project-based assistance under the Section 8 Certificate Program.

1.2 Applicability of Part II Provisions.

- 2.1 Training, Employment, and Contracting Opportunities for Businesses and Lower-Income Persons. (Applies if the total of Contract Rents for all units under the proposed Contract, over the minimum term of the Contract, is more than \$500,000 or \$2,778 per month).

Applicable Not Applicable

- 2.2 Equal Employment Opportunity. (Applies only to construction contracts of more than \$10,000.)

Applicable Not Applicable

- 2.3 Clean Air Act and Federal Water Pollution Control Act. (Applies if the total of Contract Rents for all units under the Contract, over the maximum term of the Contract, is more than \$100,000 or \$556 per month).

Applicable Not Applicable

- 2.4 Labor Standards Requirements. (Sections 2.4, 2.8 and 2.10 apply when this Agreement covers nine or more units.) 2.4 HUD-Federal Labor Standards Provisions, 2.8 Wage Claims and Adjustments; 2.10 Evidence of Unit(s) Completion; Escrow.

Applicable Not Applicable

- 2.11 Flood Insurance. (Applies if units are located in areas having special flood hazards and in which flood insurance is available under the National Flood Insurance Program.)

Applicable Not Applicable

- 1.3 PHA Assurance to Owner.

The PHA warrants that it is a “public housing agency” as defined in the U.S. Housing Act of 1937, that it is authorized to execute an Agreement in accordance with HUD regulations and requirements and that it has an ACC with HUD.

1.4 Schedule of Completion.

- A. Timely Performance of Work. The Owner agrees to begin work no later than the date for commencement of work as stated in Section 1.1.B. In the event the work is not commenced, diligently continued and completed as required under this Agreement, the PHA may terminate this Agreement or take other appropriate action. The Owner agrees to report promptly to the PHA the date work is commenced and furnish the PHA with progress reports as required by the PHA.
- B. Time for Completion. All work must be completed no later than the end of the period stated in Section 1.1.C. Where completion in stages is provided for, work related to units included in each stage shall be completed by the stage completion date in Exhibit E, and all work on all stages must be completed no later than the end of the period stated in Section 1.1.C.
- C. Delays. If there is delay in the completion due to unforeseen factors beyond the Owner's control as determined by the PHA, the PHA agrees to extend the time for completion for an appropriate period as determined by the PHA. In the case of such delays, the PHA shall reduce the term of the Contract so that the Contract term does not extend beyond the last date of the ACC term for the ACC funding authority from which the Contract is to be funded.

1.5 Rehabilitation Period.

- A. Establishment of Initial Contract Rent.
 - 1. The initial Contract Rent for each unit may in no event exceed the amount authorized in accordance with HUD regulations and requirements.
 - 2. The Contract Rents stated in Exhibit C of this Agreement will be the initial Contract Rents specified in the Contract unless a lower initial Contract Rent is established by the PHA in accordance with paragraph B of this section, or Section 1.14A of this Agreement. The initial Contract Rents stated in Exhibit C of this Agreement shall not be increased for any reason, including changes in the work.

B. Establishment of Lower Initial Contract Rent.

1. Excessive Rent. Where the initial Contract Rent for any unit would otherwise exceed the amount authorized in accordance with HUD regulations and requirements, the PHA shall establish a lower initial Contract Rent in accordance with such regulations and requirements. Such lower rent shall be established at the amount determined by HUD.
2. Changes in the Work.
 - (a) The Owner must obtain prior PHA approval for any change from the work specified in Exhibit B which would alter the design or quality of the rehabilitation or construction. The PHA is not required to approve any changes requested by the Owner. PHA approval of any change may be conditioned on establishment of lower initial Contract Rents at the amounts determined by HUD.
 - (b) If the Owner makes any changes in the work without prior PHA approval, the PHA may establish lower initial Contract Rents at the amounts determined by HUD.
3. Insured or Coinsured Mortgage. When a HUD insured or a HUD coinsured multifamily mortgage is used, the PHA shall establish lower initial Contract Rent, in the amounts determined by HUD to reflect any reduction in the amount necessary to amortize the insured or coinsured mortgage.

