

RESOLUTION NO. 2818

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT BETWEEN THE CITY OF NAPLES AND THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, RELATIVE TO THE SECTION 8 EXISTING HOUSING PROGRAM, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART OF THIS RESOLUTION.

WHEREAS, on August 18, 1976 a Housing Assistance Plan was submitted to the Department of Housing and Urban Development, and subsequently approved on August 30, 1976 as a part of the City's Community Development Block Grant, setting a current year goal of 25 existing rental units to be assisted by the Section 8 Existing Housing Program; and

WHEREAS, pursuant thereto, an application was submitted by the City and approved by HUD for said housing assistance; and

WHEREAS, the Department of Housing and Urban Development has requested that the City of Naples enter into the attached Contract;

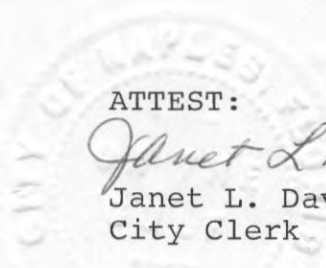
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NAPLES, FLORIDA:

SECTION 1. That the Mayor is hereby authorized to execute a Contract between the City of Naples and the U.S. Department of Housing and Urban Development, relative to the Section 8 Existing Housing Program, a copy of which is attached hereto and made a part of this Resolution.

SECTION 2. This Resolution shall take effect immediately upon adoption.

PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA, THIS 16th DAY OF NOVEMBER, 1977.

Harry E. O. Heineman Mayor
Harry E. O. Heineman



ATTEST:
Janet L. Davis
Janet L. Davis
City Clerk

APPROVED AS TO FORM AND LEGALITY BY John G. Fletcher
John G. Fletcher, City Attorney

MASTER SECTION 8 ANNUAL CONTRIBUTIONS CONTRACT NO. A-3402
NEW CONSTRUCTION, SUBSTANTIAL REHABILITATION, EXISTING HOUSING

This Annual Contributions Contract (ACC) is entered into on the _____ day of _____, 19____, (the date of execution by the Government) by and between the United States of America (herein called the "Government"), pursuant to the United States Housing Act of 1937, as amended (42 U. S. C. 1437, et seq.), herein called the "Act", and the Department of Housing and Urban Development Act (42 U. S. C. 3531), and CITY OF NAPLES (herein called the "PHA"), which is a "public housing agency" as defined in the Act. In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

0.1 Project or Projects. The PHA is undertaking to provide Decent, Safe, and Sanitary housing for Families (as defined in Section 2.1) pursuant to section 8 of the Act by means of Housing Assistance Payments Contracts ("Contracts") with Owners (as defined in Section 2.1). Such undertaking may involve an agreement for the use of housing to be constructed ("New Construction"), an agreement for the use of existing housing to be substantially rehabilitated ("Substantial Rehabilitation"), or the use of existing housing without substantial rehabilitation ("Existing Housing"). In each instance, the numbers and sizes of dwelling units with respect to which a certain maximum Annual Contributions commitment is made shall constitute a Project hereunder and shall be identified by a stated Project Number.

0.2 Part I and Part II of this Annual Contributions Contract.

(a) Certain provisions of the ACC, principally those which are specifically applicable to a designated Project, are contained in Part I. Separate forms of Part I are used for different types of Projects (i.e., New Construction, Substantial Rehabilitation, and Existing Housing). A separate Part I, on the applicable form thereof, has been executed with respect to each Project hereunder, and each such Part I, so executed, constitutes a part of this ACC.

(b) The remaining provisions of this ACC, which are applicable to all Projects hereunder, are contained in Part II, which, although not separately executed, constitutes a part of this ACC.

0.3 Fiscal Year. Except for the first Fiscal Year of each Project, there shall be one Fiscal Year for all Projects hereunder. Such established Fiscal Year shall be the 12-month period ending September 30 of each calendar year. The first Fiscal Year for each Project shall be as provided in the Part I applicable to each Project.

0.4 Schedule of Projects. Attached to this Master Section 8 ACC, as Attachment A, is a list identifying each ACC Part I and ACC Part I amendment by Project Number, date, and ACC List Number and date.

