

INSTRUCTIONS FOR PREPARATION OF TURNKEY CONTRACT OF SALE
FORM HUD-53015, PART I AND PART II

1. **USE OF AND ADDITIONS TO FORM.** This basic form of Contract of Sale shall be used for public housing projects developed under the Turnkey method pursuant to the Public Housing Program Development Phase Regulation (24 CFR 841). Additional provisions may be required to cover the special circumstances of a particular project.

2. **PROVISION FOR DELIVERY IN STAGES.**

(a) Where feasible to accept delivery and acceptance of the project in stages - - each stage consisting of completed buildings and the land upon which the buildings are located - - the Contract of Sale may provide for staged delivery. In such case, a schedule of the improvements and land included in each stage, along with their agreed Purchase Prices and Substantial Completion Dates, shall be incorporated as an Exhibit to the Contract. The Contract of Sale shall include the following provision:

“Completion and settlement with respect to the improvements and land included in the Contract shall take place in stages, and in accordance with Exhibit _____, and each stage shall be subject to all provisions of the Contract, including provisions relating to completion and settlement.”

(b) The Purchase Price shall reflect any savings to the Seller resulting from the agreement to accept the project in stages, such as a saving in interest. If agreement to deliver the Project in stages is made after the Seller's proposal has been received, but prior to execution of the Contract, the Purchase Price reflected in the Contract shall be reduced to reflect these savings. After execution of the Contract, the PHA shall not agree to accept a staged delivery, and HUD shall not approve such agreement, unless the Seller agrees to an amendment of the Contract reducing the Purchase Price to reflect the savings.

3. **PROVISIONS ON SETTLEMENT ADJUSTMENTS.**

(a) The provisions on settlement adjustments, including the provisions for allocation of taxes and settlement costs should be carefully examined by HUD and PHA counsel, and may be modified as deemed advisable. Modifications may be desirable to conform to local custom or practice, or for the sake of clarity. Counsel should determine all charges or taxes likely to be applicable in the locality and should ascertain whether the provisions of the Contract state with sufficient clarity the treatment at settlement of each item.

(b) The allocation of settlement items under the Contract of Sale must be consistent with the basis for evaluation and approval of the Seller's price. That is, if the HUD-approved breakdown of the Seller's price includes a particular settlement item, the Contract must provide for payment for that item by the Seller, and not by the PHA. The Contract language in the form shall be modified as necessary to preclude double payment by the PHA for any tax or other settlement item. Such double payment would occur if an item is included in the Purchase Price, and is also to be paid by the Purchaser as a settlement adjustment under the Contract.

(c) Where it is anticipated that specified state or local taxes (other than real property taxes and assessments), e.g., sales taxes, included in the Purchase Price may be subject to abatement or exemption, counsel shall assure that the Contract is modified to include a provision such as the following:

“**Tax Exemption or Abatement.** In the event of exemption or abatement of any of the following state or local taxes payable with respect to the Project, the amount of such exemption or abatement shall be credited against amounts payable by Purchaser at settlement:

<u>TAX</u>	<u>AMOUNT</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____

4. **PROVISION FOR ADDITIONAL WITHHOLDINGS.** This form of Contract provides (Sections 2.8(d) and 2.10(b)) for certain minimum withholdings at settlement. Where deemed necessary to provide additional protection with respect to any statutory liens (mechanics, subcontractors, materialmen, etc.), the Contract may be modified to provide for additional withholdings during the lien periods (or, as an alternative to the additional withholding, for an unconditional and irrevocable letter of credit, issued by a banking institution, unconditionally payable upon demand of the Purchaser).

5. **PAYMENT TO LENDER.** If Seller desires, the Contract may be modified to provide for direct payment of the Purchase Price to Seller's Lender, rather than to the Seller.

