

## **Terms and Conditions**

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

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This Annual Contributions Contract ("ACC"), No. \_\_\_\_\_, is entered into as of this day of \_\_\_\_\_, 199 by and between the United States of America, acting by and through the Secretary of Housing and Urban Development, ("HUD") and \_\_\_\_\_ (the "HA"). The parties to this ACC may have previously entered into Consolidated ACCs whose terms and conditions have become obsolete through the subsequent passage of legislation or the promulgation of regulations by HUD. The parties wish to resolve this obsolescence by entering into this ACC, which shall supersede the most recent Consolidated ACC entered into between the HA and HUD bearing the same ACC number as this Consolidated ACC, and which incorporates by reference into this ACC those regulations issued by HUD for the development, modernization, and operation of public and Indian housing projects contained in Title 24 of the Code of Federal Regulations, as said Title shall be amended from time to time. Nothing herein shall release the HA from compliance with all applicable laws, executive orders, and regulations that are not specifically incorporated herein by reference.

This ACC covers all project(s) listed under the most recent Consolidated ACC entered into between HUD and the HA bearing the same ACC number as this ACC, and any amendments thereto, as well as any additional project(s) that may be added as a result of future amendments to this ACC. This ACC shall remain in effect with respect to such projects for the maximum period required by law, or as may be established by HUD. If this ACC consolidates previous ACCs executed by the parties, it shall remain in effect for the maximum period remaining under such previously executed ACCs, including any extension of the original ACC term based upon the HA's receipt of modernization and operating subsidies.

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

This ACC supersedes the most recent Consolidated ACC entered into between HUD and the HA bearing the same ACC number *as* this ACC (including both Parts I and II), and any amendments thereto, provided that this novation shall in no way affect obligations outstanding, accounts due, or other actions taken pursuant to such previous ACCs, all of which matters shall be administered pursuant to and under this ACC.

### **Section 2 - Definitions.**

ACC - Consolidated Annual Contributions Contract between HUD and the HA, as may be amended herein, consisting of Part A (which sets forth requirements applicable to all projects) and Part 13 (which sets forth additional requirements that apply only to certain types of projects).

Act - the United States Housing Act of 1937, as amended.

**Cooperation Agreement** - agreement(s) prescribed by HUD for execution by the HA and the local governing body relative to the cooperation of the local governing body in the development and operation of the project(s) and the obligation of the HA for payments in lieu of taxes, due to the exemption of the project from all real and personal property taxes.

**HA** - a public housing agency as defined in the Act, including an Indian housing authority.

**HUD approval** - prior written approval from HUD.

**"Operating receipts" and "Operating expenditures"** - Operating receipts shall mean all rents, revenues, income, and receipts accruing from, out of, or in connection with the ownership or operation of such project. Operating receipts shall not include any funds received for development or modernization of a project, annual contributions pledged for payment of bonds or notes, or proceeds from the disposition of real property. Operating expenditures shall mean all costs incurred by the HA for administration, maintenance and other costs and charges that are necessary for the operation of the project. Operating expenditures shall not include any costs incurred as part of the development or modernization cost, or payment of principal or interest of bonds or notes.

**Project** - public and Indian housing developed, acquired, or assisted by HUD under the Act, other than under section 8 of the Act, and the improvement of such housing. The term shall include all real and personal property, tangible and intangible, which is acquired or held by a HA in connection with a project covered under this ACC.

### **Section 3 - Mission of HUD.**

HUD shall administer the Federal public and Indian housing program for the provision of decent, safe, and sanitary housing to eligible families in accordance with this ACC and all applicable statutes, executive orders, and regulations. HUD shall provide maximum responsibility and flexibility to HAs in making administrative decisions within all applicable statutes, executive orders, regulations and this ACC. HUD shall provide annual contributions to the HA in accordance with all applicable statutes, executive orders, regulations, and this ACC.

### **Section 4 - Mission of the HA.**

The HA shall at all times develop and operate each project solely for the purpose of providing decent, safe, and sanitary housing for eligible families in a manner that promotes serviceability, economy, efficiency, and stability of the projects, and the economic and social well-being of the tenants.