ATTEST:

Janet L. Davis
Janet L. Davis
City Clerk

PHA CITY OF NAPLES

By *Fung S. H. Hernandez*

Mayor
(Official Title)

Date November 16, 1977

United States of America
Secretary of Housing and Urban Development

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Gerald R. Wright, Area Counsel

Date _____, 1977

By _____
Director, Housing Production and Mortgage Credit Division
(Official Title)

Date _____, 19____

PART I of the
ANNUAL CONTRIBUTIONS CONTRACT

Number of this ACC Part I: A-3402E

Master Section 8 ACC Number: A-3402

Effective Date: _____
[Date of execution by the Government of this ACC Part I]

1.1 The Program.

(a) Projects Within Program. The Existing Housing Program under this ACC Part I includes the following projects:

<u>Project Number</u>	<u>ACC List Number and Date of Approval</u>
FL29-E124-001	A-77-591 (09/13/77)

(b) Number of Units (By Size) in Program. The aggregate number of units by size of unit included in these projects is as follows:

<u>Size of Unit</u>	<u>Number of Units</u>
0-BR	2 Elderly
1-BR	2 Elderly
2-BR	13 Family
3-BR	8 Family
	<u>25</u>

(c) Maximum ACC Amount. The maximum ACC amount for all Program Expenditures in respect to the aggregate number of units in these projects (the Program) is \$ 44,880 per year; Provided however, that this amount shall be reduced commensurately with any reduction in the number of units or changes in unit size under any provision of this ACC (see Section 1.4(a)). The PHA shall not enter into any Contract or take any other action which will result in a claim for an Annual Contribution in respect to the Program in excess of the amount stated in this paragraph (c).

(d) PHA Obligation. The PHA, to the maximum extent feasible, shall enter into Housing Assistance Payments Contracts ("Contracts") in accordance with the numbers and sizes of units and subject to the maximum ACC amount specified above.

(e) Meaning of "Project" as Used in Master ACC and Part II. For purposes of this Part I the term "Project" wherever used in the Master Section 8 ACC and in Part II shall mean all the projects in the "Existing Housing Program."

1.2 Authorization of Actions by PHA. In order to carry out the Program, the PHA is authorized to (a) enter into Housing Assistance Payments Contracts, (b) make housing assistance payments on behalf of Families and (c) take all other necessary actions all in accordance with the forms, conditions and requirements prescribed or approved by the Government; Provided, however, that neither the PHA nor the Government shall assume an obligation beyond that provided in Contracts in the form approved by the Government.

1.3 Term of ACC, Lease and Contract.

(a) Term of ACC. The term of this ACC shall be five years.

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(b) Term of Lease and Contract. The term of each Lease shall be for not less than one year nor more than three years but the Lease may contain a provision permitting termination upon 30 days advance written notice by either party. The term of each Contract shall be for the term of the Lease, provided that if a Family continues in occupancy after the expiration of the term on the same terms and conditions as the original Lease (or changes thereto which have been approved by the PHA and incorporated in the Contract where appropriate), the Contract shall continue in effect for the duration of such tenancy subject to the limitation in the next sentence. Any renewal of the Contract and Lease term, and any continuation of tenancy beyond the term, shall in no case extend beyond the term of this ACC.

1.4 Annual Contribution.

(a) Notwithstanding any other provisions of this ACC (other than paragraph (c) of this Section) or any provisions of any other contract between the Government and the PHA, the Government shall not be obligated to make any Annual Contribution or any other payment with respect to any Fiscal Year in excess of the amount stated in Section 1.1(c).

(b) Subject to the maximum dollar limitation in paragraph (a) of this Section, the Government shall pay for each Fiscal Year an Annual Contribution to the PHA in respect to the Program in an amount equal to the sum of the following (subject to reduction by the amount of any Program Receipts other than Annual Contributions, which Receipts shall be available for Program Expenditures):

(1) The amount of housing assistance payments payable during the Fiscal Year (see Section 1.5) by the PHA pursuant to the Contract, as authorized in Section 1.2.

(2) The allowance, in the amount approved by the Government, for preliminary costs of administration.

(3) The allowance, in the amount approved by the Government, for regular costs of administration, including costs of Government-required audits of Owners and the PHA.

