

**U.S. Department of Housing  
and Urban Development**

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**Additional Terms and  
Conditions**

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**Constituting Part B of a  
Consolidated Annual Contributions Contract  
Between Housing Authority and  
the United States of America**

**Forms HUD-53010 and  
HUD-53011 are obsolete**

**Form HUD-53012B  
(7/95)**

# TABLE OF CONTENTS

## – Part B –

<b>Heading</b>	<b>Page</b>
Applicability of Additional Requirements Pursuant to Part B of this ACC.	i
Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects.	I-1
Special Requirements for Section 23 and Section 10(c) Projects.	II-1 to II-3
Special Requirements for Turnkey III Homeownership Opportunities Projects.	III-1
Special Requirements for Mutual Help Projects.	IV-1 to IV-2
Special Interim Requirements for Development Projects.	V-1 to V-10
Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank.	VI-1 to VI-12
Insurance Requirements	VII-1 to VII-2

## **Applicability of Additional Requirements Pursuant to Part B of this ACC**

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The HA shall comply with all additional requirements set forth in any applicable attachments contained in this Part B to the ACC. The HA is responsible for determining whether the following attachment(s) apply to the HA's project(s), and for determining the extent to which they apply to a HA's projects. The HA shall not be relieved of its obligation to comply with these requirements because of its failure to make an appropriate determination of applicability.

- (A) **Attachment I:** Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects. (Applicable to all projects, except those financed by the HA's issuance of tax-exempt bonds or by the sale of notes to the Federal Financing Bank.)
- (B) **Attachment II:** Special Requirements for Section 23 and Section 10(c) projects. (Applicable to all projects developed pursuant to sections 23 or 10(c) of the Act.)
- (C) **Attachment III:** Special Requirements for Turnkey III Homeownership Opportunities Projects. (Applicable to all projects operating pursuant to the Turnkey III Homeownership Opportunities program.)
- (D) **Attachment IV:** Special Requirements for Mutual Help Homeownership Projects. (Applicable to all projects operating pursuant to the Mutual Help Homeownership program.)
- (E) **Attachment V:** Special Interim Requirements for Development Projects. (Applicable, on an interim basis, to all projects being developed, or proposed to be developed, by a public housing authority under the Act.)
- (F) **Attachment VI:** Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank. (Applicable to all projects financed through the issuance of tax-exempt bonds or through notes sold to the Federal Financing Bank.)
- (G) **Attachment VII:** Insurance Requirements. (Applicable to all projects.)

# ATTACHMENT I

## Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects

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Section	Page
Section 1	I-1
Section 2	I-1

### **Section 1 - Limitations on Forgiveness of Debt.**

(A) Section 4(a) of the Act authorizes HUD to make loans to HAs to help finance the development or modernization of low income housing projects by such agencies. Section 5(a) of the Act authorizes HUD to make annual contributions to HAs, which may in no case exceed the annual debt service payable by such HAs to finance the development or modernization cost of the project involved.

(B) Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985 added section 4(c) to the Act to provide that each loan made by HUD under section 4(a) that has any principal amount outstanding or any interest amount outstanding or accrued that is repayable from debt service annual contributions shall be forgiven and any promise to repay principal and interest in a loan contract shall be cancelled. Section 4(c) further provides that such cancellation of a promise to repay principal and interest shall not affect any other terms and conditions of the ACC, which shall remain in effect as if the cancellation had not occurred.

(C) The forgiveness provided under section 4(c) is limited to loans held by HUD, repayment of which was to be made using annual contributions and does not extend to indebtedness of HAs to holders of bonds or notes sold to the Federal Financing Bank or otherwise, or under indebtedness to HUD not to be paid from annual contributions.

### **Section 2 - Maximum Amount That May Be Forgiven.**

The outstanding principal balance and interest due on loans held by HUD made under section 4 of the Act for the development or modernization of such project, shall be forgiven, not to exceed a maximum principal amount equal to the Actual Development Cost (or Actual Modernization Cost) for such project, and interest thereon. Excess financing, with interest thereon until paid, shall not be forgiven.

## ATTACHMENT II

### Special Requirements for Section 23 and Section 10(c) Projects

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<b>Section</b>		<b>Page</b>
Section 1	General Requirements Applicable to Section 23 and Section 10(c) Projects.	II-1
Section 2	Special requirements Applicable Only to Section 23 Projects	II-2

#### **Section 1 - General Requirements Applicable to Section 23 and Section 10(c) Projects.**

(A) Subject to reduction as herein provided, HUD shall pay Basic Annual Contributions to the HA with respect to each dwelling unit in a Section 23 or Section 10(c) project in the amount allocable to dwelling units of its size for each fiscal year in which the dwelling unit is under lease to the HA.

(B) Provided that the total estimated number of dwelling units of all sizes is not exceeded, the HA may lease any combination of the various sizes of dwelling units but shall not lease more than 125% of the estimated number of dwelling units of any specified size without the prior approval of HUD. Notwithstanding the number and size of dwelling units leased by the HA, HUD shall not be obligated to make Basic Annual Contributions with respect to the project for any period in excess of the amount of the Basic Annual Contributions established in this ACC.

(C) Following the end of each fiscal year, the HA shall promptly pay to HUD (unless HUD approves an alternative disposition), the amount of Basic Annual Contributions paid to the HA for such fiscal year with respect to any dwelling unit (1) which the HA did not place under lease; or (2) which may be attributable to: (i) a period prior to the effective date of the lease covering the dwelling unit, or (ii) subsequent to the date of termination of the lease covering any dwelling unit, or (iii) for which the HA is not obligated to pay rent under the lease covering any dwelling unit. Amounts in relation to item (2) above, shall be determined on the basis of 1/365th of the annual amount allocable to the dwelling unit for each day.

(D) The HA shall proceed expeditiously with the leasing of the maximum number of units authorized for use and occupancy by eligible families. If the HA does not proceed expeditiously with the leasing of dwelling units in the project, HUD may, by notice to the

HA, reduce its obligation to pay annual contributions with respect only to the number and sizes of dwelling units under lease to the HA at the date of the HA's receipt of such notice.

(E) The HA shall promptly commence and conduct a continuing survey and listing of available dwelling units that will provide decent, safe, and sanitary dwelling accommodations and related facilities and that are, or may be made, suitable for use as low-rent housing. The HA shall inspect each dwelling unit and shall maintain a current list of approved dwelling units for the project consistent with the need and demand of eligible families for such units.

(F) The initial term of any lease shall be for not less than twelve months nor more than one hundred and twenty (120) months. Each lease may contain a provision for renewal, provided that no such renewal shall result in a total term exceeding one hundred and eighty (180) months for an existing structure or two hundred and forty (240) months for a new structure.

(G) The HA shall not lease more than one dwelling unit in a structure containing ten or less dwelling units or more than 10% of the dwelling units (counting any fraction as one dwelling unit) in a larger structure except to the extent that the HA determines that such limit should not be applied.

(H) The books of account and records of the HA shall be maintained in such manner as will at all times show the operating receipts, operating expenditures, and reserves for the project separate and distinct from all other projects under this ACC. All annual contributions received by the HA in connection with the project shall constitute operating receipts of the project.

(I) The HA hereby pledges the Basic Annual Contributions payable with respect to a Section 23 or Section 10(c) project to the payment of its obligations incurred under this ACC in connection with such project(s).

