OMB Control Number 2502–0587
form HUD–9640; exp. XX/XX/XXXX

Project-Based Section 8 Housing Assistance Payments Interim (Full) Mark-to-Market Renewal Contract

This form is used for the renewal of Section 8 Housing Assistance Payments contracts as authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), 42 U.S.C. § 1437f note. The public reporting burden for completing this form is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, and gathering and maintaining the data needed. The information collected is required to obtain benefits. HUD may disclose certain information to Federal, State, or local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. Information collected will not otherwise be disclosed or released outside of HUD, except as required and permitted by law. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Preparation of HAP Contract

Reference numbers in this form refer to notes at the end of the contract text. These endnotes are instructions for preparation of the Preservation Renewal Contract. The instructions are not part of the Renewal Contract.

This form of Renewal Contract shall be used only for the Interim Mark-To-Market renewal of an expiring Section 8 project-based HAP contract in accordance with HUD requirements and Sections 514(c) of MAHRA.

Section 2 of the Renewal Contract specifies the contract term.

Table of Contents

1. Contract Information....3

a. Project....3

b. Type of renewal....3

c. Parties to Renewal Contract....3

2. Term and funding of renewal contract....3

3. Definitions....3

4. Renewal Contract....4

a. Parties....4

b. Statutory authority....4

c. Expiring Contract....4

d. Purpose of Renewal Contract....5

e. Contract units....5

5. Expiring Contract: Provisions Renewed....5

6. Contract Rent....6

a. Initial contract rents....6

b. Contract rent adjustments....6

7. Owner Warranties, Representations, and Agreements....6

8. Owner Termination Notice....7

9. HUD Requirements....7

10. Statutory Changes During Term....8

11. PHA Default....8

12. Exclusion of Third-Party Rights....8

13. Written Notices....9

1. Contract Information[1]

a. Project

Section 8 Project Number: _____

Section 8 Project Number of Expiring Contract: _____

FHA Project Number (if applicable): _____

Project Name: _____

Project Description:[2] _____

_____

b. Type of renewal

☐ Check this box for a project renewed under Section 514(c) of MAHRA.

c. Parties to Renewal Contract

Name of Contract Administrator[3] _____

Address of Contract Administrator _____

Name of Owner[4] _____

Address of Owner _____

2. Term and funding of renewal contract

a. The Renewal Contract begins on _____[5] and shall terminate upon the date that is the earliest of: (i) _____ months from the date specified in section 2a (insert number of months not to exceed 12 months); (ii) the last day of the month of closing under the Restructuring Commitment; (iii) upon a final decision that results in the discontinuance of the Restructuring process; or (iv) upon determination that the Owner is in default under the Renewal Contract and that such event of default is continuing beyond any notice and cure periods under HUD requirements, if any.

b. Execution of the Renewal Contract by the Contract Administrator is an obligation by HUD of $ _____,[6] an amount sufficient to provide housing assistance payments for approximately _____[7] months of the Renewal Contract term.

c. HUD will provide additional funding for the remainder of the Renewal Contract term subject to the availability of sufficient appropriations. When such appropriations are available, HUD will obligate additional funding and provide the Owner written notification of (i) the amount of such additional funding, and (ii) the approximate period of time within the Renewal Contract term to which it will be applied.

3. Definitions

ACC. Annual contributions contract.

Contract units. The units in the Project that are identified in Exhibit A by size and applicable contract rents.

Contract rent. The total monthly rent to owner for a contract unit, including the tenant rent (the portion of rent to owner paid by the assisted family).

HAP contract. A housing assistance payments contract between the Contract Administrator and the Owner.

HUD. The United States Department of Housing and Urban Development.

HUD requirements. HUD regulations and other requirements, including changes in HUD regulations and other requirements during the term of the Renewal Contract.

MAHRA. The Multifamily Assisted Housing Reform and Affordability Act of 1997 (Title V of Public Law No.105–65, October 27, 1997, 111 Stat. 1384), as amended.

PHA. Public housing agency (as defined and qualified in accordance with the United States Housing Act of 1937. 42 U.S.C. 1437 et seq.).

Project. The housing designated in section 1 of the Renewal Contract.

Section 8. Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Renewal Contract. This contract, including applicable provisions of the Expiring Contract (as determined in accordance with section 5 of the Renewal Contract).

