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A Joint Powers  
Agency

MEMBERS

City of Sacramento

County of Sacramento

Housing Authority of the  
City of Sacramento

Housing Authority of the  
County of Sacramento

# Sacramento Housing and Redevelopment Agency

## Request for Proposals

### **Project-Based Vouchers for Homeless Families / Individuals**

**RFP #1923-VK**

**Issued: May 1, 2019**

#### **Submittal Deadlines**

**11:00 a.m. PST – May 31, 2019**

Sacramento Housing and Redevelopment Agency  
Procurement Services – 2<sup>nd</sup> Floor  
801 12<sup>th</sup> Street  
Sacramento, CA 95814

Copies of this RFP may be requested from:  
Procurement Services

[ps@shra.org](mailto:ps@shra.org)  
(916) 440-1378

Or by visiting our website @:

<https://www.shra.org/doing-business-with-shra/> and finding Project  
Based Vouchers for Homeless Families/Individuals under the Request  
for Proposals section.

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## **Introduction**

The Sacramento Housing and Redevelopment Agency (Agency), on behalf of the Housing Authority of the County of Sacramento, is requesting proposals from owners and developers interested in receiving Project-Based Vouchers (PBV) to serve homeless families/individuals.

The Sacramento Housing and Redevelopment Agency is a Joint Powers Authority (JPA) created as a public agency for the City and County of Sacramento in 1973. The Agency provides affordable housing for a population of over 66,000 individuals through the Conventional Low Rent Public Housing Program, Housing Choice Voucher Program (HCV), and through selective use of mortgage revenue bonds and gap financing for developments for very low and low-income families, seniors, homeless and disabled individuals. The Agency operates the Housing Choice Voucher (HCV) program, which currently assists more than 12,000 households in Sacramento County. In addition, the Agency manages a Project-Based Voucher (PBV) program with over 1000 units that serve primarily low income, homeless and disabled individuals and families. With PBVs, the Agency enters into a contract with the owner as the housing subsidy is attached to subsidize the unit regardless of whether the same tenant continues to occupy that unit or moves away.

## **The Project**

According to the 2017 “Point in Time” Count (the most current year for which there is data), Sacramento Steps Forward reports that there were 3,665 homeless individuals and families of which 2,052 were unsheltered. The Agency is committed to housing homeless families, both individuals and families with minor children, and connecting them to services designed to help them stabilize their housing. The goal of this Request for Proposals (RFP) for PBV is to increase the housing stock available for homeless families and individuals through significant rehabilitation or new construction.

The purpose of this RFP is to create affordable rental units that are decent, safe and sanitary for homeless families, both single adults and families with minor children, earning no more than 50% Area Median Income (AMI). Permanent affordability is achieved by attaching project-based voucher (PBV) assistance to qualified rental units. **Rental units that are currently subsidized by other sources will not be considered for PBV as the goal is not to supplant one funding source for another, but to increase the affordable housing stock available for homeless families.**

The Agency is seeking proposals from owners or developers to create rental units to low income, homeless families and individuals that is rich with services. The PBV subsidies are tied to specific rental units for an initial period of up to 20 years and may be extended for an additional period of up to 20 years.

A minimum of 20 vouchers per project are available to be issued through this RFP. A request to reduce the amount of PBVs to a number less than 20 post award will not be considered. The entire award may be rescinded.

Up to 200 vouchers will be made available through this RFP process. The Agency reserves the right to award more than 200 project-based vouchers at its sole discretion, based on a compelling need as demonstrated by the response to this RFP and contingent upon funding.

This RFP will create additional housing units that are restricted to serving the homeless. Developers building or rehabilitating housing must sign an Agreement to Enter into a Housing Assistance Payment (AHAP) contract within 2 years of the letter awarding project-based vouchers and then execute a Housing Assistance Payment (HAP) contract and have units occupied within 2 additional years unless the Agency grants an extension.

All proposals must meet the **Minimum Threshold Requirements** as described in this document. The proposals will be evaluated based on the PBV project selection process listed in the **Rating Factors** section of this RFP.

Per HUD regulations, the PBV's are attached to the unit regardless of whether the same tenant continues to occupy the unit or moves away. When a unit becomes vacant, the owner must take every reasonable action to minimize the likelihood and length of vacancy so that the unit is ready to be re-rented to another suitable low-income homeless tenant. The Agency may pay the owner vacancy loss payment.

The owner may fill vacant units with families and individuals referred from a service provider serving homeless families or via a wait list. It is likely that families will be referred by Coordinated Entry to fill vacant units. This system of establishing a centralized "Coordinated Entry" is still under development but is anticipated to be the primary mode of receiving referrals of homeless families in need of housing. The site will utilize a "Housing First" model, meaning there are no requirements for the family to be clean and sober prior to becoming housed. Requirements for housing will be low-barrier, allowing access to housing by families and individuals who have been chronically homeless.

Each proposal must request a specific number of units to receive PBV's. Supportive services must be available to residents living at the site; the services must be available at the site or nearby so that they are accessible for families lacking transportation. The services must be described in the proposal.

The Agency may award multiple contracts resulting from this solicitation to the owners whose proposals are most consistent with this RFP. Only written responses to this RFP, received from owners or developers, shall be considered for project basing. The Agency reserves the right to fund some, all or none of the respondents.

### **Federal and Local Regulations**

The information contained in this RFP is a summary overview of the PBV Program. All applicants are encouraged to read the relevant HUD regulations. For a complete listing of all ineligible units, refer to the Code of Federal Regulations, Title 24 and Part 983.53 and 983.54. The implementation of PBV shall be in compliance with:

- Section 8(o)(13) of the US Housing Act of 1937;
- Title 24 of the Code of Federal Regulations, Part 983;  
([http://www.access.gpo.gov/nara/cfr/waisidx\\_00/24cfr983\\_00.html](http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr983_00.html))
- SHRA's Administrative Plan; and  
([http://www.shra.org/Portals/0/pdf/public\\_housing/2016AdminPlan.pdf](http://www.shra.org/Portals/0/pdf/public_housing/2016AdminPlan.pdf))
- SHRA's Multi Family Lending and Mortgage Revenue Bond Policies  
(<http://www.shra.org/Portals/0/pdf/multifam/lendingpolicy.pdf>)

For new construction and rehabilitation projects with 9 or more units, Davis Bacon wage requirements are triggered.

## **SUBMISSION PROCEDURES, REQUIREMENTS, RATING FACTORS AND SELECTION PROCESS**

### **Contact**

All questions and requests for clarification concerning this RFP are to be submitted in writing to:

Vance Kelly  
Phone: (916) 440-1327  
[vkelly@shra.org](mailto:vkelly@shra.org)

Do not contact other Agency employees regarding this project or the selection procedures. The Agency will not be responsible for oral or other explanations / interpretations of the RFP document or procedures. The terms of the RFP remain unchanged unless amended in writing.

### **RFP Timeline**

May 1, 2019	RFP Issued
May 15, 2019	Questions due in writing by 11:00 a.m. PST
May 17, 2019	Responses to questions received posted by 11:00 a.m. PST
May 31, 2019	Proposals due by 11:00 a.m. PST. <b>Postmarks will not be accepted</b>

Responses to questions and other updates will be posted to the Agency's website @ [www.shra.gov](http://www.shra.gov) and can be found in the **Doing Business With SHRA** tab under the name of this solicitation.

### **Time and Place for Submission of Proposals**

Firms interested in providing proposals for this project should closely examine the specific requirements and questions and submit four (4) bound copies and one (1) flash drive of their proposal to:

Sacramento Housing and Redevelopment Agency  
Attn: Vance Kelly – RFP #1923-VK  
801 12<sup>th</sup> Street  
Sacramento, CA 95814

Proposals must be received by **11:00 a.m. PST on May 31, 2019**. Proposals received after that time will not be considered. Incomplete proposals, or insufficient numbers of proposals submitted will not be considered. Postmarks, e-mails and faxes will not be accepted.

After selection and execution of the contract(s), all information and materials provided in each proposal received is subject to disclosure through a Public Records Request pursuant to the California Public Records Act.

### **Proposal Format**

Proposals are to be bound, single-sided standard sized (8.5" X 11") pages. Number each page. To facilitate review by the Selection Committee, please submit information / answers to each of the 6 items listed below (**Minimum Threshold Requirements**) and the 7 items listed under **Rating Factors**, identify each item, in order by the appropriate number. Brevity is encouraged; however, be sure to fully address each item listed below as part of your RFP submittal. **Print out and complete Attachments A-C.** These forms must be included in your response to this RFP and it must be signed

by an authorized signatory of your firm, with the authority to officially submit the proposal and respond to questions concerning the proposal.

### **Minimum Threshold Requirements**

The owner must provide documentation to demonstrate that the following minimum threshold requirements are met. Proposals not meeting the minimum threshold requirements will not be evaluated further for rating factors.

1. Please provide documentation showing that the applicant has site control interest for the physical site to receive the project-based vouchers.
2. Please describe the location by census tract; total number of units by bedroom size; total number of buildings; number and bedroom sizes of units; number of units per building; and target population of any non-PBV units. If the proposal is for existing units, the property must have rent restrictions of 50% Area Median Income (AMI) or below, and provide proof of covenants and regulatory agreements.
3. Title 24 of the Code of Federal Regulations [24 CFR 983.57(b)] requires that the site for PBV's meet the goals of deconcentrating poverty and expanding housing opportunities. Therefore, all respondents creating new affordable units of housing must show how their plan to provide project-based vouchers at the housing site meets these goals. Please provide the following:
  - A. What is the census tract in which the proposed PBV development will be located?
  - B. Is this census tract in a HUD-designated Enterprise Zone, Economic Community or Renewal Community?
  - C. Is this census tract undergoing significant revitalization? Describe.
  - D. List any other state, local, or federal dollars been invested in this area?
  - E. List any new market rate units being developed in the same census tract where the proposed PBV development will be located? What is the likelihood that such market rate units will positively impact the poverty rate in the area?
  - F. What is the poverty rate in this census tract?
    - i. If the poverty rate is greater than 20 percent, has there been an overall decline in the poverty rate in the past 5 years? Describe.
  - G. Describe meaningful opportunities for educational and economic advancement in this census tract. Are there meaningful opportunities for educational and economic advancement in this area and transportation available to access these opportunities?
4. The site must be inspected before the proposal is due to determine:
  - A. That the site meets the Housing Quality Standards (HQS) site standards (24 CFR 982.401(l)); and
  - B. That the existing units substantially comply with HQS prior to proposal submission
5. The proposal **must** contain a signed contract or a letter of commitment, showing a relationship between the housing owner and the service provider(s). The contract or commitment letter must list:
  - A. The services that are to be provided.
  - B. The duration of the services.
  - C. Location of the supportive services provided.
  - D. Who is eligible to participate in the services.

## **Rating Factors**

Proposals will be rated based on the following factors. Proposals will be ranked by score and the number of requested vouchers will be assigned in the order of ranking. In order to be considered for PBV funding, proposals must receive a minimum of 70% of the possible points available (245 points).