6. **EXHIBITS.** The Contract provides that the following documents, which are listed in Section 1.6 of the Contract, shall be incorporated as Exhibits:

- Exhibit A - Annual Contributions Contract (see Section 1.1)
- Exhibit B - Plans and Specifications (see Section 1.1)
- Exhibit C - Land-Legal Description (see Section 1.1)
- Exhibit D - Guarantees and Warranties (see Section 2.8(a)(6))
- Exhibit E - Department of Labor Wage Determination Decision (see Section 2.12(c))

Other Exhibits (e.g., schedule for staged delivery) may be included in the Contract as required, and shall be added to the list in Section 1.6. The listing shall provide a specific identification of all additional Exhibits, including a letter designation and brief description of the contents of each. All Exhibits shall be initialed or otherwise appropriately identified by the parties.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PUBLIC HOUSING PROGRAM

TURNKEY CONTRACT OF SALE

TABLE OF SECTIONS

PART I

- 1.1 Identification of Project
- 1.2 Purchase Price
- 1.3 Commencement Date
- 1.4 Completion Date
- 1.5 Settlement
- 1.6 Contract Documents
- 1.7 Warranty of Purchaser's Authority
- 1.8 Events Constituting Default Under This Contract and the Annual Contributions Contract
- 1.9 Approval by HUD

PART II

- 2.1 Definitions
- 2.2 Improvements
- 2.3 Adjustments in Purchase Price
- 2.4 Time for Commencement and Completion of Work
- 2.5 Changes in the Work
- 2.6 Inspections During Construction
- 2.7 Final Inspection, Acceptance
- 2.8 Settlement
- 2.9 Final Certificate of Completion
- 2.10 Warranties
- 2.11 Fire and Other Casualty Insurance
- 2.12 Prevailing Salaries or Wages
- 2.13 Contract Work Hours and Safety Standards Act - Overtime Compensation
- 2.14 Compliance With Copeland Regulations (29 CFR, Part 3)
- 2.15 Payrolls and Related Reports
- 2.16 Wage Claims and Adjustments
- 2.17 Disputes Concerning Wage Rates and Classification of Labor
- 2.18 Termination Because of Violation of Labor Provisions
- 2.19 Insertion of Labor Provisions in Subcontracts
- 2.20 Equal Employment Opportunity
- 2.21 Section 3 of the HUD Act of 1968 (Employment and Business Opportunities for Lower Income Residents of Project Area)
- 2.22 Prohibition Against Transfer of Contract or Project
- 2.23 Third Parties
- 2.24 Conflict of Interest

TURNKEY CONTRACT OF SALE

PART I

THIS CONTRACT made on _____ ("Date of this Contract") by and between _____ ("Seller") and _____, a Public Housing Agency ("Purchaser").

WHEREAS, Seller proposes to sell to Purchaser a completed Project consisting of improvements and land, and

WHEREAS, Purchaser desires to acquire the Project,

NOW, THEREFORE, Seller and Purchaser agree as follows:

1.1 IDENTIFICATION OF PROJECT. The Project, which is identified as Project No. _____ in the Annual Contributions Contract attached as Exhibit A, shall consist of _____ dwelling units and related appurtenances as described in Exhibit B, upon land situated in _____ and as described in the legal description attached as Exhibit C.

1.2 PURCHASE PRICE. The Purchase Price is \$ _____.

1.3 COMMENCEMENT DATE. Seller shall commence the Contract Work no later than _____.

1.4 COMPLETION DATE. Seller shall Substantially Complete the Contract Work no later than _____.

1.5 SETTLEMENT. Settlement shall be held at _____ within _____ calendar days after Purchaser and HUD have approved the Interim Certificate of Completion.

1.6 CONTRACT DOCUMENTS. This Contract consists of Part I, Part II, and the following Exhibits, which are attached to and made a part of this Contract.

- Exhibit A - Annual Contributions Contract No. _____, Dated _____
- Exhibit B - Plans and Specifications
- Exhibit C - Land - Legal Description
- Exhibit D - Guarantees and Warranties
- Exhibit E - Department of Labor Wage Determination Decision

1.7 WARRANTY OF PURCHASER'S AUTHORITY. Purchaser warrants that it is a duly organized body politic authorized by law to acquire land and improvements thereon and that it is in fact and in law authorized to execute this Contract.

1.8 EVENTS CONSTITUTING DEFAULT UNDER THIS CONTRACT AND THE ANNUAL CONTRIBUTIONS CONTRACT.

Any breach of the warranty in Section 1.7, or if the Purchaser fails to expeditiously continue the undertaking of the Project or to comply with this Contract, or if this Contract be held void, voidable, or ultra vires, or if the power or right of the Purchaser to enter into this Contract is drawn into question in any legal proceeding or if the Purchaser asserts or claims that this Contract is not binding upon the Purchaser for any such reason, the occurrence of any such event shall be deemed a default hereunder, and a Substantial Default under the following Section of the Annual Contributions Contract included in this Contract as Exhibit A¹.

