

APPENDIX III

**Sample Contracts for
PBVs and RRAP**

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

SECTION 8 PROJECT-BASED VOUCHER PROGRAM

**PBV HOUSING ASSISTANCE PAYMENTS CONTRACT
EXISTING HOUSING**

PART 1 OF HAP CONTRACT

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

1. CONTRACT INFORMATION

a. Parties

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

_____ (PHA) and

_____ (owner).

b. Contents of contract

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

c. Contract exhibits

The HAP contract includes the following exhibits:

EXHIBIT A: TOTAL NUMBER OF UNITS IN PROJECT COVERED BY THIS HAP CONTRACT; INITIAL RENT TO OWNER; AND THE NUMBER AND DESCRIPTION OF THE CONTRACT UNITS. (See 24 CFR 983.203 for required items.)

**Project-based Voucher Program
HAP Contract for Existing Housing**

Previous editions are obsolete

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

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

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

ADDITIONAL EXHIBITS

d. Effective date and term of HAP contract

1. Effective date

- a. The PHA may not enter into a HAP contract for any contract unit until the PHA has determined that the unit complies with the housing quality standards.
- b. For all contract units, the effective date of the HAP contract is:

_____.

- c. The term of the HAP contract begins on the effective date.

2. Length of initial term

- a. Subject to paragraph 2.b, the initial term of the HAP contract for all contract units is: _____.
- b. The initial term of the HAP contract may not be less than one year, nor more than fifteen years.

3. Extension of term

The PHA and owner may agree to enter into an extension of the HAP contract at

_____.

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the time of initial HAP contract execution or any time prior to expiration of the contract. Any extension, including the term of such extension, must be in accordance with HUD requirements. A PHA must determine that any extension is appropriate to achieve long-term affordability of the housing or expand housing opportunities.

4. Requirement for sufficient appropriated funding

- a. The length of the initial term and any extension term shall be subject to availability, as determined by HUD, or by the PHA in accordance with HUD requirements, of sufficient appropriated funding (budget authority), as provided in appropriations acts and in the PHA's annual contributions contract (ACC) with HUD, to make full payment of housing assistance payments due to the owner for any contract year in accordance with the HAP contract.
- b. The availability of sufficient funding must be determined by HUD or by the PHA in accordance with HUD requirements. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action by the PHA shall be implemented in accordance with HUD requirements.

e. Occupancy and payment

1. Payment for occupied unit

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

2. Vacancy payment

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

- a. If an assisted family moves out of a contract unit, the PHA may provide vacancy

payments to the owner for a PHA-determined vacancy period extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

- b. The vacancy payment to the owner for each month of the maximum two-month period will be determined by the PHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may only cover the period the unit remains vacant.
 - c. The PHA may only make vacancy payments to the owner if:
 - 1. The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and the date when the family moved out (to the best of the owner's knowledge and belief);
 - 2. The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
 - 3. The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
 - 4. The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.
 - d. The PHA must take every reasonable action to minimize the likelihood and length of vacancy.
 - e. The owner may refer families to the PHA, and recommend selection of such families from the PHA waiting list for occupancy of vacant units.
 - f. The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payments.
3. **PHA is not responsible for family damage or debt to owner**

Except as provided in this paragraph e (Occupancy and Payment), the PHA will not make any other payment to the owner under the HAP contract. The PHA will not make any payment to owner for any damages to the unit, or for any other

amounts owed by a family under the family's lease.

f. Income-mixing requirement

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

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

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

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

_____.

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

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

_____.

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

The following number of contract units shall be rented to families

receiving supportive services: _____.

EXECUTION OF HAP CONTRACT FOR EXISTING HOUSING

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

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

SECTION 8 PROJECT-BASED VOUCHER PROGRAM

**PBV HOUSING ASSISTANCE PAYMENTS CONTRACT
EXISTING HOUSING**

PART 2 OF HAP CONTRACT

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2. DEFINITIONS

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

Existing housing. Housing units that already exist on the proposal selection date and that substantially comply with the housing quality standards on that date. The units must fully comply with the housing quality standards before execution of the HAP contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. PURPOSE

- a. This is a HAP contract between the PHA and the owner.

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

4. RENT TO OWNER; HOUSING ASSISTANCE PAYMENTS

a. Amount of initial rent to owner

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

b. HUD rent requirements

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

c. PHA payment to owner

- 1. Each month the PHA must make a housing assistance payment to the owner for a unit under lease to and occupied by an eligible family in accordance with the HAP contract.
- 2. The monthly housing assistance payment to the owner for a contract unit is equal to the amount by which the rent to owner exceeds the tenant rent.
- 3. Payment of the tenant rent is the responsibility of the family. The PHA is not responsible for paying any part of the tenant rent, or for paying any other claim by the owner against a family. The PHA is only responsible for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract.