**Factor Rubric**

<b>Factor</b>	<b>Points Available</b>
1. Supportive Services	50
2. Case Management	30
3. Support for Services	50
4. Financial Viability	60
5. Project Readiness	50
6. Property Management Experience	50
7. Unit Configuration	30
8. Location	30
<b>Total Points Available:</b>	<b>350</b>

### **1. Supportive Services. (50 points)**

A. (20 points) Please provide a complete description of the services to be provided to the homeless residents receiving Project-based vouchers at this site. Please define the services to be provided to different populations residing at the site:

- i. What base line services are residents eligible to receive?
- ii. Is there additional funding to provide targeted services to residents living at the site? What are the sources of the funding (ie, MHSA or NPLH funding) and what targeted additional services are provided? Who can receive these services?
- iii. Do you anticipate that there will be PBV families living at the site but not eligible to receive services from the targeted funding described in b. above? What services will be provided to these PBV families and individuals?

**NOTE:** The site **must** be available to house families with a variety of disabilities. Housing cannot be limited to persons with specific disabilities.

- iv. For every population described above that receive PBV, describe:
  - a. The type of services provided
  - b. Who is the service provider? (provide a service contract or letter of intent).
  - c. Provide a resident service plan and show at least three services to be provided to residents to help move them to living independently and/or becoming self-sufficient. These services do not have to be provided on site if alternate arrangements are made with services providers that are accessible to the residents. Describe the length of time services will be available to each client and how these services will be monitored.
  - d. The provision of housing cannot be contingent upon participation in services. The provision of supportive services has been shown to benefit to formerly homeless families looking to achieve long term housing stability. How will families be encouraged to participate in services?
- v. For sites targeting families with children, are there services and activities for children on site or in close proximity?

- B. (20 points) Please discuss your past experience(s) working with previously homeless families/individuals. What is the service provider's relevant experience? How will you provide services at this site based on these past experiences?
- C. (10 points) Describe how the target population to be served represents a diversity of disabilities, ages, gender, family types and culture by the provision of PBV.

**2. Case Management (30 points)**

- A. (15 points) Describe how referrals to, and provision by, various community services will be coordinated. How will various service providers communicate?
  - i. When families are referred or offered services, how will that handoff be conducted?
  - ii. Will there be follow up to ensure that the referral was utilized?
- B. (5 points) Family participation in supportive services is voluntary. State what steps will be taken if a family is not participating in case management.
- C. (10 points) What steps will be taken during a crisis? How will services be coordinated beforehand to prevent a crisis and afterwards to bring to a resolution? For this question, a crisis is an immediate need for intervention.

**3. Support for Services (50 points)**

- A. (15 points) Does the site have a community room available to residents? What space will be used for the provision of services? How can residents access services?
- B. (35 points) Provide an operational budget showing the sources and uses of funds dedicated to providing supportive services. The budget should show:
  - i. The number of hours of supportive services to be provided.
  - ii. The number of full-time equivalent (FTE) staff to be covered.
  - iii. The specific services to be provided.
  - iv. The total costs for providing these services and the source(s) of these funds.

**4. Financial viability (50 points)**

The owner must demonstrate that the project is financially viable and can demonstrate that it will remain solvent for at least 20 years. The developer must provide an itemized projected cash flow pro forma demonstrating long term viability for a period of at least 20 years.

Describe any use or funding restrictions or limitations regarding individuals and families that must live at this property either currently or in the future. For example, are there requirements related to receiving Mental Health Services Act (MHSA) funds, No Place Like Home (NPLH) funds, Housing Opportunities for Persons with AIDS (HOPWA) funds or is this housing for seniors only? These restrictions must be provided and can be attached to the regulatory agreement or the funding received at the site. Please provide documentation showing any restrictions at the site. Also indicate if there are no limitations or restrictions for the development

A projected Cash Flow Pro Forma for the initial time period (20 years) based on the most recently audited financial statements is required.

- A. Projected sources and uses of funds, including construction, bridge and permanent financing.
- B. Evidence of commitment, or commitment status of proposed financing.

- C. Evidence that the project can be constructed (if applicable).
- D. Itemized total proposed development budget (if applicable)
- E. Developer experience (tax credits, bond projects, and projects using HUD PBV or tenant-based HCV vouchers)
- F. Identification of any properties defaulted or foreclosed upon

## **5. Project Readiness (50 points).**

Provide a detailed project timeline that indicates all necessary actions for the project to meet the readiness date, including but not limited to:

- A. Environmental clearance (please provide a copy of any environmental documents, if available).
- B. Financing commitment and timeline.
- C. Project entitlements.
- D. Estimated date construction/rehabilitation will commence, be completed and when occupancy is expected. Under no circumstances can construction or rehabilitation of housing begin until the AHAP has been executed.
- E. Evidence showing entitlements are in process with Planning Department and plans have been submitted to the appropriate Building Department.

The AHAP and PBV HAP contract may only be executed after specific regulatory requirements are met. For new construction and rehabilitation, an environmental review and subsidy layering review are required prior to the execution of the AHAP (24 CFR 983.153). The AHAP must be executed within 2 years of award of project based vouchers. The HAP contract (and occupancy) should be completed within 2 years of signing the AHAP unless SHRA approves an extension.

For proposed new construction projects, provide a narrative that describes the current status of any required entitlements along with an anticipated timeline for submission and approvals. If entitlements have been received, please provide evidence in the form of a letter from a City or County building or planning official stating the project is appropriately zoned and in compliance with land use ordinances.

## **6. Property Management Experience (50 points)**

- A. The Agency will evaluate the property management's company and key staff's qualifications, past performance, experience, and quality of work developing and maintaining housing for low income and/or special needs populations (10 points).
- B. Provide a list of five (5) sites over 10 units in size for which the property manager has ongoing contracts providing similar services or programs to similar target groups within the last three (3) years. For each of these sites, please describe the name and location of the site, the number of units, the target population, the time frame it has been under this management company, any regulations governing rental amounts, timeframe of these agreements restricting rents, indicate if the project utilized PBVs, the designation of subsidy sources for those properties (tax credits, bonds or other regulatory agreements), occupancy rates, marketing efforts and the qualifications of key staff persons to be involved in the project. Include experience with special project/programs targeting the needs of homeless or low-income families needing supportive services. (40 points)

## 7. Unit Configuration (30 points)

The size and configuration of the units are designed to serve persons with disabilities. Please list the number of units that will be made accessible for persons with disabilities and describe the types of modifications.

- **More than 10%** of the units will be accessible to persons with disabilities and they are spread throughout the building. Path of travel and public space will also be accessible. Modifications address different accommodations (30 points) **OR**
- **At least 10%** of the units will be or are proposed to be 504 accessible and they are spread throughout the building. Path of travel and public space will also be accessible. Modifications address different accommodations (20 points) **OR**
- **At least 5%** of the units will be 504 accessible and they are spread throughout the building. Path of travel and public space is also accessible. Modifications address different accommodations (10 points)

## 8. Location (30 points)

The site must be located in Sacramento County and meet the following criteria. Please submit a map showing the location of the project. Include concentric circles showing a radius of  $\frac{1}{4}$ ,  $\frac{1}{2}$  and 1 mile from the project and use the attached checklist to answer the questions. (Use **Attachment C**)

Points are awarded if:

- A. (10 points) Property is located in a low poverty census tract (poverty rate is below 20% or is undergoing transformation.)
- B. (10 points) Support services are located within the site or nearby.
- C. (10 points) Project is located within  $\frac{1}{4}$  mile of:
  - i. High frequency public transportation and
  - ii. Medical facilities,
  - iii. Grocery stores and
  - iv. Other services.

Please list the census tract in which the proposed site will be located and the poverty rate of that census tract. Also list the closest services and the distance from the site for each of the items listed above.

## Other Requirements

1. If vacant units are to be filled via referral from a service provider(s), the PBV Site Owner/Developer will submit to the Agency:
  - A. A letter on company letterhead:
    - i. Requesting to fill vacant units via referrals from the service provider;
    - ii. Committing to notifying the Agency when/if there is a new service provider;
  - B. A copy of the contract between the service provider and the site owner/developer;
  - C. A certification from the service provider that they will not deny services to member of any federally protected class under fair housing laws, i.e., race, color, religion, national origin, sex, disability, or familial status.
  - D. Signed copy of the Agency's Contract Confidentiality Requirement (Attachment G)
2. Broadband infrastructure must be included in the plans. Rehabilitation of housing for PBV must include installation of broadband infrastructure unless:
  - A. The location makes this infeasible; or

- B. The cost would fundamentally alter the nature of the housing or would cause an undue financial burden; or
  - C. The structure of the housing makes installation of broadband infeasible. (24 CFR 983.157)
3. There are Section 3 requirements for rehabilitation and construction of housing, affecting employment at the site. (Please see page Part 2 of the AHAP in Attachment E)

### **Submittal Review**

Submittals will initially be reviewed after they are received to confirm that they follow the proposal format. Proposals that do not follow the format will be considered non-responsive and will not be submitted to the Selection Committee for evaluation.

### **Selection Process**

1. A Selection Committee will be established according to Agency policy. Members of the Selection Committee will be provided copies of each proposal received. Each member will evaluate each submittal individually.
2. Based upon information provided during this process, the Selection Committee will select the most qualified respondents. The proposals received will be validated and evaluated for technical and contractual acceptability. The Agency's evaluation of proposals will be based upon those materials submitted in accordance with the submission procedures and requirements. Submittals will be reviewed to determine if all items requested were submitted. Incomplete submittals will be removed from consideration.
3. Please note that the Agency has the right to reject a proposal if it does not embody the characteristics outlined in this RFP and the evaluation criteria. The Selection Committee will determine whether each proposal is responsive to and in compliance with the requirements of this RFP and the evaluation criteria. The Selection Committee will assure that the proposal meets PBV goals and civil rights requirements. The proposal must be consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities, and the site and neighborhood standards.
4. Review of the proposals will follow the submittal deadline. The Selection Committee is anticipated to rank the firms directly from the written materials. However, the Agency reserves the right to request clarifications or additional information from any or all firms. Additionally, if deemed necessary and at the sole discretion of the Selection Committee, oral interviews will be scheduled at a later date and final selections made after interviews.
5. After the individual evaluations are completed, the Selection Committee will meet to discuss the evaluations. Proposals will be ranked by score and vouchers will be assigned to sites in order of ranking. All selections are subject to owner compliance with applicable Agency, HUD and other legal requirements. The Agency reserves the right to fund some, all or none of the respondents.
6. The Agency has the right to approve projects and provide PBVs that may be less or more than the vouchers requested in the proposal.

7. The Agency will provide written notice to the owners whose proposals are selected within 30 days of the decision. The Agency will also promptly notify owners of properties whose proposals were not accepted.

8. If any of the respondents presents an Identity of Interest with the Agency, the proposal in question will be forwarded to the HUD field office or HUD approved independent entity for review.

### **Contract Award**

The Agency may award multiple contracts resulting from this solicitation to the owners whose proposals are most consistent with this RFP.

Owner participation requires compliance with Fair Housing and Equal Opportunity requirements.

The Agency's activities under the PBV program are subject to HUD environmental regulations in 24 CFR Part 58. The Agency is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

The Agency must not enter into an agreement to enter into a AHAP contract nor enter into a HAP contract until it has complied with the environmental review requirements, and the Agency, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The owner is required to carry out mitigating measures required by the responsible entity as a result of the environmental review.

Once an award is made, the project cannot be substantially altered. Any substantial alterations including (but not limited to) a request for additional vouchers will disqualify the project from receiving PBV's.