(J) Upon the occurrence of a substantial default with respect to the project, the HA shall, if HUD so requires, assign to HUD all of its rights and interests in and to the project, or such part thereof as HUD may specify. HUD shall continue to pay the Basic Annual Contributions with respect to the dwelling units and for the terms of the leases so assigned to HUD, and to otherwise operate such units in accordance with the terms of this ACC until reassigned to the HA. After HUD is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of this ACC, HUD shall reassign to the HA all of HUD's rights and interests in and to the project, as such rights and interests exist at the time of such reassignment.

## **Section 2 - Special Requirements Applicable Only to Section 23 Projects.**

(A) A HA with a Section 23 tax-exempt bond-financed project must also comply with the additional requirements set forth in Attachment VI to this ACC.

(B) In addition to project reserves remaining at the end of the lease term, funds returned to the HA by a bond trustee at the end of the bond term, or returned to a leased housing corporation created by an HA for the purpose of developing a Section 23 tax-exempt bond-financed project, shall be disbursed as directed by HUD.

(C) Section 23 private-owner financed projects are not subject to the requirements of section 6, Part A, of the ACC ("Cooperation Agreement(s)"), including the making of payments in lieu of taxes provided therein.

## **ATTACHMENT III**

### **Special Requirements for Turnkey III Homeownership Opportunities Projects**

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<b>Section</b>	<b>Page</b>
Section 1 Homebuyers' Ownership Opportunity Agreement.	III-1
Section 2 Books of Account.	III-1
Section 3 Application of Purchase Payments.	III-1

#### **Section 1 - Homebuyers' Ownership Opportunity Agreement.**

(A) The HA agrees to operate its Turnkey III project(s) in accordance with the regulations and guidelines for the Turnkey III Homeownership Opportunities Program for Low-Income Families, as prescribed by HUD. The HA shall enter into a Homebuyers' Ownership Opportunity Agreement (HOOA), in the form prescribed by HUD, with the occupant of each dwelling in the project. The HOOA shall provide for the ultimate ownership of the dwelling by the occupant who has performed all the obligations and conditions required by the HOOA.

(B) Failure of the HA to enter into such HOOA at the time and in the form prescribed by HUD, failure to perform any obligation imposed under such agreement, or failure to meet any other obligation under this ACC shall constitute a substantial default under the ACC.

#### **Section 2 - Books of Account.**

The books of account and records of the HA shall be maintained in accordance with the HOOA as well as other provisions of this ACC and in such manner as will at all times show the operating receipts, operating expenditures, reserves, and other required accounts for the project separate and distinct from all other projects under this ACC.

#### **Section 3 - Application of Purchase Payments.**

All funds held or received by the HA that are applied to payment of the purchase price of a home by a Homebuyer shall be used or disposed of by the HA as authorized by HUD in applicable statutes, executive orders, regulations, or contractual documents governing the use of proceeds of sale.



## ATTACHMENT IV

### Special Requirements for Mutual Help Homeownership Projects

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<b>Section</b>		<b>Page</b>
Section 1	Annual Contributions Contract.	IV-1
Section 2	MHO Agreement.	IV-1
Section 3	Books of Account.	IV-2
Section 4	Application of Purchase Payments.	IV-2

#### **Section 1 - Annual Contributions Contract.**

The IHA agrees to develop and operate its Mutual Help project(s) in compliance with any applicable HUD regulations and guidelines for the Mutual Help (MH) Homeownership Opportunity Program, and in accordance with all contractual obligations imposed upon the IHA by the Mutual Help and Occupancy Agreement (MHO Agreement).

#### **Section 2 - MHO Agreement.**

(A) The MH Program provides low income families with an opportunity to become homeowners in return for the families' agreement to make a minimum contribution toward the development cost of a project, to maintain the home, and to perform all duties of a homebuyer under a MHO Agreement.

(B) As units become available, the IHA shall execute a MHO Agreement, in the form prescribed by HUD, with each eligible family. The IHA shall ensure the homebuyer's compliance with all applicable provisions of the MHO Agreement, and shall be responsible for ensuring that the Mutual Help unit is maintained in a decent, safe and sanitary condition, notwithstanding the homebuyer's failure to meet his or her obligation for maintenance under the MHO Agreement.

(C) The IHA shall ensure that each home in a MH project is used, unless otherwise approved by HUD, solely in accordance with a MHO Agreement executed with an eligible homebuyer.

(D) The IHA's failure to enter into a MHO Agreement with an eligible family for an available home in a Mutual Help project at the times required by HUD, constitutes a substantial default under this ACC.

### **Section 3 - Books of Account.**

The IHA shall maintain books of account and records in accordance with the requirements of the MHO Agreement and any HUD requirements. The books of account and records shall be maintained in such manner as will at all times show the operating receipts, operating expenses, reserves, and other required accounts for the project separate and distinct from all other projects under this ACC.

### **Section 4 - Application of Purchase Payments.**

All funds held or received by the IHA from a homebuyer for the purchase of a MH unit shall be used or disposed of by the IHA as authorized by HUD in applicable statutes, executive orders, regulations, or contractual documents governing the use of proceeds of sale.

## ATTACHMENT V

### Special Interim Requirements for Development Projects

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<b>Section</b>		<b>Page</b>
Section 1	Acquisition of Project Sites.	V-1
Section 2	Architectural and Engineering Services.	V-2
Section 3	Main Construction Contract and Other Contracts.	V-3
Section 4	Taking of Bids.	V-3
Section 5	Liquidated Damages.	V-4
Section 6	Subcontracts and Assignments.	V-4
Section 7	Prevailing Salaries or Wages During Development.	V-4
Section 8	Copeland Act; Contract Work Hours Standards Act.	V-5
Section 9	Wage Claims and Adjustments.	V-6
Section 10	Payrolls and Related Reports.	V-6
Section 11	Other Labor Provisions.	V-7
Section 12	Retention of Contract Rights and Change Orders.	V-7
Section 13	Payment to Contractors.	V-8
Section 14	Acceptance of Contract Work and Completion of Contracts.	V-8
Section 15	Development Cost.	V-9
Section 16	Development Cost Budgets.	V-9
Section 17	Actual Development Cost.	V-10

In addition to the requirements codified at 24 CFR part 941, this attachment lists interim requirements applicable to projects being developed, or proposed to be developed, by a public housing agency. The provisions of this attachment shall expire upon HUD's issuance, for effect, of an interim or final regulation to replace the rule promulgated at 45 FR 60838 (September 12, 1980; 24 CFR part 941, and all subsequent amendments to that rule). This attachment does not apply to Indian housing development, which is governed by regulations codified at Title 24 of the Code of Federal Regulations.

#### **Section 1 - Acquisition of Project Sites.**

(A) The HA, unless HUD otherwise approves, shall provide by contract for necessary services of experts in their respective fields for land surveys, title information, and legal services for land

acquisition, appraisals and option negotiations, in accordance with HUD requirements. Approval of such contracts by HUD shall be required if the fees provided therein exceed the maximum amounts then prescribed by HUD. Such contracts shall not be entered into with respect to any project site prior to tentative approval by HUD of such site. The HA shall not undertake to acquire real property unless HUD has approved the acquisition thereof for a project.

(B) The HA, unless HUD otherwise approves, shall obtain a formal appraisal(s), as required by HUD, on each parcel and obtain HUD approval before taking an option, instituting condemnation proceedings, or acquiring title thereto, and shall conduct all negotiations for the acquisition of real property in accordance with regulations and requirements prescribed by the United States Government. In no case shall persons who have made such appraisals be employed to negotiate options.