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

d. Termination of assistance for family

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

5. ADJUSTMENT OF RENT TO OWNER

a. PHA determination of adjusted rent

1. At each annual anniversary during the term of the HAP contract, the PHA shall adjust the amount of rent to owner, upon request to the PHA by the owner, in accordance with law and HUD requirements. In addition, the PHA shall adjust the rent to owner when there is a five percent or greater decrease in the published, applicable Fair Market Rent in accordance with 24 CFR 983.302.
2. The adjustment of rent to owner shall always be determined in accordance with all HUD requirements. The amount of the rent to owner may be adjusted up or down, in the amount defined by the PHA in accordance with HUD requirements.

b. Reasonable rent

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

c. No special adjustments

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

d. Owner compliance with HAP contract

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

e. Notice of rent adjustment

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

6. OWNER RESPONSIBILITY

The owner is responsible for:

- a. Performing all management and rental functions for the contract units.
- b. Maintaining the units in accordance with HQS.
- c. Complying with equal opportunity requirements.
- d. Enforcing tenant obligations under the lease.
- e. Paying for utilities and housing services (unless paid by the family under the lease).
- f. Collecting from the tenant:
 1. Any security deposit;

2. The tenant rent; and
3. Any charge for unit damage by the family.

7. OWNER CERTIFICATION

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

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

8. CONDITION OF UNITS

a. Owner maintenance and operation

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

b. PHA inspections

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

c. Violation of the housing quality standards

1. If the PHA determines a contract unit is not in accordance with the HQS, the PHA may exercise any of its remedies under the HAP contract for all

or any contract units. Such remedies include termination, suspension or reduction of housing assistance payments, and termination of the HAP contract.

2. The PHA may exercise any such contractual remedy respecting a contract unit even if the family continues to occupy the unit.
3. The PHA shall not make any housing assistance for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the PHA and the PHA verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects, the owner must correct the defect within no more than 30 calendar days (or any PHA-approved extension).

d. Maintenance and replacement—owner’s standard practice

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

9. LEASING CONTRACT UNITS

a. Selection of tenants

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

requirements.

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

b. Vacancies

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

10. TENANCY

a. Lease

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

b. Termination of tenancy

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

c. Family payment

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

d. Other owner charges

1. Except as provided in paragraph 2, the owner may not require the tenant or

family members to pay charges for meals or supportive services. Nonpayment of such charges is not grounds for termination of tenancy.

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

e. Security deposit

1. The owner may collect a security deposit from the family.
2. The owner must comply with HUD and PHA requirements, which may change from time to time, regarding security deposits from a tenant.
3. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted families.
4. When the family moves out of the contract unit, the owner, subject to State and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit or other amounts which the family owes under the lease. The owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used as reimbursement to the owner, the owner must promptly refund the full amount of the balance to the family.
5. If the security deposit is not sufficient to cover amounts the family owes under the lease, the owner may seek to collect the balance from the family. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

11. FAMILY RIGHT TO MOVE

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

12. OVERCROWDED, UNDER-OCCUPIED, AND ACCESSIBLE UNITS

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

13. PROHIBITION OF DISCRIMINATION

- a. The owner may not refuse to lease contract units to, or otherwise discriminate against any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.
- b. The owner must comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.* ; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* ; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as

amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

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

14. PHA DEFAULT AND HUD REMEDIES

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

15. OWNER DEFAULT AND PHA REMEDIES

a. Owner default

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

1. The owner has failed to comply with any obligation under the HAP contract, including the owner's obligations to maintain all contract units in accordance with the housing quality standards.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the HAP contract.
4. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.

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

b. PHA remedies

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

c. PHA remedy is not waived

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

16. ~~REQUIRED BY HUD FROM PHA~~ INFORMATION AND ACCESS

a. Required information

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

PHA or HUD.

b. PHA and HUD access to premises

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

17. PHA AND OWNER RELATION TO THIRD PARTIES

a. Injury because of owner action or failure to act

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

b. Legal relationship

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

c. Exclusion of third party claims

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

d. Exclusion of owner claims against HUD

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

18. PHA-OWNED UNITS

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

19. CONFLICT OF INTEREST

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

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

b. Disclosure

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

c. Interest of member of or delegate to Congress

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

20. EXCLUSION FROM FEDERAL PROGRAMS

a. Federal requirements

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

b. Disclosure

The owner certifies that:

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

21. TRANSFER OF THE CONTRACT OR PROPERTY

a. When consent is required

1. The owner agrees that neither the HAP contract nor the property may be transferred without the advance written consent of the PHA in accordance with HUD requirements.
2. “Transfer” includes:
 - A. Any sale or assignment or other transfer of ownership, in any form, of the HAP contract or the property;
 - B. The transfer of any right to receive housing assistance payments that may be payable pursuant to the HAP contract;
 - C. The creation of a security interest in the HAP contract or the property;
 - D. Foreclosure or other execution on a security interest; or
 - E. A creditor’s lien, or transfer in bankruptcy.
3. If the owner is a corporation, partnership, trust or joint venture, the owner is not required to obtain advance consent of the PHA pursuant to paragraph a for transfer of a passive and non-controlling interest in the ownership entity (such as a stock transfer or transfer of the interest of a limited partner), if any interests so transferred cumulatively represent less than half the beneficial interest in the HAP contract or the property. The owner must obtain advance consent pursuant to paragraph a for transfer of any interest of a general partner.

b Transferee assumption of HAP contract

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

c. Effect of consent to transfer

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

d. When transfer is prohibited

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

~~22. SUBSTITUTED LAYERING~~ required for existing housing projects.