C. List of Vacancies. At least sixty days prior to the scheduled completion of the work described in Exhibit B (where completion in stages is provided, sixty days prior to completion of each stage), the Owner shall notify the PHA in writing of any unit(s) expected to be vacant at the anticipated effective date of the Contract. The PHA shall refer to the Owner appropriate-sized families from the PHA waiting list. When the Contract is executed, the Owner shall notify the PHA which units are vacant.

D. Prohibition Against Displacement of Residential Tenants from Assisted Units. The Owner agrees that work on any unit to be subsidized with assistance under this Contract shall not result in the displacement of residential tenants from the units to be subsidized.. If a residential tenant is displaced through a waiver of

this requirement or in violation of this requirement, the owner shall provide relocation assistance for displaced person in accordance with the regulations which implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

- E. Temporary Relocation. The Owner agrees that lawful residential tenants shall not be required to move temporarily from a structure or complex unless:
1. The Owner has given the tenants advance written notice and appropriate advisory services;
 2. Decent, safe, and sanitary temporary housing is available;
 3. The temporary relocation period will not exceed 12 months; and
 4. The Owner reimburses tenants for reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from temporary housing and increases in monthly housing costs.

These requirements apply only to lawful residential tenants (but not to owner-occupants or businesses) who are temporarily relocated following submission of the Owner's application to the PHA. The requirements do not apply to tenants who commence occupancy after the Owner's submission of an application if, before they commence occupancy, they are provided written notice from the Owner of the impending work and possible temporary relocation, or whose tenancy is terminated for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement.

- F. Inspections. The PHA (or HUD in the case of insured or coinsured mortgages) may inspect the work during rehabilitation or construction to ensure that work is proceeding on schedule, is being accomplished in accordance with the terms of the Agreement, meets the levels of material described in Exhibit B, and meets typical levels of workmanship in the area.

1.6 Work Completion.

- A. Conformance with Exhibit B. The completed work must be in accordance with Exhibit B. The Owner is solely responsible for completion of the work.

- B. Notification of Completion. The Owner agrees to notify the PHA when the work is completed and to submit to the PHA the items described in paragraph C of this section.
- C. Evidence of Completion. When the work is completed, the Owner must provide the PHA with the following:
1. A certificate of occupancy and other official approvals as required by the locality.
 2. A certification by the Owner that:
 - (a) The work has been completed in accordance with the requirements of this Agreement;
 - (b) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy,
 - (c) The unit(s) has been rehabilitated or constructed and is in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waiver obtained from appropriate officials;
 - (d) Any unit built prior to 1978 is in compliance with applicable HUD Lead Based Paint regulations; and
 - (e) If Labor Standards Requirements are applicable, the Owner has complied with the requirements of Section 2.10 of this Agreement.
 3. For projects where construction inspections by HUD staff are not required by HUD, a certification from the inspecting architect stating that the units have been constructed in accordance with the certified working drawings and specifications, Housing Quality Standards, local codes and ordinances, and zoning requirements.
- D. Review and Inspection.
1. After receipt of the evidence of completion, the PHA agrees to review the evidence of completion for compliance with paragraph C of this section and, if applicable, Section 2.10.

2. A PHA representative must inspect the unit(s) to be assisted to determine that the work has been completed in accordance with the requirements of this Agreement. If the inspection discloses defects or deficiencies the inspector will report them to the PHA with sufficient detail and information for purposes of this section.
- E. Acceptance. If the PHA determines from the review and inspection that all the work has been completed in accordance with the requirements of this Agreement, the unit(s) must be accepted.
- F. Acceptance Where Defects or Deficiencies Reported. If the work is not acceptable, the following shall apply:
1. If there are any 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 affect occupancy, and all other requirements of the Agreement have been met, the unit(s) may be accepted. The Owner shall deposit in escrow with the PHA funds in an amount the PHA determines to be sufficient to assure completion of the delayed items, and shall execute a written agreement with the PHA (in the form prescribed by the PHA) which specifies the schedule for completion of the items. If the Owner fails to deposit such escrow, or to execute such written agreement, or if items are not completed within the agreed time period, the PHA may terminate the Agreement or Contract or exercise other rights under the Agreement or Contract.
 2. If other defects or deficiencies exist, the PHA shall determine whether and to what extent the defects or deficiencies are correctable, whether the unit(s) will be accepted after correction of defects or deficiencies, and the requirements and procedures for such correction and acceptance. Furthermore, the PHA shall determine whether lower initial Contract Rents shall be established, and whether the term of the Contract shall be reduced. The Owner shall be notified of the PHA's decision.
- G. Notification of Nonacceptance. If the PHA determines that, based on the review of the evidence of completion and inspection, any unit is not accepted, the Owner shall be promptly notified of this decision and the reasons.
- H. Completion in Stages. Where completion in stages is provided for, the procedures of this section shall apply to each stage.