(C) The HA shall not accept any option for, institute, accept awards under (except as required by applicable law), or appeal any condemnation proceedings for, or otherwise acquire any portion of the site for any project until it has submitted such data with respect thereto as HUD may require, and has obtained the approval of HUD of such action. The HA shall appeal any condemnation award if requested to do so by HUD.

(D) The HA shall acquire good and valid title to the site of each project free and clear of any mortgage, lease, lien, or encumbrance of any nature whatsoever, other than such leases, use restrictions, zoning ordinances, building restrictions, easements, or rights-of-way as will not, in the determination of the HA approved by HUD, adversely affect the value or usefulness of such site for the project.

(E) Upon the vesting of title to the site of each project in the HA and the due recording of deeds or other documents required to be recorded in order to protect such title, the HA shall furnish to HUD a final report on completed land acquisition, together with two copies of: (1) title insurance policies; or (2) title certificates; or (3) attorneys' opinions, showing that the HA has good and valid title, as described in subsection (D) hereof, to the entire site of such project, and that such deeds or other documents have been duly recorded or filed for record wherever necessary to protect such title.

## **Section 2 - Architectural and Engineering Services.**

The HA shall furnish HUD, at such time(s) as HUD may require, and in any event prior to the release of any document for the taking of bids, evidence satisfactory to HUD, showing that the plans, drawings, specifications, and related documents are in accordance with the provisions of this ACC and with all applicable laws, ordinances, and regulations, except to the extent that valid waivers have been obtained from the appropriate authorities. The HA shall obtain all necessary permits or approvals of State and local housing, planning, zoning, building, and other boards, bodies, or officers having jurisdiction, and shall furnish to HUD a certificate listing such

approvals before any Main Construction Contract is let.

### **Section 3 - Main Construction Contract and Other Contracts.**

(A) "Main Construction Work" for any project shall mean all physical construction work, materials, and equipment in connection with such project except demolition, lawns and planting, and the furnishing of movable equipment. "Main Construction Contract" shall mean any contract covering all or any part of the Main Construction Work. "Construction or Equipment Contract" shall mean any contract covering all or any part of the Main Construction Work, or covering demolition, lawn and planting, or the furnishing of movable equipment.

(B) Unless otherwise required by applicable State laws, the Main Construction Work for each project shall be performed under one contract, except that HUD, upon submission of evidence satisfactory to it that such action is in the best interest of the development of the project, may approve: (1) separate contracts for foundations or for any or all elements of site improvements, to be entered into prior to the execution of contracts for the remainder of the Main Construction Work; (2) separate contracts for any or all of the mechanical trades, to be entered into at the same time as the contracts for the remainder of the Main Construction Work; or (3) separate contracts for specific buildings or groups of buildings to be developed concurrently or consecutively.

(C) Demolition, lawns and planting, and the furnishing of movable equipment may be performed under separate contracts or may be included in the same contract(s) as the Main Construction Work.

(D) All Main Construction Work and demolition, lawns and planting, and the furnishing of movable equipment shall be performed under lump-sum contracts, and no part of such work shall, unless approved in advance by HUD, be performed by force account.

### **Section 4 - Taking of Bids.**

(A) The HA shall not request alternate bids (e.g., two different structural systems). Instead, the HA may specify the most expensive system as the base bid and list deductive alternates in inverse priority order so that in the case of a budget overrun, they may be taken in numerical order as listed until the award can be made within available funds.

(B) Each bidder for any of the Construction or Equipment Contracts (except demolition contracts) shall, unless HUD otherwise approves, be required to furnish a bid bond or equivalent guarantee in accordance with requirements set forth in Title 24 of the Code of Federal Regulations. Bidders for demolition contracts shall, unless HUD otherwise approves, be required to furnish a bid bond or equivalent guarantee in an amount not less than ten percent of the cost of labor, materials, hauling, and all other incidental expenses, as estimated by the HA, necessary

to perform the work under the demolition contract, without regard to the value of salvage.

**Section 5 - Liquidated Damages.**

Each Construction or Equipment Contract shall include provisions, in form and substance satisfactory to HUD, for liquidated damages in the event of delay in the performance of such Construction or Equipment Contract, unless HUD approves the omission of such provisions.

**Section 6 - Subcontracts and Assignments.**

(A) The HA shall ensure that no subcontractor proposed to carry out work under this ACC is subject to debarment, suspension, or is otherwise ineligible to participate in a Federal assistance program, pursuant to Title 24 of the Code of Federal Regulations.

(B) Each Construction or Equipment Contract shall provide that: (1) the contractor shall make no assignment thereof (other than an assignment of the monies due or to become due thereunder to a bank or financial institution) without the prior approval of the HA, which approval may be given only with respect to a responsible assignee who shall furnish performance and payment bonds in accordance with Title 24 of the Code of Federal Regulations; and (2) such Construction or Equipment Contract may be assigned by the HA to any corporation, agency, or instrumentality authorized to accept such assignment.

**Section 7 - Prevailing Salaries or Wages During Development.**

(A) Each contract entered into by the HA in connection with the development of any project under which any architects, technical engineers, or technicians are employed shall provide that the HA will not make any payment under such contract unless and until the HA has received a signed statement from the contractor that such contractor and each of his or her subcontractors has made payment to each class of employees in compliance with the applicable prevailing wages, as set forth in Title 24 of the Code of Federal Regulations. The HA shall not make any such payment unless and until it has received such signed statement.

(B) Each contract referred to in subsection (A) entered into by the HA shall require that if the contractor or any of his or her subcontractors finds it necessary or desirable to exceed the prevailing salary or wage rates specified in his or her contract, any expense incurred by the contractor or subcontractors 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 the contract. The HA shall not consider or allow any claim for additional compensation made by the contractor or subcontractors because of such payments.

**Section 8 - Copeland Act; Contract Work Hours Standards Act.**

(A) The HA shall incorporate in each contract entered into by it in connection with the construction, prosecution, completion or repair of the projects the following:

"Compliance with Copeland Regulations. The contractor shall comply with the Copeland Regulations (29 CFR Part 3, or any successor provision) of the Secretary of Labor which are herein incorporated by reference."

(B) The HA shall incorporate in each contract entered into by it that may require the employment of laborers or mechanics the following:

**"Contract Work Hours Standards Act - Overtime Compensation.**

As used in these paragraphs, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work that may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he or she 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 his or her 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.

(2) Violations; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subsection (B)(1), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his or her unpaid wages. In addition, such contractor 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 subsection (B)(1), 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 forty hours without payment of the overtime wages required by the clause set forth in subsection (B)(1).

(3) Withholding for liquidated damages. The HA may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for

liquidated damages as provided in the clause set forth in subsection (B)(2).

(4) **Subcontracts.** The contractor shall insert in any subcontracts the clauses set forth in subsections (B)(1), (2), and (3) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts that they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

#### **Section 9 - Wage Claims and Adjustments.**

Each contract entered into by the HA shall provide that in cases of underpayment of salaries or wages to any architects, technical engineers, draftsmen, technicians, laborers, or mechanics by the contractor or any of his subcontractors, the HA may withhold from such contractor 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 shall further provide that the amounts withheld may be disbursed by the HA for and on account of the contractor or the subcontractor to the respective employees to whom they are due. The HA shall in cases of such underpayment withhold such monies and any amounts of liquidated damages due the United States in connection with violations of overtime compensation requirements of the Contract Work Hours Standards Act: provided, That the HA shall not be considered in default under this sentence if it has in good faith made payments to the contractor in reliance upon a signed statement of the contractor that the salaries and wages required under this contract have actually been paid.