23. OWNER LOBBYING CERTIFICATIONS

- a. The owner certifies, to the best of owner's knowledge and belief, that:
1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.
 2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

24. TERMINATION OF HAP CONTRACT FOR WRONGFUL SELECTION OF CONTRACT UNITS

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

25. NOTICES AND OWNER CERTIFICATIONS

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

26. ENTIRE AGREEMENT; INTERPRETATION

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

Sample RRAP Contract

-For Discussion Only

-Actual Contract will be with HTFC

-Terms are subject to change

**STATE OF NEW YORK
AGREEMENT**

This AGREEMENT is made by and between the State of New York acting by and through the Division of Housing and Community Renewal ("STATE"), and the public or private agency ("CONTRACTOR") identified on the face page ("Face Page").

WITNESSETH:

WHEREAS, the STATE has the authority to regulate and provide funding for the establishment and operation of program services and desires to contract with skilled parties possessing the necessary resources to provide such services; and

WHEREAS, the CONTRACTOR is ready, willing and able to provide such program services and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services required pursuant to the terms of this AGREEMENT;

NOW, THEREFORE, in consideration of the promises, responsibilities and covenants herein, the STATE and the CONTRACTOR agree as follows:

I. Conditions of Agreement

- A. The term of this AGREEMENT shall be five years (the "Term") unless otherwise specified on the Face Page. Within this Term the funding will be awarded on an annual basis ("Budget Period").
- B. Funding for the entire contract Term shall not exceed the aggregate funding amount specified on the Face Page ("Contract Amount"). Funding for each Budget Period shall be set forth in Appendix X and include an annual budget (Appendix B) reflecting that amount. The STATE will notify the CONTRACTOR in writing and the CONTRACTOR will submit the required documents. In the event that the amount for the new annual period causes an increase in the Contract Amount, such Contract Amount will require the approval of the Office of the State Comptroller before it is deemed effective.
- C. This AGREEMENT incorporates the Face Page attached and all of the marked appendices identified on the Face Page. This AGREEMENT may be modified by a subsequent modification agreement (Appendix X).
- D. To modify this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (Appendix X). Any terms of this AGREEMENT not modified shall remain in effect for the Term of the AGREEMENT. Any change in the Contract Amount, or change in the Term, is subject to the approval of the Office of the State Comptroller. Any other modifications shall be processed in accordance with agency guidelines or as stated in Appendix A1.
- E. The CONTRACTOR shall perform all services to the satisfaction of the STATE. The CONTRACTOR shall provide services and meet the program objectives summarized in the Program Work Plan (Appendix D) in accordance with: provisions of the AGREEMENT; relevant laws, rules and regulations, administrative and fiscal guidelines; and where applicable, operating certificates for facilities or licenses for an activity or program.

- F. If the CONTRACTOR enters into subcontracts for the performance of work pursuant to this AGREEMENT, the CONTRACTOR shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the STATE under this AGREEMENT. No contractual relationship shall be deemed to exist between the subcontractor and the STATE.
- G. Appendix A (Standard Clauses as required by the Attorney General for all New York State contracts) takes precedence over all other parts of the AGREEMENT.

II. Payment and Reporting

- A. The CONTRACTOR, to be eligible for payment, shall submit to the STATE's designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by STATE fiscal guidelines, in a manner acceptable to the STATE.
- B. The STATE shall make payments and any reconciliations in accordance with the Payment and Reporting Schedule (Appendix C). The STATE shall pay the CONTRACTOR, in consideration of contract services for the Term, a sum not to exceed the Contract Amount. Payments during any Budget Period shall not exceed the amount awarded or allocated for that Budget Period. This sum shall not duplicate reimbursement from other sources for CONTRACTOR costs and services provided pursuant to this AGREEMENT.
- C. The CONTRACTOR shall meet the audit requirements specified by the STATE.