### **Section 5 - Covenant to Develop and Operate.**

The HA shall develop and operate all projects covered by this ACC in compliance with all the provisions of this ACC and all applicable statutes, executive orders, and regulations issued by HUD, as they shall be amended from time to time, including but not limited to those regulations promulgated by HUD at Title 24 of the Code of Federal Regulations, which are hereby incorporated into this ACC by reference as if fully set forth herein, and as such regulations shall be amended from time to time. The HA shall also ensure compliance with such requirements by any contractor or subcontractor engaged in the development or operation of a project covered under this ACC.

### **Section 6 - Cooperation Agreement(s).**

During the development and operation of the project(s), the HA shall perform and comply with all applicable provisions of the Cooperation Agreement(s), in the form prescribed by HUD, including the making of payments in lieu of taxes provided therein (or such lesser amount as may be prescribed by State law or agreed to by the local governing body), shall at all times preserve and enforce its rights thereunder, and shall not terminate or amend the Cooperation Agreement(s) without the written approval of HUD.

### **Section 7 - Covenant Against Disposition and Encumbrances.**

The HA shall not demolish or dispose of any project, or portion thereof, other than in accordance with the terms of this ACC and applicable HUD requirements. With the exception of entering into dwelling leases with eligible families for dwelling units in the projects covered by this ACC, and normal uses associated with the operation of the project(s), the HA shall not in any way encumber any such project, or portion thereof, without the prior approval of HUD. In addition, the HA shall not pledge as collateral for a loan the assets of any project covered under this ACC.

### **Section 8 - Declaration of Trust.**

Promptly upon the acquisition of the site of any project, the HA shall execute and deliver an instrument (which may be in the form of a declaration of trust, a trust indenture, or such other document as may be approved by HUD), confirming and further evidencing, among other things, the covenant of the HA not to convey or encumber the project except as expressly authorized in this ACC. Such instrument and all amendments shall be duly recorded or filed for record wherever necessary to give public notice of their contents and to protect the rights and interests of HUD and of any bondholders. The HA shall furnish HUD with appropriate evidence of such recording or filing. From time to time, as additional real property is acquired by the HA in connection with the projects, the HA shall promptly amend such instrument to incorporate all such real property and shall record the instrument, as amended.

## **Section 9 - Depository Agreement and General Fund.**

(A) The HA shall deposit and invest all funds and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of the projects under an ACC with HUD in accordance with the terms of the General Depository Agreement(s). The General Depository Agreement shall be in the form prescribed by HUD and must be executed by the HA and the depository. Immediately upon the execution of any Depository Agreement, the HA shall furnish to HUD such executed or conformed copies thereof as HUD may require. A Depository Agreement shall not be terminated except after 30 days notice to HUD.

(B) All monies and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of projects in accordance with an ACC with HUD shall constitute the "General Fund."

(C) The HA shall maintain records that identify the source and application of funds in such a manner as to allow HUD to determine that all funds are and have been expended in accordance with each specific program regulation and requirement. The HA may withdraw funds from the General Fund only for: (1) the payment of the costs of development and operation of the projects under ACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD. Program funds are not fungible; withdrawals shall not be made for a specific program in excess of the funds available on deposit for that program.

## **Section 10 - Pooling of Funds.**

(A) The HA may deposit into an account covered by the terms of the General Depository Agreement any funds received or held by the HA in connection with any project operated by the HA under the provisions of this ACC.

(B) The HA may also deposit into an account covered by the General Depository Agreement, by lump-sum transfers of funds from the depositories of other projects or enterprises of the HA in which HUD has no financial interest, amounts necessary for current expenditures of items chargeable to all projects and enterprises of the HA.

(C) The HA shall not withdraw from any of the funds or accounts authorized under this section amounts for the projects under ACC, or for the other projects or enterprises, in excess of the amount then on deposit in respect thereto.

## **Section 11 - Operating Budget.**

(A) The HA shall prepare and have approved by its Board of Commissioners an operating budget for each of its fiscal years in a manner, and using such forms, as prescribed by HUD. The HA shall submit a calculation of operating subsidy eligibility in the manner prescribed by HUD in regulations in Title 24 of the Code of Federal Regulations. HUD shall review the calculation and, if correct, and subject to the availability of funds, take action within 45 days of submission to obligate the funds and approve a payment schedule, unless the HA is notified that it must submit an operating budget as provided in (B) below. HUD may revise or amend the subsidy calculation to bring it into conformity with regulatory requirements. The HA shall submit revised calculations in support of mandatory or other adjustments based on procedures and deadlines prescribed by HUD.