#### **Section 10 - Payrolls and Related Reports.**

(A) Each contract identified in subsection (A) of section 7 of this Attachment V shall also require that payrolls and basic records relating thereto will be maintained during the course of the work and preserved by the contractor and his or her 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, his or her 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, or any successor provision), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under the Contract Work Hours and Safety Standards Act 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 (or any successor provision), the contractor shall maintain records that 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 that show the costs anticipated or the actual cost incurred in



providing such benefits.

(B) The contractor shall be required to submit weekly to the HA such copies and summaries (on forms prescribed by HUD and furnished by the HA) of all of his or her payrolls and those of each of his or her subcontractors, as the HA or HUD may require. Each such payroll and summary shall be accompanied by a statement signed by the employer or his or her agent indicating that: (1) such payroll is 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. The contractor shall be required to make his or her employment records available for inspection by authorized representatives of the HA, HUD, and the Department of Labor and to permit such representatives to interview employees during working hours on the job.

#### **Section 11 - Other Labor Provisions.**

(A) All disputes concerning the payment of prevailing wage rates or classifications arising under this ACC or under any contract entered into by the HA involving: (1) significant sums of money; (2) large groups of employees; or (3) novel or unusual situations, shall be promptly reported 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. Each contract entered into by the HA shall embody the provisions of this paragraph.

(B) All questions arising under this ACC or under any contract relating to the application or interpretation of the Copeland Act or the Contract Work Hours Standards Act shall be referred to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final. Each contract entered into by the HA shall embody the provisions of this subsection.

#### **Section 12 - Retention of Contract Rights and Change Orders.**

(A) With respect to all contracts entered into by the HA in connection with the development of any project, the HA: (1) except in an emergency endangering life or property, shall not, without HUD approval, amend, modify, or consent to any change in any such contract or contractual provision that is required by this ACC to be approved by HUD; (2) shall at all times retain, preserve, and enforce all its rights under all such contracts; and (3) shall not, without the prior approval of HUD, waive, release, or compromise any right or claim that it may have under any such contract.

(B) Each Construction or Equipment Contract shall contain the following provision:

"Except in any emergency endangering life or property, no change shall be made by the contractor unless he or she has received a prior written order from HUD approved on its face by HUD authorizing the change, and no claim for an adjustment of the contract price

or time shall be valid unless so ordered."

**Section 13 - Payment to Contractors.**

(A) Each Construction or Equipment contract may provide for partial payments by the HA to the contractor. In such event, the Construction or Equipment Contract shall provide that the contractor shall supply to the HA, in a form satisfactory to HUD, a detailed estimate showing a complete breakdown of the contract price. Partial payment shall be made in accordance with periodic estimates based upon said detailed breakdown and with appropriate supporting data. The periodic estimates shall cover work performed (including materials delivered to and properly stored on the site with the approval of the HA) during the preceding period, and shall be duly certified and approved by persons designated by the HA. In making periodic partial payments, the HA shall retain at least 10 percent of the amount of each periodic estimate until final completion and acceptance of all work covered by the particular contract: Provided, That after one-half of the work has been completed, and if the work is progressing satisfactorily and continues to so progress, the HA may make the remaining partial payments in full for the work subsequently completed.

(B) Each Construction or Equipment Contract shall provide that final payment to the contractor by the HA of amounts retained under subsection (A) shall not be made until: (1) the contractor has furnished a release, in a form approved by HUD, of all claims against the HA arising under and by virtue of such Construction or Equipment Contract, or other than such claims, if any (the basis, scope, and amount of each of which are clearly defined and stated) as may be specifically excepted by the contractor from the operation of such release; and (2) the contractor has furnished evidence satisfactory to the HA that the contractor has paid, and that his or her subcontractors have paid, all sums due to laborers, mechanics, and materialmen.

**Section 14 - Acceptance of Contract Work and Completion of Contracts.**

(A) Each Construction or Equipment Contract shall require that the work covered thereby shall be completed within the time specified therein and such extensions as may be granted by the HA. The HA shall grant no such extension without approval thereof by HUD.

(B) With respect to each Construction or Equipment Contract, the HA may accept the work thereunder in parts or in its entirety. Such acceptance may be acceptance of the work involved either as: (1) fully complete and satisfactory; or (2) completed but with an adjustment in price for noncompliances; or (3) completed subject to the correction of specific minor items. No work shall be so accepted by the HA unless such acceptance is approved by HUD, or HUD has waived such approval: provided, That the HA may accept work required in the correction of specific minor items without the approval of HUD.

(C) After acceptance of all work (including the correction of any specific minor items) under

each Construction or Equipment Contract, the HA shall submit for approval by HUD a certificate of: (1) full completion; or (2) full completion but with an adjustment in price for noncompliances, and shall include in such certificate a statement of the final amount due and payable to the contractor.

#### **Section 15 - Development Cost.**

(A) "Date of Full Availability" with respect to each project shall mean the last day of the month in which substantially all dwelling units in such project became available for occupancy.

(B) "Initial Operating Deficit" of any project as of the end of the Initial Operating Period thereof shall mean the amount, if any, by which the Operating Expenditures thereof to such date exceeded the Operating Receipts.

#### **Section 16 - Development Cost Budgets.**

(A) Until such time as a budget of Development Cost (herein called "Development Cost Budget") is approved by HUD for any project, the breakdown of the Maximum Development Cost set forth in the applicable Development Program shall constitute the approved Development Cost Budget for such project.

(B) At the time the HA requests HUD approval of the award of contracts for the Main Construction Work of any project, it shall submit for HUD approval a Development Cost Budget for such project that shall be based upon: (1) the amount of the proposed award(s); (2) costs and obligations incurred to such date; (3) the estimated amount of costs and obligations not yet incurred; and (4) an allowance for contingencies in such amount as HUD may approve.

(C) In the event that in the judgment of the HA it appears necessary with respect to any project to incur Development Cost in excess of the total amount shown in the last previously approved Development Cost Budget for such project, or that it appears necessary with respect to any of the main classifications of Development Cost to incur costs in excess of the amount shown therefor in the last previously approved Development Cost Budget for such project plus the share of the allowance for contingencies allocated to such main classifications, or if for any other reason the HA deems it advisable, it may prepare and submit to HUD for its approval a revised Development Cost Budget for such project.

(D) Not earlier than six months nor later than twenty-four months after the Date of Full Availability of each project, the HA shall submit for HUD approval a final Development Cost Budget for such project which shall be based upon: (1) costs and obligations incurred to such date including a reasonable allowance for disputed, contingent, or unliquidated liabilities, and for legal and other costs and expenses in connection with the settlement of such liabilities; and (2) the estimated amount of costs and obligations not yet incurred for work, equipment, and

services deemed necessary for the completion of such project. No other allowance for contingencies shall be included in such final Development Cost Budget.

(E) HUD shall promptly review each proposed Development Cost Budget and notify the HA of its approval or disapproval thereof. If HUD disapproves any proposed Development Cost Budget, the HA shall be so notified in writing and be furnished with a detailed explanation of the reasons for such disapproval. Upon approval by HUD of any Development Cost Budget for any project, such budget shall supersede all previously approved budgets for such project, and the total of such budget shall thereafter and for all purposes of this ACC be the Maximum Development Cost of such project, and shall for all purposes of this ACC correspondingly revise the aggregate Maximum Development Cost of all the projects.