### **Agency Rights, Options, and Policies**

1. The Agency reserves the right to decide that one firm is more responsive than the others and to select after review of the written submittals only.
2. The Agency reserves the right to fund all, some or none of the respondents.
3. The Agency reserves the right to reject any and all submissions, request additional information, amend the project schedule, or issue additional requirements throughout the selection process. It is the responsibility of the consultant to verify that all necessary information is submitted by the due date. Proposals which do not conform to all requirements expressed in this solicitation may be rejected without further evaluation, deliberation, or discussion.
4. The Agency reserves the right to modify any portion, postpone or cancel this RFP at any time, and/or reject any and all submissions without indicating any reason. No submission documents will be returned.

5. The Agency reserves the right to reject individual team members, firms, and request substitution without indicating any reason prior to contract award.
6. The Agency highly encourages participation by local qualified firms and contractors in all aspects of consultant contracting unless the project requires unusual or highly specialized services.
7. The Agency actively encourages participation of small, minority and women owned business enterprises in all aspects of contracting.
8. No compensation is offered for any work related to this selection process. Submissions are entirely voluntary. All original documents including electronic files become the property of the Agency. If any submission is late or incomplete in any way, that team will be eliminated from consideration.
9. Materials contained in each proposal will be considered proprietary until selection. Following selection, however, the contract scope of work may be amended by the Agency and negotiated based upon ideas provided by any source.
10. In accordance with federal and state laws, the Agency does not discriminate on the basis of race, color, national origin, gender, sexual orientation, religion, age, veteran's status or disability in the provision of services.
11. Procured consultants / contractors will not be considered Agency personnel and the Agency assumes proposal of certain personnel to be a statement of their availability to do the work.
12. The Agency reserves the right to select more than one respondent, to select a respondent(s) for specific purposes or for any combination of specific purposes, and to defer the selection of any respondent(s) to a time of the Agency's choosing.

## ATTACHMENT A

### Coversheet for Application for Project-Based Housing Vouchers

Name of Proposal: \_\_\_\_\_

_____ Owner's Name	_____ Business Name	_____ Manager Name
_____ Contact Person's Name	_____ Contact Person's Name	_____ Contact Person's Name
_____ Owner's Street Address	_____ Business Street Address	_____ Manager's Street Address
_____ City, State, Zip	_____ City, State, Zip	_____ City, State, Zip
_____ Personal Telephone No.	_____ Business Telephone No.	_____ Manager Telephone No.
_____ E-mail Address	_____ E-mail Address	_____ E-mail Address

I certify, under penalty of perjury, to the truth and correctness of all statements and of all answers to questions contained in this proposal.

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Date

**Owners: Please provide a copy of a *Certificate of Good Standing* from the Secretary of State for the project's ownership entity. In addition, if the ownership entity is a corporation please submit *Articles of Incorporation*, if a limited partnership submit a *Partnership Agreement*, and if a limited liability company submit an *Operating Statement*. These documents will be verified on the Secretary of State's website.**

\_\_\_\_\_  
Name of Project or Property

\_\_\_\_\_  
Address(es) or Project of Property

\_\_\_\_\_  
City/State/Zip

### ATTACHMENT A (cont)

Name of Proposal: \_\_\_\_\_

\_\_\_\_\_  
Number of units proposed to project base

\_\_\_\_\_  
Census tract

\_\_\_\_\_  
Census Poverty Rate

\_\_\_\_\_  
Total number of units at the project or property

#### Unit Configuration and Proposed Rents for

##### Units with a Project based voucher:

Number	Proposed Rent
_____ Single Room Occupancy	\$ _____
_____ Studio	\$ _____
_____ One Bedroom	\$ _____
_____ Two Bedroom	\$ _____
_____ Three Bedroom	\$ _____
_____ Four Bedroom	\$ _____
_____ Five Bedroom	\$ _____

##### This application is for:

- New Construction
- Rehabilitated housing

#### Utility Configuration (circle answer)

Gas	Paid by Owner	Paid by Tenant
Electric	Paid by Owner	Paid by Tenant
Trash	Paid by Owner	Paid by Tenant
Water	Paid by Owner	Paid by Tenant
Stove	Furnished by Owner	Furnished by Tenant
Refrigerator	Furnished by Owner	Furnished by Tenant

#### Amenities

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**ATTACHMENT B**

**PROJECT TIMELINE FOR NEW CONSTRUCTION  
AND REHABILITATION ONLY**

Project Title: \_\_\_\_\_ Applicant: \_\_\_\_\_

<b><u>Item</u></b>	<b><u>Projected Date of Completion</u></b>
<b>SITE</b>	
Environmental Review Completed	_____
Site control evidence	_____
<b>LOCAL PERMITS</b>	
Conditional Use Permit	_____
Variance	_____
Site Plan Review	_____
Grading Permit	_____
Building Permit	_____
<b>CONSTRUCTION FINANCING</b>	
Loan Application	_____
Enforceable Commitment	_____
Closing and Disbursement	_____
<b>PERMANENT FINANCING</b>	
Loan Application	_____
Letter Commitment	_____
Closing and Disbursement	_____
<b>OTHER LOANS AND GRANTS</b>	
Type and Source	_____
Application	_____
Closing or Award	_____
Funds Available	_____
Construction Start	_____
Construction Completion	_____
Placed in Service	_____
Occupancy of all Assisted Units	_____

## ATTACHMENT C

### LOCATION CHECKLIST

Please attach a map showing a ½ mile radius from the proposed project-based vouchers.

As shown in the map, this project is located within:

- \_\_\_\_\_ miles of a grocery store  
List the grocery store: \_\_\_\_\_
  
- \_\_\_\_\_ miles of a medical services  
List the medical services \_\_\_\_\_
  
- \_\_\_\_\_ miles of an elementary school or transportation to an elementary school  
List the elementary school \_\_\_\_\_
  
- \_\_\_\_\_ miles of a high school or transportation to a high school  
List the high school \_\_\_\_\_
  
- \_\_\_\_\_ miles of a college  
List the college \_\_\_\_\_
  
- \_\_\_\_\_ miles of a major hub for public transportation  
List the transportation hub \_\_\_\_\_
  
- \_\_\_\_\_ miles of a link to public transportation  
List the public transportation \_\_\_\_\_

## ATTACHMENT D

# Instructions to Offerors Non-Construction

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing

### 1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

### 2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

### 3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
  - (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
  - (3) letter or telegram, or
  - (4) facsimile, if facsimile offers are authorized in the solicitation.
- The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

### 4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

### 5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;
- (2) Have a satisfactory performance record;

- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

### 6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office

receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an Invitation for bids, bids may be withdrawn at any time prior to bid opening.

## 7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and
- (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals,

before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counter offer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

## 8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

## 9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

Please note that additional conditions, specifications and instructions pertaining to this RFP are contained within the RFP document issued, which this document is Attachment F thereto.

ATTACHMENT E

**U.S. Department Of Housing And Urban Development  
Office of Public and Indian Housing**

**SECTION 8 PROJECT-BASED VOUCHER PROGRAM**

**PBV AGREEMENT TO ENTER INTO  
HOUSING ASSISTANCE PAYMENTS CONTRACT**

**NEW CONSTRUCTION OR REHABILITATION**

**PART I**

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

**1.1 Parties**

This Agreement to Enter into Housing Assistance Payments Contract (“Agreement”) is entered into between:

\_\_\_\_\_ (“PHA”) and

\_\_\_\_\_ (“owner”).

**1.2 Purpose**

The owner agrees to develop the Housing Assistance Payments Contract (“HAP contract”) units to in accordance with Exhibit B to comply with Housing Quality Standards (“HQS”), and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner of the contract units.

**1.3 Contents of Agreement**

This Agreement consists of Part I, Part II and the following Exhibits:

EXHIBIT A: The approved owner’s PBV proposal. (Selection of proposals must be in accordance with 24 CFR 983.51.)

EXHIBIT B: Description of work to be performed under this Agreement, including:

- if the Agreement is for rehabilitation of units, this exhibit must include the rehabilitation work write-up and, where the PHA has determined necessary, specifications and plans.
- if the Agreement is for new construction of units, the work description must include the working drawings and specifications.
- any additional requirements beyond HQS relating to quality, design and architecture that the PHA requires.
- work items resulting from compliance with the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements under section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.22 and 8.23.

EXHIBIT C: Description of housing, including:

- project site.
- total number of units in project covered by this Agreement.
- location of contract units on site.
- number of contract units by area (size) and number of bedrooms and bathrooms.
- services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner.
- utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant.
- estimated initial rent to owner for the contract units.

EXHIBIT D: The HAP contract.

**1.4 Significant Dates**

- A. **Effective Date of the Agreement:** The Agreement must be executed promptly after PHA notice of proposal selection to the owner has been given. The PHA may not enter this Agreement with the owner until any required subsidy layering review has been performed and an environmental review has been satisfactorily completed in accordance with HUD requirements.
- B. A project may either be a single-stage or multi-stage project. A single-stage project will have the same Agreement effective date for all contract units. A multi-stage project will have separate effective dates for each stage.

**Single-stage project**

- i. Effective Date for all contract units: \_\_\_\_\_
- ii. Date of Commencement of the Work: The date for commencement of work is not later than \_\_\_\_\_ calendar days after the effective date of this Agreement.
- iii. Time for Completion of Work: The date for completion of the work is not later than \_\_\_\_\_ calendar days after the effective date of this Agreement.

**Multi-Stage Project**

Enter the information for each stage upon execution of the Agreement for the corresponding stage.

STAGE	NUMBER OF UNITS	EFFECTIVE DATE	DATE OF COMMENCEMENT OF WORK	TIME FOR COMPLETION OF WORK

**1.5 Nature of the Work**

- This Agreement is for **New Construction** of units to be assisted by the project-based voucher program.
- This Agreement is for **Rehabilitation** of units to be assisted by the project-based voucher program.

## 1.6 Schedule of Completion

- A. **Timely Performance of Work:** The owner agrees to begin work no later than the date for commencement of work as stated in section 1.4. In the event the work is not commenced, diligently continued and completed as required under this Agreement, the PHA may terminate this Agreement or take other appropriate action. The owner agrees to report promptly to the PHA the date work is commenced and furnish the PHA with progress reports as required by the PHA.
- B. **Time for Completion:** All work must be completed no later than the end of the period stated in section 1.4. Where completion in stages is provided for, work related to units included in each stage shall be completed by the stage completion date and all work on all stages must be completed no later than the end of the period stated in section 1.4.
- C. **Delays:** If there is a delay in the completion due to unforeseen factors beyond the owner's control as determined by the PHA, the PHA agrees to extend the time for completion for an appropriate period as determined by the PHA in accordance with HUD requirements.

## 1.7 Changes in Work

- A. The owner must obtain prior PHA approval for any change from the work specified in Exhibit B which would alter the design or quality of the rehabilitation or construction. The PHA is not required to approve any changes requested by the owner. PHA approval of any change may be conditioned on establishment of a lower initial rent to owner as determined by PHA in accordance with HUD requirements.
- B. If the owner makes any changes in the work without prior PHA approval, the PHA may establish lower initial rents to owner as determined by the PHA in accordance with HUD requirements.
- C. The PHA may inspect the work during rehabilitation or construction to ensure that work is proceeding on schedule, is being accomplished in accordance with the terms of the Agreement, meets the level of material described in Exhibit B and meets typical levels of workmanship for the area.

## 1.8 Work Completion

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

B. Evidence of Completion: When the work is completed, the owner must provide the PHA with the following:

1. A certification by the owner that the work has been completed in accordance with the HQS and all requirements of this Agreement.
2. A certification by the owner that the owner has complied with labor standards and equal opportunity requirements in the development of the housing. (See 24 CFR 983.155(b)(1)(ii).)
3. Additional Evidence of Completion: At the discretion of the PHA, or as required by HUD, the owner may be required to submit additional documentation as evidence of completion of the housing. Check the following that apply:

A certificate of occupancy or other evidence that the contract units comply with local requirements.