III. Terminations

- A. This AGREEMENT may be terminated at any time upon mutual written consent of the STATE and the CONTRACTOR.
- B. The STATE shall have the right to terminate this AGREEMENT early for: (i) unavailability of funds; (ii) cause; or (iii) convenience. The State may only invoke its right to terminate for convenience on the anniversary date of the AGREEMENT or the anniversary date of any Budget Period (except for the expiration date of the TERM), provided that the STATE has given written notice to the CONTRACTOR no later than 30 days or more prior to the date of termination, except with respect to contracts that give the STATE a general right to terminate at any time.
- C. The STATE may terminate the AGREEMENT immediately, upon written notice of termination to the CONTRACTOR, if the CONTRACTOR fails to comply with the terms and conditions of this AGREEMENT and/or with any laws, rules, regulations, policies or procedures affecting this AGREEMENT.
- D. The STATE may also terminate this AGREEMENT for any reason in accordance with provisions set forth in Appendix A1.

- E. Written notice of termination, where required, shall be sent by personal messenger service or by certified mail, return receipt requested. The termination shall be effective in accordance with the terms of the notice.
- F. Upon receipt of notice of termination, the CONTRACTOR agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the STATE.
- G. The STATE shall be responsible for payment on claims pursuant to services provided and costs incurred pursuant to terms of the AGREEMENT. In no event shall the STATE be liable for expenses and obligations arising from the program(s) in this AGREEMENT after the termination date.

IV. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claim, demand or application to or for any right based upon any different status.

V. Property

Any equipment, furniture, supplies or other property purchased pursuant to this AGREEMENT is deemed to be the property of the STATE except as may otherwise be governed by Federal or State laws, rules or regulations, or as stated in Appendix A1.

VI. Safeguards for Services and Confidentiality

- A. Services performed pursuant to this AGREEMENT are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
- B. Funds provided pursuant to this AGREEMENT shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
- C. Information relating to individuals who may receive services pursuant to this AGREEMENT shall be maintained and used only for the purposes intended under the contract and in conformity with applicable provisions of laws and regulations, or specified in Appendix A1.

APPENDIX A1

RURAL RENTAL ASSISTANCE PAYMENTS

1. PURPOSE. The purpose of this Agreement is to provide Rural Rental Assistance Payments ("Payments") to the Contractor of up to the maximum amount stated on the face page, to enable eligible tenants as defined by the regulations of the State, to occupy apartment units in the project identified in the Program Workplan (Appendix D).
2. TERM. The term of this Agreement shall be fifteen years commencing and expiring as stated on the face page.
3. PERFORMANCE REVIEW. The Contractor's performance shall be reviewed annually to evaluate its use of housing assistance funds provided under this Agreement and to insure the Contractor has taken measures to minimize the need for housing assistance payments. Such measures may include but are not limited to:
 - a. utilization of real property tax exemption or abatement;
 - b. equipment and materials which reduce the costs of operation and maintenance;
 - c. utilization of other forms of governmental assistance, and assistance to tenants and Contractors in obtaining such assistance;
 - d. utilization of private sources to provide additional housing assistance; and
 - e. appropriate project management to reduce the costs of operation and maintenance.
4. UNIT DISTRIBUTION. The Unit Distribution shall be consistent with the Program Workplan (Appendix D). The Unit Distribution may only be altered if the size of an eligible tenant's household changes so as to cause an apartment assisted by Payments to become under or over occupied. If the Unit Distribution is altered, the next assisted unit must be assigned in a manner which will restore the Unit Distribution in the Program Workplan (Appendix D).
5. TENANT LEASES. The Contractor agrees to execute a lease with each tenant, including the Rural Rental Assistance Program Lease Rider ("Rider") in the form attached as Appendix A3. Said lease shall be subject and subordinate to this Agreement, and shall automatically terminate upon termination of this Agreement.
6. RURAL RENTAL ASSISTANCE PAYMENTS. Each lease shall set forth monthly charges (the rent and utility allowance approved by the United States Department of Agriculture Rural Development or any successor thereto ("USDA Rural Development"), collectively "Lease Rent"). The lease shall provide that the tenant shall be solely responsible for any utility costs for the apartment which exceed the utility allowance approved by USDA Rural Development.
 - a. The tenant's monthly payment shall be 30% of the tenant's adjusted gross income as defined under applicable federal regulations ("Tenant's Payment"). Any changes in the Tenant's Payment shall be effective as of the date stated in the notification of such changes to the tenant by the Contractor.

