Project-Based Section 8 Housing Assistance Payments Renewal Contract for Mark-Up-to-Market Project

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 Basic Renewal Contract. The instructions are not part of the Renewal Contract.

This form of Renewal Contract is to be used only to renew an expiring Section 8 project-based HAP contract for a Section 8 project whose rents are increased to market under the HUD Mark-Up-to-Market Option. The Renewal Contract shall be entered in accordance with Section 524 of MAHRA and HUD requirements.

Section 2 of the Renewal Contract specifies the contract term.

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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] _____

_____

_____

_____

☐ Check this box if the project is a Section 236 project or a Section 221(d)(3) below market interest rate (BMIR) project at the beginning of the Renewal Contract term.

b. Parties to Renewal Contract

_____

Name of Contract Administrator[3]

_____

Name of Owner

2. Term and Funding of Renewal Contract

a. The Renewal Contract begins on _____[4] and shall run for a period of _____[5] years.

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 first annual increment of the Renewal Contract term.

c. HUD will provide additional funding for the remainder of the first annual increment and for subsequent annual increments, including for any remainder of such subsequent annual increments, 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. Renewal Contract

a. Parties

(1) This contract ("Renewal Contract") is a housing assistance payments contract ("HAP contract") between the contract administrator and the owner of the housing.

(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 8 (applicable requirements), section 9 (statutory changes during term), section 10 (distributions) 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 ("Section 8") (42 U.S.C. 1437f), and section 524(a) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) (Title V of Public Law No.105–65, October 27, 1997, 111 Stat. 1384), as amended.

c. Expiring Contract

Previously, the owner entered into a Housing Assistance Payments Contract ("Expiring Contract") with HUD or a PHA to make Section 8 housing assistance payments to the owner for eligible families living in the project. The term of the Expiring Contract has expired or will expire prior to the beginning of the term of the Renewal Contract.

d. Purpose of Renewal Contract

The purpose of the Renewal Contract is to renew the Expiring Contract for an additional term. During the term of the Renewal Contract, the contract administrator will make housing assistance payments to the owner in accordance with the provisions of the Renewal Contract. Such payments shall only be made for contract units occupied by eligible families ("families") leasing decent, safe and sanitary units from the owner in accordance with HUD regulations and other requirements.

e. Contract units

The Renewal Contract applies to the project contract units identified in Exhibit A by size and applicable contract rents.

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

(1) The amount of the monthly contract rents;

(2) Contract rent adjustments;

(3) 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.

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

5. Contract Rent

a. Initial contract rents

At the beginning of the Renewal Contract term, and until contract rents for units in the project are adjusted in accordance with section 5b, 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 made a part of the Renewal Contract. The initial contract rent amounts listed in Exhibit A have been increased to market levels under the HUD Mark-Up-to-Market Option.

b. Contract rent adjustments

(1) OCAF adjustment

Except for adjustment of the contract rents to comparable market rents at the expiration of each 5-year period (as provided in paragraph 5b(2) of this section) (“fifth-year adjustment”), during the term of the Renewal Contract the contract administrator shall annually, on the anniversary of the Renewal Contract, adjust the amounts of the monthly contract rents in accordance with HUD requirements, using an operating cost adjustment factor (OCAF) established by HUD. Such adjustments by use of the OCAF shall not result in a negative adjustment (decrease) of the contract rents. The OCAF shall not be used for a fifth-year adjustment.

(2) Fifth-year adjustment (comparability adjustment at expiration of each 5-year period, if applicable)

(a) This section 5(b)(2) is only applicable if the term of the Renewal Contract is longer than five (5) years (from the first day of the term specified in section 2a).

(b) At the expiration of each 5-year period of the Renewal Contract term, the contract administrator shall compare existing contract rents with comparable market rents for the market area. At such anniversary of the Renewal Contract, the contract administrator shall make any adjustments in the monthly contract rents, as reasonably determined by the contract administrator in accordance with HUD requirements, necessary to set the contract rents for all unit sizes at comparable market rents. Such adjustments may result in a negative adjustment (decrease) or positive adjustment (increase) of the contract rents for one or more unit sizes.

(c) To assist in the redetermination of contract rents, the contract administrator may require that the owner submit to the contract administrator a rent comparability study prepared (at the owner's expense) in accordance with HUD requirements.