(F) The HA shall not with respect to any project incur costs in excess of the amounts shown in the last previously approved Development Cost budget for such controlled accounts as may be specified by HUD.

#### **Section 17 - Actual Development Cost.**

(A) The HA shall, as promptly as possible consistent with the maintenance of its rights against its contractors, settle and pay all disputed, contingent, or unliquidated items of Development Cost on all projects.

(B) Whenever the HA shall be satisfied that all the development work on each project has been properly completed, and that the entire Development Cost on such project (including all items that may have theretofore been disputed, contingent, or unliquidated) has been fully paid, the HA shall submit to HUD for its approval a certificate setting forth the total amount of the Development Cost of such project (herein called the "Actual Development Cost"), stating that: (1) all such development work has been completed; (2) the entire Development Cost or liabilities therefor incurred by the HA have been fully paid; (3) there are no undischarged mechanics', laborers', contractors', or material-men's liens on such project on file in any public office where the same should be filed in order to be valid liens against such project; and (4) the time in which such liens could be filed has expired. Upon approval by HUD, such certificate shall be known as the "Actual Development Cost Certificate." The determination of the amount of the Actual Development Cost contained in such Actual Development Cost Certificate so approved by HUD shall be final and conclusive for all purposes of this ACC, and upon the determination of Actual Development Cost, a copy of the approved Actual Development Cost Certificate shall be attached to this ACC and shall be deemed to further amend the ACC to state the Actual Development Cost.

(C) If the HA shall unduly delay in the submission of the Actual Development Cost Certificate for any project, HUD may give notice to the HA that the amount of the Development Cost of such project incurred to the date of such notice shall be considered to be the Actual Development

Cost of such project, and such notice shall constitute the Actual Development Cost Certificate for such project for all the purposes of this ACC, and shall be deemed to amend the ACC to state the Actual Development Cost.

(D) Promptly after the issuance of the Actual Development Cost Certificate for any project the HA shall: (1) if such project is then permanently financed, deposit any remaining balance of the monies theretofore received for the purpose of the development of such project in the Advance Amortization Fund; or (2) if such project is not then permanently financed, apply any such remaining balance to the payment of outstanding Advance Notes or Temporary Notes issued in connection with such project.

(E) Subsequent to the issuance of the Actual Development Cost Certificate for any project, no cost for additional development work shall be incurred by the HA without the approval of HUD. In the event that the HA and HUD agree that additional development work is necessary, the Actual Development Cost Certificate shall be amended to include the cost of such additional development work.

## ATTACHMENT VI

### Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank

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<b>Section</b>		<b>Page</b>
Section 1	Reconstruction and Restoration.	VI-1
Section 2	Advances by HUD; Mortgage.	VI-2
Section 3	Bond Resolutions and Fiscal Agent.	VI-2
Section 4	Delivery of Bonds.	VI-3
Section 5	Annual Contributions.	VI-4
Section 6	Debt Service Fund.	VI-7
Section 7	Advance Amortization Fund.	VI-8
Section 8	General Limitations on Annual Contributions.	VI-9
Section 9	Pledge of Annual Contributions.	VI-9
Section 10	Refunding of Bonds.	VI-10
Section 11	Faith of the United States Pledged to Payment of Annual Contributions.	VI-10
Section 12	Continuance of Annual Contributions.	VI-11
Section 13	Rights and Obligations of HUD During Tenure Under Section 18, Part A, of the ACC.	VI-11

This attachment lists special requirements applicable to projects financed by tax-exempt bonds or notes sold to the Federal Financing Bank. These requirements shall expire when all such bonds and notes associated with a particular project are paid off.

#### **Section 1 - Reconstruction and Restoration.**

(A) If a project, or any portion of a project, is damaged or destroyed, the HA shall establish promptly (by settlement approved by the HA and HUD, or by litigation) and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. In addition, the HA shall reconstruct, restore or repair the project, except as otherwise provided in this section.

(B) The HA shall deposit into the General Fund the proceeds of any claims and any other monies provided for the reconstruction, restoration, or repair of a project and shall reserve such funds for these purpose(s). Unless otherwise approved by HUD, the HA shall use these funds to pay for the cost of reconstructing, restoring, or repairing the project. Any funds that remain after completing the work and paying off all costs associated with the work are to be applied as follows: (1) to pay off any indebtedness that the HA may have incurred to provide such funds; (2) to reimburse any other reserve or other account that may have been used to provide the funds; and (3) as unreserved Operating Receipts.

(C) If the reconstruction, restoration, or repair of the project can be accomplished substantially as one operation, is not to be performed by the HA's regular staff, and the estimated cost is in excess of \$10,000, the HA shall ensure that the work is done in compliance with the requirements of section 5, Part A, of the ACC.

(D) Upon approval by HUD, the HA may determine that all or part of the damage to or destruction of a project shall not be reconstructed, restored, or repaired. In such event, the HA shall deposit into the Advance Amortization Fund the proceeds of any claims against insurers or others as a result of the damage or destruction, to the extent these proceeds are not used to reconstruct, restore, or repair the project.

## **Section 2 - Advances by HUD; Mortgage.**

(A) Each advance provided by HUD to a HA for the development of a project shall be evidenced by an obligation duly issued and delivered by the HA, in a form satisfactory to HUD, which obligation shall bear interest at the applicable Loan Interest Rate from the date the advance is made, and shall otherwise conform to the following:

(1) Each obligation (herein called a "Project Loan Note") evidencing an advance made for the Development Cost of any project not permanently financed, together with interest on such note, shall be due and payable on demand.

(2) Each obligation (herein called a "Permanent Note"), evidencing an advance made for the development cost of any permanently financed project, together with interest on the Note, shall (subject to the HA's right to prepay some or all of this amount) be payable on the first day of the month following each Annual Contribution Date. Such amount is payable in annual installments (applicable first to interest and then to principal) equal to the portion of the Debt Service Annual Contribution allocable to the Note, in accordance with section 5(C) of this Attachment. Each Permanent Note issued to refund or renew other Permanent Notes, in whole or in part, shall be payable in installments equal to the installments payable upon the Notes so refunded or renewed. Each Permanent Note shall further provide that the holder of the Note may declare the Note to be due and payable in full at any time: (1) when there is any default in the payment of any installment of principal or interest; or (2) when the HA is in substantial

default; or (3) upon the termination of this ACC.

(B) HUD shall not demand payment of, nor pledge, sell, or otherwise dispose of any Project Loan Note unless: (1) the HA is in substantial default; or (2) HUD has given notice of the termination of this ACC in accordance with section 17(H), Part A, of this ACC.

(C) Each Project Loan Note or Permanent Note issued in connection with a project shall be secured, to the extent authorized or permitted by law, by a mortgage, deed of trust, or other equivalent lien upon the project.

### **Section 3 - Bond Resolutions and Fiscal Agent.**

(A) Before the delivery of the first issue of bonds, the HA shall enter into, and thereafter maintain, a fiscal agency agreement, in substantially the form prescribed by HUD. Immediately upon executing the agreement, the HA shall furnish HUD with executed or conformed copies of the agreement as may be required by HUD.