1.9 APPROVAL BY HUD. The approval of this Contract by HUD signifies that the undertaking by the Purchaser of the acquisition of the Project constitutes a "Project" eligible for financial assistance under the Annual Contributions Contract included in this Contract as Exhibit A; that said Annual Contributions Contract has been properly authorized; that funds have been reserved by HUD and will be available to effect payment and performance by the Purchaser hereunder; that HUD has approved the terms and conditions of this Contract; and that HUD and the Purchaser have agreed that they shall not amend or modify the Annual Contributions Contract in any manner which would reduce the amount of the loan or annual contributions payable thereunder with respect to the Project.

EXECUTION²

IN WITNESS WHEREOF, the Seller and Purchaser have caused this Contract to be executed in _____
original counterparts as of the date of this Contract.

Seller _____

By _____

Title _____

Purchaser _____

By _____

Title _____

APPROVED:

United States of America

Secretary of Housing and Urban Development

By _____

Title _____

¹Insert full text of the Special Provisions for Turnkey Projects as contained in the Annual Contributions Contract (Exhibit A).
²Print or type names underneath all signatures.

TURNKEY CONTRACT OF SALE

PART II

2.1 DEFINITIONS

ANNUAL CONTRIBUTIONS CONTRACT. The contract between HUD and the Purchaser under which HUD will provide assistance to the Purchaser for the acquisition of the Project, as more fully identified in Part I, which Annual Contributions Contract, as amended to the date of this Contract, is included in this Contract as Exhibit A.

CONTRACT. This Contract of Sale between the Purchaser and the Seller.

CONTRACT WORK. The construction work to be performed under this Contract.

HUD. The Department of Housing and Urban Development, which has agreed to provide financial assistance to the Purchaser for the Project in accordance with the Annual Contributions Contract.

INSPECTION REPRESENTATIVE. The qualified inspector designated by the Purchaser to make inspections of the Project to determine conformity to the Contract.

PROJECT. The Project, as more fully identified in Part I, to be acquired by the Purchaser under this Contract.

PURCHASE PRICE. The total price for the Project.

SUBSTANTIAL COMPLETION. The point when the Contract Work is in good and tenantable condition and there are no deficiencies other than punch list items and items awaiting seasonal opportunity to complete.

2.2 IMPROVEMENTS

- (a) The completed improvements shall be in accordance with Exhibit B and in accordance with all applicable Federal, State and local laws and regulations.
- (b) Seller shall be responsible for delivery of the improvements in good and tenantable condition and in full compliance with paragraph (a) of this Section. Review or approval by the Purchaser and HUD of the working drawings, specifications or other documents shall not relieve Seller of this responsibility. Seller shall have full and sole responsibility for subsurface investigations and foundation design, for any changes in details, dimensions or materials required to produce the complete improvements in accordance with paragraph (a), and for correction of any defects arising out of any design deficiencies.

2.3 ADJUSTMENTS IN PURCHASE PRICE

The Purchase Price shall be subject to the following adjustments:

- (a) Changes in the Purchase Price agreed to by reason of changes in the Contract Work pursuant to Section 2.5, shall be added or subtracted as the case may be.
- (b) The amount of any increase in the Purchase Price pursuant to Section 2.7(d), resulting from delay due to submission of a disagreement between the parties to HUD, shall be added.
- (c) Seller shall disclose tax-exempt financing provided by State Housing Finance Agencies at any time before or after the execution of the Contract of Sale and the Contract of Sale price shall reflect, or be adjusted to reflect, reduction in construction financing cost due to a lower interest rate below the cost of conventional financing.

2.4 TIME FOR COMMENCEMENT AND COMPLETION OF WORK

- (a) The Seller shall commence the Contract Work not later than the date specified in this Contract, shall prosecute the Contract Work with such diligence as will insure Substantial Completion by the date specified in this Contract, and shall Substantially Complete the work by such date. If Seller fails to commence, diligently prosecute or Substantially Complete the Contract Work in accordance with the Contract, Purchaser may terminate the Contract by notice to the Seller and in such case Seller shall not be entitled to any compensation. If the Purchaser is entitled to terminate the Contract under the preceding sentence, but omits to do so, such omission shall not be construed as, or constitute a waiver of, the Purchaser's right to subsequently terminate the Contract.
- (b) (1) If the construction of the improvements is delayed, the Seller shall, within 10 working days from the beginning of the delay, notify the Purchaser in writing of the delay and the causes for the delay.
(2) At Substantial Completion of the Contract Work, the Purchaser shall determine the number of calendar days, if any, by which Substantial Completion of the Project was delayed beyond the date specified in this Contract, and the reasons for the delay. To the extent that the delay is determined by the Purchaser to be the result of unforeseen causes (such as fire, flood epidemic, strikes, unusually severe weather, or acts of the Federal Government or the Purchaser) beyond the control of the Seller and without the fault or negligence of the Seller, and such cases of delay were reported to the Purchaser in accordance with paragraph (b)(1) of this Section, the time for Substantial Completion of the Project shall be extended for the number of days that Substantial Completion is delayed due to these causes.