An architect or developer's certification that the housing complies with:

the HQS;

State, local or other building codes;

Zoning;

The rehabilitation work write-up for rehabilitated housing;

The work description for newly constructed housing; or

Any additional design or quality requirements pursuant to this Agreement.

## **1.9 Inspection and Acceptance by the PHA of Completed Contract Units**

- A. Completion of Contract Units: Upon receipt of owner notice of completion of contract units, the PHA shall take the following steps:
1. Review all evidence of completion submitted by owner.
  2. Inspect the units to determine if the housing has been completed in accordance with this Agreement, including compliance with the HQS and any additional requirements imposed by the PHA under this Agreement.
- B. Non-Acceptance: If the PHA determines the work has not been completed in accordance with this Agreement, including non-compliance with the HQS, the PHA shall promptly notify the owner of this decision and the reasons for the non-acceptance. The parties must not enter into the HAP contract at this point. However, work deficiencies may be corrected in accordance with Section 1.10 of this Agreement.
- C. Acceptance: If the PHA determines that the work has been completed in accordance with this Agreement, and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **1.10 Acceptance Where Work Deficiencies Exist**

- A. If the PHA determines that work deficiencies exist, the PHA shall determine whether and to what extent the deficiencies are correctable, whether the units will be accepted after correction of the deficiencies, and the requirements and procedures (consistent with HUD requirements) for such correction and acceptance of contract units. The PHA shall notify the owner of the PHA's decision.
- B. Completion in Stages: When the units will be completed in stages, the procedures of this section shall apply to each stage.

## **1.11 Execution of HAP Contract**

- A. Time and Execution: Upon acceptance of the units by the PHA, the owner and the PHA execute the HAP contract.

- B. Completion in Stages: When the units will be completed in stages, the number and types of units in each stage, and the initial rents to owner for such units, shall be separately shown in the HAP contract for each stage. Upon acceptance of the first stage, the owner shall execute the HAP contract and the signature block provided in the HAP contract for that stage. Upon acceptance of each subsequent stage, the owner shall execute the signature block provided in the HAP contract for such stage.
- C. Form of HAP contract: The terms of the HAP contract shall be provided in Exhibit D of this Agreement. There shall be no change in the terms of the HAP contract unless such change is approved by HUD headquarters. Prior to execution by the owner, all blank spaces in the HAP contract shall be completed by the PHA.
- D. Survival of Owner Obligations: Even after execution of the HAP contract, the owner shall continue to be bound by all owner obligations under the Agreement.

### **1.12 Initial Determination of Rents**

- A. The estimated initial rent to owner shall be established in Exhibit C of this Agreement.
- B. The initial rent to owner is established at the beginning of the HAP contract term.
- C. The estimated and initial contract rents for each unit may in no event exceed the amount authorized in accordance with HUD requirements. Where the estimated or the initial rent to owner exceeds the amount authorized under HUD requirements, the PHA shall establish a lower estimated or initial rent to owner (as applicable), in accordance with HUD requirements.

### **1.13 Uniform Relocation Act**

- A. A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.
- B. The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Payment of relocation assistance must be in accordance with HUD requirements.

- C The acquisition of real property for a project to be assisted under the project-based voucher program is subject to the URA and 49 CFR part 24, subpart B.
- D The PHA must require the owner to comply with the URA and 49 CFR part 24.
- E In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the PHA.

#### **1.14 Protection of In-Place Families**

- A In order to minimize displacement of in-place families, if a unit to be placed under HAP contract is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA’s waiting list (if it is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized unit in the project.
- B This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.
- C The term “in-place family” means an eligible family residing in a proposed contract unit on the proposal selection date.
- D Assistance to in-place families may only be provided in accordance with HUD requirements.

#### **1.15 Termination of Agreement and HAP Contract**

The Agreement or HAP contract may be terminated upon at least 30 days notice to the owner by the PHA or HUD if the PHA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

#### **1.16 Rights of HUD if PHA Defaults Under Agreement**

If HUD determines that the PHA has failed to comply with this Agreement, or has failed to take appropriate action, to HUD’s satisfaction or as directed by HUD, for enforcement of the PHA’s rights under this Agreement, HUD may assume the PHA’s rights and obligations under the Agreement, and may perform the obligations and enforce the rights of the PHA under the Agreement. HUD will, if it determines that the owner is not in

default, pay annual contributions for the purpose of providing housing assistance payments with respect to the dwelling unit(s) under this Agreement for the duration of the HAP contract.

## 1.17 Owner Default and PHA Remedies

### A. Owner Default

Any of the following is a default by the owner under the Agreement:

1. The owner has failed to comply with any obligation under the Agreement.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the Agreement.
4. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD and:
  - A. The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or
  - B. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
6. The owner has engaged in any drug-related criminal activity or any violent criminal activity.

### B. PHA Remedies

1. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights or remedies under the Agreement.

2. The PHA must notify the owner in writing of such determination. The notice by the PHA to the owner may require the owner to take corrective action (as verified by the PHA) by a time prescribed in the notice.
3. The PHA's rights and remedies under the Agreement include, but are not limited to: (i) terminating the Agreement; and (ii) declining to execute the HAP contract for some or all of the units.

C. PHA Remedy is not Waived

The PHA's exercise or non-exercise of any remedy for owner breach of the Agreement is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

### 1.18 PHA and Owner Relation to Third Parties

A. Selection and Performance of Contractor

1. The PHA has not assumed any responsibility or liability to the owner, or any other party for performance of any contractor, subcontractor or supplier, whether or not listed by the PHA as a qualified contractor or supplier under the program. The selection of a contractor, subcontractor or supplier is the sole responsibility of the owner and the PHA is not involved in any relationship between the owner and any contractor, subcontractor or supplier.
2. The owner must select a competent contractor to undertake rehabilitation or construction. The owner agrees to require from each prospective contractor a certification that neither the contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in contracts by any Federal department or agency or the Comptroller General. The owner agrees not to award contracts to, otherwise engage in the service of, or fund any contractor that does not provide this certification.

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

- C. **Legal Relationship:** The owner is not the agent of the PHA and this Agreement does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractor or subcontractors used by the owner in the implementation of the Agreement.
- D. **Exclusion of Third Party Claims:** Nothing in this Agreement shall be construed as creating any right of any third party (other than HUD) to enforce any provision of this Agreement or the HAP contract, or to assert any claim against HUD, the PHA or the owner under the Agreement or the HAP contract.
- E. **Exclusion of Owner Claims against HUD:** Nothing in this Agreement shall be construed as creating any right of the owner to assert any claim against HUD.

### **1.19 PHA-Owned Units**

Notwithstanding Section 1.18 of this Agreement, a PHA may own units assisted under the project-based voucher program, subject to the special requirements in 24 CFR 983.59 regarding PHA-owned units.

### **1.20 Conflict of Interest**

- A. **Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials**
  - 1. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in the Agreement or HAP contract.
  - 2. HUD may waive this provision for good cause.
- B. **Disclosure**

The owner has disclosed to the PHA any interest that would be a violation of the Agreement or HAP contract. The owner must fully and promptly update such disclosures.

## **1.21 Interest of Member or Delegate to Congress**

No member of or delegate to the Congress of the United States of America or resident-commissioner shall be admitted to any share or part of the Agreement or HAP contract or to any benefits arising from the Agreement or HAP contract.

## **1.22 Transfer of the Agreement, HAP Contract or Property**

### **A. PHA Consent to Transfer**

The owner agrees that the owner has not made and will not make any transfer in any form, including any sale or assignment, of the Agreement, HAP contract or the property without the prior written consent of the PHA. A change in ownership in the owner, such as a stock transfer or transfer of the interest of a limited partner, is not subject to the provisions of this section. Transfer of the interest of a general partner is subject to the provisions of this section.

### **B. Procedure for PHA Acceptance of Transferee**

Where the owner requests the consent of the PHA for a transfer in any form, including any sale or assignment, of the Agreement, the HAP contract or the property, the PHA must consent to a transfer of the Agreement or HAP contract if the transferee agrees in writing (in a form acceptable to the PHA) to comply with all the terms of the Agreement and HAP contract, and if the transferee is acceptable to the PHA. The PHA's criteria for acceptance of the transferee must be in accordance with HUD requirements.

### **C. When Transfer is Prohibited**

The PHA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

## **1.23 Exclusion from Federal Programs**

### **A. Federal Requirements**

The owner must comply with and is subject to requirements of 2 CFR part 2424.

**B. Disclosure**

The owner certifies that:

1. The owner has disclosed to the PHA the identity of the owner and any principal or interested party.
2. Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation or otherwise excluded under 2 CFR part 2424.

**1.24 Lobbying Certifications**

A. The owner certifies, to the best of owner's knowledge and belief, that:

1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the Agreement or HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the Agreement or HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

## 1.25 Subsidy Layering

### A. Owner Disclosure

The owner must disclose to the PHA, in accordance with HUD requirements, information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

### B. Limit of Payments

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA will adjust in accordance with HUD requirements the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

## 1.26 Prohibition of Discrimination

A. The owner may not refuse to lease contract units to, or otherwise discriminate against, any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.

B. The owner must comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 *et seq.* ; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* ; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-

1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

- C. The PHA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

### **1.27 PHA and HUD Access to Premises and Owner Records**

- A. The owner must furnish any information pertinent to this Agreement as may be reasonably required from time to time by the PHA or HUD. The owner shall furnish such information in the form and manner required by the PHA or HUD.
- B. The owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the Agreement.

### **1.28 Notices and Owner Certifications**

- A. Where the owner is required to give any notice to the PHA pursuant to this Agreement, such notice shall be in writing and shall be given in the manner designated by the PHA.
- B. Any certification or warranty by the owner pursuant to the Agreement shall be deemed a material representation of fact upon which reliance was placed when this transaction was entered into.

## 1.29 HUD Requirements

- A. The Agreement and the HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements. The owner agrees to comply with all such laws and HUD requirements
- B. HUD requirements are requirements that apply to the project-based voucher program. HUD requirements are issued by HUD Headquarters as regulations, Federal Register notices or other binding program directives.

## 1.30 Applicability of Part II provisions – Check all that apply

- Training, Employment and Contracting Opportunities  
Section 2.1 applies if the total of the contract rents for all units under the proposed HAP contract, over the maximum term of the contract, is more than \$200,000.
- Equal Employment Opportunity  
Section 2.2 only applies to construction contracts of more than \$10,000.
- Labor Standards Requirements  
Sections 2.4, 2.8 and 2.10 apply when this Agreement covers nine or more units.
- Flood Insurance  
Section 2.11 applies if units are located in areas having special flood hazards and in which flood insurance is available under the National Flood Insurance Program.

## EXECUTION OF THE AGREEMENT

### PUBLIC HOUSING AGENCY

Name (Print) \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Authorized Representative

Official title (Print): \_\_\_\_\_

Date: \_\_\_\_\_

### OWNER

Name (Print) \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Authorized Representative

Official Title (Print): \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE

ATTACHMENT E (cont.)