(B) If HUD directs the HA to submit an operating budget because it has failed to achieve certain specified operating standards, or for other reasons which in HUD's determination require it, HUD shall, within 45 days of receipt of the complete operating budget, review and approve the operating budget if the plan of operation and the amounts included therein are reasonable. If HUD disapproves any proposed operating budget, or approves such budget with modifications, the HA shall be notified in writing and be furnished with an explanation of the reasons for such disapproval or modified approval. Any HA that is required to submit an operating budget may, at any time prior to thirty days before the end of the HA fiscal year, submit to HUD a proposed revision of any approved operating budget.

(C) HUD shall not in any Federal fiscal year approve any estimate or revision of a HA's operating budget in an amount which, together with the amount of all operating subsidies then contracted for by HUD, would exceed the amount as determined by HUD of contracting authorization for operating subsidies under the Act. HUD shall not be obligated to make any payments on account of operating subsidies in an amount in excess of the amount specifically approved by HUD.

(D) The HA shall not incur any operating expenditures except pursuant to an approved operating budget. If unbudgeted expenditures are incurred in emergencies to eliminate serious hazards to life, health and safety, the operating budget shall be amended accordingly.

## **Section 12 - Civil Rights Requirements.**

(A) The HA shall comply with all statutory, regulatory, and executive order requirements pertaining to civil rights, equal opportunity, and nondiscrimination, as those requirements now exist, or as they may be enacted, promulgated, or amended from time to time. These requirements include, but shall not be limited to, compliance with at least the following authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601-3619; 24 CFR part 100); section 504 of the Rehabilitation Act of



1973 (29 U.S.C. 794; 24 CFR part 8); (the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107; 24 CFR part 146); the Americans with Disabilities Act (Pub. L. 101-336, approved July 26, 1990; 28 CFR part 35); Executive Order 11063 on Equal Opportunity in Housing (24 CFR part 107); Executive Order 11246 on Equal Employment Opportunity, as amended by Executive Order 11375 (41 CFR part 60); and Executive Order 12892 on Affirmatively Furthering Fair Housing. An Indian Housing Authority established pursuant to tribal law shall comply with applicable civil rights requirements, as set forth in Title 24 of the Code of Federal Regulations.

(B) In connection with the development or operation of any project, the HA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The HA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, disability, age, 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. The HA shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its contracts in connection with the development or operation of any project, except contracts for standard commercial supplies or raw materials and contracts referred to in subsection (C) of this section, and shall require all contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The HA shall post at the projects, in conspicuous places available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscriminatory clause.

(C) The HA shall incorporate the language required by Executive Order 11246, codified at 41 CFR §60-1.4(b) (or any successor provision), into any contract for construction work, or any modification thereof, which is paid for in whole or in part with funds obtained under this ACC. In addition, the HA agrees that it will be bound by the equal employment opportunity provisions set forth at 41 CFR §60-1.4(b) (or any successor provision) with respect to its own employment practices when it uses its own staff (force account) to carry out Federally assisted construction work.

### **Section 13 - Insurance Requirements.**

(A) Except as otherwise provided by HUD, the HA shall procure adequate insurance to protect the HA from financial loss resulting from various hazards if the HA determines that exposure to certain hazards exists. The types of insurance required, or that should be purchased, and other requirements with respect to insurance coverage are listed in Part B, Attachment VII, of this ACC.

(B) The HA shall, to the extent that insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project, except with the written approval

of HUD to the contrary.

#### **Section 14 - Employer Requirements.**

(A) The HA shall comply with all tribal, State and Federal laws applicable to employee benefit plans and other conditions of employment.

(B) No funds of any project may be used to pay any compensation for the services of members of the HA Board of Commissioners.

#### **Section 15 - Books of Account, Records, and Government Access.**

(A) The HA must maintain complete and accurate books of account for the projects of the HA in such a manner as to permit the preparation of statements and reports in accordance with HUD requirements, and to permit timely and effective audit.