4. Renewal Contract

a. Parties

(1) The Renewal Contract is a housing assistance payments contract ("HAP Contract") between the Contract Administrator and the Owner of the Project (see section 1).

(2) If HUD is the Contract Administrator, HUD may assign the Renewal Contract to a public housing agency ("PHA") for the purpose of PHA administration of the Renewal Contract, as Contract Administrator, in accordance with the Renewal Contract (during the term of the annual contributions contract ("ACC") between HUD and the PHA). Notwithstanding such assignment, HUD shall remain a party to the provisions of the Renewal Contract that specify HUD's role pursuant to the Renewal Contract, including such provisions of section 9 (HUD requirements), section 10 (statutory changes during term), and section 11 (PHA default) of the Renewal Contract.

b. Statutory authority

The Renewal Contract is entered pursuant to section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), and section 514(c) of the MAHRA.

c. Expiring Contract

Previously, the Contract Administrator and the Owner had entered into a HAP Contract ("Expiring Contract") to make Section 8 housing assistance payments to the Owner for eligible families living in the Project. The term of the Expiring Contract will expire or terminate by mutual consent of the parties prior to the beginning of the term of the Renewal Contract. Notwithstanding any provision of the Expiring Contract regarding the duration of that contract, the parties agree

that the term of the Expiring Contract will be deemed to terminate prior to the beginning of the term of the Renewal Contract.

d. Purpose of Renewal Contract

(1) The purpose of the Renewal Contract is to renew the Expiring Contract for an additional term sufficient to facilitate the implementation of a mortgage restructuring and rental assistance sufficiency plan, as determined by HUD. The Renewal Contract constitutes a binding commitment for purposes of section 579(b) of MAHRA. During the term of the Renewal Contract, the Contract Administrator shall make housing assistance payments to the Owner in accordance with the provisions of the Renewal Contract.

(2) Housing assistance payments shall only be paid to the Owner for contract units occupied by eligible families leasing decent, safe and sanitary units from the Owner in accordance with statutory requirements, and with all HUD regulations and other requirements. If the Contract Administrator determines that the Owner has failed to maintain one or more contract units in decent, safe and sanitary condition, and has abated housing assistance payments to the owner for such units, the Contract Administrator may use amounts otherwise payable to the Owner pursuant to the Renewal Contract for the purpose of relocating or rehousing assisted residents in other housing.

e. Contract units

The Renewal Contract applies to the Contract units.

5. Expiring Contract: Provisions Renewed

a. Except as specifically modified by the Renewal Contract, all provisions of the Expiring Contract are renewed (to the extent such provisions are consistent with statutory requirements in effect at the beginning of the Renewal Contract term).

b. Any and all provisions of the Expiring Contract concerning any of the following subjects are not renewed, and shall not be applicable during the renewal term:

(1) Identification of contract units by size and applicable contract rents;

(2) The amount of the monthly contract rents;

(3) Contract rent adjustments;

(4) Project account (sometimes called “HAP reserve” or “project reserve”) as previously established and maintained by HUD pursuant to former Section 8(c)(6) of the United States Housing Act of 1937 (currently Section 8(c)(5) of the Act, 42 U.S.C. 1437f(c)(5)). Section 8(c)(5) does not apply to the Renewal Contract, or to payment of housing assistance payments during the Renewal Contract term; and

(5) The submission of monthly accounting reports to HUD (if required by the Expiring Contract).

c. The Renewal Contract includes those provisions of the Expiring Contract that are renewed in accordance with this section 5.

6. Contract Rent

a. Initial contract rents

At the beginning of the Renewal Contract term, the contract rent for each bedroom size (number of bedrooms) shall be the initial contract rent amount listed in Exhibit A, which is attached to and, by this reference, is hereby made a part of the Renewal Contract.

b. Contract rent adjustments

There shall be no contract rent adjustments during the term of the Renewal Contract.