**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing**

**SECTION 8 PROJECT-BASED VOUCHER PROGRAM**

**PBV AGREEMENT TO ENTER INTO  
HOUSING ASSISTANCE PAYMENTS CONTRACT**

**NEW CONSTRUCTION OR REHABILITATION**

**PART II**

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

**2.1 Training, Employment and Contracting Opportunities**

- (a) The project assisted under this Agreement is subject to the requirements of section 3 of the Housing Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The owner shall carry out the provisions of section 3 and the regulations issued by HUD as set forth in 24 CFR part 135 and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement. This shall be a condition of the Federal financial assistance provided to the project, binding upon the owner, the owner's contractors and subcontractors, successors and assigns. Failure to fulfill these requirements shall subject the owner, the owner's contractors and subcontractors, successors and assigns to the sanctions specified by this Agreement, and to such sanctions as are specified by 24 CFR part 135.
- (b) The owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$100,000 the following clause:
- (1) The work to be performed under this contract is subject to the requirements of section 3 of the Housing Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- (2) The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- (3) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, and shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (4) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- (5) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- (6) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- (7) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 405e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible:
  - (i) preference and opportunities for training and employment shall be given to

Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## **2.2 EQUAL EMPLOYMENT OPPORTUNITY**

- (a) The owner shall incorporate or cause to be incorporated into any contract in excess of \$10,000 for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is to be performed pursuant to this Agreement, the following nondiscrimination clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the labor union or workers representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and with the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, the contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imported and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
  - (b) The owner agrees to be bound by the above nondiscrimination clause with respect to his or her own employment practices when participating in federally assisted construction work.
  - (c) The owner agrees to assist and cooperate actively with HUD and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the nondiscrimination clause and the rules, regulations, and relevant orders of the Secretary of Labor, to furnish HUD and the Secretary of Labor such information

as they may require for the supervision of such compliance, and to otherwise assist HUD in the discharge of HUD's primary responsibility for securing compliance.

- (d) The owner further agrees to refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the nondiscrimination clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to the Executive Order. In addition, if the owner fails or refuses to comply with these undertakings, HUD may take any or all of the following actions; cancel, terminate, or suspend in whole or in part this Agreement; refrain from extending any further assistance to the owner under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the owner, and refer the case to the Department of Justice for appropriate legal proceedings.

### **2.3 RESERVED**

### **2.4 HUD-FEDERAL LABOR STANDARDS PROVISIONS**

The owner is responsible for inserting the entire text of section 2.4 of this Agreement in all construction contracts and, if the owner performs any rehabilitation work on the project, the owner must comply with all provisions of section 2.4. (Note: Sections 2.4(b) and (c) apply only when the amount of the prime contract exceeds \$100,000.)

(a)(1)(i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or

mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within the 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determinations or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractors under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such

violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due.

(3)(i) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4)(i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary

employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee

rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR part 3 which are incorporated by reference in this Agreement.

(6) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in section 2.4(a)(1) through (11) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section 2.4(a).

(7) Contract Terminations; Debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U. S. Department of Labor, or the employees or their representatives.

(10)(i) Certification of Eligibility. By entering into this Agreement, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.

(ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, section 1010, Title 18, U.S.C., "Federal Housing Administration transactions, provides in part: "Whoever, for the purpose of ...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Agreement to his employer.

(b) Contract Work Hours and Safety Standards Act. The provisions of this paragraph (b) are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for Unpaid Wages and Liquidated Damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontractors. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) Health and Safety. The provisions of this paragraph (c) are applicable only where the amount of the prime contract exceeds \$100,000.

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The contractor shall comply with all regulations issue by the Secretary of Labor pursuant to Title 29 part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 *et seq.*
- (3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and

Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

### **2.5-2.7 RESERVED**

### **2.8 WAGE AND CLAIMS ADJUSTMENTS**

The owner shall be responsible for the correction of all violations under section 2.4, including violations committed by other contractors. In cases where there is evidence of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the owner or other contractor or a failure by the owner or other contractor to submit payrolls and related reports, the owner shall be required to place an amount in escrow, as determined by HUD sufficient to pay persons employed on the work covered by the Agreement the difference between the salaries or wages actually paid such employees for the total number of hours worked and the full amount of wages required under this Agreement, as well as an amount determined by HUD to be sufficient to satisfy any liability of the owner or other contractor for liquidated damages pursuant to section 2.4. The amounts withheld may be disbursed by HUD for and on account of the owner or other contractor to the respective employees to whom they are due, and to the Federal Government in satisfaction of liquidated damages under section 2.4.

### **2.9 RESERVED**

### **2.10 EVIDENCE OF UNIT(S) COMPLETION; ESCROW**

(a) The owner shall evidence the completion of the unit(s) by furnishing the PHA, in addition to the requirements listed in Part I of this Agreement, a certification of compliance with the provisions of sections 2.4 and 2.8 of this Agreement, and that to the best of the owner's knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of these provisions of the Agreement. In the event there are any such pending claims to the knowledge of the owner, the PHA, or HUD, the owner will place a sufficient amount in escrow, as directed by the PHA or HUD, to assure such payments.

(b) The escrows required under this section and section 2.8 of shall be paid to HUD, as escrowee, or to an escrowee designated by HUD, and the conditions and manner of releasing such escrows shall be designated and approved by HUD.

## **2.11 FLOOD INSURANCE**

If the project is located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Program, the owner agrees that: (1) the project will be covered, during the life of the property, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less; and (2) that it will advise any prospective purchaser or transferee of the property in writing of the continuing statutory requirement to maintain such flood insurance during the life of the property.

SAMPLE

ATTACHMENT F

OMB Approval No. 2577-0169  
(exp. 04/30/2018)

**U.S. Department Of Housing and Urban Development  
Office of Public and Indian Housing**

**SECTION 8 PROJECT-BASED VOUCHER PROGRAM**

**PBV HOUSING ASSISTANCE PAYMENTS CONTRACT  
NEW CONSTRUCTION OR REHABILITATION**

**PART 1 OF HAP CONTRACT**

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

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**1. CONTRACT INFORMATION**

**a. Parties**

This housing assistance payments (HAP) contract is entered into between:

\_\_\_\_\_ (PHA) and

\_\_\_\_\_ (owner).

**b. Contents of contract**

The HAP contract consists of Part 1, Part 2 and the contract exhibits listed in paragraph c.

**c. Contract exhibits**

The HAP contract includes the following exhibits:

**EXHIBIT A: TOTAL NUMBER OF UNITS IN PROJECT COVERED BY THIS HAP CONTRACT; INITIAL RENT TO OWNER; AND THE NUMBER AND DESCRIPTION OF THE CONTRACT UNITS. (See 24 CFR 983.203 for required items.) If this is a multi-stage project, this exhibit must include a description of the units in each completed phase.**

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**Project-based Voucher Program  
HAP Contract for New Construction or Rehabilitation**

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**EXHIBIT B: SERVICES, MAINTENANCE AND EQUIPMENT TO BE PROVIDED BY THE OWNER WITHOUT CHARGES IN ADDITION TO RENT TO OWNER**

**EXHIBIT C: UTILITIES AVAILABLE IN THE CONTRACT UNITS, INCLUDING A LISTING OF UTILITY SERVICES TO BE PAID BY THE OWNER (WITHOUT CHARGES IN ADDITION TO RENT TO OWNER) AND UTILITIES TO BE PAID BY THE TENANTS**

**EXHIBIT D: FEATURES PROVIDED TO COMPLY WITH PROGRAM ACCESSIBILITY FEATURES OF SECTION 504 OF THE REHABILITATION ACT OF 1973**

**ADDITIONAL EXHIBITS**

**d. Single-Stage and Multi-Stage Contracts (Check the applicable box.)**

1.  **Single-Stage Project**

This is a single-stage project.

For all contract units, the effective date of the HAP contract is:

\_\_\_\_\_.

The PHA enters the effective date, and executes the HAP contract, after completion and PHA acceptance of all units in the single stage project.

2.  **Multi-Stage Project**

This is a multi-stage project. The units in each completed stage are designated in Exhibit A.

The PHA enters the effective date for each stage after completion and PHA acceptance of all units in that stage. The PHA enters the effective date for each stage in the "Execution of HAP contract for contract units completed in stages" (starting on page 8).

The annual anniversary date of the HAP contract for all contract units in this multi-stage project is the anniversary of the effective date of the HAP contract for the contract units included in the first stage. The expiration date of the HAP contract for all of the contract units completed in stages must be concurrent with the end of the HAP contract term for the units included in the first stage. (See 24 CFR 983.206(c).)

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HAP Contract for New Construction or Rehabilitation**

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**e. Term of the HAP contract**

**1. Beginning of Term**

The PHA may not enter into a HAP contract for any contract unit until the PHA has determined that the unit complies with the housing quality standards. The term of the HAP contract for any unit begins on the effective date of the HAP contract.

**2. Length of initial term**

a. Subject to paragraph 2.b, the initial term of the HAP contract for any contract units is:

\_\_\_\_\_.

b. The initial term of the HAP contract for any unit may not be less than one year, nor more than fifteen years.

**3. Extension of term**

The PHA and owner may agree to enter into an extension of the HAP contract at the time of initial HAP contract execution or any time prior to expiration of the contract. Any extension, including the term of such extension, must be in accordance with HUD requirements.

A PHA must determine that any extension is appropriate to achieve long-term affordability of the housing or expand housing opportunities.

**4. Requirement for sufficient appropriated funding**

a. The length of the initial term and any extension term shall be subject to availability, as determined by HUD, or by the PHA in accordance with HUD requirements, of sufficient appropriated funding (budget authority), as provided in appropriations acts and in the PHA's annual contributions contract (ACC) with HUD, to make full payment of housing assistance payments due to the owner for any contract year in accordance with the HAP contract.

b. The availability of sufficient funding must be determined by HUD or by the PHA in accordance with HUD requirements. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action by the PHA shall be implemented in accordance with HUD requirements.

**Project-based Voucher Program  
HAP Contract for New Construction or Rehabilitation**

**f. Occupancy and payment**

**1. Payment for occupied unit**

During the term of the HAP contract, the PHA shall make housing assistance payments to the owner for the months during which a contract unit is leased to and occupied by an eligible family. If an assisted family moves out of a contract unit, the owner may keep the housing assistance payment for the calendar month when the family moves out (“move-out month”). However, the owner may not keep the payment if the PHA determines that the vacancy is the owner’s fault.

**2. Vacancy payment**

THE PHA HAS DISCRETION WHETHER TO INCLUDE THE VACANCY PAYMENT PROVISION (PARAGRAPH f.2), OR TO STRIKE THIS PROVISION FROM THE HAP CONTRACT FORM.

- a. If an assisted family moves out of a contract unit, the PHA may provide vacancy payments to the owner for a PHA-determined vacancy period extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.
- b. The vacancy payment to the owner for each month of the maximum two-month period will be determined by the PHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant’s security deposit). Any vacancy payment may only cover the period the unit remains vacant.
- c. The PHA may only make vacancy payments to the owner if:
  - 1. The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and the date when the family moved out (to the best of the owner’s knowledge and belief);
  - 2. The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
  - 3. The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and

4. The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.
- d. The PHA must take every reasonable action to minimize the likelihood and length of vacancy.
- e. The owner may refer families to the PHA, and recommend selection of such families from the PHA waiting list for occupancy of vacant units.
- f. The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payments.

**3. PHA is not responsible for family damage or debt to owner**

Except as provided in this paragraph f (Occupancy and Payment), the PHA will not make any other payment to the owner under the HAP contract. The PHA will not make any payment to owner for any damages to the unit, or for any other amounts owed by a family under the family's lease.