(c) (1) An ACC reserve account will be established and maintained by the Government, as a specifically identified and segregated account, in an amount as determined by the Government consistent with its responsibilities under section 8(c)(6) of the Act. To the extent funds are available in said account, the Annual Contribution for any Fiscal Year may exceed the maximum amount stated in paragraph (a) of this Section by such amount, if any, as may be required for increases reflected in the estimates of required Annual Contribution applicable to such Fiscal Year as approved by the Government in accordance with Section 2.11 below.

(2) The Government will take such additional steps authorized by section 8(c)(6) of the Act as may be necessary to assure availability of funds to cover increases in housing assistance payments on a timely basis as a result of increases in Contract Rents or decreases in Family Incomes.

(d) The Government will make periodic payments on account of each Annual Contribution upon requisition therefor by the PHA in the form prescribed by the Government. Each requisition shall include certifications by the PHA that housing assistance payments have been or will be made only:

(1) In accordance with the provisions of the Contracts; and

(2) With respect to units which the PHA has inspected or caused to be inspected, pursuant to Section 2.4 of Part II of this ACC, within one year prior to the making of such housing assistance payments.

(e) Following the end of each Fiscal Year, the PHA shall promptly pay to the Government, unless other disposition is approved by the Government, the amount, if any, by which the total amount of the periodic payments during the Fiscal Year exceeds the total amount of the Annual Contribution payable for such Fiscal Year in accordance with this Section.

1.5 Fiscal Year. The Fiscal Year for the Program shall be the Fiscal Year established by Section 0.3 of this ACC; Provided, however, that the first Fiscal Year for the Project shall be the period beginning with the effective date of this ACC Part I and ending on the last day of said established Fiscal Year which is not less than 12 months after such effective date. If the first Fiscal Year exceeds 12 months, the maximum Annual Contribution in Section 1.1(c) may be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

1.6 Periodic Adjustment of Contract Rents. Each Contract may provide for periodic adjustments in the Contract Rents chargeable by the Owner and commensurate increases in amounts of housing assistance payments in accordance with applicable Government regulations.

1.7 Equal Opportunity Housing Plan. The PHA shall comply with all provisions of its HUD-approved equal opportunity housing plan.

1.8 Expeditious Carrying Out of Program. The PHA shall proceed expeditiously with the Program. If the PHA fails to proceed expeditiously, the Government, by notice to the PHA, may reduce its obligation hereunder with respect to the Program to the number and size of dwelling units under Contracts with Owners as of the date of receipt of such notice by the PHA, with a corresponding reduction in the maximum amount of the Annual Contribution specified in Section 1.1(c).

1.9 Prior ACC's Superseded. This Part I supersedes prior Section 8 Existing Housing ACC Parts I, if any.

PHA CITY OF NAPLES

ATTEST:

Janet L. Davis
Janet L. Davis
City Clerk

By *James H. ...*

Mayor
(Official title)

Date November 16, 1977

UNITED STATES OF AMERICA
SECRETARY OF HOUSING AND URBAN DEVELOPMENT

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By _____

Director, HPMC Division
(Official title)

Gerald R. Wright, Area Counsel

Date _____ 1977

Date _____

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Terms and Conditions Constituting Part II of the
Annual Contributions Contract

