

**HOUSING AUTHORITY OF THE COUNTY OF SANTA CRUZ**  
**AGENDA OF THE REGULAR BOARD MEETING**

**May 22, 2019**

**11:30 a.m.**

**TO BE HELD AT:**

**HOUSING AUTHORITY OFFICES**  
2160 41<sup>st</sup> Avenue, Capitola, CA 95010

1. Roll Call
2. Consideration of Late Additions and Changes to the Agenda
3. Consent Agenda
  - A. Minutes of the Regular Meeting held April 24, 2019

Motion to Approve as Submitted
  - B. Update of Standard HUD Documents

Motion to Authorize Execution of General Depository Agreement (HUD-51999) and Public Housing Consolidated Annual Contributions Contract (HUD-53012, parts A and B).
  - C. Letter of Intent for Moving To Work Designation

Motion to Adopt Resolution No. 2019-03 Authorizing the Submittal of a Letter of Intent to Obtain HUD Moving to Work (MTW) Designation under the Second Cohort of the MTW Expansion and, if awarded MTW status, the Intension to comply with MTW objectives, statutory requirements and the Operating Notice
  - D. Procurement Policy Revision

Motion to Adopt Resolution No. 2019-04: Approval of Revised Procurement Policy
4. Oral Communications (All oral communications must be directed to an item not listed on this agenda and must be within the jurisdiction of the Board. Presentations must not exceed three minutes in length. The Board will not take action or respond immediately to any Oral Communication presented, but may choose to follow up at a later time or schedule item for a subsequent agenda. The Board may limit the total amount of time allowed for oral communication). Anyone addressing the Board of Commissioners is asked to complete a card and leave it with the Board secretary so that their names may be accurately recorded in the Minutes.
5. Unfinished Business
6. New Business
  - A. Agency Budget for FY 2019-2020

Motion to Approve Agency Budget for FY 2019-2020; Adopt Resolution No. 2019-05: Approval of Operating Budget for Low Income Public Housing for Fiscal Year 2019-20

B. Update and Revision of Agency Bylaws

Motion to Approve Revision to Agency Bylaws

7. Written Correspondence
8. Report of Executive Director
9. Reports from Board Members  
(Board members may report on meetings attended, if any, or other items of interest.)
10. Closed Session

A. Executive Director Employee Evaluation and Contract Renewal

(The Board will recess to discuss those items listed, if any.)

11. Report on Closed Session
12. Adjournment

\*The Housing Authority complies with the Americans with Disabilities Act. If you are a person with disabilities and you require special assistance in order to participate, please contact the Board secretary at 831-454-9455, ext. 201 at least 72 hours in advance of the meeting in order to make arrangements. Persons with disabilities may request a copy of the agenda in an alternative format.

Spanish language translation is available on an as needed basis. Please make arrangements 72 hours in advance by contacting the Housing Authority at 831-454-9455, ext. 280.

*Agendas can be obtained from the Housing Authority of the County of Santa Cruz Administration Department.*

HOUSING AUTHORITY OF THE COUNTY OF SANTA CRUZ, MINUTES OF THE REGULAR MEETING APRIL 24, 2019 AT THE HOUSING AUTHORITY OF THE COUNTY OF SANTA CRUZ, 2160 41<sup>ST</sup> AVENUE, CAPITOLA, CA 95010

---

**AGENDA ITEM NO. 1**

Roll Call

Vice Chairperson Schiffrin called the meeting to order at 11:30 a.m. Members present Commissioners Berg, Eligio, Garcia, Pomerantz, Schiffrin and Schmale (Chairperson Brunner entered the meeting at 11:34 a.m. and took over the gavel)

**Members Absent**

None.

**Staff Present**

Jennifer Panetta, Aaron Pomeroy and Courtney Byrd of the Housing Authority

**AGENDA ITEM NO. 2**

Consideration of Late Additions or Changes to the Agenda

None.

**AGENDA ITEM NO. 3**

Consent Agenda

Vice Chairperson Schiffrin asked for a motion to approve the Consent Agenda.

Commissioner Pomerantz requested Agenda Items 3C and 3E be pulled from the Consent Agenda, items so pulled. Secretary Panetta requested these pulled items be discussed after Agenda Item 6C. The Board agreed.

Chairperson Brunner asked for a motion to approve the Consent Agenda as amended.

Commissioner Berg moved for approval of the Consent Agenda as amended; Commissioner Eligio seconded the motion and it was passed by the following vote:

AYES: Commissioners Berg, Brunner, Eligio, Garcia, Schiffrin and Schmale  
NOES: None  
ABSENT: None  
ABSTAIN: Commissioner Pomerantz

Agenda Item 3A. Approval of the Minutes of the Special Meeting held March 20, 2019

Commissioner Pomerantz had questions regarding wages paid and the total cost of Agenda item 3C Siding Repair Project for Agency Owned Housing. A discussion followed.

Commissioner Pomerantz moved to Authorize the Executive Director to Enter into a Contract with Cisco Home Restoration and Construction for Siding Repair for Agency Owned Housing; Commissioner Garcia seconded the motion and it was passed by the following vote:

HOUSING AUTHORITY OF THE COUNTY OF SANTA CRUZ, MINUTES OF THE REGULAR MEETING APRIL 24, 2019 AT THE HOUSING AUTHORITY OF THE COUNTY OF SANTA CRUZ, 2160 41<sup>ST</sup> AVENUE, CAPITOLA, CA 95010

---

AYES: Commissioners Berg, Brunner, Eligio, Garcia, Pomerantz, and Schmale  
NOES: None  
ABSENT: Commissioner Schiffrin (Commissioner Schiffrin exited the meeting prior to the motion)  
ABSTAIN: None

Commissioner Pomerantz had questions about the Housing Authority's role relating to the use of funds in Agenda Item 3E County of Santa Cruz Housing Services Contract and the Administrative Fees the Housing Authority is paid. A discussion followed.