7. Owner Warranties, Representations, and Agreements

a. The Owner warrants that it has the legal right to execute the Renewal Contract and to lease dwelling units covered by the contract.

b. The Owner warrants that the rental units to be leased by the Owner under the Renewal Contract are in decent, safe and sanitary condition (as defined and determined in accordance with HUD regulations and procedures), and shall be maintained in such condition during the term of the Renewal Contract.

c. The Owner, in full compliance with the requirements of Section 514(b) of MAHRA and Section 401.500 of the Final Rule for the Multifamily Housing Mortgage and Housing Assistance Restructuring Program (the "Mark-to-Market Program") issued on March 22, 2000 (65 FR 15452), warrants that it has provided, or will cause to be provided, the requisite written notice of the Owner's intention to participate in the Mark-to-Market Program to: (i) the tenants residing in the Project; (ii) the chief official of the affected unit of local government having jurisdiction over the Project; and (iii) the current mortgagee on the Project's Loan(s).

d. The Owner agrees to undertake all reasonable efforts to obtain any and all consents of third parties (e.g., the current mortgagee on the Project's Loan(s), the Owner's and, if applicable, the Purchaser's partners/investors that may be required in order to enable the Owner and, if applicable, the purchaser to execute a Restructuring Commitment and perform the related obligations in accordance with the Mark-to-Market Program's requirements.

e. Except as identified on Exhibit B, which is attached to and made a part of this Renewal Contract, the Owner warrants that neither it nor any of its principals or affiliates is subject to, or received any notice of, any debarment, suspension or other administrative proceeding or investigation initiated by HUD, or any other federal or state government agency, with respect to such party or the Project.

f. Except as identified on Exhibit B, the Owner warrants that neither it nor any of its principals or affiliates has engaged in any material adverse actions or omissions with regard to the Project, or with regard to any other project(s) subject to a HUD-

held or HUD-insured loan and/or receiving HUD assistance, which causes, or may cause, the Owner, and/or such principals or affiliates to be in default (monetary or technical) under, or in violation of, any HUD regulatory agreement, Section 8 Housing Assistance Payments Contract or other applicable HUD requirements.

g. Except as identified on Exhibit B, the Owner warrants that it has not received any notice from HUD or any other governmental authority that any unit(s) within the Project fail to comply with HUD's Section 8 Uniform Physical Condition Standards and/or local housing codes.

h. The Owner agrees to proceed in good faith and in a diligent manner to enter into a Restructuring Commitment with HUD and to consummate closing under the Restructuring Commitment on or before the expiration date of the Renewal Contract. In connection with such obligation, the Owner agrees to, among other things: (A) promptly submit to the relevant participating administrative entity and its contractors and agents (hereinafter, collectively, the "PAE") all documents and information that may be requested by or on behalf of HUD relating to the Owner and/or the Project and to the extent any such documents or information are not in the Owner's possession or control, the Owner hereby agrees that the Owner will undertake all reasonable efforts to obtain such documents and deliver them to the PAE within ten (10) calendar days of request by HUD; (B) promptly provide the PAE (and its contractors and agents) with access to the Project; (C) attend such meetings as the PAE (and its contractors and agents) may deem reasonably necessary in connection with the Owner's participation in the Mark-to-Market Program; and (D) undertake all reasonable efforts to obtain third-party financing if refinancing of the first mortgage is found necessary under 24 C.F.R. § 401.460(e).

i. Upon the request of HUD, the Owner agrees that it shall provide HUD with evidence satisfactory to HUD relating to each of the foregoing certifications.

j. The Owner agrees to provide written notice to the Contract Administrator immediately upon a change in circumstances making any of the above-stated representations or warranties untrue or incomplete.

8. Owner Termination Notice

a. Before termination of the Renewal Contract, the Owner shall provide written notice to the Contract Administrator and each assisted family in accordance with HUD requirements.

b. If the Owner fails to provide such notice in accordance with the law and HUD requirements, the Owner may not increase the tenant rent payment for any assisted family until such time as the Owner has provided such notice for the required period.

9. HUD Requirements

The Renewal Contract shall be construed and administered in accordance with all statutory requirements, and with all HUD regulations and other requirements, including changes in HUD regulations and other requirements during the term of the Renewal

Contract. However, any changes in HUD requirements that are inconsistent with the provisions of the Renewal Contract, including the provisions of section 6 (contract rent), shall not be applicable.

10. Statutory Changes During Term

If any statutory change during the term of the Renewal Contract is inconsistent with section 6, and if HUD determines, and so notifies the Contract Administrator and the Owner, that the Contract Administrator is unable to carry out the provisions of section 6 because of such statutory change, then the Contract Administrator or the Owner may terminate the Renewal Contract upon notice to the other party.