(B) The Fiscal Agent named in the Bond Resolutions in connection with the first issue of Bonds shall also be named as Fiscal Agent in all subsequent Bond Resolutions, and shall administer the Debt Service Fund and the Advance Amortization Fund. The HA shall require the Fiscal Agent to furnish HUD with such reports and other data relating to accounts under this ACC as may reasonably be required by HUD.

### **Section 4 - Delivery of Bonds.**

(A) Delivery of (including payment for) each issue of Bonds shall be made at the time and place established in the terms of the offering.

(B) At such time all amounts paid by purchasers of the bonds on account of accrued interest shall be paid to the Fiscal Agent for deposit in the Debt Service Fund, and all amounts paid on account of premiums shall be paid to the Fiscal Agent for deposit in the Advance Amortization Fund or, with the approval of HUD, be used for the repurchase of bonds.

(C) At such time, and as a condition precedent to the delivery of such bonds, the HA shall deposit or cause to be deposited with the Fiscal Agent in the Debt Service Fund from the bond proceeds (or from any other monies of the HA, including monies available for such purpose under section 5(C)(6) of this Attachment) an amount equal to: (1) the interest on the issue of bonds becoming due and payable six months after the Bond Date of such issue, less (2) any portion thereof deposited in the Debt Service Fund on account of accrued interest, and less (3) any amount which may then be on deposit in the Debt Service Fund for such purpose.



(D) At such time, and as a condition precedent to the delivery of such bonds, the HA shall advance or cause to be advanced from the bond proceeds (or from any other monies of the HA) to the Fiscal Agent for deposit in the Debt Service Fund an amount equal to: (1) the interest on such issue of Bonds becoming due and payable twelve months after the Bond Date of such issue, less (2) any portion thereof deposited in the Debt Service Fund on account of accrued interest. At a later date, the HA shall be reimbursed by the Fiscal Agent for such advance in accordance with section 6(E) of this Attachment.

(E) At such time the HA shall pay or cause to be paid from the bond proceeds (or from other monies of the HA) the principal of and interest on all outstanding Project Loan Notes, Permanent Notes, and Project Notes to the extent that the principal of such Notes includes an amount for any part of the Development Cost financed by such issue of Bonds.

(F) Upon delivery of the first issue of Bonds to finance any part of the Development Cost of a Project, such Project shall be considered to be "Permanently Financed."

(G) If, at the time of the delivery of an issue of Bonds, the HA does not have available the amount set forth in subsection (D) of this section to advance to the Fiscal Agent for deposit in the Debt Service Fund, HUD shall advance on account of the loan herein provided an amount equal to such deficiency. Such advance shall be made and deposited in the manner described in subsection (D) of this section, but shall not be included in the amount of the Minimum Development Cost of any project. The Fiscal Agent shall, on behalf of the HA, reimburse HUD for such advance at the time and in the manner provided for reimbursement of similar advances to the HA, in accordance with section 6(E) of this Attachment. Such advance shall bear interest at the Loan Interest Rate and the interest shall be paid from Operating Receipts as an Operating Expenditure.

#### **Section 5 - Annual Contributions.**

(A) HUD shall make annual contributions to the HA for each project. Such annual contributions shall include Debt Service Annual Contributions (or Basic Annual Contributions in respect to Leased Housing projects) and Additional Annual Contributions pursuant to section 11, Part A, of the ACC. HUD (1) shall make Debt Service Annual Contributions to the HA for each permanently financed project; and (2) may, in its determination, make Debt Service Annual Contributions to the HA for each project that is not permanently financed. The date upon which each Debt Service Annual Contribution is payable (except the first Debt Service Annual Contribution with respect to a project not permanently financed, which may be made available as of the Date of Full Availability of such project) shall be known as the "Annual Contribution Date." If the Annual Contribution Date is not specifically set forth in this ACC, it shall be deemed to be the fifteenth day of the fourth, fifth or sixth month of the fiscal year, as determined by HUD.

(B) The first Debt Service Annual Contribution with respect to each permanently financed project shall be due and payable on the Annual Contribution Date which is seventeen months and fourteen days after the Bond Date of the first issue of bonds issued to finance any part of the development cost of the project. For projects that are not permanently financed, the first Debt Service Annual Contribution may be made available as of the Date of Full Availability of the project and shall be determined in accordance with subsection (C)(1)(d) of this section 5. If the first Debt Service Annual Contribution for a project is made available as of the Date of Full Availability of the project, the second Debt Service Annual Contribution with respect to the project may be made on the Annual Contribution Date that occurs not less than twelve months subsequent to the Date of Full Availability. Subsequent annual contributions shall be due and payable on each Annual Contribution Date thereafter.

C) On each Annual Contribution Date, HUD shall pay (subject to reduction as provided in this section 5) Debt Service Annual Contributions for each project for which any Debt Service Annual Contributions are then payable.

(1) The amount of the Debt Service Annual Contribution shall be equal to the sum of the level debt services of all unmatured issues of bonds, bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date, as specified in the applicable Bond Resolution, plus an amount or amounts allocable to Permanent (or Project Loan Notes, as follows:

(a) For each project that is permanently financed by an issue of bonds equal to the minimum development cost first established for the project, an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of the minimum development cost of the project which exceeded as of the last day of such fiscal year the principal amount of such issue of bonds would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for such project; and

(b) For each project that is permanently financed by an issue of bonds in an amount less than the amount of the minimum development cost first established for the project, an amount equal to (i) the applicable minimum loan interest rate times the amount by which the minimum development cost as first established for the project exceeds the principal amount of such issue of bonds, plus (ii) an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the portion of the minimum development cost of the project which exceeds, as of the last day of the fiscal year, the minimum development cost as first established for the project would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project; and (iii) commencing on the Annual Contribution Date next following

the last maturity date of such issue of bonds, the amount of the level debt service of such issue of bonds; and

(c) For each project that is financed by a permanent note in lieu of bonds, an amount, as determined by HUD, which, if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of the minimum development cost of the project that exceeded (as of the last day of such fiscal year) the minimum development cost as first established for the project would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project; and

(d) For each project that is not permanently financed, an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of that figure determined by HUD to be that below which the development cost of the project shall in no event fall would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project.

Upon delivery of any issue of bonds to refund Permanent or Project Loan Notes, the amount of the level debt service of such issue of bonds shall be in lieu of the portion of the Debt Service Annual Contribution allocable to such Notes whether pursuant to clause (a), (b), (c), or (d) above.

(2) On each Annual Contribution Date, the actual amount of the Debt Service Annual Contribution to be paid (herein called the "Accruing Annual Contribution") shall be an amount equal to the Debt Service Annual Contribution less (1) the amount then on deposit in the Debt Service Fund for the reduction of annual contributions pursuant to subsection (B) of section 6 of this Attachment, and (2) any amount then on deposit in the Debt Service Fund, pursuant to subsection (B) of section 4 of this Attachment, on account of interest accrued on any issue of Bonds after a date that is six months after the Bond Date of such issue.

(3) Notwithstanding any other provision of this ACC, HUD may make payment of any Accruing Annual Contribution in semi-annual installments as follows: (a) the first installment shall be paid on the Annual Contribution Date in the amount, if any, by which (i) the Accruing Annual Contribution exceeds (ii) the amount of principal and interest that shall become due and payable on the next following anniversary of the Bond Date on all bonds outstanding at the end of the preceding fiscal year and that bears a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date; (b) the balance of such Accruing Annual Contribution shall be paid on the date six months after such Annual Contribution Date.