NEW CONSTRUCTION, SUBSTANTIAL REHABILITATION, EXISTING HOUSING

MASTER SECTION 8 ACC NUMBER: A-3402

2.1. DEFINITIONS.

- (a) "Families" means Lower-Income Families (including "Very Low-Income Families") and includes Families consisting of a single person in the case of Elderly Families and Displaced Families and includes the remaining member of a tenant family.
- (b) "Elderly Families" means Families whose heads (or their spouses), or whose sole members, are persons who are at least 62 years of age and are under a disability as defined in section 223 of the Social Security Act or in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, or are handicapped. The term Elderly Families includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living together with another person who is determined under regulations of the Secretary of Housing and Urban Development ("Secretary") to be a person essential to their care or well being.
- (c) "Displaced Families" means Families displaced by governmental action, or Families whose dwellings have been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.
- (d) "Lower-Income Families" means Families whose Incomes do not exceed 80 percent of the median Income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish Income limits higher or lower than 80 percent of the median for the area on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family Incomes, or other factors.
- (e) "Very Low-Income Families" means Families whose Incomes do not exceed 50 percent of the median Income for the area, as determined by the Secretary with adjustments for smaller and larger families.
- (f) "Income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary.
- (g) "Owner" means the person or entity, including a cooperative, with which the Agreement and Contract are entered into.
- (h) "Rent" or "rental" mean, with respect to members of a cooperative, the charges under the occupancy agreements between such members and the cooperative.
- (i) "Project Receipts" with respect to each Project means the Annual Contributions payable hereunder and all other receipts under this ACC, if any, accruing to the PHA from, out of, or in connection with such Project.
- (j) "Project Expenditures" with respect to each Project means all costs allowable under Section 1.4(b), Part I of this ACC, with respect to such Project.
- (k) "Substantial Default" means the occurrence of any of the events listed in Section 2.16.

2.2. LOWER-INCOME HOUSING USE: COMPLIANCE WITH ACT AND REGULATIONS.

The PHA shall use the Annual Contribution solely for the purpose of providing Decent, Safe, and Sanitary dwellings for Families in compliance with all applicable provisions of the Act and all regulations issued pursuant thereto.

2.3. ELIGIBILITY AND AMOUNT OF HOUSING ASSISTANCE PAYMENTS.

- (a) The PHA shall comply with the Income limits established by the Government, and with the requirements of the Government pursuant to section 8(c)(7) of the Act that at least 30 percent of the Families assisted in all its Projects under its Master Section 8 ACC shall be Very Low-Income Families.
- (b) The PHA shall comply or assure compliance with the schedules and criteria established by the Government with respect to the amounts of housing assistance payments made on behalf of Families.
- (c) The PHA shall make or cause to be made periodic re-examinations of the Income, composition, and extent of exceptional medical or other unusual expenses of Families for whom housing assistance payments are being made, for the purpose of confirming or adjusting, in accordance with the applicable schedules established by the Government, the amount of rent payable by the Family and the amount of housing assistance payment.
- (d) The PHA shall determine, as part of its annual inspection and at such other times as it deems appropriate, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling unit on grounds of changes of general applicability. If the PHA determines that an adjustment should be made, the PHA shall prescribe the amount of the adjustment and notify the Owner accordingly, and the PHA shall cause the Owner to make a corresponding adjustment in the amount of rent to be paid by the affected Family and the amount of housing assistance payment.
- (e) Prior to the approval of eligibility of a Family by the PHA or the Owner, as the case may be, and thereafter on the date established for each reexamination of the status of such Family, the PHA or the Owner, as the case may be, shall review or cause to be reviewed a written application, signed by a responsible member of such Family, which application shall set forth all data and information necessary for a determination of the amount, if any, of housing assistance payment which can be made with respect to the Family.

2.4. INSPECTIONS.

- (a) The PHA shall require, as a condition for the making of housing assistance payments, that the Owner maintain the assisted dwelling units and related facilities in Decent, Safe, and Sanitary condition.
- (b) The PHA shall inspect or cause to be inspected dwelling units and related facilities prior to commencement of occupancy by Families and thereafter at least annually, adequate to assure that Decent, Safe, and Sanitary housing accommodations are being provided and that the agreed-to services are being furnished.

2.5 HOUSING ASSISTANCE PAYMENTS OPPORTUNITY.

(a) The PHA shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, and the regulations of the Department of Housing and Urban Development issued thereunder, 24 CFR, Subtitle A, Part 1, Section 1.1, and the requirements of said Department pursuant to said regulations, and Executive Order 11063, to the end that, in accordance with that Act and the regulations and requirements of said Department thereunder, and said Executive Order, no person in the United States shall, on the ground of race, color, creed, religion, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program or be otherwise subjected to discrimination. The PHA shall, by contractual requirement, covenant, or other binding commitment, assure the same compliance on the part of any subgrantee, contractor, subcontractor, transferee, successor in interest, or other participant in the program or activity, such commitment to include the following clause:

"This provision is included pursuant to the regulations of the Department of Housing and Urban Development, 24 CFR, Subtitle A, Part 1, Section 1.1, et seq.; issued under Title VI of the said Civil Rights Act of 1964, and the requirements of said Department pursuant to said regulations; and the obligation of the [contractor or other] to comply therewith inures to the benefit of the United States, the said Department, and the PHA, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the [contractor or other]."