- b. The State will pay to the Contractor on behalf of each eligible tenant a Payment equal to the difference between the Tenant's Payment and the Lease Rent. If, during the term of any tenant's lease the USDA Rural Development approves increases or decreases in the rent for the apartment in the project, the Payment will be proportionately increased or decreased.
 - c. Any increase in the Tenant's Payment shall result in a corresponding decrease in the Payment for that apartment. A decrease in the Tenant's Payment shall result in a corresponding increase in the Payment.
 - d. Vacant apartments are not eligible for Payment.
 - e. In the event that the Tenant's Payment is less than the utility allowance, the Contractor shall promptly pay to the tenant that part of the Payment which is in excess of the rent approved by USDA Rural Development for the apartment.
7. ELIGIBILITY. The tenant's eligibility for Payments shall be terminated only as set forth herein:
- a. If the Tenant's Payment (exclusive of rent arrears) equals the Lease Rent the Payments shall terminate. However, the Contractor agrees to execute a new lease (without the Rider) with any tenant who is otherwise eligible under USDA Rural Development regulations when the tenant's income results in the tenant's ineligibility for Payments.
 - b. The State may determine that the tenant is ineligible for further Payments because the tenant has failed to comply with the Rural Rental Assistance Program requirements as set forth in the Rider. If the State makes this determination, the State may terminate the Payments for that tenant upon 30 days notice to the Contractor and to the tenant.
 - c. If a tenant fails to timely pay the Tenant Payment, the Payment for that tenant will be abated, effective the first day of the month following the month that the tenant failed to make such payment. After three months of such abatement, the Payment for the tenant shall be terminated.
 - d. If a tenant vacates the project, the Payments will be terminated with respect to that tenant.
 - e. If a tenant fails to comply with the USDA Rural Development requirements for income information and verification, the Payments will be terminated with respect to that tenant.
 - f. The Contractor's rights to terminate a tenant's lease are:
 - i. The Contractor shall not terminate a tenant's lease without complying with the regulations of the USDA Rural Development and New York State Law.
 - ii. If a tenant is a holdover or remains in possession of a Contractor's apartment subsequent to the termination or expiration of his or her lease with the Contractor, it shall be the obligation solely of the Contractor to promptly and diligently act to remove the tenant from the apartment. During such period all Payments shall cease and the State shall not be obligated to pay costs of removal of a tenant from the apartment.
8. CONTRACTOR OBLIGATIONS. The Contractor agrees to maintain apartments leased to tenants and related facilities so as to provide all the services, maintenance and utilities set forth in the lease. If the State determines that the Contractor is not meeting one or more of these obligations, the State shall have the right, in addition to other rights and remedies under this Agreement, to abate the

Payments in whole or in part. Any such abatement of Payments shall be effective upon ten days notice to the Contractor and the tenant.

9. RECOVERY OF OVERPAYMENTS. If the Contractor is aware that a tenant has received overpayment of assistance due to tenant's:

- a. change in family composition or family income;
- b. false statements in application for Payments, report of income or other information furnished to Contractor; or
- c. failure to supply information requested by the Contractor;

then Contractor shall pursue recovery of overpayment from tenant. Upon Contractor's failure to do so, the State shall have the right to recover the overpayment by abating future Payments in an amount equal to the overpayment.

10. TRANSFERS. The Contractor agrees that all apartments will be rented in accordance with USDA Rural Development occupancy standards and that it will transfer a tenant living in an under or over occupied apartment to a more suitably sized apartment as soon as possible.

11. PAYMENT PROCEDURES.

- a. The Contractor is to submit, 30 days before the first day of the month for which Payment is requested, one voucher which itemizes all tenants. The voucher is to be completed in accordance with the instructions of the State.
- b. Payments shall be made by the State to the Contractor only for the period during which the apartment is leased or occupied by the tenant during the term of the Agreement, except as otherwise provided in this Agreement.

12. REPORTING AND MONITORING.

- a. The Contractor shall immediately submit to the State any and all project budgets and rent adjustments approved by USDA Rural Development.
- b. The Contractor shall keep separate records of security deposits, rents paid and owed by the tenants receiving housing assistance payments, and legal actions taken for collection of rents. The Contractor shall furnish copies of these records and such reports relating to the Agreement as may be required by the State. The Contractor shall file with USDA Rural Development an authorization for release of all project financial information to and upon request of New York State.
- c. The State may review the performance of the Contractor in such manner and at such times as the State shall determine, including the right to inspect the project at any time during the term of this Agreement. An inspection may include but is not limited to:
 - (i) physical inspection of the building, grounds, common facilities and central systems, the offices of the Contractor, and tenants' apartments;
 - (ii) interviews of tenants and Contractor's employees; and

- (iii) books, documents, papers, fiscal and other reports, budgets, tenant files and any other records of the Contractor.

Immediately upon receiving notice from the State of the State's intent to inspect, the Contractor shall give tenants prior notice of inspections of tenants' apartments. The Contractor shall provide the State with access to tenants' apartments. The Contractor shall at all times make available its employees and facilities to authorized representatives of the State in connection with any review. Such review shall be for the purpose of, among other things, examination and audit, monitoring conformity to the provisions of this Agreement, reviewing the financial integrity and efficiency of the Contractor, and evaluating the Contractor's measures to minimize the need for housing assistance payments.

d. The Contractor agrees to cooperate with the State for the purposes of this Agreement in order to assure the expeditious and satisfactory operation of the project. The Contractor also agrees to complete promptly all forms and reports as may from time to time be required by the State.

e. The Contractor agrees to comply with the rules and regulations of the State, as amended from time to time, which are hereby incorporated herein and made a part thereof.