**g. Income-mixing requirement**

1. Except as provided in paragraphs g.2 and 3, the PHA will not make housing assistance payments under the HAP contract for more than 25 percent of the total number of dwelling units (assisted or unassisted) in any project. The term “project” means a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land assisted under this HAP contract.
2. The limitation in paragraph g.1 does not apply to single-family buildings.
3. In referring eligible families to the owner for admission to the number of contract units in any project exceeding the 25 percent limitation under paragraph g.1, the PHA shall give preference to elderly or disabled families, or to families receiving supportive services, for the number of contract units designated for occupancy by such families. The owner shall rent the designated number of contract units to such families referred by the PHA from the PHA waiting list.
4. The PHA and owner must comply with all HUD requirements regarding income mixing.

5. The following specifies the number of contract units (if any):
- a. Designated for occupancy by disabled families;
  - b. Designated for occupancy by elderly families;
  - c. Designated for occupancy by elderly or disabled families; or
  - d. Designated for occupancy by families receiving supportive services.

Check this box if any contract units are designated for disabled families.

The following number of contract units shall be rented to disabled families: \_\_\_\_\_.

Check this box if any contract units are designated for elderly families.

The following number of contract units shall be rented to elderly families: \_\_\_\_\_.

Check this box if any contract units are designated for elderly or disabled families.

The following number of contract units shall be rented to elderly or disabled families: \_\_\_\_\_.

Check this box if any contract units are designated for families receiving supportive services.

The following number of contract units shall be rented to families receiving supportive services: \_\_\_\_\_.

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**Project-based Voucher Program  
HAP Contract for New Construction or Rehabilitation**

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**EXECUTION OF HAP CONTRACT FOR SINGLE-STAGE PROJECT**

<b>PUBLIC HOUSING AGENCY (PHA)</b> <b>Name of PHA (Print)</b>
<b>By:</b> Signature of authorized representative
Name and official title (Print)
Date
<b>OWNER</b> <b>Name of Owner (Print)</b>
<b>By:</b> Signature of authorized representative
Name and title (Print)
Date

SAMPLE

**EXECUTION OF HAP CONTRACT FOR CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES**

(For multi-stage projects, at acceptance of each stage, the PHA and the owner sign the HAP contract execution for the completed stage.)

STAGE NO. 1. The Contract is hereby executed for the contract units in this stage.
STAGE EFFECTIVE DATE. The effective date of the Contract for this stage is:
PUBLIC HOUSING AGENCY (PHA) Name of PHA (Print)
By: Signature of authorized representative
Name and official title (Print) Date
OWNER Name of Owner (Print)
By: Signature of authorized representative
Name and title (Print) Date

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**Project-based Voucher Program  
HAP Contract for New Construction or Rehabilitation**

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STAGE NO. 2. The Contract is hereby executed for the contract units in this stage.

STAGE EFFECTIVE DATE. The effective date of the Contract for this stage is:

PUBLIC HOUSING AGENCY (PHA)  
Name of PHA (Print)

By:  
Signature of authorized representative

Name and official title (Print)  
Date

OWNER  
Name of Owner (Print)

By:  
Signature of authorized representative

Name and title (Print)  
Date

SAMPLE

STAGE NO. 3. The Contract is hereby executed for the contract units in this stage.

STAGE EFFECTIVE DATE. The effective date of the Contract for this stage is:

PUBLIC HOUSING AGENCY (PHA)  
Name of PHA (Print)

By:  
Signature of authorized representative

Name and official title (Print)  
Date

OWNER  
Name of Owner (Print)

By:  
Signature of authorized representative

Name and title (Print)  
Date

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**Project-based Voucher Program  
HAP Contract for New Construction or Rehabilitation**

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STAGE NO. ____ The Contract is hereby executed for the contract units in this stage. STAGE EFFECTIVE DATE. The effective date of the Contract for this stage is:
PUBLIC HOUSING AGENCY (PHA) Name of PHA (Print)
By: Signature of authorized representative
Name and official title (Print) Date
OWNER Name of Owner (Print)
By: Signature of authorized representative
Name and title (Print)
Date

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**Project-based Voucher Program  
HAP Contract for New Construction or Rehabilitation**

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ATTACHMENT F (continued)

**U.S. Department Of Housing and Urban Development  
Office of Public and Indian Housing**

**SECTION 8 PROJECT-BASED VOUCHER PROGRAM**

**PBV HOUSING ASSISTANCE PAYMENTS CONTRACT  
NEW CONSTRUCTION OR REHABILITATION**

**PART 2 OF HAP CONTRACT**

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

**2. DEFINITIONS**

**Agreement.** Agreement to enter into HAP Contract between the owner and the PHA. The HAP contract was entered into following new construction or rehabilitation of the contract units by the owner pursuant to an Agreement.

**Contract units.** The housing units covered by this HAP contract. The contract units are described in Exhibit A.

**Family.** The persons approved by the PHA to reside in a contract unit with assistance under the program.

**HAP contract.** This housing assistance payments contract between the PHA and the owner. The contract consists of Part 1, Part 2, and the contract exhibits (listed in section 1.c of the HAP contract).

**Housing assistance payment.** The monthly assistance payment by the PHA for a contract unit, which includes: (1) a payment to the owner for rent to the owner under the family's lease minus the tenant rent; and (2) an additional payment to or on behalf of the family if the utility allowance exceeds total tenant payment.

**Household.** The family and any PHA-approved live-in aide.

**Housing quality standards (HQS).** The HUD minimum quality standards for dwelling units occupied by families receiving project-based voucher program assistance.

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

**HUD requirements.** HUD requirements which apply to the project-based voucher program. HUD requirements are issued by HUD headquarters, as regulations, Federal Register notices or other binding program directives.

**Newly constructed housing.** Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the PHA and owner for use under the project-based voucher program.

**Owner.** Any person or entity who has the legal right to lease or sublease a unit to a participant.

**Premises.** The building or complex in which a contract unit is located, including common areas or grounds.

**Principal or interested party.** This term includes a management agent and other persons or entities participating in project management, and the officers and principal members, shareholders, investors, and other parties having a substantial interest in the HAP contract, or in any proceeds or benefits arising from the HAP contract.

**Program.** The project-based voucher program (see authorization for project-based assistance at 42 U.S.C. 1437f(o)(13)).

**PHA.** Public Housing Agency. The agency that has entered into the HAP contract with the owner. The agency is a public housing agency as defined in the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)).

**Proposal selection date.** The date the PHA gives written notice of proposal selection to the owner whose proposal is selected in accordance with the criteria established in the PHA's administrative plan.

**Rehabilitated housing.** Housing units that exist on the proposal selection date, but do not substantially comply with the HQS at that date, and are developed, pursuant to an Agreement between the PHA and owner, for use under the project-based voucher program.

**Rent to owner.** The total monthly rent payable to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

**Tenant.** The person or persons (other than a live-in aide) who executes the lease as a lessee of the dwelling unit.

**Tenant rent.** The portion of the rent to owner payable by the family, as determined by the PHA in accordance with HUD requirements. The PHA is not responsible for paying any part of the tenant rent.

---

**3. PURPOSE**

- a. This is a HAP contract between the PHA and the owner.
- b. The purpose of the HAP contract is to provide housing assistance payments for eligible families who lease contract units that comply with the HUD HQS from the owner.
- c. The PHA must make housing assistance payments to the owner in accordance with the HAP contract for contract units leased and occupied by eligible families during the HAP contract term. HUD provides funds to the PHA to make housing assistance payments to owners for eligible families.

**4. RENT TO OWNER; HOUSING ASSISTANCE PAYMENTS**

---

**a. Amount of initial rent to owner**

The initial rent to owner for each contract unit is stated in Exhibit A, which is attached to and made a part of the HAP contract. At the beginning of the HAP contract term, and until rent to owner is adjusted in accordance with section 5 of the HAP contract, the rent to owner for each bedroom size (number of bedrooms) shall be the initial rent to owner amount listed in Exhibit A.

**b. HUD rent requirements**

Notwithstanding any other provision of the HAP contract, the rent to owner may in no event exceed the amount authorized in accordance with HUD requirements. The PHA has the right to reduce the rent to owner, at any time, to correct any errors in establishing or adjusting the rent to owner in accordance with HUD requirements. The PHA may recover any overpayment from the owner.

**c. PHA payment to owner**

1. Each month the PHA must make a housing assistance payment to the owner for a unit under lease to and occupied by an eligible family in

accordance with the HAP contract.

2. The monthly housing assistance payment to the owner for a contract unit is equal to the amount by which the rent to owner exceeds the tenant rent.
3. Payment of the tenant rent is the responsibility of the family. The PHA is not responsible for paying any part of the tenant rent, or for paying any other claim by the owner against a family. The PHA is only responsible for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract.
4. The owner will be paid the housing assistance payment under the HAP contract on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.
5. To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.
6. If the PHA determines that the owner is not entitled to the payment or any part of it, the PHA, in addition to other remedies, may deduct the amount of the overpayment from any amounts due the owner, including amounts due under any other housing assistance payments contract.
7. The owner will notify the PHA promptly of any change of circumstances that would affect the amount of the monthly housing assistance payment, and will return any payment that does not conform to the changed circumstances.

**d. Termination of assistance for family**

The PHA may terminate housing assistance for a family under the HAP contract in accordance with HUD requirements. The PHA must notify the owner in writing of its decision to terminate housing assistance for the family in such case.

---

**5. ADJUSTMENT OF RENT TO OWNER**

**a. PHA determination of adjusted rent**

1. At each annual anniversary during the term of the HAP contract, the PHA

shall adjust the amount of rent to owner, upon request to the PHA by the owner, in accordance with law and HUD requirements. In addition, the PHA shall adjust the rent to owner when there is a five percent or greater decrease in the published, applicable Fair Market Rent in accordance with 24 CFR 983.302.

2. The adjustment of rent to owner shall always be determined in accordance with all HUD requirements. The amount of the rent to owner may be adjusted up or down, in the amount defined by the PHA in accordance with HUD requirements.

**b. Reasonable rent**

The rent to owner for each contract unit, as adjusted by the PHA in accordance with 24 CFR 983.303, may at no time exceed the reasonable rent charged for comparable units in the private unassisted market. The reasonable rent shall be determined by the PHA in accordance with HUD requirements.

**c. No special adjustments**

The PHA will not make any special adjustments of the rent to owner.

**d. Owner compliance with HAP contract**

The PHA shall not approve, and the owner shall not receive, any increase of rent to owner unless all contract units are in accordance with the HQS, and the owner has complied with the terms of the assisted leases and the HAP contract.

**e. Notice of rent adjustment**

Rent to owner shall be adjusted by written notice by the PHA to the owner in accordance with this section. Such notice constitutes an amendment of the rents specified in Exhibit A.

---

**6. OWNER RESPONSIBILITY**

The owner is responsible for:

- a. Performing all management and rental functions for the contract units.
- b. Maintaining the units in accordance with HQS.

- c. Complying with equal opportunity requirements.
- d. Enforcing tenant obligations under the lease.
- e. Paying for utilities and housing services (unless paid by the family under the lease).
- f. Collecting from the tenant:
  - 1. Any security deposit;
  - 2. The tenant rent; and
  - 3. Any charge for unit damage by the family.

---

**7. OWNER CERTIFICATION**

The owner certifies that at all times during the term of the HAP contract:

- a. All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.
- b. The owner is providing all the services, maintenance and utilities as agreed to under the HAP contract and the leases with assisted families.
- c. Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements.
- d. To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.
- e. The owner (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.
- f. The amount of the housing assistance payment is the correct amount due under the HAP contract.
- g. The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.