(b) The PHA shall incorporate or cause to be incorporated into all Housing Assistance Payments Contracts a provision requiring compliance with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and any rules and regulations issued pursuant thereto.

(c) The PHA shall not, on account of creed or sex, discriminate in the sale, leasing, rental, or other disposition of housing or related facilities (including land) included in any Project or in the use or occupancy thereof, nor deny to any Family the opportunity to apply for such housing, nor deny to any eligible applicant the opportunity to lease or rent any dwelling in any such housing suitable to its needs. No person shall automatically be excluded from participation in or be denied the benefits of the Housing Assistance Payments Program because of membership in a class such as unmarried mother, recipients of public assistance, etc.

2.6 EQUAL EMPLOYMENT OPPORTUNITY.

(a) The PHA shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The PHA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, 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.

(b) (1) The PHA shall incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is to be performed pursuant to this contract, the following Equal Opportunity clause:

"EQUAL EMPLOYMENT OPPORTUNITY

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

(A) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the PHA setting forth the provisions of this Equal Opportunity clause.

(B) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(C) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the PHA advising the said labor union or workers' representative of the contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(E) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(F) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(G) The contractor will include the portion of the sentence immediately preceding Paragraph (A) and the provisions of Paragraphs (A) through (F) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding on each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

(2) The PHA agrees that it will assist and cooperate actively with the Government and the Secretary of Labor in obtaining the compliance of contractor and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the Government in the discharge of the Government's primary responsibility for securing compliance.

(4) The PHA further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246, of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts. Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of Equal Opportunity clause as may be imposed upon contractors and subcontractors by the Government or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

2.7. TRAINING, EMPLOYMENT, AND CONTRACTING OPPORTUNITIES FOR BUSINESS AND LOWER INCOME PERSONS.

- (a) The project assisted under this ACC is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701a. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.
- (b) Notwithstanding any other provision of this ACC, the PHA shall carry out the provisions of said section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR, Part 135 (published in 38 Federal Register 29220, October 23, 1973), and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this ACC. The requirements of said regulations include but are not limited to development and implementation of an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the Project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3, and incorporation of the "section 3 clause" specified in Section 135.20(b) of the regulations in all contracts for work in connection with the Project. The PHA certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.
- (c) Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application for this ACC shall be a condition of the Federal financial assistance provided to the Project, binding upon the PHA, its successors and assigns. Failure to fulfill these requirements shall subject the PHA, its contractors and subcontractors, its successors, and assigns to the sanction specified by this ACC and to such sanctions as are specified by 24 CFR, Section 135.135.
- (d) The PHA shall incorporate or cause to be incorporated into any contract pursuant to this contract such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Housing and Urban Development Act, as amended. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.8. COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS.

The PHA shall cooperate with the Government in the conducting of compliance reviews and complaint investigations pursuant to applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

2.9. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.

The PHA shall incorporate or cause to be incorporated, into any contract for construction or substantial rehabilitation, such clause or clauses as are required by the Government for compliance with the regulations issued by the Environmental Protection Agency pursuant to the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, and Executive Order 11738. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.10. LABOR STANDARDS.

The PHA shall incorporate or cause to be incorporated into any contract for construction or substantial rehabilitation of nine or more dwelling units, such clause or clauses as are required by the Government for compliance with its regulations issued pursuant to the Copeland Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act. The PHA shall cooperate with the Government in the conducting of compliance reviews pursuant to said Acts and Regulations.

2.11. ESTIMATES OF REQUIRED ANNUAL CONTRIBUTION.

The PHA shall from time to time submit to the Government estimates of required annual contribution at such times and in such form as the Government may require. All estimates and any revisions thereof submitted under this Section shall be subject to Government approval.