1.7 Execution of Housing Assistance Payments Contract.

- A. Time and Execution. Upon acceptance of the units by the PHA, the Owner and the PHA agree to execute the Contract.
- B. Completion in Stages. Where completion in stages is provided for, the number and types of units in each stage, and the initial Contract Rents for such units, shall be separately shown in Exhibit A of the Contract for each stage. Upon acceptance of the first stage, the Owner shall execute the Contract and the signature block provided in the Contract for that stage. Upon acceptance of each subsequent stage, the Owner shall execute the signature block provided in the Contract for such stage.
- C. Form of Contract. The terms of the Contract shall be as provided in Exhibit D of this Agreement. There shall be no change in the terms of the Contract other than as provided in this Agreement. Prior to execution by the Owner, all blanks in the Contract shall be completed by the PHA.
- D. Survival of Owner Obligations. Even after execution of the Contract, the Owner shall continue to be bound by all Owner obligations under the Agreement.

1.8 Cooperation in Equal Opportunity Compliance Reviews: Nondiscrimination.

- A. The Owner and the PHA agrees 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 of 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 B in all of its contracts for Project work, except contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work

1.9 PHA and Owner Relations to Third Parties.

A. Selection and Performance of Contractor.

1. The PHA has not assumed any responsibility or liability to the Owner or any other party for the performance of any contractor, subcontractor or supplier, whether or not listed by the PHA as qualified contractor or supplier under the Program. The selection of a contractor, subcontractor or supplier for performance of the work is the sole responsibility of the Owner, and the PHA has no involvement in any relationship between the Owner and any contractor, subcontractor or supplier.
2. The Owner must select a competent contractor to undertake the rehabilitation or construction. The Owner agrees to require from each prospective contractor a certification that neither the contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in contracts by the Comptroller General or any Federal department or agency. The Owner agrees not to award contracts to, otherwise engage the services of, or fund any contractor that does not provide this certification.

B. Injury Resulting from Work under the Agreement. The PHA has not assumed any responsibility for or liability to any person, including a worker or a resident of the unit undergoing work pursuant to this Agreement, injured as a result of the work or as a result of any other action or failure to act by the Owner, or any contractor, subcontractor or supplier.

C. Legal Relationship. The Owner is not the agent of the PHA, and this Agreement does not create or affect any relationship between the PHA and any lender to the Owner or any suppliers, employees, contractors or subcontractors used by the Owner in the implementation of the Agreement.

- D. Exclusion of Third Party Claims. Nothing in this Agreement shall be construed as creating any right of any third party (other than HUD) to enforce any provision of this Agreement or the Contract, or to assert any claim against HUD, the PHA or the Owner under the Agreement or the Contract.
- E. Exclusion of Owner Claims Against HUD. Nothing in this Agreement shall be construed as creating any right of the Owner to assert any claim against HUD.

1.10 Rights of HUD if PHA Defaults Under Agreement.

If HUD determines that the PHA has failed to comply with this Agreement, or has failed to take appropriate action, to HUD's satisfaction or as directed by HUD, for enforcement of the PHA's rights under this Agreement, HUD may assume the PHA's rights and obligations under the Agreement, and may perform the obligations and enforce the rights of the PHA under the Agreement. HUD will, if it determines that the Owner is not in default, pay Annual Contributions for the purpose of making housing assistance payments with respect to the dwelling unit(s) under this Agreement for the duration of the Contract.

1.11 Conflict of Interest.

- A. Interest of Members, Officers, or Employees of PHA, Members of Local Government Body, or Other Public Officials. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the Section 8 Program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to the Section 8 Program, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in this Agreement or the Contract or in any proceeds or benefits arising from the Agreement or Contract. This provision may be waived by HUD for good cause.
- B. Disclosure. The Owner warrants that the Owner has disclosed to the PHA:
 - (1) The identity of the Owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest in this Agreement or the Contract or in any proceeds or benefits arising from the Agreement or Contract;

- (2) The previous participation of each of these parties in HUD programs on the prescribed HUD form; and
- (3) Any possible conflict of interest by any of these parties that would be a violation of the Agreement or the Contract.

