

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

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

AGREEMENT/CONTRACT NUMBER: V00077-AHAP-02

U.S. Department of Housing and Urban Development
Section 8 Housing Assistance Payments Program

Section 8 Certificate Program
Project Based Assistance

**PART I OF THE
AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT**

This Agreement to Enter Into Housing Assistance Payments Contract ("Agreement") is entered into between the El Dorado County Public Housing Authority ("PHA"), and Tahoe Senior Housing II, L.P. ("Owner").

The Owner agrees to complete the work on unit(s) in accordance with Exhibit B. When the work is completed, the Owner and the PHA will enter into a Housing Assistance Payments Contract ("Contract") which will allow the Owner to receive housing assistance payments from the PHA on behalf of eligible Families ("Families") so that they may afford to rent the unit(s). The PHA has executed an Annual Contributions Contract ("ACC") with HUD by which HUD agrees to provide funds to the PHA to make these housing assistance payments.

1.1 Significant Dates: Contents of Agreement.

- A. Effective Date of Agreement: 04/29/2008.
- B. Date of Commencement of Work. The date for commencement of work is not later than 30 calendar days after the effective date of this Agreement.
- C. Time for Completion of Work. The date for completion of work is not later than 365 calendar days after the effective date of this Agreement.
- D. Contents of Agreement. This Agreement consists of Part I, Part II, Form HUD 52531-B dated December 1988 (if applicable, see Section 1.2), and the following exhibits:

Exhibit A.- The approved Owner's Application.

Exhibit B: Description of work to be performed under this Agreement. (If this Agreement is for rehabilitation of units, this exhibit shall contain the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. If this agreement is for new construction, this exhibit shall contain the drawings and specifications.)

Exhibit C: Identification of units by size and applicable initial Contract Rents.

Exhibit D: The Housing Assistance Payments Contract ("Contract") complete with respect to the Agreement/Contract number, the identification of the PHA and Owner, and Exhibit B.

Exhibit E: The schedule of completion of stages, if applicable. (This exhibit shall identify the units in each stage.)

Exhibit F: Exhibit required if this Agreement is for new construction. This exhibit shall contain the design architect's certification that the proposed new construction reflected in the working drawings and specifications complies with Housing Quality Standards, local codes and ordinances, and zoning requirements.

Additional Exhibits: (Specify additional exhibits, such as Davis-Bacon Wage Rate Schedule, if any. If none, insert "None".)

This Agreement, including the exhibits, is the entire Agreement between the PHA and Owner.

E. Nature of Work. (Check which is applicable.)

- ☐ This Agreement is for rehabilitation of units to be assisted by project-based assistance under the Section 8 Certificate Program.
- ☒ This Agreement is for new construction of units to be assisted by project-based assistance under the Section 8 Certificate Program.

1.2 Applicability of Part II Provisions.

- 2.1 Training, Employment, and Contracting Opportunities for Businesses and Lower-Income Persons. (Applies if the total of Contract Rents for all units under the proposed Contract, over the minimum term of the Contract, is more than \$500,000 or \$2,778 per month).

☒ Applicable ☐ Not Applicable

- 2.2 Equal Employment Opportunity. (Applies only to construction contracts of more than \$10,000.)

☒ Applicable ☐ Not Applicable

- 2.3 Clean Air Act and Federal Water Pollution Control Act. (Applies if the total of Contract Rents for all units under the Contract, over the maximum term of the Contract, is more than \$100,000 or \$556 per month).

☒ Applicable ☐ Not Applicable

- 2.4 Labor Standards Requirements. (Sections 2.4, 2.8 and 2.10 apply when this Agreement covers nine or more units.) 2.4 HUD-Federal Labor Standards Provisions, 2.8 Wage Claims and Adjustments; 2.10 Evidence of Unit(s) Completion; Escrow.

☐ Applicable ☒ Not Applicable

- 2.11 Flood Insurance. (Applies if units are located in areas having special flood hazards and in which flood insurance is available under the National Flood Insurance Program.)

☐ Applicable ☒ Not Applicable

1.3 PHA Assurance to Owner.

The PHA warrants that it is a "public housing agency" as defined in the U.S. Housing Act of 1937, that it is authorized to execute an Agreement in accordance with HUD regulations and requirements and that it has an ACC with HUD.