Commissioner Pomerantz moved to Approve the Housing Services Work Plan for 2019-2020; Commissioner Garcia seconded the motion and it was passed by the following vote:

AYES: Commissioners Berg, Brunner, Eligio, Garcia, Pomerantz, and Schmale  
NOES: None  
ABSENT: Commissioner Schiffrin (Commissioner Schiffrin exited the meeting prior to the motion)  
ABSTAIN: None

**AGENDA ITEM NO. 4** Oral Communications  
None.

**AGENDA ITEM NO. 5** Unfinished Business  
None.

**AGENDA ITEM NO. 6A** Draft Agency Budget for FY 2019-2020

Secretary Panetta introduced Finance Director Aaron Pomeroy who presented the Commissioners with the Draft Agency Budget for FY 2019-2020. The proposed budget balances conservative assumptions about funding levels with ambitious goals regarding increases to the number of families assisted by the Housing Authority's programs, in alignment with the Housing Authority's mission and values.

This budget was prepared using a blend of admin fee proration levels of 82% for CY 2019 and an estimated 77% for CY 2020 based on industry forecasts. A discussion followed. This budget will be brought before the Board at the May 22, 2019 Regular Meeting for approval. Secretary Panetta and the Commissioners thanked Finance Director Pomeroy and his staff for their work on the FY 2019-2020 budget.

**AGENDA ITEM NO. 6B** Funding of Section 115 Pension Trust

Finance Director Pomeroy explained to the Board that defined benefit pension plans, like those offered through CalPERS, generate an unfunded pension liability when the plan's total pension liability exceeds

the actual plan assets. The Housing Authority's total unfunded pension liability is \$7.2 million as of the most recent CalPERS actuarial valuation.

At the December 2017 meeting, the Board approved the establishment of a Section 115 pension prefunding trust to address the unfunded pension liability and the corresponding annual increases to the agency's minimum required pension contributions. Funds placed in the Section 115 pension trust remain separate from the CalPERS pension plan assets. Staff proposes an initial lump sum contribution to the Section 115 trust equal to the Low Income Public Housing (LIPH) program's proportionate share of the total unfunded pension liability. This would equate to about \$1 million of the roughly \$7 million of LIPH reserves. A discussion followed.

Commissioner Schiffrin moved to Authorize the LIPH program's proportionate share of the agency's total unfunded pension liability to be drawn from LIPH reserves and deposited into the Section 115 pension prefunding trust; Commissioner Garcia seconded the motion and it was passed by the following vote:

AYES: Commissioners Berg, Brunner, Eligio, Garcia, Pomerantz, Schiffrin and Schmale  
NOES: None  
ABSENT: None  
ABSTAIN: None

Finance Director Pomeroy exited the meeting at 12:23 p.m. with thanks from the Board of Commissioners and Secretary Panetta.

Commissioner Schiffrin exited the meeting 12:30 p.m.

**AGENDA ITEM NO. 6C** Project Based Voucher RFP Criteria

Secretary Panetta explained to the Board that in recent years, the Housing Authority has sought to expand the Project Based Voucher (PBV) program in order to support the development of affordable housing and to increase the number of units exclusively available to voucher holders. The Housing Authority maintains an open Request for Proposals (RFP) to provide interested parties with the opportunity to request PBVs to support existing housing or to help finance new affordable developments. The current scoring criteria was most recently updated in March 2017 after discussion with the Board.

Before officially selecting any project based voucher proposal, the HACSC will determine that the proposal complies with HUD program regulations and requirements, including a determination that the property is eligible for project based vouchers, that the proposal complies with the cap on the number of project based units per building, and that the proposal meets HUD's site selection standards. A discussion followed. Commissioner Berg recommended a change to the scoring criteria, such that the amount of points awarded to projects that propose to utilize the existing HCV waiting list are reduced, and the number of points awarded to projects that propose to utilize project based vouchers for the

development of new affordable units be increased. Additionally, the Board voiced concern that some of the proposals for existing units may be in need of the PBV funding and some may not. The board recommended establishing an application fee, as well as requiring additional financial analysis to support the need for PBVs at the site. These recommendations will be reflected in the next update of the RFP.

**AGENDA ITEM NO. 6D** Moving to Work Demonstration Program

Secretary Panetta informed the Board that HUD has established a demonstration program called Moving to Work (MTW). The goal of the demonstration program is to allow a small group of PHAs to design and test innovative, locally designed housing and self-sufficiency strategies for low-income families by permitting PHAs to use funding from the Section 8 and Low Income Housing Program more flexibly and by allowing certain exemptions from existing program rules. The MTW Demonstration Program was originally authorized 1996. Since this time, 39 PHAs (including 6 in the state of California) have been selected as MTW agencies. In 2016, Congress authorized HUD to expand the MTW Demonstration Program by an additional 100 PHAs over seven years. MTW agencies will be added to in four cohorts. As discussed followed as Secretary Panetta described each of the four cohorts. At this time, staff is considering submitting a *letter of interest* to participate in the MTW program under Cohort 2 rent reform. Ideally, the Housing Authority would choose to participate in Cohort 4 to test landlord incentive strategies. All cohorts will be very competitive. Staff believes that the administrative and funding flexibility available to MTW agencies would allow our agency to provide rental assistance to more families. Therefore, in an effort to keep our options open, without committing to any level of participation, staff plans to recommend Board approval of a letter of interest in Cohort 2 at the May meeting.

**AGENDA ITEM NO. 7** Written Correspondence  
None.

**AGENDA ITEM NO. 8** Report of Executive Director

Executive Director Panetta updated the Board on the Housing Authority's software conversion that is scheduled to take place on July 1, 2019.

Executive Director Panetta informed the Board that in 2017 the Housing Authority conducted its first FMR Study in response to a 5% decrease in the HUD published FMRs. The study resulted in a modest 4% increase in FMRs. Staff commissioned an additional study last year, which resulted in a 24% increase in FMRs. The FMR study we submitted last year will remain valid for 2 years. Therefore, staff will not commission an FMR study in 2019. Staff will commission a new study in the spring of 2020 to establish the 2021 FMRs. If the Housing Authority does not conduct a new study at that time, the 2021 FMRs will be re-set based on HUD's standard methodology.

Executive Director Panetta gave the Board a quarterly update on the Landlord Incentive Program and PBV Activity for the period January – March 2019

**AGENDA ITEM NO. 9** Reports from Board Members

Commissioner Berg informed the Board that she received an email regarding the HUD proposal to terminate housing benefits for mixed-immigration status families who rely on HUD's public and assisted housing programs. Secretary Panetta will keep the Board informed on this proposal.