2.5 CHANGES IN THE WORK

No changes in the Contract Work shall be made without a written agreement, approved on its face by HUD, executed by the Seller and Purchaser, and countersigned by Purchaser's Inspection Representative. Such agreement shall state changes, if any, in the terms of this Contract concerning Purchase Price and/or time for commencement and/or Substantial Completion of the Contract Work, and the agreement shall not be construed to affect these terms unless, and to the extent stated in the agreement.

2.6 INSPECTIONS DURING CONSTRUCTION

- (a) The Purchaser shall make inspections at least semi-monthly to determine conformity with this Contract, and HUD may also make inspections for the same purpose. Comments concerning inspections by Purchaser or HUD shall only be communicated to the Seller through the Purchaser's Inspection Representative. The results of the Purchaser's inspections shall be incorporated in written reports which shall include any observed defects or deficiencies in the improvements. Purchaser shall send copies of these reports, within five working days of each inspection, to the Seller and to the Seller's lender for the Project. In the event of any dispute as to compliance with Exhibit B which arises in the course of the work and which cannot be resolved between the Purchaser and Seller, the Purchaser, upon request by the Seller, will estimate the amount required for correcting the defect or deficiency.
- (b) Notwithstanding the provisions of this Contract concerning inspections by Purchaser and HUD, it is expressly agreed that the Seller shall be solely responsible for timely completion of the Project, in accordance with all contractual requirements, and failure of Purchaser or HUD to make inspections or to provide reports of the inspections, shall not diminish or affect such responsibility.

2.7 FINAL INSPECTION, ACCEPTANCE

- (a) The Seller shall notify the Purchaser in writing of the date when in Seller's opinion the Contract Work, or stage where applicable, will be Substantially Completed. Unless Purchaser has determined and so notifies the Seller, that the Contract Work or stage is not Substantially Completed, Purchaser shall promptly arrange for a joint final inspection by the Purchaser, the HUD representative, and the Seller.
- (b) If the inspection in accordance with paragraph (a) has disclosed that the Contract Work is Substantially Completed:
 - (1) The Purchaser's Inspection Representative shall provide a certification to the Purchaser, in the form prescribed by HUD, (i) stating that the work is in good and tenable condition, (ii) describing the punch list items and items awaiting seasonal opportunity to complete, and (iii) specifying the estimated amounts necessary to complete them, and shall also provide a copy of such certification to Seller.
 - (2) The Seller shall deliver to the Purchaser a certification that (i) the work has been completed in accordance with this Contract except for the punch list items and items awaiting seasonal opportunity to complete listed on the certification of the Purchaser's Inspection Representative, (ii) there are no defects and deficiencies in the work except such listed items, and (iii) the work is in good and tenable condition.
 - (3) The Purchaser and the Seller shall agree on a proposed time schedule for completion of the items.
- (c) Upon completion of all the conditions stated in paragraph (b) of this Section, the Purchaser shall submit for HUD approval an Interim Certificate of Completion on a form prescribed by HUD, which shall detail the punch list items and items awaiting seasonal opportunity to complete, and the proposed time schedule for completion of the items.
- (d) If the Purchaser's Inspection Representative fails or refuses to certify that the work is in good and tenable condition at a time when the Seller believes it is in such condition, or if the Seller disagrees with determinations by said Inspection Representative of punch list items and items awaiting seasonal opportunity to complete, or of the amounts necessary to correct such items, the Seller may submit to the Purchaser a written statement of his position, with substantiation. If the parties are unable to reach agreement within 10 working days from the date of such written statement, either party may submit the matter to HUD for determination, and the parties hereby agree that HUD's determination shall be final. If HUD's determination sustains the Seller's position, the Purchase Price shall be increased by an amount equal to interest on the amount which would otherwise have been paid to the Seller at an earlier date, for the period of delay due to the submission of the matter to HUD, at the rate applicable to the Seller's construction financing during such period.