13. NOTICE OF INVESTIGATION OR DEFAULT. The Contractor shall notify the State within five days after obtaining knowledge of:

- a. the commencement of any investigation or audit of its activities by any governmental agency;
- b. the alleged default by the Contractor under any mortgage, deed of trust, security agreement, loan agreement or credit instrument, whether executed in connection with the project or otherwise; or
- c. any alleged breach by the Contractor of any agreement, credit agreement, lease or other instrument executed in connection with the project.

Contractor shall insure that, in the event of any alleged default under any of such instruments, the mortgagee, secured party, lender or lessor, as the case may be, shall simultaneously send to the State a copy of any notice of such alleged default sent to the Contractor.

For the purposes of this paragraph, the term "Contractor" shall include all employees, officers, board members, general partners or other principals, including any person holding a controlling interest in Contractor.

14. CERTIFICATION. The Contractor certifies to the best of its knowledge, for the period beginning ten years prior to the date of this Agreement, the Contractor has not:

- a. been the subject of any governmental agency's investigation or audit;
- b. defaulted under any mortgage, deed of trust, security agreement, loan agreement or credit instrument executed in connection with any governmental agency's project;
- c. breached any agreement, credit agreement, lease or other instrument executed in connection with any governmental agency's project;

- d. been suspended, debarred or otherwise restricted by any governmental agency from doing business with such agency;
- e. been convicted of, or been the subject of a complaint or indictment charging a felony; or
- f. defaulted on an obligation covered by a surety or performance bond or been the subject of a claim under an employee fidelity bond.

For the purposes of this paragraph, the term "Contractor" shall include all employees, officers, board members, general partners or other principals, including any person holding a controlling interest in Contractor.

15. MISCELLANEOUS.

- a. The availability of any remedy under this Agreement shall not preclude the exercise of any other remedy under this Agreement or under any provisions of law. Nor shall any action taken in the exercise of any remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.
- b. If the State determines that the Contractor is not providing sufficient information to the State to monitor conformity to the provisions of this Agreement, the State shall have the right, in addition to other rights and remedies under this Agreement, to abate the Payments in whole or in part.
- c. The Contractor agrees that it has not made and will not make any sale, assignment or transfer in any form of this Agreement, or any of its interest therein except with the prior written consent of the State.
- d. The Contractor agrees that there will not be a transfer of controlling interest in the Contractor without the prior written consent of the State.
- e. The Payments made by the State and to be made by the State pursuant to this Agreement are hereby pledged and assigned by the Contractor to the United States of America acting by and through the USDA Rural Development as part of the security for a loan of the amount stated in the Program Workplan (Appendix D), evidenced by a promissory note.

16. REMEDIES

If the Contractor fails to comply with any of the above provisions, the State may a) place the Contractor under probation, the terms of which will be set by the State in its sole discretion; b) suspend the Agreement; or c) terminate the Agreement.

APPENDIX A-2
NYS DIVISION OF HOUSING AND COMMUNITY RENEWAL
STANDARD CONTRACT CLAUSES

- 1) INDEPENDENT CONTRACTOR. With respect to any activities carried out in connection with this Agreement, the Contractor shall not be the agent of the Division nor shall the Contractor represent to any person, foundation, group, organization or government entity that the Contractor is acting as agent for the Division or that the Contractor is entitled in any way to act on behalf of the Division or to incur obligations on behalf of the Division unless expressly authorized to do so by the Division in writing. This Agreement shall not be construed as a partnership or joint venture between the Division and the Contractor. The Division shall not be liable for the action of the Contractor in carrying out this Agreement.
- 2) RULES AND REGULATIONS. Contractor agrees to comply with the Rules and Regulations of Division, as amended from time to time, which are incorporated into and made a part of this Agreement.
- 3) REQUESTS FOR FUNDS. The Contractor shall certify with each request for funds that (a) all statements and representations previously made regarding this Agreement are correct and complete and (b) that the funds do not duplicate reimbursement of costs or services from any other source.
- 4) PERFORMANCE REVIEW. Division will review Contractor in such manner and at such times as Division shall determine for the purpose, among other things, of ascertaining the quality and quantity of the activities performed by Contractor, their conformity to the provisions of this Agreement, and the financial integrity and efficiency of Contractor.
- 5) CONTRACTS. All contracts entered into by the Contractor for legal, accounting, architectural, engineering, technical, professional, consulting or other services which are to be paid for, in whole or in part, with funds shall be arms-length transactions and shall be entered into only after an appropriate evaluation by Division of the experience and qualification of the contracting firm or individual and submission of the Contract to Division for approval.
- 6) NOTICE OF INVESTIGATION OR DEFAULT. The Contractor shall notify Division within five (5) days after obtaining knowledge of (a) the commencement of any investigation or audit of its activities by any governmental agency; (b) the alleged default by the Contractor under any mortgage, deed of trust, security agreement, loan agreement or credit instrument, whether executed in connection with the Project or otherwise; or (c) any alleged breach by the Contractor of the terms of any agreement, credit agreement, lease or other instrument executed in connection with the Project. The Contractor shall insure that, in the event of any alleged default under any of such instruments, the mortgagee, secured party, lender or lessor, as the case may be, shall simultaneously send to Division a copy of any notice of such alleged default sent to the Contractor, and shall give Division a reasonable opportunity to cure such alleged default.
- 7) DISSOLUTION, LIQUIDATION OR TERMINATION. In the event of dissolution, liquidation or termination of the Contractor (whether voluntary, involuntary or by operation of law), this Agreement may be terminated. Such termination shall not relieve the Contractor from liability to Division pursuant to paragraph 8 of this Appendix. Where dissolution occurs by operation of law or in accordance with Article 10 or Article 11 of the Not-For-Profit Division Law, the Contractor shall obtain the prior approval of Division of its plan of dissolution and distribution of assets.