Commissioner Garcia informed the Board that many of the groups involved in creating and/or supporting Measure H, are joining together again to support affordable housing in Santa Cruz County. There was a subcommittee formed to work on their Mission Statement.

**AGENDA ITEM NO. 10** Closed Session

None.

**AGENDA ITEM NO.11** Report on Closed Session

None.

**AGENDA ITEM NO. 12** Adjournment

The Board of Commissioners meeting was adjourned at 1:45 p.m.

I hereby certify that these minutes were approved by the Housing Authority of the County of Santa Cruz, on the Twenty Second day of May, 2019.

\_\_\_\_\_

Chairperson of the Authority

ATTEST: \_\_\_\_\_

Secretary

## AGENDA ITEM SUMMARY

---

**MEETING DATE:** May 22, 2019

**ITEM NUMBER:** 3B

**FROM:** Executive Director

---

**SUBJECT:** Update of Standard HUD Documents

---

**RECOMMENDATION:** Authorize Execution of General Depository Agreement (HUD-51999) and Public Housing Consolidated Annual Contributions Contract (HUD-53012, parts A and B).

---

### **BACKGROUND SUMMARY:**

The San Francisco HUD field office has requested that our agency update or re-execute some standard documents that have become outdated.

Documents requested include the following:

- General Depository Agreement (HUD-51999): Documents that the Housing Authority will deposit and invest all funds and investment securities received by or held for the account of the Housing Authority in connection with the development, operation, and improvement of the projects under the ACC. Executed between the Housing Authority and the depository.
- Public Housing (PH) Program's Consolidated Annual Contributions Contract, Form HUD-53012 Part A and B: - The Annual Contributions Contract between HUD and a PHA covering a public housing project or multiple public housing projects. Executed between the Housing Authority and the HUD. Part A: sets forth requirements applicable to all projects; Part B: sets forth additional requirements that apply only to certain types of projects.

These documents require signature of the Chairperson of the Housing Authority Board of Commissioners.

**RECOMMENDATION:** Authorize Execution of General Depository Agreement (HUD-51999) and Public Housing Consolidated Annual Contributions Contract (HUD-53012, parts A and B).

HOUSING AUTHORITY OF THE COUNTY OF SANTA CRUZ



Public reporting burden for this collection of information is estimated to average 1 hour per response. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. HUD will use this information to ensure PHAs use all Program Receipts received from HUD or otherwise associated with public housing funds for purposes of public housing, by requiring such financial assistance to be deposited into interest-bearing accounts at certain financial institutions. The information requested does not lend itself to confidentiality.

**This Agreement**, entered into this 23<sup>rd</sup> day of April, 2019 by and between Housing Authority of the County of Santa Cruz (herein called the "HA"), a duly organized and existing public body corporate and politic of the County of Santa Cruz and Santa Cruz County Bank (herein called the "Depository"), located at 75 River Street Santa Cruz, CA 95060.

**Witnesseth:**

**Whereas**, the Department of Housing and Urban Development (herein called "HUD") has entered into one or more Annual Contributions Contracts (herein called the "ACC" with the HA for the purpose of providing financial assistance to develop and operate lower income housing projects, as authorized by the United States Housing Act of 1937, as amended (42 USC 1437, et seq.); and

**Whereas**, under the terms of the ACC the HA is required to select as depositories of its funds, financial institutions whose deposits or accounts are insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF) as long as this Agreement is in force and effect.

**Now Therefore**, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. The deposits and accounts of the Depository shall continue to be insured by the FDIC Corporation or NCUSIF.
2. All monies deposited by the HA with the Depository shall be credited to the HA in a separate interest-bearing deposit or interest-bearing accounts (herein the "Accounts"). Any portion of HA Funds not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable U.S. Government or Agency securities prescribed by HUD in a notice. Collateralization is required on a daily basis at the end of the business day. Such securities shall be pledged and set aside in accordance with applicable law or Federal regulations. The HA shall have possession of the securities (or the HA will take possession of the securities) or an independent custodian (or an independent third party) holds the securities on behalf of the HA as a bailee (evidenced by safe keeping receipt and a written bailment for hire contract) and will be maintained for the full term of deposit. The Depository may substitute other securities as collateral to equal or increase the value. If the HA is an agency of an Indian tribe, the collateral shall be in United States bonds and otherwise as may be prescribed for public funds by the United States Secretary of the Treasury.
3. Except as stated in Paragraph 5, the Depository shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase investment securities with monies from the Accounts or to sell securities, if such order or directive is in writing and signed on behalf of the HA by an officer or member designated by resolution of the Board of Directors of the HA to have such authority. To assist the Depository in its obligation, the HA shall furnish the Depository with a certified copy of the resolution.
4. Any securities received from the HA or purchased by the Depository with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Depository in safe-keeping for the HA until sold. Interest on such securities and the proceeds from the sale thereof shall be deposited in the Account upon receipt
5. If the Depository receives written notice from HUD that no withdrawals by the HA from the Accounts are to be permitted, the Depository shall not honor any check or other order to pay from the Accounts or directive to purchase or sell securities, or permit any withdrawals by the HA from said Accounts until the Depository is authorized to do so by written notice from HUD.
6. The Depository is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the ACC, and shall be under no duty to investigate or determine whether any action taken by either the HA or HUD in respect of the Accounts are consistent with or are authorized by the ACC or whether either HA or HUD is in default under the provisions of the ACC. The Depository shall be fully justified in accepting and acting on, without investigation, any certificate or notice furnished to it pursuant to the provisions of this Agreement and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed
7. The rights and duties of the Depository under this Agreement shall not be transferred or assigned by the Depository without the prior written approval of the HA and HUD. This Agreement may be terminated by either party hereto upon thirty days' written notice to the other party, and HUD. The rights and duties of the Depository hereunder shall not be transferred or assigned nor shall this Agreement be terminated during any period in which the Depository is required to refuse to permit withdrawals from the Accounts as provided in Paragraph 5.
8. HUD is intended to be a third-party beneficiary of this Agreement and may sue to enforce its provisions and to recover damages for failure to carry out its terms.