2.12. INSURANCE AND FIDELITY BOND COVERAGE.

For purposes of protection against hazards arising out of or in connection with the administrative activities of the PHA in carrying out the Project, the PHA shall carry adequate (a) comprehensive general liability insurance, (b) workmen's compensation coverage (statutory or voluntary), (c) automobile liability insurance against property damage and bodily injury (owned and non-owned), and (d) fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

2.13. BOOKS OF ACCOUNT AND RECORDS, REPORTS.

- (a) The PHA shall maintain complete and accurate books of account and records, as may be prescribed from time to time by the Government, in connection with the Projects, including records which permit a speedy and effective audit, and will among other things fully disclose to amount and the disposition by the PHA of the Annual Contributions and other Project Receipts, if any.
- (b) The books of account and records of the PHA shall be maintained for each Project as separate and distinct from all other Projects and undertakings of the PHA except as authorized or approved by the Government.
- (c) The PHA shall furnish the Government such financial, operating, and statistical reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data, all as may reasonably be required from time to time by the Government.
- (d) The Government and the Comptroller General of the United States, or his duly authorized representatives, shall have full and free access to the Projects and to all the books, documents, papers, and records of the PHA that are pertinent to its operations with respect to financial assistance under the Act, including the right to audit, and to make excerpts and transcripts from such books and records.
- (e) The PHA shall incorporate or cause to be incorporated in all Contracts the following clauses:

"PHA AND GOVERNMENT ACCESS TO PREMISES AND OWNER'S RECORDS.

"(1) The Owner shall furnish such information and reports pertinent to the Contract as reasonably may be required from time to time by the PHA and the Government.

"(2) The Owner shall permit the PHA or the Government or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers, and records of the Owner that are pertinent to compliance with this Contract.

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- (f) The PHA shall be responsible for employing and paying the auditor for the making of audits as required by the Government, but the PHA shall be compensated under this ACC for the cost of such audits.

2.14. DEPOSITARY AGREEMENTS

- (a) (1) The PHA shall maintain one or more agreements, which are herein collectively called the "General Depositary Agreement," with a bank(s) selected as a depositary by the PHA.
- (2) The PHA may maintain one or more agreements, which are herein collectively called the "Savings Depositary Agreement," with a savings and loan institution(s) or credit union(s) selected as a depositary by the PHA for the investment of excess funds.
- (3) All such General Depositary Agreements and Savings Depositary Agreements are herein collectively called the "Depositary Agreement." All such banks, savings and loan institutions, and credit unions are herein collectively called the "Depositary."
- (4) The Depositary Agreement shall be in the form prescribed by the Government for the particular type of Depositary. The Depositary shall be, and continue to be, a member of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Share Insurance Fund, as the case may be.
- (5) Immediately upon the execution of any Depositary Agreement, the PHA shall furnish to the Government such executed or conformed copies thereof as the Government may require.
- (6) No such Depositary Agreement shall be terminated except after 30 days notice to the Government.
- (b) The PHA shall deposit promptly with such Depositary, under the terms of the Depositary Agreement, all monies received pursuant to this ACC.
- (c) The PHA may withdraw monies pursuant to the Depositary Agreement only for (1) payments pursuant to the Housing Assistance Payments Contract, and (2) other purposes specifically approved by the Government. No withdrawals shall be made except in accordance with a voucher or vouchers then on file in the office of the PHA stating in proper detail the purpose for which such withdrawal is made.
- (d) If the Government makes a determination, after notice to the PHA giving it a reasonable opportunity to take corrective action, that the PHA is in Substantial Default or if the Government determines that the PHA has made any fraudulent or willful misrepresentation of any material fact in any of the documents or data submitted to the Government pursuant to this ACC or in any document or data submitted to the Government as a basis for this ACC or as an inducement to the Government to enter into this ACC, the Government shall have the right to (1) give notice of such determination to any Depositary which holds any monies pursuant to the Depositary Agreement and (2) require such Depositary, on the basis of such notice, to refuse to permit any withdrawals of such monies. Provided, however, that upon the curing of such Default the Government shall promptly rescind such notice and requirement.

2.15¹ POOLING OF FUNDS UNDER SPECIAL CONDITIONS AND REVOLVING FUND.