1.4 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 1.1.B. 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 1.1.C. Where completion in stages is provided for, work related to units included in each stage shall be completed by the stage completion date in Exhibit E, and all work on all stages must be completed no later than the end of the period stated in Section 1.1.C.
- C. Delays. If there is 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 the case of such delays, the PHA shall reduce the term of the Contract so that the Contract term does not extend beyond the last date of the ACC term for the ACC funding authority from which the Contract is to be funded.

1.5 Rehabilitation Period.

- A. Establishment of Initial Contract Rent.
 - 1. The initial Contract Rent for each unit may in no event exceed the amount authorized in accordance with HUD regulations and requirements.
 - 2. The Contract Rents stated in Exhibit C of this Agreement will be the initial Contract Rents specified in the Contract unless a lower initial Contract Rent is established by the PHA in accordance with paragraph B of this section, or Section 1.14A of this Agreement. The initial Contract Rents stated in Exhibit C of this Agreement shall not be increased for any reason, including changes in the work.

B. Establishment of Lower Initial Contract Rent.

1. Excessive Rent. Where the initial Contract Rent for any unit would otherwise exceed the amount authorized in accordance with HUD regulations and requirements, the PHA shall establish a lower initial Contract Rent in accordance with such regulations and requirements. Such lower rent shall be established at the amount determined by HUD.
2. Changes in the 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 lower initial Contract Rents at the amounts determined by HUD.
 - (b) If the Owner makes any changes in the work without prior PHA approval, the PHA may establish lower initial Contract Rents at the amounts determined by HUD.
3. Insured or Coinsured Mortgage. When a HUD insured or a HUD coinsured multifamily mortgage is used, the PHA shall establish lower initial Contract Rent, in the amounts determined by HUD to reflect any reduction in the amount necessary to amortize the insured or coinsured mortgage.

- C. List of Vacancies. At least sixty days prior to the scheduled completion of the work described in Exhibit B (where completion in stages is provided, sixty days prior to completion of each stage), the Owner shall notify the PHA in writing of any unit(s) expected to be vacant at the anticipated effective date of the Contract. The PHA shall refer to the Owner appropriate-sized families from the PHA waiting list. When the Contract is executed, the Owner shall notify the PHA which units are vacant.

- D. Prohibition Against Displacement of Residential Tenants from Assisted Units. The Owner agrees that work on any unit to be subsidized with assistance under this Contract shall not result in the displacement of residential tenants from the units to be subsidized.. If a residential tenant is displaced through a waiver of

this requirement or in violation of this requirement, the owner shall provide relocation assistance for displaced person in accordance with the regulations which implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

- E. Temporary Relocation. The Owner agrees that lawful residential tenants shall not be required to move temporarily from a structure or complex unless:
1. The Owner has given the tenants advance written notice and appropriate advisory services;
 2. Decent, safe, and sanitary temporary housing is available;
 3. The temporary relocation period will not exceed 12 months; and
 4. The Owner reimburses tenants for reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from temporary housing and increases in monthly housing costs.

These requirements apply only to lawful residential tenants (but not to owner-occupants or businesses) who are temporarily relocated following submission of the Owner's application to the PHA. The requirements do not apply to tenants who commence occupancy after the Owner's submission of an application if, before they commence occupancy, they are provided written notice from the Owner of the impending work and possible temporary relocation, or whose tenancy is terminated for cause based upon a serious or repeated violation of material terms of the lease or occupancy agreement.

- F. Inspections. The PHA (or HUD in the case of insured or coinsured mortgages) 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 levels of material described in Exhibit B, and meets typical levels of workmanship in the area.