9. The Depository shall provide the HA with remote, electronic access to the Accounts for the purpose of monitoring the crediting or depositing of any monies in the Accounts.

10. The provisions of this Agreement may not be modified by either Party without the prior written approval of HUD

11. **Strike this paragraph if inapplicable:** Previous General Depository or Savings Depository Agreements, if any, entered into between the Depository and the HA are hereby terminated and all monies and securities of the HA on deposit with or held by the Depositories pursuant to the terms of said Agreement shall continue to be held for account of the HA pursuant to and in accordance with the provisions of this Agreement.

12. **Strike this paragraph if paragraph 2 applies:** For use only in certain States that have statutes that prohibit HAs from implementing paragraph 2.

At no time shall the HA Funds in the Accounts be permitted to exceed the amount insured by Federal deposit insurance (herein the "Insured Amount"). At any such time as the amount of funds in the Accounts reach the Insured Amount, whether by the accrual of interest or otherwise, the Depository shall promptly, as directed by the HA, and in an amount sufficient to limit the funds in the Accounts to the Insured Amount, either: (a) remit payment to the HA or, (b) on behalf of the HA, purchase securities approved for investment by the HA. Such securities shall not be considered to be a part of the Account pursuant to Paragraph 4 hereof but shall be held by the Depository as custodian or trustee for the HA in a separate account established for that purpose by the Depository (herein the "Securities Account").

Income or other proceeds from securities held in the Securities Account shall, as directed by the HA, upon receipt, be paid to or on behalf of the HA; provided, however, that such proceeds shall, to the extent consistent otherwise with the provisions of this Paragraph, be deposited in the Accounts. If the Depository receives written notice from HUD pursuant to Paragraph 5 hereof that no withdrawals by the HA from the Accounts are to be permitted, the Depository shall not honor any directive from the HA to sell securities, or permit any withdraws by the HA, from the Securities Account until the Depository is authorized to do so by written notice from HUD.

During the pendency of such restrictions on the Accounts and the Securities Account, the Depository, except as directed in writing by HUD, shall not remit any payment to the HA for the purpose of limiting the amount of funds in the Account to the Insured Amount but shall instead purchase securities approved for investment by the HA and hold such securities in the Securities Account.

13. Notice required under the terms and conditions of this agreement shall be deemed to have been given when it made by:

\_\_\_\_ Executive Director \_\_\_\_\_, on behalf of Housing Authority of the County of Santa Cruz  
Title Organization (HA)

\_\_\_\_\_, on behalf of \_\_\_\_\_  
Title Organization (Depository)

\_\_\_\_\_, on behalf of \_\_\_\_\_  
Title Organization (HUD)

Notice shall be made in writing. Notice may be delivered in person, by United States Postal Service mail, by receipted commercial mail delivery, by facsimile machine or other electronic means that clearly identifies the sender as one of the persons so authorized in this paragraph. **Notice under the terms of this agreement shall be implemented by the Depository within 24 hours of actual receipt.**

**In Witness Whereof**, the HA and the Depository have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

\_\_\_\_\_  
HA  
(SEAL)  
ATTEST:  
By \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Depository  
(SEAL)  
ATTEST  
By \_\_\_\_\_



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

---

# **Terms and Conditions**

---

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

**Forms HUD-53010 and  
HUD-53011 are obsolete**

**Form HUD-53012A  
(7/95)**

# TABLE OF CONTENTS

## -- Part A --

<b>Section</b>		<b>Page</b>
Section 1	Consolidation of Annual Contributions Contract.	1
Section 2	Definitions.	1
Section 3	Mission of HUD.	2
Section 4	Mission of the HA.	2
Section 5	Covenant to Develop and Operate.	3
Section 6	Cooperation Agreement(s).	3
Section 7	Covenant Against Disposition and Encumbrances.	3
Section 8	Declaration of Trust.	3
Section 9	Depository Agreement and General Fund.	4
Section 10	Pooling of Funds.	4
Section 11	Operating Budget.	5
Section 12	Civil Rights Requirements.	5
Section 13	Insurance Requirements.	6
Section 14	Employer Requirements.	7
Section 15	Books of Account, Records, and Government Access.	7
Section 16	Termination of a Project Under Management.	7

<b>Section</b>		<b>Page</b>
Section 17	Notices, Defaults, Remedies.	7
Section 18	Rights and Obligations of HUD While in Possession of Project(s).	9
Section 19	Conflict of Interest.	9
Section 20	Interest of a Member or Delegate to Congress.	11
Section 21	Rights of Third Parties.	11
Section 22	Performance of Conditions Precedent to the Validity of this ACC.	11
Section 23	Waiver or Amendment.	11

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of HUD to the contrary.

**Section 14 - Employer Requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

remain subject to other applicable conflict of interest requirements.

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

**Section 20 - Interest of a Member or Delegate to Congress.**

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise from it. (As used in this section, the term "resident commissioner" refers to an individual appointed to oversee a territory or possession of the United States of America, e.g., Guam.)

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

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

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

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

**Section 23 - Waiver or Amendment.**

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



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

(SEAL)

ATTEST:

HOUSING AUTHORITY OF THE COUNTY OF SANTA CRUZ  
(Housing Authority)

By \_\_\_\_\_  
(Chairperson)

UNITED STATES OF AMERICA  
Secretary of Housing and Urban  
Development

By \_\_\_\_\_  
\_\_\_\_\_  
(Official Title)

---

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

---

**Additional Terms and  
Conditions**

---

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

**Forms HUD-53010 and  
HUD-53011 are obsolete**

**Form HUD-53012B  
(7/95)**

# TABLE OF CONTENTS

## — Part B —

<b>Heading</b>	<b>Page</b>
Applicability of Additional Requirements Pursuant to Part B of this ACC.	i
Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects.	I-1
Special Requirements for Section 23 and Section 10(c) Projects.	II-1 to II-3
Special Requirements for Turnkey III Homeownership Opportunities Projects.	III-1
Special Requirements for Mutual Help Projects.	IV-1 to IV-2
Special Interim Requirements for Development Projects.	V-1 to V-10
Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank.	VI-1 to VI-12
Insurance Requirements	VII-1 to VII-2

## **Applicability of Additional Requirements Pursuant to Part B of this ACC**

---

The HA shall comply with all additional requirements set forth in any applicable attachments contained in this Part B to the ACC. The HA is responsible for determining whether the following attachment(s) apply to the HA's project(s), and for determining the extent to which they apply to a HA's projects. The HA shall not be relieved of its obligation to comply with these requirements because of its failure to make an appropriate determination of applicability.