(4) At least thirty days prior to each Annual Contribution Date, the Fiscal Agent shall file with HUD a report showing the amount of each deposit made into the Debt Service Fund since the

next preceding Annual Contribution Date and the balance in the Debt Service Fund as of the date of such report.

(5) Except as otherwise provided in subsections (C)(6) and (7) of this section 5, HUD shall pay each Accruing Annual Contribution, or installment thereof, to the Fiscal Agent for deposit in the Debt Service Fund. At the time of such payment, HUD shall furnish to the HA and to the Fiscal Agent a statement showing (in detail and with appropriate explanations) the amount of the Accruing Annual Contribution, and the method by which the Accruing Annual Contribution shall be paid. Each such statement shall include a schedule showing, on the basis of information available to HUD, the distribution of the funds in the Debt Service Fund to be made pursuant to section 6 of this Attachment.

(6) On each Annual Contribution Date on which any Permanent, Project Loan, or Project Notes issued in connection with any project with respect to which an annual contribution is then payable remain outstanding and until full repayment, with interest at the applicable Loan Interest Rate, of all expenditures, if any, made by HUD in connection with any such Project pursuant to section 13 of this Attachment, such portion of the Accruing Annual Contribution, which if deposited in the Debt Service Fund would (together with the monies then on deposit in said Fund for the reduction of annual contributions pursuant to this ACC plus the amount of the second installment, if any, of such Accruing Annual Contribution) exceed the sum of: (a) an amount equal to the principal and interest becoming due and payable during the twelve month period following such Annual Contribution Date on each issue of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date, plus (b) an amount equal to the aggregate Bond Service Carry-Over required to be on deposit in the Debt Service Fund on the next succeeding Annual Contribution Date, may be withheld by HUD, and applied to the full extent thereof. Such amount shall be applied, first, to reimburse the HA for any advance made pursuant to section 4(D) of this Attachment. Thereafter, such amounts shall be used pay the interest and principal of such Notes and to repay such expenditures in proportion, with respect to each such project, to the applicable portion of the Debt Service Annual Contribution determined pursuant to clauses (a), (b), (c), or (d) of section 5(C)(1) of this Attachment. However, any amounts that would otherwise be applied to the payment of principal under the second order of preference may be withheld for not more than twelve months and be used for the payment of interest on any bonds that may be subsequently issued to refund such Notes and expenditures.

(7) When monies sufficient for the payment and discharge of all bonds have been deposited in trust for such purpose with the Fiscal Agent, Accruing Annual Contributions, and monies otherwise payable to the Debt Service Fund shall be applied, as approved by HUD, to the payment of the Notes and expenditures and in the proportions as prescribed in subsection (C)(6) of this section 5. Monies so applied by the HA during the twelve month period preceding each Annual Contribution Date which, except for the provisions of this subsection (C)(7), would have been on deposit on such Annual Contribution Date in the Debt Service Fund for the reduction

of annual contributions, shall be deemed to have been on deposit in the Debt Service Fund on such Annual Contribution Date for the purpose of subsection (2) of this section 5(C).

(8) HUD shall not pay or make available any Accruing Annual Contribution pursuant to this ACC in excess of an amount which, together with all monies then on deposit in the Debt Service Fund, shall be sufficient to fully pay and retire the outstanding Bonds, Permanent Notes, Project Loan Notes, and Project Notes issued in connection with all projects for which annual contributions become payable and to repay, with interest at the applicable Loan Interest Rate, all expenditures made by HUD in connection with the development of such projects pursuant to section 13 of this Attachment. The obligation of HUD to pay or make available Debt Service Annual Contributions pursuant to this ACC with respect to any such project shall terminate when: (a) all such Bonds and Notes issued in connection with the project have been fully paid and retired, or when monies sufficient for their payment and retirement have been deposited in trust for such purpose in accordance with the terms of such bonds and notes; and (b) all such expenditures, with interest thereon, by HUD in (connection with such project are fully repaid.

#### **Section 6 - Debt Service Fund.**

(A) Upon the delivery of any issue of bonds, there shall be deposited in the Debt Service Fund the amounts required pursuant to subsections (B), (C), and (D) of section 4 of this Attachment.

(B) Within sixty calendar days after the end of each fiscal year, the HA shall deposit with HUD for the reduction of debt service annual contributions:

(1) The amount of the interest on each issue of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to the Annual Contribution Date next following the end of such fiscal year, which accrued during such fiscal year after (i) the date that is six months after the Bond Date of each such issue of Bonds; or (ii) the date of delivery of such issue, whichever is later, up to (i) the Date of Full Availability of the project financed by such issue or (ii) the end of such fiscal year, whichever is earlier; and

(2) The amount of any unpaid interest, on Permanent Notes and Project Notes issued in connection with any project that was permanently financed on or before the last day of such fiscal year by an issue of Bonds bearing a Bond Date not later than seventeen months and fourteen days prior to the Annual Contribution Date next following the end of such fiscal year, up to (i) the Date of Full Availability of such project or (ii) the end of such fiscal year, whichever is earlier.

(C) Upon receipt from HUD of each Accruing Annual Contribution or installment thereof, such amount shall be deposited in the Debt Service Fund.

(D) On each interest payment date of the bonds, the Fiscal Agent shall, out of the Debt Service Fund, pay the principal and interest maturing on the bonds.

(E) On the first day of the month following each Annual Contribution Date the Fiscal Agent shall, out of the Debt Service Fund, reimburse the HA for any advance made pursuant to subsection (D) of section 4 of this Attachment on account of interest on issues of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date.

(F) On the first day of the month following each Annual Contribution Date, the Fiscal Agent, after (1) paying all bonds and bond interest that have then become due and payable, or that will become due and payable on the next succeeding anniversary of the Bond Date, (2) making provision for the Bond Service Carry-Over, shall, unless otherwise approved by HUD, apply the balance in the Debt Service Fund in the following order: First, to the payment of interest and principal of the notes and repayment of the expenditures in the same manner, and to the same extent as prescribed in subsection (C)(7) of section 5 of this Attachment; and, Second, to transfer to the Advance Amortization Fund. In making provision for the payment of the bonds and bond interest that shall become due on the next succeeding anniversary of the Bond Date and for the Bond Service Carry-over, the Fiscal Agent shall consider the second installment, if any, of the Accruing Annual Contribution as if it had actually been paid on the Annual Contribution Date.

#### **Section 7 - Advance Amortization Fund.**

(A) There shall be deposited in the Advance Amortization Fund the following: (1) bond premiums as provided in subsection (B) of section 4 of this Attachment; (2) amounts transferred from the Debt Service Fund, as provided in subsection (F) of section 6 of this Attachment, and (3) proceeds of claims against insurers and others arising out of damage to or destruction of any project to the extent provided in subsection (D) of section 1 of this Attachment.

(B) The Fiscal Agent shall as rapidly as possible apply all monies deposited in the Advance Amortization Fund, as directed by the HA with the approval of HUD: (1) to the payment of interest of the notes and the repayment of expenditures in the same manner and to the same extent as prescribed in subsection (C)(7) of section 5 of this Attachment; (2) to the purchase, at not more than the cost of redemption, of any outstanding bonds; and (3) to the redemption of any outstanding bonds on the terms provided in the Bond Resolutions. All bonds purchased or redeemed by or on behalf of the HA shall be immediately cancelled and shall not be reissued.