- 8) LIABILITY ON TERMINATION OR EXPIRATION. In the event of termination of this Agreement for any reason or upon the expiration of the Period of Agreement, unless Contractor obtains the prior written consent of Division to the contrary, all unspent funds held by Contractor shall immediately be returned to Division, and Division shall have no further liability or obligations under this Agreement, including any obligation to make additional disbursements of funds. Notwithstanding any such termination or expiration, Contractor shall remain liable to Division for any unspent funds, the expenditure or use of the funds in a manner or for a purpose not authorized by this Agreement and/or damages as a result of any breach of this Agreement by Contractor. Division shall have the right, at any time prior or subsequent to any such termination or expiration, to pursue any and all available remedies, including seeking injunctive or other equitable relief, to enforce the provisions of this Agreement and/or recover funds, which are unspent, expended or used in an unauthorized manner or for an unauthorized purpose and/or damages sustained by Division as a result of any breach of this Agreement by Contractor.
- 9) NO ORAL MODIFICATION. This Agreement may not be amended, modified or rescinded unless such amendment, modification or rescission is in writing, signed by Division and Contractor and delivered to both parties.
- 10) NO WAIVER. No waiver of any term, provision or condition of this Agreement by Division shall be effective unless the waiver is in writing, signed by Division and delivered to Contractor. No waiver by Division of any term, provision, or condition or of any failure by Contractor to perform any of the terms, provisions, or conditions of this Agreement shall be construed to be a waiver by Division of any other or subsequent breach of any term, provision, or condition or failure to perform any of such terms, provisions, or conditions.
- 11) WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this Agreement shall be void and of no force and effect unless Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- 12) OFFICIALS NOT TO BENEFIT. No member of the Legislature of the State of New York, and no public official whether federal, state or municipal, shall be admitted to any share or part hereof.
- 13) CONFIDENTIALITY. All of the reports, information, data, training manuals, policy and procedure manuals, video and audio tape recordings, computer disks and tapes and all other data given to, prepared or assembled by the Contractor under this Agreement (the "Documents") are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of Division.
- 14) DOCUMENTS. Pursuant to any request by Division, or if this Agreement is terminated for any reason, or upon completion of the Services, all finished or unfinished documents, data, studies, surveys and reports, video or audio tapes, training manuals, policy and procedural manuals computer tapes and discs, or any item prepared by the Contractor under this Agreement shall, at the option of Division, become its property and the Contractor shall, upon the exercise of such option, be required to turn over such items upon request, and as a condition precedent to the receipt of any compensation or reimbursement due under this Agreement.

In the event the Contractor breaches the requirements of this section by failing to provide such documents to Division, Division reserves the right to seek any legal remedy available to it which may include an injunction, monetary damages, court costs, attorney fees, and in addition, daily

liquidation damages in the amount of \$ 1,000.00 until the Contractor is in compliance with this section.

All finished or unfinished documents, data, studies, surveys and reports, video or audio tapes, training manuals, policy and procedural manuals prepared pursuant to this Agreement are works for hire; Division shall be the author of such materials for the purposes of copyright, and shall own the copyright to such materials. In the event that materials prepared pursuant to this Agreement are not works for hire as defined by applicable law, Contractor transfers all rights in the copyright of such works, if any, to Division.