- (A) **Attachment I:** Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects. (Applicable to all projects, except those financed by the HA's issuance of tax-exempt bonds or by the sale of notes to the Federal Financing Bank.)
- (B) **Attachment II:** Special Requirements for Section 23 and Section 10(c) projects. (Applicable to all projects developed pursuant to sections 23 or 10(c) of the Act.)
- (C) **Attachment III:** Special Requirements for Turnkey III Homeownership Opportunities Projects. (Applicable to all projects operating pursuant to the Turnkey III Homeownership Opportunities program.)
- (D) **Attachment IV:** Special Requirements for Mutual Help Homeownership Projects. (Applicable to all projects operating pursuant to the Mutual Help Homeownership program.)
- (E) **Attachment V:** Special Interim Requirements for Development Projects. (Applicable, on an interim basis, to all projects being developed, or proposed to be developed, by a public housing authority under the Act.)
- (F) **Attachment VI:** Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank. (Applicable to all projects financed through the issuance of tax-exempt bonds or through notes sold to the Federal Financing Bank.)
- (G) **Attachment VII:** Insurance Requirements. (Applicable to all projects.)

## ATTACHMENT I

### Debt Forgiveness Requirements Applicable to Low Income Public and Indian Housing Projects

---

Section	Page
Section 1 Limitations on Forgiveness of Debt.	I-1
Section 2 Maximum Amount That May Be Forgiven.	I-1

#### **Section 1 - Limitations on Forgiveness of Debt.**

(A) Section 4(a) of the Act authorizes HUD to make loans to HAs to help finance the development or modernization of low income housing projects by such agencies. Section 5(a) of the Act authorizes HUD to make annual contributions to HAs, which may in no case exceed the annual debt service payable by such HAs to finance the development or modernization cost of the project involved.

(B) Section 3004 of the Housing and Community Development Reconciliation Amendments of 1985 added section 4(c) to the Act to provide that each loan made by HUD under section 4(a) that has any principal amount outstanding or any interest amount outstanding or accrued that is repayable from debt service annual contributions shall be forgiven and any promise to repay principal and interest in a loan contract shall be cancelled. Section 4(c) further provides that such cancellation of a promise to repay principal and interest shall not affect any other terms and conditions of the ACC, which shall remain in effect as if the cancellation had not occurred.

(C) The forgiveness provided under section 4(c) is limited to loans held by HUD, repayment of which was to be made using annual contributions and does not extend to indebtedness of HAs to holders of bonds or notes sold to the Federal Financing Bank or otherwise, or under indebtedness to HUD not to be paid from annual contributions.

#### **Section 2 - Maximum Amount That May Be Forgiven.**

The outstanding principal balance and interest due on loans held by HUD made under section 4 of the Act for the development or modernization of such project, shall be forgiven, not to exceed a maximum principal amount equal to the Actual Development Cost (or Actual Modernization Cost) for such project, and interest thereon. Excess financing, with interest thereon until paid, shall not be forgiven.

## ATTACHMENT II

### Special Requirements for Section 23 and Section 10(c) Projects

---

<b>Section</b>		<b>Page</b>
Section 1	General Requirements Applicable to Section 23 and Section 10(c) Projects.	II-1
Section 2	Special requirements Applicable Only to Section 23 Projects	II-2

#### **Section 1 - General Requirements Applicable to Section 23 and Section 10(c) Projects.**

(A) Subject to reduction as herein provided, HUD shall pay Basic Annual Contributions to the HA with respect to each dwelling unit in a Section 23 or Section 10(c) project in the amount allocable to dwelling units of its size for each fiscal year in which the dwelling unit is under lease to the HA.

(B) Provided that the total estimated number of dwelling units of all sizes is not exceeded, the HA may lease any combination of the various sizes of dwelling units but shall not lease more than 125% of the estimated number of dwelling units of any specified size without the prior approval of HUD. Notwithstanding the number and size of dwelling units leased by the HA, HUD shall not be obligated to make Basic Annual Contributions with respect to the project for any period in excess of the amount of the Basic Annual Contributions established in this ACC.

(C) Following the end of each fiscal year, the HA shall promptly pay to HUD (unless HUD approves an alternative disposition), the amount of Basic Annual Contributions paid to the HA for such fiscal year with respect to any dwelling unit (1) which the HA did not place under lease; or (2) which may be attributable to: (i) a period prior to the effective date of the lease covering the dwelling unit, or (ii) subsequent to the date of termination of the lease covering any dwelling unit, or (iii) for which the HA is not obligated to pay rent under the lease covering any dwelling unit. Amounts in relation to item (2) above, shall be determined on the basis of 1/365th of the annual amount allocable to the dwelling unit for each day.

(D) The HA shall proceed expeditiously with the leasing of the maximum number of units authorized for use and occupancy by eligible families. If the HA does not proceed expeditiously with the leasing of dwelling units in the project, HUD may, by notice to the

HA, reduce its obligation to pay annual contributions with respect only to the number and sizes of dwelling units under lease to the HA at the date of the HA's receipt of such notice.

(E) The HA shall promptly commence and conduct a continuing survey and listing of available dwelling units that will provide decent, safe, and sanitary dwelling accommodations and related facilities and that are, or may be made, suitable for use as low-rent housing. The HA shall inspect each dwelling unit and shall maintain a current list of approved dwelling units for the project consistent with the need and demand of eligible families for such units.

(F) The initial term of any lease shall be for not less than twelve months nor more than one hundred and twenty (120) months. Each lease may contain a provision for renewal, provided that no such renewal shall result in a total term exceeding one hundred and eighty (180) months for an existing structure or two hundred and forty (240) months for a new structure.