The Owner shall fully and promptly update such disclosures.

1.12 Interest of Member or of 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 therefrom.

1.13 Assignment of the Agreement or Contract or Interest in It.

- A. The Owner agrees that the Owner has not made and will not make any transfer in any form, including any sale or assignment, of this Agreement or the Contract or the property without the prior written consent of the PHA. A change in ownership in the Owner, such as a stock transfer or transfer of the interest of a limited partner, is not subject to the provisions of this section. Transfer of the interest of a general partner is subject to the provisions of this section.
- B. Where the Owner requests the consent of the PHA for a transfer in any form, including any sale or assignment, of this Agreement or the Contract or the property, the PHA will review the transferee's previous participation in the HUD programs. The PHA will give its consent to a transfer of the Agreement or Contract pursuant to paragraph A of this section if the transferee agrees in writing (in a form acceptable to the PHA) to comply with all terms of the Agreement and Contract, and if the transferee is acceptable to the PHA. The PHA's criteria for acceptance of the transferee must be no more restrictive than initial acceptance of any Owner under the program at the time of the Owner's request.
- C. If an Owner is proposing to pledge the Agreement or HAP Contract as security for financing, the Owner must submit the financing documents to the PHA for approval. In determining the approvability of a pledge arrangement, the PHA must review the documents submitted by the Owner to ensure that the financing documents do not modify the Agreement or Contract, and do not contain any requirements inconsistent with the Agreement or Contract. Any pledge of the Agreement or Contract must be limited to amounts payable under the Contract in accordance with the terms of the Contract.

1.14 Owner Assurance to the PHA.

- A. Disclosure of Other Government Assistance. The Owner shall disclose to the PHA in accordance with HUD requirements information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the Contract Units. Such related assistance shall include, but not be limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance. Housing assistance payments under the Contract shall not be more than is necessary, as determined by the PHA in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA shall adjust in accordance with HUD requirements the amount of the housing assistance payments to the Owner to compensate in whole or in part for such related assistance.
- B. Rehabilitation or Construction Financing. The Owner agrees not to rehabilitate or construct the units with assistance under the U.S. Housing Act of 1937 (e.g., public housing, the rental rehabilitation program, housing development grants, Section 11(b) tax exempt bonds, or other Section 8 programs) or the flexible subsidy program. The Owner warrants that the units were not rehabilitated or constructed with assistance under the U.S. Housing Act of 1937 in the five years before execution of this Agreement. HUD may approve attachment of assistance to a unit that was rehabilitated with public housing modernization funds before conveyance to a resident management corporation where attachment of project-based assistance would further the purposes of the sale of the public housing project to the corporation.
- C. Ownership. The Owner warrants that the property to be rehabilitated or constructed under this Agreement is not owned by the PHA, or an entity controlled by the PHA.

1.15 Other Federal Requirements.

The Owner shall comply with and shall be subject to the requirements of the following, where applicable:

- A. Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy.

- B. Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises.
- C. 24 CFR Part 24, Debarment, Suspension, and Limited Denial of Participation.

1.16 Lobbying Certifications.

The Owner hereby assures and certifies that:

- A. No Federally appropriated funds have been paid or will be paid, by or on behalf of the Owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than the Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Owner shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Owner shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and of not more than \$100,000 for each such failure.

1.17 Notices.

Where the Owner is required to give any notice to the PHA pursuant to this Agreement, such notice shall be in writing and shall be given in the manner designated by the PHA.

1.18 HUD Requirements.

The Agreement and Contract shall be interpreted and implemented in accordance with HUD requirements.

1.19 Termination of Contract.

This Agreement or the Contract can be terminated upon at least 30 days written notice to the Owner by the PHA or HUD if the PHA or HUD determines that the Contract Units were not selected in accordance with the PHA's HUD-approved written selection policy or that the Contract Units were not eligible for selection in conformity with HUD requirements.

PHA _____

Owner _____

By _____

By _____

(Official Title)

(Official Title)

Date _____

Date _____

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined no more than \$10,000 or imprisoned for not more than five years, or both.