2.8 SETTLEMENT

- (a) At the settlement, the Seller shall deliver the following to the Purchaser:
 - (1) A certification that (i) the Seller has complied with the provisions of the Contract relating to the payment of not less than prevailing wage rates, and (ii) to the best of the Seller's knowledge and belief there are no claims of underpayment in alleged violation of said provisions of the Contract (in the event there are any such pending claims to the knowledge of the Seller, the Purchaser, or HUD, the Seller shall place a sufficient amount, as determined by the Purchaser and HUD, in escrow to be held by the Purchaser to assure such payments).
 - (2) A Certificate of Occupancy and all other approvals necessary for occupancy.
 - (3) As-built drawings of the work, at no additional cost to the Purchaser, which shall have been currently maintained during construction, which shall be reproducible drawings on a permanent type of material, and which shall show accurately deviations from the Contract drawings and the exact locations of underground utilities and appurtenances as referenced to permanent surface improvements.
 - (4) Conveyance of the completed Project, to the Purchaser or assigns, by good and sufficient general warranty deed, free and clear from all encumbrances, liens or claims except those specifically excepted or reserved in Exhibit C, and vesting title which shall be good of record and in fact, and which shall be merchantable. The Seller shall also deliver, at no additional cost to the Purchaser, a title insurance policy naming the Purchaser as beneficiary, in the full amount of the Purchase Price of the Project. In case legal steps are necessary to perfect the title, such action shall be taken promptly by the Seller at the Seller's own expense, and the time for settlement shall thereby be extended for the period necessary for such prompt action.

- (5) A release and hold harmless agreement by Seller, in the form approved by HUD, including the Seller's release of all claims under the Contract except amounts, as listed in the release and hold harmless agreement, withheld by Purchaser in accordance with the Contract.
 - (6) Assignment to Purchaser of all guarantees and warranties relating to the improvements and materials or equipment included therein, to the extent such guarantees and warranties are assignable. These guarantees and warranties are listed in Exhibit D. The Seller shall be obligated, for the duration of these guarantees and warranties to assist the Purchaser in asserting rights thereunder as may be required.
 - (7) Possession of the Project, with right of occupancy in the Purchaser from that time, provided, however, that delivery of possession or actual occupancy shall not relieve the Seller of liability to perform any work required by the Contract but not completed at the time of such delivery of possession or commencement of occupancy.
- (b) All delinquent taxes and assessments which are a lien against the property shall be satisfied of record by the Seller.
 - (c) All written notices of violations of governmental orders or requirements, or action in any court on account thereof, against or affecting the Project at the time of settlement, shall be complied with by the Seller, and the Project shall be conveyed free thereof.
 - (d) Upon satisfaction by the Seller of all requirements of this Section, the Purchaser shall pay the Purchase Price as adjusted in accordance with Section 2.3, minus the following withholdings:
 - (1) The Purchaser shall withhold from the Purchase Price an amount equal to one and one-half (1½) times the amount certified by the Inspection Representative as necessary to complete the punch list items and items awaiting seasonal opportunity to complete listed on the Interim Certificate of Completion.
 - (2) The Purchaser shall also withhold from the Purchase Price an additional amount in connection with warranties in accordance with the terms of Section 2.10(b) unless the Seller elects to use the alternative to such withholding authorized by that Section.
 - (e) The following adjustments shall also be made at settlement:
 - (1) Water rent and operating charges shall be adjusted to the date of settlement.
 - (2) Real property taxes and assessments (other than assessments for improvements benefitting the property) shall be adjusted to the Date of this Contract.
 - (3) All outstanding assessments for improvements benefitting the property, including future installments thereon, shall be paid in full by the Seller.
 - (4) Purchaser shall pay all closing or settlement costs, including the cost of preparing the deed, the cost incidental to execution and recordation of the deed, and all documentary taxes applicable to the transaction.

2.9 FINAL CERTIFICATE OF COMPLETION

The Seller shall complete the punch list items and items awaiting seasonal opportunity in accordance with the HUD-approved time schedule for completion of the items. The Seller will be paid for such items only after inspection and acceptance by the Purchaser, and HUD approval of the payment. The Purchaser shall not accept any item if there is a dispute as to whether such item has been completed. If the Purchaser is satisfied that the Seller has completed the items listed in the Interim Certificate of Completion, and has complied with all provisions of the Contract, the Purchaser shall submit to HUD for approval a Final Certificate of Completion in a form prescribed by HUD. Upon HUD approval of the Final Certificate of Completion, the Purchaser shall release to the Seller any amount withheld with respect to the items listed on the Interim Certificate of Completion.