11. PHA Default

a. This section 11 of the Renewal Contract applies if the Contract Administrator is a PHA acting as Contract Administrator pursuant to an annual contributions contract ("ACC") between the PHA and HUD. This includes a case where HUD has assigned the Renewal Contract to a PHA Contract Administrator, for the purpose of PHA administration of the Renewal Contract.

b. If HUD determines that the PHA has committed a material and substantial breach of the PHA's obligation, as Contract Administrator, to make housing assistance payments to the Owner in accordance with the provisions of the Renewal Contract, and that the Owner is not in default of its obligations under the Renewal Contract, HUD shall take any action HUD determines necessary for the continuation of housing assistance payments to the Owner in accordance with the Renewal Contract.

12. Exclusion of Third-Party Rights

a. The Contract Administrator does not assume any responsibility for injury to, or any liability to, any person injured as a result of the Owner's action or failure to act in connection with the Contract Administrator's implementation of the Renewal Contract, or as a result of any other action or failure to act by the Owner.

b. The Owner is not the agent of the Contract Administrator or HUD, and the Renewal Contract does not create or affect any relationship between the Contract Administrator or HUD and any lender to the Owner or any suppliers, employees, contractors or subcontractors used by the Owner in connection with implementation of the Renewal Contract.

c. If the Contract Administrator is a PHA acting as Contract Administrator pursuant to an annual contributions contract ("ACC") between the PHA and HUD, the Contract Administrator is not the agent of HUD, and the Renewal Contract does not create any relationship between HUD and any suppliers, employees, contractors or subcontractors used by the Contract Administrator to carry out functions or responsibilities in connection with contract administration under the ACC.

13. Written Notices

a. Any notice by the Contract Administrator or the Owner to the other party pursuant to the Renewal Contract shall be given in writing.

b. A party shall give notice at the other party's address specified in section 1 of the Renewal Contract, or at such other address as the other party has designated by a contract notice. A party gives a notice to the other party by taking steps reasonably required to deliver the notice in ordinary course of business. A party receives notice when the notice is duly delivered at the party's designated address.

EXECUTION OF HAP CONTRACT

Contract Administrator (CA)

By: _____
Signature of authorized representative

_____
Name and official title (print or type)

_____
Date (mm/dd/yyyy)

U.S. Department of Housing and Urban Development (HUD)

By:

_____
Signature of authorized representative

_____
Name and official title (print or type)

_____
Date (mm/dd/yyyy)

Owner

_____
Name of Owner (print or type)

By:

_____
Signature of authorized representative

_____
Name and title (print or type)

_____
Date (mm/dd/yyyy)

EXHIBIT A

IDENTIFICATION OF UNITS ("CONTRACT UNITS")
BY SIZE AND APPLICABLE CONTRACT RENTS

Section 8 Contract Number: _____

FHA Project Number (if applicable): _____

Effective Date of the Rent Increase (if applicable): _____

Number of Contract Units	Number of Bedrooms	Contract Rent	Utility Allowance	Gross Rent

Comments: _____

_____

_____

_____

EXHIBIT B[1]

Any notice of, any debarment, suspension or other administrative proceeding or investigation initiated by HUD, or any other federal or state government agency, with respect to such party or the Project:

1. _____
   _____
2. _____
   _____

Any material adverse actions or omissions with regard to the Project:

1. _____
   _____
2. _____
   _____

Violations of section 8 uniform physical condition standards and/or local housing codes:

1. _____
   _____
2. _____
   _____

[1] Owner must provide information prior to execution. Insert the word “None” where applicable (i.e., where there are no notices, violations, acts or omissions).

[1] To prepare the Renewal Contract for execution by the parties, fill out all contract information in section 1 and section 2.

[2] Enter a description of the housing that will be covered by the Renewal Contract. The description must clearly identify the Project by providing the Project's name, street address, city, county, state and zip code, block and lot number (if known), and any other information necessary to clearly designate the covered Project.

If necessary, attach an exhibit with a site plan, legal description or other descriptive information. Enter a reference to the attached exhibit.

[3] Enter the name of the Contract Administrator that executes the Renewal Contract. If HUD is the Contract Administrator, enter "United States of America – Department of Housing and Urban Development (HUD)". If the Contract Administrator is a public housing agency ("PHA"), enter the full legal name of the PHA.

[4] Enter the full legal name of the Owner. For example: "ABC Corporation, Inc., a Maryland corporation."

[5] The Renewal Contract must be entered before expiration of the Expiring Contract. Enter the date of the first day after expiration of the term of the Expiring Contract.

[6] Enter the amount of funding obligated.

[7] Enter a whole number of months.