(G) The HA shall not lease more than one dwelling unit in a structure containing ten or less dwelling units or more than 10% of the dwelling units (counting any fraction as one dwelling unit) in a larger structure except to the extent that the HA determines that such limit should not be applied.

(H) The books of account and records of the HA shall be maintained in such manner as will at all times show the operating receipts, operating expenditures, and reserves for the project separate and distinct from all other projects under this ACC. All annual contributions received by the HA in connection with the project shall constitute operating receipts of the project.

(I) The HA hereby pledges the Basic Annual Contributions payable with respect to a Section 23 or Section 10(c) project to the payment of its obligations incurred under this ACC in connection with such project(s).

(J) Upon the occurrence of a substantial default with respect to the project, the HA shall, if HUD so requires, assign to HUD all of its rights and interests in and to the project, or such part thereof as HUD may specify. HUD shall continue to pay the Basic Annual Contributions with respect to the dwelling units and for the terms of the leases so assigned to HUD, and to otherwise operate such units in accordance with the terms of this ACC until reassigned to the HA. After HUD is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of this ACC, HUD shall reassign to the HA all of HUD's rights and interests in and to the project, as such rights and interests exist at the time of such reassignment.

## **Section 2 - Special Requirements Applicable Only to Section 23 Projects.**

(A) A HA with a Section 23 tax-exempt bond-financed project must also comply with the additional requirements set forth in Attachment VI to this ACC.

(B) In addition to project reserves remaining at the end of the lease term, funds returned to the HA by a bond trustee at the end of the bond term, or returned to a leased housing corporation created by an HA for the purpose of developing a Section 23 tax-exempt bond-financed project, shall be disbursed as directed by HUD.

(C) Section 23 private-owner financed projects are not subject to the requirements of section 6, Part A, of the ACC ("Cooperation Agreement(s)"), including the making of payments in lieu of taxes provided therein.



## ATTACHMENT III

### Special Requirements for Turnkey III Homeownership Opportunities Projects

---

Section		Page
Section 1	Homebuyers' Ownership Opportunity Agreement.	III-1
Section 2	Books of Account.	III-1
Section 3	Application of Purchase Payments.	III-1

#### **Section 1 - Homebuyers' Ownership Opportunity Agreement.**

(A) The HA agrees to operate its Turnkey III project(s) in accordance with the regulations and guidelines for the Turnkey III Homeownership Opportunities Program for Low-Income Families, as prescribed by HUD. The HA shall enter into a Homebuyers' Ownership Opportunity Agreement (HOOA), in the form prescribed by HUD, with the occupant of each dwelling in the project. The HOOA shall provide for the ultimate ownership of the dwelling by the occupant who has performed all the obligations and conditions required by the HOOA.

(B) Failure of the HA to enter into such HOOA at the time and in the form prescribed by HUD, failure to perform any obligation imposed under such agreement, or failure to meet any other obligation under this ACC shall constitute a substantial default under the ACC.

#### **Section 2 - Books of Account.**

The books of account and records of the HA shall be maintained in accordance with the HOOA as well as other provisions of this ACC and in such manner as will at all times show the operating receipts, operating expenditures, reserves, and other required accounts for the project separate and distinct from all other projects under this ACC.

#### **Section 3 - Application of Purchase Payments.**

All funds held or received by the HA that are applied to payment of the purchase price of a home by a Homebuyer shall be used or disposed of by the HA as authorized by HUD in applicable statutes, executive orders, regulations, or contractual documents governing the use of proceeds of sale.

## ATTACHMENT IV

### Special Requirements for Mutual Help Homeownership Projects

---

<b>Section</b>		<b>Page</b>
Section 1	Annual Contributions Contract.	IV-1
Section 2	MHO Agreement.	IV-1
Section 3	Books of Account.	IV-2
Section 4	Application of Purchase Payments.	IV-2

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

The IHA agrees to develop and operate its Mutual Help project(s) in compliance with any applicable HUD regulations and guidelines for the Mutual Help (MH) Homeownership Opportunity Program, and in accordance with all contractual obligations imposed upon the IHA by the Mutual Help and Occupancy Agreement (MHO Agreement).

#### **Section 2 - MHO Agreement.**

- (A) The MH Program provides low income families with an opportunity to become homeowners in return for the families' agreement to make a minimum contribution toward the development cost of a project, to maintain the home, and to perform all duties of a homebuyer under a MHO Agreement.
- (B) As units become available, the IHA shall execute a MHO Agreement, in the form prescribed by HUD, with each eligible family. The IHA shall ensure the homebuyer's compliance with all applicable provisions of the MHO Agreement, and shall be responsible for ensuring that the Mutual Help unit is maintained in a decent, safe and sanitary condition, notwithstanding the homebuyer's failure to meet his or her obligation for maintenance under the MHO Agreement.
- (C) The IHA shall ensure that each home in a MH project is used, unless otherwise approved by HUD, solely in accordance with a MHO Agreement executed with an eligible homebuyer.
- (D) The IHA's failure to enter into a MHO Agreement with an eligible family for an available home in a Mutual Help project at the times required by HUD, constitutes a substantial default under this ACC.

**Section 3 - Books of Account.**

The IHA shall maintain books of account and records in accordance with the requirements of the MHO Agreement and any HUD requirements. The books of account and records shall be maintained in such manner as will at all times show the operating receipts, operating expenses, reserves, and other required accounts for the project separate and distinct from all other projects under this ACC.

**Section 4 - Application of Purchase Payments.**

All funds held or received by the IHA from a homebuyer for the purchase of a MH unit shall be used or disposed of by the IHA as authorized by HUD in applicable statutes, executive orders, regulations, or contractual documents governing the use of proceeds of sale.