2.10 WARRANTIES

- (a) Seller shall promptly remedy any defects due to faulty materials or workmanship which may appear within the warranty periods and pay for any damage to other work resulting from such defects. The warranty periods shall be: (1) one year from the date of HUD approval of the Interim Certificate of Completion for all work accepted as completed on that date, (2) one year from the date of HUD approval of the Final Certificate of Completion for all items completed since the date of approval of the Interim Certificate, and (3) one growing season for all landscaping items.
- (b) As assurance for the performance of the Seller's obligations under paragraph (a) of this Section, the Purchaser shall withhold from the Purchase Price an amount equal to two and one-half percent (2½%) of the Purchase Price. The withheld amount shall be used to pay the actual cost or expense necessary for performance of such obligations. Promptly after the expiration of each of the warranty periods, Purchaser shall pay to Seller any balance of such withheld amount not required for such performance, as determined by the Purchaser. No interest shall accrue to the Seller on the withheld amount. As an alternative to withholding, the Seller may furnish the Purchaser with an unconditional and irrevocable letter of credit unconditionally payable upon demand of the Purchaser, issued by a banking institution in the same amount.

2.11 FIRE AND OTHER CASUALTY INSURANCE

The risk of loss or damage to the Project by fire or other casualty until the time of conveyance to the Purchaser is assumed by the Seller. Insurance coverage from the time of conveyance shall be the responsibility of the Purchaser.

2.12 PREVAILING SALARIES OR WAGES

- (a) The Seller shall pay to all architects, technical engineers, draftsmen and technicians employed in the development of the Project not less than the salaries or wages prevailing in the locality of the Project, as determined or adopted (subsequent to a determination under applicable State or local law) by HUD.
- (b) The Seller shall pay to all laborers and mechanics employed in the development of the Project not less than the wages prevailing in the locality of the Project, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C., Secs. 276a to 276a5).
- (c) All mechanics and laborers employed in the development of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c, 29 CFR, Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto as Exhibit E and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Seller or subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the Seller at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
- (d) The Purchaser shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the Contract, shall be classified or reclassified conformably to the wage determination and a report of the action taken shall be sent by HUD to the Secretary of Labor. In the event the Seller, the Purchaser and HUD cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question, accompanied by the Purchaser's recommendation, shall be reported by the Purchaser to HUD for resolution in accordance with Section 2.17(a).
- (e) The Seller may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, or any bona fide fringe benefits not expressly listed in Section 1(b)(2) of the Davis-Bacon Act or otherwise not listed in the wage determination decision of the Secretary of Labor which is included in this Contract, only when the Secretary of Labor has found, upon the written request of the Seller, that the applicable standards of the Davis-Bacon Act have been met. Whenever practicable, the Seller should request the Secretary of Labor to make such findings before the making of the Contract. In the event of unfunded plans and programs, the Secretary of Labor may require the Seller to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (f) The Purchaser shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Seller is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the Seller, the Purchaser and HUD cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the Purchaser's recommendation, shall be reported by the Purchaser to HUD for resolution in accordance with Section 2.17(a).
- (g) If the Seller does not make payments to a trustee or other third person, the Seller may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract; Provided, however, the Secretary of Labor has found, upon the written request of the Seller, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require Seller to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (h) The Purchaser will not make any payment under this Contract unless and until the Purchaser has received a signed statement from the Seller that such Seller and each of the Seller's subcontractors has made payment to each class of employees in compliance with the applicable preceding provisions of this Section, and Section 2.13.
- (i) If the Seller or any of the Seller's subcontractors finds it necessary or desirable to exceed the prevailing salary or wage rates specified in accordance with paragraph (a) or (b) of this Section, any expense incurred by the Seller or subcontractor because of the payment of salaries or wages in excess of such amounts shall not be cause for any increase in the amount payable under this Contract. The Purchaser shall not consider or allow any claim for additional compensation by the Seller or subcontractor because of such payments.
- (j) (1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Seller as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in paragraph (2); or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The Seller or subcontractor will be required to furnish to the Contracting Officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of the program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the Contract Work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

- (2) Except as provided in 29 CFR 5.15, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work actually performed. The Seller or subcontractor will be required to furnish the Contracting Officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of the program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the Seller will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (k) No laborer or mechanic employed in the development of the Project shall be discharged or in any other manner discriminated against because such laborer or mechanic has filed any complaint or instituted or caused to be instituted any proceedings or has testified or is about to testify in any proceedings under or relating to the labor standards incorporated in the Contract.