1.6 Work Completion.

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

- B. Notification of Completion. The Owner agrees to notify the PHA when the work is completed and to submit to the PHA the items described in paragraph C of this section.
- C. Evidence of Completion. When the work is completed, the Owner must provide the PHA with the following:
1. A certificate of occupancy and other official approvals as required by the locality.
 2. A certification by the Owner that:
 - (a) The work has been completed in accordance with the requirements of this Agreement;
 - (b) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy,
 - (c) The unit(s) has been rehabilitated or constructed and is in accordance with applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waiver obtained from appropriate officials;
 - (d) Any unit built prior to 1978 is in compliance with applicable HUD Lead Based Paint regulations; and
 - (e) If Labor Standards Requirements are applicable, the Owner has complied with the requirements of Section 2.10 of this Agreement.
 3. For projects where construction inspections by HUD staff are not required by HUD, a certification from the inspecting architect stating that the units have been constructed in accordance with the certified working drawings and specifications, Housing Quality Standards, local codes and ordinances, and zoning requirements.
- D. Review and Inspection.
1. After receipt of the evidence of completion, the PHA agrees to review the evidence of completion for compliance with paragraph C of this section and, if applicable, Section 2.10.

2. A PHA representative must inspect the unit(s) to be assisted to determine that the work has been completed in accordance with the requirements of this Agreement. If the inspection discloses defects or deficiencies the inspector will report them to the PHA with sufficient detail and information for purposes of this section.
- E. Acceptance. If the PHA determines from the review and inspection that all the work has been completed in accordance with the requirements of this Agreement, the unit(s) must be accepted.
- F. Acceptance Where Defects or Deficiencies Reported. If the work is not acceptable, the following shall apply:
1. If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions and in any case which do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the unit(s) may be accepted. The Owner shall deposit in escrow with the PHA funds in an amount the PHA determines to be sufficient to assure completion of the delayed items, and shall execute a written agreement with the PHA (in the form prescribed by the PHA) which specifies the schedule for completion of the items. If the Owner fails to deposit such escrow, or to execute such written agreement, or if items are not completed within the agreed time period, the PHA may terminate the Agreement or Contract or exercise other rights under the Agreement or Contract.
 2. If other defects or deficiencies exist, the PHA shall determine whether and to what extent the defects or deficiencies are correctable, whether the unit(s) will be accepted after correction of defects or deficiencies, and the requirements and procedures for such correction and acceptance. Furthermore, the PHA shall determine whether lower initial Contract Rents shall be established, and whether the term of the Contract shall be reduced. The Owner shall be notified of the PHA's decision.
- G. Notification of Nonacceptance. If the PHA determines that, based on the review of the evidence of completion and inspection, any unit is not accepted, the Owner shall be promptly notified of this decision and the reasons.
- H. Completion in Stages. Where completion in stages is provided for, the procedures of this section shall apply to each stage.

1.7 Execution of Housing Assistance Payments Contract.

- A. Time and Execution. Upon acceptance of the units by the PHA, the Owner and the PHA agree to execute the Contract.
- B. Completion in Stages. Where completion in stages is provided for, the number and types of units in each stage, and the initial Contract Rents for such units, shall be separately shown in Exhibit A of the Contract for each stage. Upon acceptance of the first stage, the Owner shall execute the Contract and the signature block provided in the Contract for that stage. Upon acceptance of each subsequent stage, the Owner shall execute the signature block provided in the Contract for such stage.
- C. Form of Contract. The terms of the Contract shall be as provided in Exhibit D of this Agreement. There shall be no change in the terms of the Contract other than as provided in this Agreement. Prior to execution by the Owner, all blanks in the Contract shall be completed by the PHA.
- D. Survival of Owner Obligations. Even after execution of the Contract, the Owner shall continue to be bound by all Owner obligations under the Agreement.

1.8 Cooperation in Equal Opportunity Compliance Reviews: Nondiscrimination.

- A. The Owner and the PHA agrees to cooperate with HUD in the conducting of the compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations.
- B.
 - 1. In carrying out of the obligations under this Agreement, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, handicap or national origin. The Owner will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
 - 2. The Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. The Owner will in all solicitations or advertisements for employees placed by or on behalf

of the Owner state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. The Owner will incorporate the foregoing requirements of this paragraph B in all of its contracts for Project work, except contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work

1.9 PHA and Owner Relations 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 the performance of any contractor, subcontractor or supplier, whether or not listed by the PHA as qualified contractor or supplier under the Program. The selection of a contractor, subcontractor or supplier for performance of the work is the sole responsibility of the Owner, and the PHA has no involvement in any relationship between the Owner and any contractor, subcontractor or supplier.
2. The Owner must select a competent contractor to undertake the 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 voluntarily excluded from participation in contracts by the Comptroller General or any Federal department or agency. The Owner agrees not to award contracts to, otherwise engage the services 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, contractors 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 Contract, or to assert any claim against HUD, the PHA or the Owner under the Agreement or the 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.