- 15) THIRD PARTY PARTICIPATION. This Agreement is intended to secure the services of the Contractor because of the Contractor's ability and reputation and none of the Contractor's duties under this Agreement shall be assigned, subcontracted or transferred without the prior written consent of Division, except as set forth in Appendix D. The Contractor agrees that despite any subcontract entered into by the Contractor for execution of activities or provision of services relating to the performance of Services, the Contractor shall be solely responsible for carrying out the Services pursuant to this Agreement. The Contractor shall specify in any such subcontract that the subcontractor or subgrantee shall be bound by this Agreement and any other requirements applicable to the Contractor in the performance of Services, unless Division and the Contractor agree to a modification in a particular case. Division shall have the right to review any contract between the Contractor and any subcontractor regarding the rendering of services pursuant to this Agreement.
- 16) NON-LIABILITY. Nothing in this Agreement or otherwise shall impose any liability or duty whatsoever on the State of New York, Division, the Division of Housing and Community Renewal, or any agency or subdivision of the foregoing (collectively, the State).
- 17) NOTICE. Whenever it is provided in this Agreement that a notice or other communication is to be given or directed to either party, the same shall be given or directed to the respective party at its address as specified in the Agreement, or at such other addresses as either party may, from time to time, designate by written notice to the other.
- 18) SEVERABILITY CLAUSE. If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and if this Agreement shall, for any reason, be held to be excessively broad as to term, duration, scope, activity or subject, it shall be construed by limiting and reducing itself as to be enforceable to the extent compatible with the applicable law as it pertains.
- 19) ENTIRE AGREEMENT. This Agreement, including exhibits and appendix, constitutes the entire Agreement between the parties hereto, and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid, and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto and approved in the same manner as this Agreement. This Agreement shall be governed by, construed and enforced in accordance with the laws of New York State.

APPENDIX A3

LEASE RIDER NEW YORK STATE RURAL RENTAL ASSISTANCE PROGRAM

WHEREAS, the Commissioner of the Division of Housing and Community Renewal of the State of New York has entered into a Rural Rental Assistance Payments Agreement with Landlord for the apartment described in the attached lease.

WHEREAS, the Tenant is eligible under Federal and New York State regulations to lease the apartment from Landlord and the Rent will be paid by Tenant and the State in the following manner:

Lease Rent (Basic Rent & Utility Allowance)	\$ _____
Tenant's Monthly Payment	\$ _____
State Housing Assistance Payment	\$ _____

NOW THEREFORE:

1. In the case of any difference between this rider and any provisions of the lease which are not required by the United States Department of Agriculture Rural Development ("USDA Rural Development"), the provisions of this rider will control.

2. The lease is subject to and governed by the Rural Rental Assistance Payments Agreement. All payments by the State are subject to the terms and conditions of that Agreement.

3. Tenant agrees that the family income, family composition and other eligibility requirements are important obligations of his/her tenancy and are necessary to determine Tenant's monthly rental and whether s/he may remain in the apartment.

4. Tenant agrees to promptly honor all requests by Landlord or the State for information regarding the total current family income of Tenant, the composition of Tenant's family and other requirements for occupancy.

5. Upon Landlord's prior notice to Tenant of the State's intent to inspect the premises, Tenant agrees to permit authorized State representatives to inspect Tenant's apartment, whether or not Tenant is in the apartment, solely to establish compliance with the Rural Rental Assistance Payments Agreement. Notice by the State to Landlord is deemed notice to Tenant of such inspection.

6. Tenant agrees to report immediately to Landlord and the State any change in family composition or family income.

7. Tenant agrees that a report of income shall be made to Landlord each year 30 days before the anniversary date of the original report or such other time that Landlord chooses.

8. Tenant understands and agrees that the monthly payment may increase or decrease if Tenant's income increases or decreases.

9. Landlord shall cancel this lease if Tenant becomes ineligible for Assistance Payments. If Tenant becomes ineligible because of increased income, Tenant has the right to either 1) surrender the apartment without penalty or 2) sign a new lease for the apartment without Assistance Payments. Tenant must inform Landlord of his or her choice within 30 days of lease cancellation.

10. Tenant agrees that there shall be no Assistance Payment unless Tenant promptly provides satisfactory proof to Landlord and the State of income and family composition when requested.

11. Tenant agrees that during the lease, the lease rent is subject to any changes approved by the USDA Rural Development and the Division of Housing and Community Renewal.

12. Tenant agrees to repay to the State any overpayments of assistance made by the State because of:

a. Tenant's failure to report an increase in income or change in family composition to Landlord; or

b. Tenant's false statements made in Tenant's application for Rural Rental Assistance Payments, report of income or other information furnished to Landlord; or

c. Tenant's failure to supply information requested by Landlord.

13. Tenant acknowledges that Tenant knows that the apartment is being subsidized by the State for a _____ year term that began on _____. When this lease expires, or if there are no Assistance Payments for this apartment, then Tenant may either terminate the lease and vacate the apartment or pay the full lease rent.

14. If Tenant vacates the apartment, Tenant agrees that Landlord, subject to the provisions of law and applicable USDA Rural Development regulations, may use the security deposit as reimbursement for any unpaid Tenant's Monthly Payment and damages due from Tenant or other amounts proven owed under the lease. If Tenant vacates the apartment owing no amounts under the lease, or if the amounts owed are less than the amount of the security deposit, Landlord shall promptly refund the full amount or unused balance to Tenant.

15. This one year lease shall commence on _____ and expire on _____.

TENANT
DATE

DATE

TENANT

WITNESS TO TENANT'S SIGNATURE

LANDLORD

DATE