(B) The HA must furnish HUD such financial and project reports, records, statements, and documents at such times, in such form, and accompanied by such reporting data as required by HUD.

(C) The United States Government, including HUD and the Comptroller General, and its duly authorized representatives, shall have full and free access to all HA offices and facilities, and to all books, documents, and records of the HA relevant to the administration of the projects under this ACC, including the right to audit and make copies.

#### **Section 16 - Termination of a Project Under Management.**

If any project under management under this ACC is terminated, all project reserves shall become part of another project administered by the HA in accordance with the terms of this ACC. If no other project(s) under management exists, the remaining project reserves shall be distributed as directed by HUD.

#### **Section 17 - Notices, Defaults, Remedies.**

(A) Any notice required or permitted to be given under this ACC shall be in writing, signed by a duly authorized official, and addressed, if to the HA, to the principal office of the HA, and if to HUD, to the HUD office with jurisdiction over the HA, unless otherwise directed by regulation or other requirement of HUD.

(B) Upon the occurrence of a substantial default by the HA, as determined by HUD in accordance with this ACC, HUD shall be entitled to any or all of the remedies set forth in paragraphs (E), (F), and (H) below. A substantial default is a serious and material violation of

any one or more of the covenants contained in this ACC. Events of substantial default shall include, but shall not be limited to, any of the following occurrences: (1) failure to maintain and operate the project(s) under this ACC in a decent, safe, and sanitary manner; (2) the disposition or encumbrance of any project or portion thereof without HUD approval; (3) failure of the HA to comply with any civil rights requirements applicable to the HA and the project(s); (4) abandonment of any project by the HA, or if the powers of the HA to operate the project(s) in accordance with the provisions of this ACC are curtailed or limited to an extent that will prevent the accomplishment of the objectives of this ACC; (5) failure to carry out modernization or development in a timely, efficient and effective manner; and (6) termination of tax exemption (either real or personal property) on behalf of a project covered under this ACC.

(C) Delivery of a notice of substantial default shall be required before the exercise of any remedy permitted under this ACC. Such notice shall: (1) identify the specific covenants, statutes, executive orders, or regulations alleged to have been violated; (2) identify the specific events, actions, failure to act, or conditions that constitute the alleged substantial default; and (3) provide a specific timeframe for the HA to cure the substantial default, taking into consideration the nature of the default.

(D) Except in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, the HA shall have the right to appeal any such notice received from the HUD office with jurisdiction over the HA. Such informal appeals shall be in writing and shall be submitted within ten (10) working days from the date of the HA's receipt of such notice. Appeals of the action of a HUD Office shall be made to the Assistant Secretary for Public and Indian Housing, or such other official as shall be a successor thereto.

(E) Upon the occurrence of a substantial default, or the expiration of any applicable cure period provided by HUD, the HA shall: (1) convey to HUD title to the project(s) as demanded by HUD if, in the determination of HUD (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of the Act; or (2) deliver possession and control of the project(s) to HUD.

(F) Nothing contained in this ACC shall prohibit or limit HUD from the exercise of any other right or remedy existing under applicable law, or available at equity. HUD's exercise or non-exercise of any right or remedy under this ACC shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

(G) If HUD shall acquire title to, or possession of the project(s), HUD shall reconvey or redeliver possession of the project(s) to the HA, or to any successor recognized by HUD: (1) upon a determination by HUD that the substantial default has been cured and that the project(s) will thereafter be operated in accordance with the terms of this ACC; or (2) after the termination of HUD's obligation to make annual contributions available, unless there

are any obligations or covenants of the HA to HUD that are then in default.

(H) HUD may at any time by notice to the HA declare this ACC terminated with respect to any project that at such time has not been permanently financed if: (1) the HA has made any fraudulent or willful misrepresentation of any material fact in any document or data submitted to HUD as a basis for this ACC or as an inducement to HUD to enter into this ACC; or (2) a substantial default exists in connection with any of the projects; provided, that no such termination shall affect any obligation of HUD to make annual contributions pursuant to section 12 of Attachment VI, Part **B**, of this ACC.