(3) Procedure for rent adjustments during renewal term

To adjust contract rents during the term of the Renewal Contract (in accordance with paragraph 5b(1) or paragraph 5b(2)), the contract administrator shall give the owner notice of the revised Exhibit A. The revised Exhibit A shall specify the adjusted contract rent amount for each bedroom size as determined by the contract administrator in accordance with paragraph 5b(1) or paragraph 5b(2). The notice shall specify when the adjustment of contract rent is effective. The notice by the contract administrator of the revised Exhibit A constitutes an amendment of the Renewal Contract.

(4) No other adjustments

Except for contract rent adjustments in accordance with paragraph 5b, there shall not be any other adjustments of the contract rents during the term of the Renewal Contract. Special adjustments shall not be granted.

6. Owner Warranties

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 by HUD, and shall be maintained in such condition during the term of the Renewal Contract.

7. Owner 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 the law and 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.

8. Applicable Requirements

The Renewal Contract shall be construed and administered in accordance with all statutory requirements, and with all HUD regulations and other requirements, including amendments or changes in HUD regulations and other requirements during the term of the Renewal Contract. However, any changes in HUD regulations and requirements which are inconsistent with the provisions of the Renewal Contract, including the provisions of section 5 (contract rent) and section 10 (distributions), shall not be applicable.

9. Statutory Changes During Term

If any statutory change during the term of the Renewal Contract is inconsistent with section 5 or section 10 of the Renewal Contract, 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 5 or section 10 because of such statutory change, then the contract administrator or the owner may terminate the Renewal Contract upon notice to the other party.

10. Distributions

During the term of the Renewal Contract, neither HUD nor the PHA may impose any additional limitations on distributions of project funds other than any distribution limitations specified in Exhibit B, which is attached to and made a part of this Renewal Contract.

11. PHA Default

a. This section 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 will take actions HUD determines necessary for the continuation of housing assistance payments to the owner in accordance with the Renewal Contract.

12. Sections 236 and 221(d)(3) BMIR projects: Prepayment

a. This section of the Renewal Contract shall be applicable if the project is a Section 236 project or a 221(d)(3) BMIR project (See the check-box at section 1 of the Renewal Contract).

b. During the term of the Renewal Contract, the owner shall not prepay any FHA-insured mortgage on the project, except where HUD, in its sole discretion, approves the prepayment as a component of a transaction whereby the project is preserved as affordable housing.

13. 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.

14. Written Notices

a. Any notice by the contract administrator or the owner to the other party pursuant to the Renewal Contract must be 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 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

NOTE: This Exhibit will be amended by Contract Administrator notice to the Owner to specify adjusted contract rent amounts as determined by the Contract Administrator in accordance with section 5b(3) of the Renewal Contract.

Comments: _____

_____

_____

_____

Exhibit B

DISTRIBUTION LIMITATION

FOR PROJECT NOT SUBJECT TO DISTRIBUTION LIMITATIONS:

If the project is not subject to any limitations on distribution of project funds, either pursuant to an FHA Regulatory Agreement or pursuant to the Expiring Contract, neither HUD nor the PHA may impose any additional limitations on distribution of project funds during the term of the Renewal Contract.

FOR PROJECT SUBJECT TO DISTRIBUTION LIMITATIONS:

If the project is subject to any limitations on distribution of project funds pursuant to an FHA Regulatory Agreement or pursuant to the Expiring Contract, such limitations on distribution shall continue to be applicable during the term of the Renewal Contract, provided that the owner may take an increased distribution in accordance with the Section 8 Renewal Policy Guidance for Renewal of Project-Based Section 8 Contracts, (the “Guidebook”).

However, owners of Section 8 properties must maintain the property in good condition, as demonstrated by a REAC score of 60 or higher, in order to take increased distributions.

The owner shall comply with the distribution limitations. The maximum distribution to the owner shall be equal to the total of:

1. The limited distribution permitted pursuant to the FHA Regulatory agreement or the Expiring Contract, plus
2. Any increased distribution as approved by HUD in accordance with the Guidebook.

[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 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.

[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 name of the PHA.

[4] 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.

[5] Enter a whole number of five or more years.

[6] Enter the amount of funding obligated.

[7] Enter a whole number of months.