## ATTACHMENT V

### Special Interim Requirements for Development Projects

---

<b>Section</b>		<b>Page</b>
Section 1	Acquisition of Project Sites.	V-1
Section 2	Architectural and Engineering Services.	V-2
Section 3	Main Construction Contract and Other Contracts.	V-3
Section 4	Taking of Bids.	V-3
Section 5	Liquidated Damages.	V-4
Section 6	Subcontracts and Assignments.	V-4
Section 7	Prevailing Salaries or Wages During Development.	V-4
Section 8	Copeland Act; Contract Work Hours Standards Act.	V-5
Section 9	Wage Claims and Adjustments.	V-6
Section 10	Payrolls and Related Reports.	V-6
Section 11	Other Labor Provisions.	V-7
Section 12	Retention of Contract Rights and Change Orders.	V-7
Section 13	Payment to Contractors.	V-8
Section 14	Acceptance of Contract Work and Completion of Contracts.	V-8
Section 15	Development Cost.	V-9
Section 16	Development Cost Budgets.	V-9
Section 17	Actual Development Cost.	V-10

In addition to the requirements codified at 24 CFR part 941, this attachment lists interim requirements applicable to projects being developed, or proposed to be developed, by a public housing agency. The provisions of this attachment shall expire upon HUD's issuance, for effect, of an interim or final regulation to replace the rule promulgated at 45 FR 60838 (September 12, 1980; 24 CFR part 941, and all subsequent amendments to that rule). This attachment does not apply to Indian housing development, which is governed by regulations codified at Title 24 of the Code of Federal Regulations.

#### **Section 1 - Acquisition of Project Sites.**

(A) The HA, unless HUD otherwise approves, shall provide by contract for necessary services of experts in their respective fields for land surveys, title information, and legal services for land

acquisition, appraisals and option negotiations, in accordance with HUD requirements. Approval of such contracts by HUD shall be required if the fees provided therein exceed the maximum amounts then prescribed by HUD. Such contracts shall not be entered into with respect to any project site prior to tentative approval by HUD of such site. The HA shall not undertake to acquire real property unless HUD has approved the acquisition thereof for a project.

(B) The HA, unless HUD otherwise approves, shall obtain a formal appraisal(s), as required by HUD, on each parcel and obtain HUD approval before taking an option, instituting condemnation proceedings, or acquiring title thereto, and shall conduct all negotiations for the acquisition of real property in accordance with regulations and requirements prescribed by the United States Government. In no case shall persons who have made such appraisals be employed to negotiate options.

(C) The HA shall not accept any option for, institute, accept awards under (except as required by applicable law), or appeal any condemnation proceedings for, or otherwise acquire any portion of the site for any project until it has submitted such data with respect thereto as HUD may require, and has obtained the approval of HUD of such action. The HA shall appeal any condemnation award if requested to do so by HUD.

(D) The HA shall acquire good and valid title to the site of each project free and clear of any mortgage, lease, lien, or encumbrance of any nature whatsoever, other than such leases, use restrictions, zoning ordinances, building restrictions, easements, or rights-of-way as will not, in the determination of the HA approved by HUD, adversely affect the value or usefulness of such site for the project.

(E) Upon the vesting of title to the site of each project in the HA and the due recording of deeds or other documents required to be recorded in order to protect such title, the HA shall furnish to HUD a final report on completed land acquisition, together with two copies of: (1) title insurance policies; or (2) title certificates; or (3) attorneys' opinions, showing that the HA has good and valid title, as described in subsection (D) hereof, to the entire site of such project, and that such deeds or other documents have been duly recorded or filed for record wherever necessary to protect such title.

## **Section 2 - Architectural and Engineering Services.**

The HA shall furnish HUD, at such time(s) as HUD may require, and in any event prior to the release of any document for the taking of bids, evidence satisfactory to HUD, showing that the plans, drawings, specifications, and related documents are in accordance with the provisions of this ACC and with all applicable laws, ordinances, and regulations, except to the extent that valid waivers have been obtained from the appropriate authorities. The HA shall obtain all necessary permits or approvals of State and local housing, planning, zoning, building, and other boards, bodies, or officers having jurisdiction, and shall furnish to HUD a certificate listing such

approvals before any Main Construction Contract is let.

### **Section 3 - Main Construction Contract and Other Contracts.**

(A) "Main Construction Work" for any project shall mean all physical construction work, materials, and equipment in connection with such project except demolition, lawns and planting, and the furnishing of movable equipment. "Main Construction Contract" shall mean any contract covering all or any part of the Main Construction Work. "Construction or Equipment Contract" shall mean any contract covering all or any part of the Main Construction Work, or covering demolition, lawn and planting, or the furnishing of movable equipment.

(B) Unless otherwise required by applicable State laws, the Main Construction Work for each project shall be performed under one contract, except that HUD, upon submission of evidence satisfactory to it that such action is in the best interest of the development of the project, may approve: (1) separate contracts for foundations or for any or all elements of site improvements, to be entered into prior to the execution of contracts for the remainder of the Main Construction Work; (2) separate contracts for any or all of the mechanical trades, to be entered into at the same time as the contracts for the remainder of the Main Construction Work; or (3) separate contracts for specific buildings or groups of buildings to be developed concurrently or consecutively.

(C) Demolition, lawns and planting, and the furnishing of movable equipment may be performed under separate contracts or may be included in the same contract(s) as the Main Construction Work.

(D) All Main Construction Work and demolition, lawns and planting, and the furnishing of movable equipment shall be performed under lump-sum contracts, and no part of such work shall, unless approved in advance by HUD, be performed by force account.

### **Section 4 - Taking of Bids.**

(A) The HA shall not request alternate bids (e.g., two different structural systems). Instead, the HA may specify the most expensive system as the base bid and list deductive alternates in inverse priority order so that in the case of a budget overrun, they may be taken in numerical order as listed until the award can be made within available funds.

(B) Each bidder for any of the Construction or Equipment Contracts (except demolition contracts) shall, unless HUD otherwise approves, be required to furnish a bid bond or equivalent guarantee in accordance with requirements set forth in Title 24 of the Code of Federal Regulations. Bidders for demolition contracts shall, unless HUD otherwise approves, be required to furnish a bid bond or equivalent guarantee in an amount not less than ten percent of the cost of labor, materials, hauling, and all other incidental expenses, as estimated by the HA, necessary

to perform the work under the demolition contract, without regard to the value of salvage.

**Section 5 - Liquidated Damages.**

Each Construction or Equipment Contract shall include provisions, in form and substance satisfactory to HUD, for liquidated damages in the event of delay in the performance of such Construction or Equipment Contract, unless HUD approves the omission of such provisions.