1.10 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 making housing assistance payments with respect to the dwelling unit(s) under this Agreement for the duration of the Contract.

1.11 Conflict of Interest.

- A. Interest of Members, Officers, or Employees of PHA, Members of Local Government Body, or Other Public Officials. 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 Section 8 Program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to the Section 8 Program, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in this Agreement or the Contract or in any proceeds or benefits arising from the Agreement or Contract. This provision may be waived by HUD for good cause.
- B. Disclosure. The Owner warrants that the Owner has disclosed to the PHA:
 - (1) The identity of the Owner, developer, builder, architect, management agent (and other participants) and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest in this Agreement or the Contract or in any proceeds or benefits arising from the Agreement or Contract;

- (2) The previous participation of each of these parties in HUD programs on the prescribed HUD form; and
- (3) Any possible conflict of interest by any of these parties that would be a violation of the Agreement or the Contract.

The Owner shall fully and promptly update such disclosures.

1.12 Interest of Member or of 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 Agreement or to any benefits which may arise therefrom.

1.13 Assignment of the Agreement or Contract or Interest in It.

- A. The Owner agrees that the Owner has not made and will not make any transfer in any form, including any sale or assignment, of this Agreement or the 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. Where the Owner requests the consent of the PHA for a transfer in any form, including any sale or assignment, of this Agreement or the Contract or the property, the PHA will review the transferee's previous participation in the HUD programs. The PHA will give its consent to a transfer of the Agreement or Contract pursuant to paragraph A of this section if the transferee agrees in writing (in a form acceptable to the PHA) to comply with all terms of the Agreement and Contract, and if the transferee is acceptable to the PHA. The PHA's criteria for acceptance of the transferee must be no more restrictive than initial acceptance of any Owner under the program at the time of the Owner's request.
- C. If an Owner is proposing to pledge the Agreement or HAP Contract as security for financing, the Owner must submit the financing documents to the PHA for approval. In determining the approvability of a pledge arrangement, the PHA must review the documents submitted by the Owner to ensure that the financing documents do not modify the Agreement or Contract, and do not contain any requirements inconsistent with the Agreement or Contract. Any pledge of the Agreement or Contract must be limited to amounts payable under the Contract in accordance with the terms of the Contract.

1.14 Owner Assurance to the PHA.

- A. Disclosure of Other Government Assistance. The Owner shall 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 shall include, but not be limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance. Housing assistance payments under the Contract shall not be more than is necessary, as determined by the PHA in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA shall 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.
- B. Rehabilitation or Construction Financing. The Owner agrees not to rehabilitate or construct the units with assistance under the U.S. Housing Act of 1937 (e.g., public housing, the rental rehabilitation program, housing development grants, Section 11(b) tax exempt bonds, or other Section 8 programs) or the flexible subsidy program. The Owner warrants that the units were not rehabilitated or constructed with assistance under the U.S. Housing Act of 1937 in the five years before execution of this Agreement. HUD may approve attachment of assistance to a unit that was rehabilitated with public housing modernization funds before conveyance to a resident management corporation where attachment of project-based assistance would further the purposes of the sale of the public housing project to the corporation.
- C. Ownership. The Owner warrants that the property to be rehabilitated or constructed under this Agreement is not owned by the PHA, or an entity controlled by the PHA.

1.15 Other Federal Requirements.

The Owner shall comply with and shall be subject to the requirements of the following, where applicable:

- A. Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy.

- B. Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises.
- C. 24 CFR Part 24, Debarment, Suspension, and Limited Denial of Participation.

1.16 Lobbying Certifications.

The Owner hereby assures and certifies that:

- A. 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 any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than the 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 this Federal contract, grant, loan, or cooperative agreement, the Owner shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Owner shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and of not more than \$100,000 for each such failure.

1.17 Notices.

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.

1.18 HUD Requirements.

The Agreement and Contract shall be interpreted and implemented in accordance with HUD requirements.

1.19 Termination of Contract.

This Agreement or the Contract can be terminated upon at least 30 days written notice to the Owner by the PHA or HUD if the PHA or HUD determines that the Contract Units were not selected in accordance with the PHA's HUD-approved written selection policy or that the Contract Units were not eligible for selection in conformity with HUD requirements.