2.13 CONTRACT WORK HOURS AND SAFETY STANDARD ACT - OVERTIME COMPENSATION

As used in this Section, the terms "laborers" and "mechanics" include watchmen and guards.

- (a) Overtime Requirements. No Seller or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which such laborer or mechanic is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, as the case may be.
- (b) Violation, liability for unpaid wages, liquidated damages. In the event of any violation of the clause set forth in paragraph (a), the Seller and any subcontractor responsible therefor shall be liable to any affected employee for unpaid wages. In addition, such Seller and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph (a), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a).
- (c) Withholding for unpaid wages and liquidated damages. The Purchaser may withhold or cause to be withheld, from any monies payable on account of work performed by the Seller or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Seller or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b).
- (d) Compliance with Section 107(a) of the Act. The Seller shall comply with Section 107(a) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333(a)) and all regulations, rulings and interpretations of the Secretary of Labor issued thereunder, which are herein incorporated by reference.

2.14 COMPLIANCE WITH COPELAND REGULATIONS (29 CFR, PART 3)

The Seller shall comply with the Copeland Regulations (29 CFR, Part 3) of the Secretary of Labor which are herein incorporated by reference.

2.15 PAYROLLS AND RELATED REPORTS

- (a) Payrolls and basic records relating thereto shall be maintained during the course of the work and preserved by the Seller and subcontractors for a period of three years thereafter for all laborers and mechanics employed in the development of the Project. Such records shall contain the name and address of each such employee, the correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in Section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Seller shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- (b) The Seller shall submit weekly to the Purchaser such copies and summaries (on forms prescribed by HUD and furnished by the Purchaser) of all the Seller's payrolls and those of each of the subcontractors, as the Purchaser or HUD may require. Each such payroll and summary shall be accompanied by a statement signed by the employer or the employer's agent indicating that (1) the payrolls are correct and complete, (2) the wage rates contained therein are not less than those determined by the Secretary of Labor, and (3) the classifications set forth for each laborer or mechanic conform with the work performed. A submission of a "Weekly Statement of Compliance" is required under this Contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The Seller shall be responsible for the submission of copies of payrolls of all subcontractors. The Seller will be required to make the records required under this Section 2.15 available for inspection by authorized representatives of the Purchaser, HUD and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting agencies that their employment is pursuant to an approved program and shall identify the program.

- (c) The Seller shall also furnish to the Purchaser any other information or certifications relating to employees in such form as the Purchaser may request.

2.16 WAGE CLAIMS AND ADJUSTMENTS

In case of underpayment of salaries or wages to any architects, technical engineers, draftsmen, technicians, laborers, or mechanics (including apprentices and trainees) by the Seller or any of the Seller's subcontractors, the Purchaser may withhold from the Seller out of payments due, an amount sufficient to pay persons employed on the work covered by the Contract the difference between the salaries or wages required to be paid under the Contract and the salaries or wages actually paid such employees for the total number of hours worked, and the amounts withheld may be disbursed by the Purchaser for and on account of the Seller or the subcontractor to the respective employees to whom they are due.

2.17 DISPUTES CONCERNING WAGE RATES AND CLASSIFICATION OF LABOR

- (a) All disputes concerning the payment of prevailing wage rates or classifications arising under this Contract or under any subcontract shall be promptly reported by the Purchaser to HUD for decision or, at the option of HUD, referral to the Secretary of Labor. The decision of HUD or the Secretary of Labor, as the case may be, shall be final.
- (b) All questions arising under this Contract or any subcontract relating to the application or interpretation of the Copeland Act, the Contract Work Hours and Safety Standards Act or Section 12 of the United States Housing Act of 1937 shall be referred by the Purchaser to HUD for ruling or interpretation or, at the option of HUD, referral to the Secretary of Labor. The ruling or interpretation by HUD or the Secretary of Labor, as the case may be, shall be final.