- (a) The PHA may deposit under the terms of the General Depositary Agreement monies received or held by the PHA in connection with any other ACC or any administration contract or lease between the PHA and the Government.
- (b) The PHA may also deposit under the terms of the General Depositary Agreement amounts necessary for current expenditures of any other project or enterprise of the PHA, including any project or enterprise in which the Government has no financial interest; Provided, however, that such deposits shall be lump-sum transfers from the depositaries of such other projects or enterprises, and shall in no event be deposits of the direct revenues or receipts of such other projects or enterprises.
- (c) If the PHA operates other projects or enterprises in which the Government has no financial interest, it may, from time to time, withdraw such amounts as the Government may approve from monies on deposit under the General Depositary Agreement for deposit in and disbursement from a revolving fund provided for the payment of items chargeable in part to the Projects and in part to other projects or enterprises of the PHA; Provided, however, that all deposits in such revolving fund shall be lump-sum transfers from the depositaries of the related projects or enterprises and shall in no event be deposits of the direct revenues or receipts.
- (d) The PHA may establish petty cash or change funds in reasonable amounts, from monies on deposit under the General Depositary Agreement.
- (e) In no event shall the PHA withdraw from any of the funds or accounts authorized under this Section 2.15 amounts for the Projects or for any other project or enterprise in excess of the amount then on deposit in respect thereto.

2.16 DEFAULTS BY PHA AND/OR OWNER.

- (a) Rights of Owner if PHA Defaults Under Agreement or Contract. (The provisions of this paragraph (a) shall not apply to any Existing Housing Project.)
- (1) In the event of failure of the PHA to comply with the Agreement with the Owner, or if such Agreement is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Agreement is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Agreement is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder. Where the Government so determines, it may assume the PHA's rights and obligations under such Agreement and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.
- (2) In the event of failure of the PHA to comply with the Contract with the Owner, or if such Contract is held to be void, voidable or ultra vires, or if the power or right of the PHA to enter into such Contract is drawn into question in any legal proceeding, or if the PHA asserts or claims that such Contract is not binding upon the PHA for any such reason, the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder. Where the Government so determines, it shall have the right to assume the PHA's rights and obligations under such Contract, perform the obligations and enforce the rights of the PHA, and exercise such other powers as the Government may have to cure the Default; however, whether or not the Government elects to proceed in this manner, the Government shall, if it determines that the Owner is not in default, continue for the duration of such Contract to pay Annual Contributions for the purpose of making housing assistance payments with respect to dwelling units under such Contract.
- (3) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(a) will be returned as constituted at the time of such return to when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

- (4) The provision of this Section 2.16(a) is made with, and for the benefit of, the Owner, the PHA (where it is the lender and the only in its capacity as lender), or the Owner's other agencies, if any, who will have been specifically approved by the Government prior to such assignment. If such parties are not in default, they may, in order to enforce the performance of these provisions, (i) demand that the Government, after notice to the PHA giving it a reasonable opportunity to take corrective action, make a determination whether a Substantial Default exists under paragraph (a)(1) or (a)(2) of this Section, (ii) if the Government determines that a Substantial Default exists, demand that the Government take action as authorized in paragraph (a)(1) or (a)(2), and (iii) proceed against the Government by suit at law or in equity.
- (5) The provisions of paragraphs (a)(1), (3) and (4) of this Section shall be included in the Agreement and the provisions of paragraph (a)(2), (3) and (4) of this Section shall be included in the Contract.

(b) Rights of Government if PHA Defaults Under ACC, Agreement, or Contract.

- (1) If the PHA defaults in the observance or performance of the provisions of Section 2.4; fails to comply with its obligations under any duly issued Certificate of Family Participation in accordance with its terms; fails to comply with the requirements of Sections 2.5, 2.6, 2.7 or 2.8; defaults in the performance or observance of any other term, covenant, or condition of this ACC or of any term, covenant, or condition of any Contract or Agreement; fails, in the event of any default by the Owner, to enforce its rights under the Agreement or Contract by way of action to achieve compliance to the satisfaction of the Government or to terminate the Agreement or Contract in whole or in part, as direct by the Government; or fails to comply with the applicable provisions of the Act and the regulations issued pursuant thereto; the Government may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that the occurrence of any such event constitutes a Substantial Default hereunder as to the Project. Upon the occurrence of a Substantial Default with respect to any Project, the PHA shall, if the Government so requires, assign to the Government all of its rights and interests under the Agreement or Contract, including any funds, and the Government shall continue to pay Annual Contributions with respect to dwelling units covered by Housing Assistance Payments Contracts in accordance with the terms of this ACC and of such Contracts until reassigned to the PHA.
- (2) All rights and obligations of the PHA assumed by the Government pursuant to this Section 2.16(b) will be returned as constituted at the time of such return (i) when the Government is satisfied that all defaults have been cured and that the Project will thereafter be administered in accordance with all applicable requirements, or (ii) when the Housing Assistance Payments Contract is at an end, whichever occurs sooner.