- h. Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payments or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.
- i. The family does not own, or have any interest in the contract unit. If the owner is a cooperative, the family may be a member of the cooperative.

---

**8. CONDITION OF UNITS**

**a. Owner maintenance and operation**

The owner must maintain and operate the contract units and premises to provide decent, safe and sanitary housing in accordance with the HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance and utilities set forth in Exhibits B and C, and in the lease with each assisted family.

**b. PHA inspections**

- 1. The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with the HQS.
- 2. Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with the HQS.
- 3. At least annually during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph 2 of this section are not counted towards meeting this annual inspection requirement.
- 4. If more than 20 percent of the annual sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.
- 5. The PHA must inspect contract units whenever needed to determine that the contract units comply with the HQS and that the owner is providing

maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information that comes to its attention in scheduling inspections.

**c. Violation of the housing quality standards**

1. If the PHA determines a contract unit is not in accordance with the HQS, the PHA may exercise any of its remedies under the HAP contract for all or any contract units. Such remedies include termination, suspension or reduction of housing assistance payments, and termination of the HAP contract.
2. The PHA may exercise any such contractual remedy respecting a contract unit even if the family continues to occupy the unit.
3. The PHA shall not make any housing assistance for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any PHA-approved extension).

**d. Maintenance and replacement—owner’s standard practice**

Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

---

**9. LEASING CONTRACT UNITS**

**a. Selection of tenants**

1. During the term of the HAP contract, the owner must lease all contract units to eligible families selected and referred by the PHA from the PHA waiting list. (See 24 CFR 983.251.)
2. The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant’s ability to perform the lease obligations.
3. Consistent with HUD requirements, the owner may apply its own admission procedures in determining whether to admit a family referred

by the PHA for occupancy of a contract unit. The owner may refer families to the PHA, and recommend selection of such families from the PHA waiting list for occupancy of vacant units.

4. The owner must promptly notify in writing any rejected applicant of the grounds for rejection.
5. The PHA must determine family eligibility in accordance with HUD requirements.
6. The contract unit leased to each family must be appropriate for the size of the family under the PHA's subsidy standards.
7. If a contract unit was occupied by an eligible family at the time the unit was selected by the PHA, or is so occupied on the effective date of the HAP contract, the owner must offer the family the opportunity to lease the same or another appropriately-sized contract unit with assistance under the HAP contract.
8. The owner is responsible for screening and selecting tenants from the families referred by the PHA from its waiting list.

**b. Vacancies**

1. The owner must promptly notify the PHA of any vacancy in a contract unit. After receiving the owner notice, the PHA shall make every reasonable effort to refer a sufficient number of families for owner to fill the vacancy.
2. The owner must rent vacant contract units to eligible families on the PHA waiting list referred by the PHA.
3. The PHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.
4. If any contract units have been vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the PHA to fill such vacancies), the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

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## **10. TENANCY**

### **a. Lease**

The lease between the owner and each assisted family must be in accordance with HUD requirements. In all cases, the lease must include the HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

### **b. Termination of tenancy**

1. The owner may only terminate a tenancy in accordance with the lease and HUD requirements.
2. The owner must give the PHA a copy of any owner eviction notice to the tenant at the same time that the owner gives notice to the tenant. Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used to commence an eviction action under State or local law.

### **c. Family payment**

1. The portion of the monthly rent to owner payable by the family (“tenant rent”) will be determined by the PHA in accordance with HUD requirements. The amount of the tenant rent is subject to change during the term of the HAP contract. Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.
2. The amount of the tenant rent as determined by the PHA is the maximum amount the owner may charge the family for rent of a contract unit, including all housing services, maintenance and utilities to be provided by the owner in accordance with the HAP contract and the lease.
3. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess rent payment to the tenant.
4. The family is not responsible for payment of the portion of the contract rent covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the PHA housing assistance payment.

5. The PHA is only responsible for making the housing assistance payments to the owner on behalf of the family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or any other claim by the owner.

**d. Other owner charges**

1. Except as provided in paragraph 2, the owner may not require the tenant or family members to pay charges for meals or supportive services. Nonpayment of such charges is not grounds for termination of tenancy.
2. In assisted living developments receiving project-based voucher assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.
3. The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to the unsubsidized tenant in the premises.

**e. Security deposit**

1. The owner may collect a security deposit from the family.
2. The owner must comply with HUD and PHA requirements, which may change from time to time, regarding security deposits from a tenant.
3. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted families.
4. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit or other amounts which the family owes under the lease. The owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the owner, the owner must

promptly refund the full amount of the balance to the family.

5. If the security deposit is not sufficient to cover amounts the family owes under the lease, the owner may seek to collect the balance from the family. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

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**11. FAMILY RIGHT TO MOVE**

- a. The family may terminate its lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease. If the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for tenant-based rental assistance in accordance with HUD requirements.
- b. Before providing notice to terminate the lease under paragraph a, the family must first contact the PHA to request tenant-based rental assistance if the family wishes to move with continued assistance. If tenant-based rental assistance is not immediately available upon lease termination, the PHA shall give the family priority to receive the next available opportunity for tenant-based rental assistance.

**12. OVERCROWDED, UNDER-OCCUPIED, AND ACCESSIBLE UNITS**

The PHA subsidy standards determine the appropriate unit size for the family size and composition. The PHA and owner must comply with the requirements in 24 CFR 983.259.

**13. PROHIBITION OF DISCRIMINATION**

- a. The owner may not refuse to lease contract units to, or otherwise discriminate against any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.
- b. The owner must comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.* ; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the

Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

- c. The PHA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

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#### **14. PHA DEFAULT AND HUD REMEDIES**

If HUD determines that the PHA has failed to comply with the HAP contract, or has failed to take appropriate action to HUD's satisfaction or as directed by HUD, for enforcement of the PHA's rights under the HAP contract, HUD may assume the PHA's rights and obligations under the HAP contract, and may perform the obligations and enforce the rights of the PHA under the HAP contract.

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#### **15. OWNER DEFAULT AND PHA REMEDIES**

##### **a. Owner default**

Any of the following is a default by the owner under the HAP contract:

1. The owner has failed to comply with any obligation under the HAP contract, including the owner's obligations to maintain all contract units in accordance with the housing quality standards.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the HAP contract.
4. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD and:
  - A. The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or
  - B. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
6. The owner has engaged in any drug-related criminal activity or any violent criminal activity.

**b. PHA remedies**

1. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights or remedies under the HAP contract.
2. The PHA must notify the owner in writing of such determination. The notice by the PHA to the owner may require the owner to take corrective action (as verified by the PHA) by a time prescribed in the notice.
3. The PHA's rights and remedies under the HAP contract include recovery of overpayments, termination or reduction of housing assistance payments, and termination of the HAP contract.

**c. PHA remedy is not waived**

The PHA's exercise or non-exercise of any remedy for owner breach of the HAP contract is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

## **16. OWNER DUTY TO PROVIDE INFORMATION AND ACCESS REQUIRED BY HUD OR PHA**

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### **a. Required information**

The owner must prepare and furnish any information pertinent to the HAP contract as may reasonably be required from time to time by the PHA or HUD. The owner shall furnish such information in the form and manner required by the PHA or HUD.

### **b. PHA and HUD access to premises**

The owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the HAP contract, including the verification of information pertinent to the housing assistance payments or the HAP contract.

## **17. PHA AND OWNER RELATION TO THIRD PARTIES**

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### **a. Injury because of owner action or failure to act**

The PHA has no responsibility for or liability to any person injured as a result of the owner's action or failure to act in connection with the implementation of the HAP contract, or as a result of any other action or failure to act by the owner.

### **b. Legal relationship**

The owner is not the agent of the PHA. The HAP contract does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractors or subcontractors used by the owner in connection with the implementation of the HAP contract.

### **c. Exclusion of third party claims**

Nothing in the HAP contract shall be construed as creating any right of a family or other third party (other than HUD) to enforce any provision of the HAP contract, or to assert any claim against HUD, the PHA or the owner under the HAP contract.

**d. Exclusion of owner claims against HUD**

Nothing in the HAP contract shall be construed as creating any right of the owner to assert any claim against HUD.

**18. PHA-OWNED UNITS**

Notwithstanding Section 17 of this HAP contract, a PHA may own units assisted under the project-based voucher program, subject to the special requirements in 24 CFR 983.59 regarding PHA-owned units.

**19. CONFLICT OF INTEREST**

**a. Interest of members, officers, or employees of PHA, members of local governing body, or other public officials**

1. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, or in the HAP contract.
2. HUD may waive this provision for good cause.

**b. Disclosure**

The owner has disclosed to the PHA any interest that would be a violation of the HAP contract. The owner must fully and promptly update such disclosures.

**c. Interest of member of or delegate to Congress**

No member of or delegate to the Congress of the United States of America or resident-commissioner shall be admitted to any share or part of this HAP contract or to any benefits arising from the contract.

## **20. EXCLUSION FROM FEDERAL PROGRAMS**

### **a. Federal requirements**

The owner must comply with and is subject to requirements of 2 CFR part 2424.

### **b. Disclosure**

The owner certifies that:

1. The owner has disclosed to the PHA the identity of the owner and any principal or interested party.
2. Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation or otherwise excluded under 2 CFR part 2424.

## **21. TRANSFER OF THE CONTRACT OR PROPERTY**

### **a. When consent is required**

1. The owner agrees that neither the HAP contract nor the property may be transferred without the advance written consent of the PHA in accordance with HUD requirements.
2. "Transfer" includes:
  - A. Any sale or assignment or other transfer of ownership, in any form, of the HAP contract or the property;
  - B. The transfer of any right to receive housing assistance payments that may be payable pursuant to the HAP contract;
  - C. The creation of a security interest in the HAP contract or the property;
  - D. Foreclosure or other execution on a security interest; or
  - E. A creditor's lien, or transfer in bankruptcy.

3. If the owner is a corporation, partnership, trust or joint venture, the owner is not required to obtain advance consent of the PHA pursuant to paragraph a for transfer of a passive and non-controlling interest in the ownership entity (such as a stock transfer or transfer of the interest of a limited partner), if any interests so transferred cumulatively represent less than half the beneficial interest in the HAP contract or the property. The owner must obtain advance consent pursuant to paragraph a for transfer of any interest of a general partner.

**b Transferee assumption of HAP contract**

No transferee (including the holder of a security interest, the security holder's transferee or successor in interest, or the transferee upon exercise of a security interest) shall have any right to receive any payment of housing assistance payments pursuant to the HAP contract, or to exercise any rights or remedies under the HAP contract, unless the PHA has consented in advance, in writing to such transfer, and the transferee has agreed in writing, in a form acceptable to the PHA in accordance with HUD requirements, to assume the obligations of the owner under the HAP contract, and to comply with all the terms of the HAP contract.

**c. Effect of consent to transfer**

1. The creation or transfer of any security interest in the HAP contract is limited to amounts payable under the HAP contract in accordance with the terms of the HAP contract.
2. The PHA's consent to transfer of the HAP contract or the property does not to change the terms of the HAP contract in any way, and does not change the rights or obligations of the PHA or the owner under the HAP contract.
3. The PHA's consent to transfer of the HAP contract or the property to any transferee does not constitute consent to any further transfers of the HAP contract or the property, including further transfers to any successors or assigns of an approved transferee.