PHA El Dorado County PHA

Owner Tahoe Senior Housing, LP

By _____

By _____

Executive Director
(Official Title)

Senior Vice President
(Official Title)

Date _____

Date _____

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined no more than \$10,000 or imprisoned for not more than five years, or both.

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U.S. Department of Housing and Urban Development
Section 8 Housing Assistance Payments Program

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PART II OF THE

AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT

**2.1 TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR BUSINESSES
AND LOWER-INCOME PERSONS.**

- (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. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower-income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county), as determined by the Secretary, in which the project is located and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the same metropolitan area , (or nonmetropolitan county) as the project.
- (b) Notwithstanding any other provision of this Agreement, 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. The requirements of the regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by Section 3; and incorporation of the "Section 3 clause" specified by Section 135.20(b) of the regulations and paragraph (d) of this section in all contracts for work in connection with the project. The Owner certifies and agrees that he or she is under no contractual or other disability which would prevent compliance with these requirements.

- (c) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders issued by HUD thereunder prior to execution of this Agreement, 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, Section 135.135.
- (d) The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

"EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS"

- "A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower-income persons residing within the unit of local government or the nonmetropolitan area (or nonmetropolitan county), as determined by the Secretary, in which the project is located and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the same metropolitan area (or nonmetropolitan county) as the project.
- "B. The parties to this Contract will comply with 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 the Agreement. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- "C. The contractor will send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

- “D. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by HUD, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided the contractor with a preliminary statement of ability to comply with the requirements of these regulations.
- “F. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement to Enter Into Housing Assistance Payments Contract, 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, successors, and assigns to those sanctions specified by the Agreement to Enter Into Housing Assistance Payments Contract, and to such sanctions as are specified in 24 CFR, Section 135.135.”
- (e) The Owner agrees to be bound by the above Section 3 clause with respect to his or her own employment practices when participating in federally assisted work.

2.2 EQUAL EMPLOYMENT OPPORTUNITY

- (a) The Owner shall incorporate or cause to be incorporated into any contract in excess of \$10,000 cost 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 Equal Opportunity clause:

“EQUAL EMPLOYMENT OPPORTUNITY”

“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 setting forth the provisions of this Equal Opportunity 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 of will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of 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 Equal Opportunity 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 portion of the sentence immediately preceding Paragraph (1) and 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 Equal Opportunity 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 Equal Opportunity 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 Equal Opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of 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 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL

In compliance with regulations issued by the Environmental Protection Agency (EPA), 40 CFR, Part 15, pursuant to the Clean Air Act, as amended (Air Act), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended (Water Act), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees to:

- (a) Not utilize any facility in the performance of this Agreement or any subcontract which is listed on the EPA list of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list;

- (b) Promptly notify the PHA if a facility the Owner intends to use in the performance of this Agreement is on the EPA List of Violating Facilities or the Owner knows that it has been recommended to be placed on the List;
- (c) Comply with all requirements of the Air Act and the Water Act, including the requirements of Section 114 of the Air Act and Section 308 of the Water Act, and all applicable clean air standards and clean water standards; and
- (d) Include or cause to be included the provisions of this section in every subcontract, and take such action as HUD may direct as a means of enforcing such provisions.

2.4 HUD-FEDERAL LABOR STANDARDS PROVISIONS.

The Owner is responsible for inserting the entire text of Sections 2.4 (a) and (b) 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(a) and (b).

- (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 Part 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 Part 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; and
 - (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. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
- Q 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 or its designee or will notify HUD or its designee within 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).

- (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. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).
- (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. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts

- (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 the 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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).
- (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 Part 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. (Approved by the Office of Management and Budget under OMB Control Number 12150149.)

- (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 Part 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, Part 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 contract.
- (6) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in Section 2.4(a)(1) through (10) 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 contract, 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 contract 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."
- (b) Contract Work Hours and Safety Standards Act. 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.

2.5-2.7 RESERVED.

2.8 WAGE CLAIMS AND 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 Section 1.6 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 Sections 2.8 and 2.10 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 the project will be covered, during its anticipated economic or useful life, 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.