2.18 TERMINATION BECAUSE OF VIOLATION OF LABOR PROVISIONS

Seller's breach of Sections 2.12, 2.13, 2.14, 2.15, 2.16, 2.17, or 2.19 may be grounds for termination of this Contract and for debarment as provided in 29 CFR 5.6, or 24 CFR, Part 24.

2.19 INSERTION OF LABOR PROVISIONS IN SUBCONTRACTS

The Seller shall insert in any subcontracts the provisions (appropriately modified) of Sections 2.12, 2.13, 2.14, 2.15, 2.16, 2.17, 2.18, and 2.19, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into together with a clause requiring this insertion in any further subcontracts that may in turn be made.

2.20 EQUAL EMPLOYMENT OPPORTUNITY

- (a) During the performance of this Contract, the Seller agrees as follows:
- (1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Seller 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 Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Purchaser setting forth the provisions of this Equal Opportunity clause.
 - (2) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
 - (3) The Seller will send to each labor union or representative of workers with which Seller has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Purchaser advising the said labor union or workers' representative of the Seller's commitments under this Section 2.20, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The Seller 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 Seller 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 the Seller's books, records and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - (6) In the event of the Seller's noncompliance with the Equal Opportunity clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Seller 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 may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulation, or order of the Secretary of Labor or as otherwise provided by law.
 - (7) The Seller will include the provisions of paragraph (a) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Seller becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by HUD, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

- (b) In the event the lender takes over performance of this Contract, the lender shall, with respect to any obligations imposed in connection with this Contract pursuant to Executive Order 11246 and regulations issued pursuant thereto, be considered an applicant and not a contractor. The lender shall, in such event, be subject to all obligations of an applicant under said Order and regulations, and shall be subject to the obligations of an applicant contained in the Equal Opportunity clause appearing in 24 CFR Section 130.15(b) of regulations of the Department of Housing and Urban Development in lieu of the obligations of the Seller contained in paragraph (a) of this Section 2.20.

2.21 SECTION 3 OF THE HUD ACT OF 1968 (EMPLOYMENT AND BUSINESS OPPORTUNITIES FOR LOWER INCOME RESIDENTS OF PROJECT AREA)

- (a) The work to be performed under this Contract is on a Project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Project.
- (b) The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- (c) The Seller will send to each labor organization or representative of workers with which the Seller has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- (d) The Seller will include this Section 3 clause in every subcontract for work in connection with the Project and will, at the direction of the Purchaser, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR, Part 135. The Seller will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

2.22 PROHIBITION AGAINST TRANSFER OF CONTRACT OR PROJECT

- (a) The Seller agrees that Seller has not made, and that Seller shall not make or agree to make, any sale, assignment, conveyance, or transfer in any other form, of this Contract or the Project, or any part thereof or any interest therein except as follows:
- (1) To an entity to which this Contract has been assigned with the prior written consent of the Purchaser and HUD.
 - (2) To Seller's lender for the purpose of obtaining financing of the completion of the Project, to which assignment the Purchaser and HUD shall consent in writing if requested by the Seller or the lender.
- (b) For the purposes of this Section, a transfer of stock in the Seller, in whole or in part, by a party holding 10 percent or more of the stock of the Seller, or a transfer by more than one stockholder of the Seller of 10 percent or more of the stock of the Seller, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of the Seller or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of new or additional stock or classification of stock or otherwise, shall be deemed an assignment or conveyance with respect to this Contract or the Project. With respect to this provision, the Seller and the parties signing this Contract on behalf of the Seller represent that they have the authority of all the Seller's existing stockholders to agree to this provision on their behalf and to bind them with respect thereto. The Seller agrees to notify the Purchaser promptly of any such proposed transfer and to request written approval thereof.

2.23 THIRD PARTIES

- (a) Nothing in this Contract shall be construed to create any relationship between (1) Seller's lender or any subcontractor or supplier on the one hand, and (2) the Purchaser or HUD on the other. No action may be brought by Seller's lender or any subcontractor or supplier against the Purchaser or HUD based on this Contract.
- (b) The Seller shall insert in any subcontracts the provisions (appropriately modified) of this Section 2.23; and also a clause requiring the subcontractors to include this clause in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

2.24 CONFLICT OF INTEREST

No member, officer or employee of the Purchaser, no member of the governing body of the locality in which the Project is situated, no member of the governing body of the locality in which the Purchaser was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, shall have any interest, direct or indirect, during his or her tenure or for one year thereafter, in this Contract or the proceeds from the Contract.