**d. When transfer is prohibited**

The PHA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the

U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

## **22. SUBSIDY LAYERING**

### **a. Owner disclosure**

The owner must disclose to the PHA, in accordance with HUD requirements, information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

### **b. Limit of payments**

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA will adjust in accordance with HUD requirements the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

## **23. OWNER LOBBYING CERTIFICATIONS**

- a. The owner certifies, to the best of owner's knowledge and belief, that:
1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.
  2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in
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accordance with its instructions.

- b. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

**24. COMPLETION AND ACCEPTANCE OF CONTRACT UNITS**

The owner certifies that the contract units have been completed in accordance with the Agreement. Completion and acceptance of the units is subject to the provisions of the Agreement.

**25. TERMINATION OF HAP CONTRACT FOR WRONGFUL SELECTION OF CONTRACT UNITS**

The HAP contract may be terminated upon at least 30 days notice to the owner by the PHA or HUD if the PHA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

**26. NOTICES AND OWNER CERTIFICATIONS**

- a. Where the owner is required to give any notice to the PHA pursuant to the HAP contract or any other provision of law, such notice must be in writing and must be given in the form and manner required by the PHA.
- b. Any certification or warranty by the owner pursuant to the HAP contract shall be deemed a material representation of fact upon which reliance was placed when this transaction was made or entered into.

**27. ENTIRE AGREEMENT; INTERPRETATION**

- a. The Agreement and the HAP contract, including the exhibits, is the entire agreement between the PHA and the owner.
- b. The Agreement and the HAP contract must be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the HAP contract. The owner agrees to comply with all such laws and HUD requirements.

ATTACHMENT G



INVESTING IN COMMUNITIES

**Sacramento Housing and Redevelopment Agency**

**And**

**Contractor:** \_\_\_\_\_

**Contract Confidentiality Requirement and Cyber Insurance**

**Protecting Personally Identifying Information**

The Sacramento Housing and Redevelopment Agency (SHRA) is federally funded and subject to the requirements of the federal Privacy Act of 1974 and various California statutes protecting privacy including the California State Constitution. Any contractor, vendor, business or person conducting business with SHRA, and has access to personally identifying information, is required to meet the standards outlined in the Privacy Act, and any Public and Indian Housing (PIH) Notice issued by the U. S. Department of Housing and Urban Development which is the regulating Agency of SHRA and all applicable state laws.

This document is an attachment to the contract effective \_\_\_\_\_ between SHRA and \_\_\_\_\_, (herein referred to as “Contractor”). This document spells out the requirements that must be met by the “Contractor,” its sub-vendors, its employees, associates and persons who will have access to the Personally Identifying Information (PII) of a person who is/was an applicant to, current or former participant of any Housing Authority programs, or any current, past or future employee of SHRA.

**ADDITIONAL INSURANCE REQUIREMENTS:**

In addition to the insurance required in the Contract between Agency and Contractor to which this PII Agreement is attached and incorporated therein, Contractor shall obtain and maintain at its own expense Cyber Liability coverage from a company or companies rated A:VII or better by A.M. Best.

Cyber Liability coverage with limits of no less than \$1,000,000 per claim and \$2,000,000 annual aggregate (or in such other amount as approved by Agency), covering all acts, errors, omissions, negligence, and including infringement of intellectual property in the performance of services for SHRA or on behalf of SHRA. Contractor’s policy will provide for Data Security & Privacy “Cyber” coverage (including coverage for unauthorized access and use, failure of security, breach of

confidential information, alleged or actual theft, dissemination, and/or use of personal or confidential information and any related forensic costs, crisis management costs, investigation, and costs of regulatory/governmental investigations).

Such insurance shall be maintained in force at all times during the term of the agreement and for a period of two years thereafter for services completed during the term of the agreement. SHRA shall be given at least 30 days' notice of the cancellation or expiration of the aforementioned insurance for any reason.

## **DEFINITIONS:**

### Personally Identifying Information:

PIH Notice 2014-10 Privacy Protection Guidance for Third Parties: PII is defined as:

i) “. . . information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

ii) Sensitive Personally Identifiable Information. PII that when lost, compromised or disclosed without authorization could substantially harm an individual. Examples of sensitive PII include social security or driver’s license numbers, medical records, and financial account numbers such as credit or debit card numbers.

### Privacy Act:

In accord with the Department of Justice, “The Privacy Act of 1974, 5 U.S.C. § 552a, establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifier assigned to the individual. The Privacy Act requires that agencies give the public notice of their systems of records by publication in the Federal Register. The Privacy Act prohibits the disclosure of a record about an individual from a system of records absent the written consent of the individual, unless the disclosure is pursuant to one of twelve statutory exceptions. The Act also provides individuals with a means by which to seek access to and amendment of their records, and sets forth various agency record-keeping requirements.

## **BASIC REQUIREMENTS:**

The “Contractor” agrees to:

1. Comply with the requirements of the Privacy Act of 1974 and the requirement to protect PII as quoted from PIH Notice 2014-10 (and any subsequent PIH notices related to protecting PII that are released)

2. Impose the requirements of the Privacy Act of 1974 and PIH Notice 2014 and any subsequent notices on all of its employees, associates and persons who will have access to PII of a person who is/was an applicant, current or former participant of any Housing Authority programs, or any current, past or future employee of SHRA.
3. Participate in an initial and annual PII training to be conducted by SHRA or its assignee as a condition of the contract, at SHRA's discretion.
4. Immediately inform SHRA by phone AND through written notification when any section of this contract has been violated. Written notification must be sent to the appropriate Director and Program Manager for the program, and may be submitted by email.

### **CONTRACTOR'S AGREEMENT:**

The "Contractor" agrees to:

#### i) Limit Collection of PII

(1) Not collect or maintain sensitive PII without proper authorization. Collect only the PII that is needed for the purposes for which it is collected.

#### ii) Manage Access to Sensitive PII

(1) Only share or discuss sensitive PII with those personnel who have a need to know for purposes of their work. Challenge anyone who asks for "access to sensitive PII for which you are responsible.

(2) Do not distribute or release sensitive PII to other employees, contractors, or other third parties unless you are first convinced that the release is authorized, proper and necessary.

(3) When discussing sensitive PII on the telephone, confirm that you are speaking to the right person before discussing the information and inform him/her that the discussion will include sensitive PII.

(4) Never leave messages containing sensitive PII on voicemail.

(5) Avoid discussing sensitive PII if there are unauthorized personnel, contractors, or guests in the adjacent cubicles, rooms, or hallways who may overhear your conversations.

(6) Hold meetings in a secure space (i.e., no unauthorized access or eavesdropping possible) if sensitive PII will be discussed and ensure that the room is secured after the meeting.

(7) Treat notes and minutes from such meetings as confidential unless you can verify that they do not contain sensitive PII.

(8) Record the date, time, place, subject, chairperson, and attendees at any meeting involving sensitive PII.

iii) Protect Hard Copy and Electronic Files Containing Sensitive PII

(1) Clearly label all files containing sensitive PII by placing appropriate physical labels on all documents, removable media such as thumb drives, information systems, and application. Examples of appropriate labels might include —For Official Use Only || or —For (Name of Individual/Program Office) Use Only. ||

(2) Lock up all hard copy files containing sensitive PII in secured file cabinets and do not leave unattended.

(3) Protect all media (e.g., thumb drives, CDs, etc.) that contain sensitive PII and do not leave unattended. This information should be maintained either in secured file cabinets or in computers that have been secured.

(4) Keep accurate records of where PII is stored, used, and maintained.

(5) Periodically audit all sensitive PII holdings to make sure that all such information can be readily located.

(6) Secure digital copies of files containing sensitive PII. Protections include encryption, implementing enhanced authentication mechanisms such as two- factor authentication and limiting the number of people allowed access to the files.

(7) Store sensitive PII only on workstations that can be secured, such as workstations located in areas that have restricted physical access.

iv) Protecting Electronic Transmissions of Sensitive PII via fax, email, etc.

(1) When faxing sensitive PII, use the date stamp function, confirm the fax number, verify that the intended recipient is available, and confirm that he/she has received the fax. Ensure that none of the transmission is stored in memory on the fax machine, that the fax is in a controlled area, and that all paper waste is disposed of properly (e.g., shredded). When possible, use a fax machine that uses a secure transmission line.

(2) Before faxing PII, coordinate with the recipient so that the PII will not be left unattended on the receiving end.

(3) When faxing sensitive PII, use only individually-controlled fax machines, not central receiving centers.

(4) Do not transmit sensitive PII via an unsecured information system (e.g., electronic mail, Internet, or electronic bulletin board) without first encrypting the information.

(5) When sending sensitive PII via email, make sure both the message and any attachments are encrypted.

(6) Do not place PII on shared drives, multi-access calendars, the Intranet, or the Internet.

v) Protecting Hard Copy Transmissions of Files Containing Sensitive PII

- (1) Do not remove records about individuals with sensitive PII from facilities where SHRA information is authorized to be stored and used unless approval is first obtained from a supervisor. Sufficient justification, as well as evidence of information security, must be presented.
- (2) Do not use interoffice or translucent envelopes to mail sensitive PII. Use sealable opaque solid envelopes. Mark the envelope to the person's attention.
- (3) Do not allow employees, associates or persons to take PII documents home, but must return to the office of the "Contractor" or its Assignee
- (4) When out in the field, PII information must be stored in the trunk
- (5) PII Information must not be left in a car overnight.
- (6) If any PII information must be transported by any mode of transportation, the PII information is secured and locked in the trunk of the vehicle or locked in a van. Files transported with PII information from the vehicle to the building must be in a sealed envelope or box. If information is being carried by a person it must be placed in a locked box.
- (7) When using the U.S. postal service to deliver information with sensitive PII, double-wrap the documents (e.g., use two envelopes – one inside the other) and mark only the inside envelope as confidential with the statement —To Be Opened By Addressee Only.

vi) Records Management, Retention and Disposition

- (1) Follow records management laws, regulations, and policies applicable within your jurisdiction.
- (2) Ensure all of the 'Contractor's' locations and all entities acting on behalf of the "Contractor" are managing records in accordance with applicable laws, regulations, and policies.
- (3) Include records management practices as part of any scheduled oversight protocols.
- (4) Do not maintain records longer than required.
- (5) Destroy records after retention requirements are met.
- (6) Dispose of sensitive PII appropriately – use cross-cut shredders or burn bags for hard copy records and permanently erase (not just delete) electronic records.
- (7) The "Contractor should ensure that all of its employees, associates and persons who will have access to PII are familiar with reporting procedures.

vii) Promptly report all suspected compromises of sensitive PII related to the appropriate Director and Program Manager by phone AND in writing

**PENALTIES FOR NON-COMPLIANCE:**

SHRA Penalties: The contract to which this document is attached is subject to termination due to non-compliance or violation of either the Federal Privacy Act; the verified disclosure of PII or the failure to meet any of the requirements by the “Contractor” its employees, associates or persons within its agency. SHRA shall notify the “Contractor” in writing with at least 30 days’ notice of the contract termination

Civil Penalties: An individual can be held personally liable and may be fined up to \$5,000 for each offense, or imprisoned up to five years or both for failing to comply with the regulations governing the use and unauthorized access to PII.

**ACKNOWLEDGEMENT AND ACCEPTANCE:**

I acknowledge all of the terms listed within this document and accept all of the requirements stated herein.

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Contractor Name

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Contractor's Signature

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Date signed by Contractor

Ref: Contract effective: \_\_\_\_\_