#### **Section 18 - Rights and Obligations of HUD While in Possession of Project(s).**

(A) During any period in which HUD holds title to or possession of the projects after a substantial default by the HA, HUD shall develop and/or operate such project(s) as nearly as practicable in accordance with the provisions of this ACC.

(B) During any such period, HUD may, in the name and on behalf of the HA, or in its own name and on its own behalf (as HUD shall solely determine), exercise any and all rights of the HA under this ACC, and perform any and all obligations of the HA under this ACC. Nothing herein shall be deemed to make the action(s) or omission(s) of the HA attributable to HUD.

#### **Section 19 - Conflict of Interest.**

(A)(1) In addition to any other applicable conflict of interest requirements, neither the HA nor any of its contractors or their subcontractors may enter into any contract, subcontract, or arrangement in connection with a project under this ACC in which any of the following classes of people has an interest, direct or indirect, during his or her tenure or for one year thereafter:

(i) Any present or former member or officer of the governing body of the HA, or any member of the officer's immediate family. There shall **be** excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the HA or a business entity.

(ii) Any employee of the HA who formulates policy or who influences decisions with respect to the project(s), or any member of the employee's immediate family, or the employee's partner.

(iii) Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) or the HA.

(2) Any member of these classes of persons must disclose the member's interest or prospective interest to the HA and HUD.

(3) The requirements of this subsection (A)(1) may be waived by HUD for good cause, if permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract to which the waiver pertains.

(4) The provisions of this subsection (A) shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.

(5) Nothing in this section shall prohibit a tenant of the HA from serving on the governing body of the HA.

(B)(1) The HA may not hire an employee in connection with a project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

(i) Any present or former member or officer of the governing body of the HA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the HA.

(ii) Any employee of the HA who formulates policy or who influences decisions with respect to the project(s).

(iii) Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the HA.

(2) The prohibition referred to in subsection (B)(1) shall remain in effect throughout the class member's tenure and for one year thereafter.

(3) The class member shall disclose to the HA and HUD the member's familial relationship to the prospective employee.

(4) The requirements of this subsection (B) may be waived by the HA Board of Commissioners for good cause, provided that such waiver is permitted by State and local law.

(C) The requirements of subsections (A) and (B) of this section do not apply to contracts entered into by an Indian Housing Authority, its contractors or subcontractors, although such contracts

remain subject to other applicable conflict of interest requirements.

(D) For purposes of this section, the term "immediate family member" means the spouse, mother, father, brother, sister, or child of a covered class member (whether related as a full blood relative, or as a "half" or "step" relative, e.g., a half-brother or stepchild).

**Section 20 - Interest of a 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 this ACC or to any benefits which may arise from it. (As used in this section, the term "resident commissioner" refers to an individual appointed to oversee a territory or possession of the United States of America, e.g., Guam.)

**Section 21 - Rights of Third Parties.**

Except as to bondholders, as stated in Part B (Attachment VI) of this ACC, nothing in this ACC shall be construed as creating any right of any third party to enforce any provision of the ACC or to assert any claim against HUD or the HA.

**Section 22 - Performance of Conditions Precedent to the Validity of this ACC.**

The HA certifies that all conditions precedent to the valid execution and delivery of this ACC on its part have been complied with, that all things necessary to constitute this ACC its valid, binding, and legal agreement on the terms and conditions and for the purposes herein set forth have been done and have occurred and that the execution and delivery of the ACC on its part have been and are in all respects duly authorized in accordance with law. HUD similarly certifies with reference to its execution and delivery of this ACC.

**Section 23 - Waiver or Amendment.**

Any right or remedy that HUD may have under this ACC may be waived in writing by HUD without the execution of a new or supplemental agreement; or by mutual agreement of the parties to this ACC, this contract may be amended in writing: Provided, That none of the provisions of this ACC may be modified or amended so as to impair in any way HUD's obligation to pay any annual contributions that have been pledged as security for any obligations of the HA.

In witness whereof, the HA and HUD have caused this ACC to be executed and the HA has caused its seal to be hereunto affixed and attested all as of the date first above written.

(SEAL)

ATTEST:

\_\_\_\_\_

(Housing Authority)

By

(Chairperson)

UNITED STATES OF AMERICA  
Secretary of Housing and Urban  
Development

By \_\_\_\_\_

\_\_\_\_\_

(Official Title)