(C) In the event that, sixty-one days after the end of any fiscal year, it appears that the balance then on deposit in the Advance Amortization Fund, together with all monies then on deposit in the Debt Service Fund together with a Debt Service Annual Contribution, would be sufficient to fully pay and retire the outstanding bonds, permanent notes, project loan notes, and project

notes issued in connection with projects for which annual contributions have then become payable and to repay, with interest at the applicable Loan Interest Rate, all expenditures made by HUD in connection with the development of such projects pursuant to section 13 of this Attachment, the Fiscal Agent shall on such date deposit in the Debt Service Fund for the reduction of annual contributions the balance then remaining in the Advance Amortization Fund, and any deposits that would, except for this subsection (C), be made to the Advance Amortization Fund shall be made to the Debt Service Fund for the reduction of annual contributions.

**Section 8 - General Limitations on Annual Contributions.**

(A) Notwithstanding any other provision of this ACC, not more than one annual contribution for each year of the Maximum Contribution Period of any project shall be paid or made available by HUD for such project; nor shall any such annual contribution be paid or made available for any such project subsequent to the end of the Maximum Contribution Period of such project.

(B) No annual contribution shall be paid or made available by HUD for any project (except as provided in section 12 of this Attachment) unless such project is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political supervision.

(C) No annual contributions shall be paid or made available by HUD for any project (except as provided in section 12 of this Attachment) in the event of the acquisition of such project by a third party in any manner including a bona fide foreclosure under a mortgage or other lien.

**Section 9 - Pledge of Annual Contributions.**

(A) The amounts required by subsections (B), (C), and (D) of section 4 of this Attachment to be deposited in the Debt Service Fund upon delivery of each issue of Bonds on account of the interest on such issues of bonds that becomes due and payable six months and twelve months, respectively, from the Bond Date of such issue shall be pledged to the payment of such interest.

(B) The Accruing Annual Contribution that is due and payable on each Annual Contribution Date (including the second installment thereof if any) together with (1) the aggregate Bond Service Carry-Over, if any, required to be on deposit in the Debt Service Fund on such Annual Contribution Date, and (2) all other amounts required to be deposited in the Debt Service Fund for the reduction of annual contributions during the twelve month period ending with such Annual Contribution Date, shall be pledged as follows:

(1) An amount equal to the principal and interest becoming due and payable during the twelve month period following such Annual Contribution Date on each issue of Bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual

Contribution Date shall be pledged for the payment of such principal and interest;

(2) An amount equal to the aggregate Bond Service Carry-Over required to be on deposit in the Debt Service Fund on the next succeeding Annual Contribution Date shall be pledged for the purpose of providing such Carry-Over; and

(3) An amount equal to the sum of the portions of the Debt Service Annual Contributions as determined pursuant to clauses (a), (b), (c), and (d) of section 5(C)(1) of this Attachment shall be pledged for the payment of the interest and principal of the Permanent Notes, Project Loan Notes and Project Notes and repayment of expenditures made by HUD pursuant to section 13 of this Attachment in connection with Projects with respect to which annual contributions have become payable.

(C) The annual contributions to be made available by HUD hereunder shall not, without the approval of HUD, be pledged for any purpose other than as specifically provided in this ACC.

#### **Section 10 - Refunding of Bonds.**

The HA may, with the approval of HUD, refund any outstanding issue of Bonds upon such terms and conditions as may be mutually agreed upon between the HA and HUD.

#### **Section 11 - Faith of the United States Pledged to Payment of Annual Contributions.**

As set forth in the Act, the faith of the United States is solemnly pledged to the payment of all annual contributions contracted for in this ACC, and by the provisions of the Act there is authorized to be appropriated in each Federal fiscal year, out of any money in the Treasury of the United States not otherwise appropriated, the amounts necessary to provide for such payment.

#### **Section 12 - Continuance of Annual Contributions.**

(A) HUD hereby determines that sections 17 and 18, Part A, of the ACC include provisions that are in accordance with section 6(g)(2) of the Act.

(B) Whenever the annual contributions, pursuant to this ACC, have been pledged by the HA as security for the payment of the principal and interest on the Bonds or other obligations issued pursuant to this ACC, HUD (notwithstanding any other provisions of this ACC) shall continue to make the annual contributions provided in this ACC available for the projects so long as any of such Bonds or obligations remain outstanding; and, in any event, such annual contributions shall in each year be at least equal to an amount which, together with such income or other funds as are actually available from the projects for the purpose at the time such annual contribution



is made, shall suffice for the payment of all installments, falling due within the next succeeding twelve months, of principal and interest on the Bonds or other obligations for which the annual contributions provided for in this ACC have been pledged as security: ~~provided~~, That in no case shall such annual contributions be in excess of the maximum sum specified in this ACC, nor for longer than the remainder of the maximum period fixed by this ACC.

**Section 13 - Rights and Obligations of HUD During Tenure Under  
Section 18, Part A, of the ACC.**

Neither the conveyance of title to or the delivery of possession of the projects by the HA pursuant to section 18, Part A, of the ACC, nor the acceptance of such title or possession by HUD, shall abrogate or affect in any way any indebtedness of the HA to HUD arising under this ACC, and in no event shall any such conveyance or delivery or any such acceptance be deemed to constitute payment or cancellation of any such indebtedness.

# ATTACHMENT VII

## Insurance Requirements

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<b>Section</b>		<b>Page</b>
Section 1	Mandatory and Optional Insurance Coverage.	VII-1
Section 2	Authorized Insurance Companies.	VII-2
Section 3	Certificates of Insurance.	VII-2
Section 4	Waivers and Self-Insurance Funds.	VII-2

### **Section 1 - Mandatory and Optional Insurance Coverage.**

The following types of insurance are either required or should be purchased if the HA determines that exposure exists.

- (A) **Commercial Property.** Mandatory. Each policy must be written with a blanket limit, on a replacement cost basis, and with an agreed value clause eliminating any coinsurance provision.
- (B) **Commercial General Liability.** Mandatory.
- (C) **Workers Compensation and Employers Liability.** Mandatory.
- (D) **Owned and Non-Owned Automobile Liability.** Mandatory.
- (E) **Theft, Disappearance, and Destruction.** Mandatory only if the amount of cash and checks on hand at any one time exceeds the amount prescribed by HUD.
- (F) **Employee Dishonesty.** Mandatory.
- (G) **Boiler and Machinery.** Mandatory only if steam boilers have been installed. However, coverage is recommended if there is extensive central air conditioning, electrical transformers, or similar equipment.
- (H) **Flood.** Mandatory only for property located in a flood plain, as determined in the Federal Government's National Flood Insurance Program.

(I) **Directors and Officers or Public Officials Liability.** Optional coverage, but highly recommended.

(J) **Lead-Based Paint Liability.** Mandatory for HAs undergoing lead-based paint testing and abatement.

(K) **Law Enforcement Liability.** Optional, but highly recommended where the exposure exists, and the Commercial General Liability insurer has excluded coverage.

### **Section 2 - Authorized Insurance Companies.**

Insurance must be purchased from an insurance company or other entity that is licensed or duly authorized to write insurance in the State where the HA is located.

### **Section 3 - Certificates of Insurance.**

At each renewal, the HA shall promptly have certificates of insurance submitted by the insurers to HUD describing the types of coverage, limits of insurance, policy numbers, and inception and expiration dates.

### **Section 4 - Waivers and Self-Insurance Funds.**

Requests for waivers not to purchase any form of required insurance, or to establish a self-insurance fund in lieu of purchasing insurance, must be submitted to HUD for approval with a justification as to why the request should be approved.