(c) Rights of PHA and Government if Owner Defaults Under Contract. (New Construction and Substantial Rehabilitation Projects.)

For New Construction and Substantial Rehabilitation Projects, the Contract shall contain the following provisions:

- "a. A default by the Owner under this Contract shall result if:
 - "(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or
 - "(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.
- "b. Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall have the right to terminate this Contract in whole or in part or take other corrective action to achieve compliance, in its discretion or as directed by the Government.
- "c. (The provisions of this paragraph c shall apply only if the PHA is the lender.) Notwithstanding any other provisions of this Contract, in the event the Government determines that the Owner is in default of his obligations under the Contract, the Government shall have the right, after notice to the Owner and the PHA giving them a reasonable opportunity to take corrective action, to abate or terminate housing assistance payments and recover overpayments in accordance with the terms of the Contract. In the event the Government takes any action under this Section, the Owner and the PHA hereby expressly agree to recognize the rights of the Government to the same extent as if the action were taken by the PHA. The Government shall not have the right to terminate the Contract except by proceeding in accordance with Section 2.16(b) of the ACC and paragraph b of this Section."

(d) Rights of PHA if Owner Defaults Under Contract (Existing Housing Projects). For Existing Housing projects, the Contract shall contain the following provisions:

- "a. A default by the Owner under this Contract shall result if:
 - "(1) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease; or
 - "(2) The Owner has asserted or demonstrated an intention not to perform some or all of his obligations under this Contract or under any Lease.
- "b. Upon a determination by the PHA that a default has occurred, the PHA shall notify the Owner, with a copy to the Government, of (1) the nature of the default, (2) the actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner to cure the default, and, where appropriate, abatement of housing assistance payments in whole or in part and recovery of overpayments), and (3) the time within which the Owner shall respond with a showing that he has taken all the actions required of him. If the Owner fails to respond or take action to the satisfaction of the PHA and the Government, the PHA shall have the right to terminate this Contract in whole or in part or take other corrective action to achieve compliance, in its discretion or as directed by the Government."

2.17. REMEDIES NOT EXCLUSIVE AND NON-WAIVER OF REMEDIES.

The availability of any remedy provided for in this ACC or in the Contract shall not preclude the exercise of any other remedy under this ACC or the Contract 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.

2.18. INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF PHA, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS.

- (a) Neither the PHA nor any of its contractors or their subcontractors shall enter into any contract, subcontract, or arrangement, in connection with any Project, in which any member, officer, director, or employee of the PHA, or any member of the governing body of the locality in which

the Project is situated, or any member of the governing body of the locality in which the PHA was activated, or any other public official of such locality or locality who exercises any responsibilities or functions with respect to the Project, during his tenure or for one year thereafter, has any interest, direct or indirect. If any such present or former member, officer, or employee of the PHA, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, and if such interest is immediately disclosed to the PHA and such disclosure is entered upon the minutes of the PHA, the PHA, with the prior approval of the Government, may waive the prohibition contained in this subsection. Provided, however, that any such present member, officer, or employee of the PHA shall not participate in any action by the PHA relating to such contract, subcontract, or arrangement.

(b) The PHA shall insert in all contract entered into in connection with any Project or any property included or planned to be included in any Project, and shall require its contractors to insert in each of its subcontracts, the following provisions:

"No member, officer, or employee of the PHA, no member of the governing body of the locality (city and county) in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or in any proceeds or benefits arising therefrom."

(c) The provisions of the foregoing subsections (a) and (b) of this Section 2.18 shall not be applicable to the Depository Agreement, or utility service the rates for which are fixed or controlled by a governmental agency.

2.19. 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 ACC or to any benefits which may arise therefrom.