**Section 6 - Subcontracts and Assignments.**

(A) The HA shall ensure that no subcontractor proposed to carry out work under this ACC is subject to debarment, suspension, or is otherwise ineligible to participate in a Federal assistance program, pursuant to Title 24 of the Code of Federal Regulations.

(B) Each Construction or Equipment Contract shall provide that: (1) the contractor shall make no assignment thereof (other than an assignment of the monies due or to become due thereunder to a bank or financial institution) without the prior approval of the HA, which approval may be given only with respect to a responsible assignee who shall furnish performance and payment bonds in accordance with Title 24 of the Code of Federal Regulations; and (2) such Construction or Equipment Contract may be assigned by the HA to any corporation, agency, or instrumentality authorized to accept such assignment.

**Section 7 - Prevailing Salaries or Wages During Development.**

(A) Each contract entered into by the HA in connection with the development of any project under which any architects, technical engineers, or technicians are employed shall provide that the HA will not make any payment under such contract unless and until the HA has received a signed statement from the contractor that such contractor and each of his or her subcontractors has made payment to each class of employees in compliance with the applicable prevailing wages, as set forth in Title 24 of the Code of Federal Regulations. The HA shall not make any such payment unless and until it has received such signed statement.

(B) Each contract referred to in subsection (A) entered into by the HA shall require that if the contractor or any of his or her subcontractors finds it necessary or desirable to exceed the prevailing salary or wage rates specified in his or her contract, any expense incurred by the contractor or subcontractors because of the payment of salaries or wages in excess of such amounts shall not be cause for any increase in the amount payable under the contract. The HA shall not consider or allow any claim for additional compensation made by the contractor or subcontractors because of such payments.

**Section 8 - Copeland Act; Contract Work Hours Standards Act.**

(A) The HA shall incorporate in each contract entered into by it in connection with the construction, prosecution, completion or repair of the projects the following:

"Compliance with Copeland Regulations. The contractor shall comply with the Copeland Regulations (29 CFR Part 3, or any successor provision) of the Secretary of Labor which are herein incorporated by reference."

(B) The HA shall incorporate in each contract entered into by it that may require the employment of laborers or mechanics the following:

**"Contract Work Hours Standards Act - Overtime Compensation.**

As used in these paragraphs, the terms "laborers" and "mechanics" include watchmen and guards.

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

(2) **Violations; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subsection (B)(1), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his or her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subsection (B)(1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard forty hours without payment of the overtime wages required by the clause set forth in subsection (B)(1).

(3) **Withholding for liquidated damages.** The HA may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for



liquidated damages as provided in the clause set forth in subsection (B)(2).

(4) **Subcontracts.** The contractor shall insert in any subcontracts the clauses set forth in subsections (B)(1), (2), and (3) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts that they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

#### **Section 9 - Wage Claims and Adjustments.**

Each contract entered into by the HA shall provide that in cases of underpayment of salaries or wages to any architects, technical engineers, draftsmen, technicians, laborers, or mechanics by the contractor or any of his subcontractors, the HA may withhold from such contractor out of payments due, an amount sufficient to pay persons employed on the work covered by the contract the difference between the salaries or wages required to be paid under the contract and the salaries or wages actually paid such employees for the total number of hours worked, and shall further provide that the amounts withheld may be disbursed by the HA for and on account of the contractor or the subcontractor to the respective employees to whom they are due. The HA shall in cases of such underpayment withhold such monies and any amounts of liquidated damages due the United States in connection with violations of overtime compensation requirements of the Contract Work Hours Standards Act: provided, That the HA shall not be considered in default under this sentence if it has in good faith made payments to the contractor in reliance upon a signed statement of the contractor that the salaries and wages required under this contract have actually been paid.

#### **Section 10 - Payrolls and Related Reports.**

(A) Each contract identified in subsection (A) of section 7 of this Attachment V shall also require that payrolls and basic records relating thereto will be maintained during the course of the work and preserved by the contractor and his or her subcontractors for a period of three years thereafter for all laborers and mechanics employed in the development of the project. Such records shall contain the name and address of each such employee, his or her correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act, or any successor provision), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under the Contract Work Hours and Safety Standards Act that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act (or any successor provision), the contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records that show the costs anticipated or the actual cost incurred in

providing such benefits.

(B) The contractor shall be required to submit weekly to the HA such copies and summaries (on forms prescribed by HUD and furnished by the HA) of all of his or her payrolls and those of each of his or her subcontractors, as the HA or HUD may require. Each such payroll and summary shall be accompanied by a statement signed by the employer or his or her agent indicating that: (1) such payroll is correct and complete; (2) the wage rates contained therein are not less than those determined by the Secretary of Labor; and (3) the classifications set forth for each laborer or mechanic conform with the work performed. The contractor shall be required to make his or her employment records available for inspection by authorized representatives of the HA, HUD, and the Department of Labor and to permit such representatives to interview employees during working hours on the job.

#### **Section 11 - Other Labor Provisions.**

(A) All disputes concerning the payment of prevailing wage rates or classifications arising under this ACC or under any contract entered into by the HA involving: (1) significant sums of money; (2) large groups of employees; or (3) novel or unusual situations, shall be promptly reported to HUD for decision or, at the option of HUD, referral to the Secretary of Labor. The decision of HUD or the Secretary of Labor, as the case may be, shall be final. Each contract entered into by the HA shall embody the provisions of this paragraph.

(B) All questions arising under this ACC or under any contract relating to the application or interpretation of the Copeland Act or the Contract Work Hours Standards Act shall be referred to the Secretary of Labor for ruling or interpretation, and such ruling or interpretation shall be final. Each contract entered into by the HA shall embody the provisions of this subsection.

#### **Section 12 - Retention of Contract Rights and Change Orders.**

(A) With respect to all contracts entered into by the HA in connection with the development of any project, the HA: (1) except in an emergency endangering life or property, shall not, without HUD approval, amend, modify, or consent to any change in any such contract or contractual provision that is required by this ACC to be approved by HUD; (2) shall at all times retain, preserve, and enforce all its rights under all such contracts; and (3) shall not, without the prior approval of HUD, waive, release, or compromise any right or claim that it may have under any such contract.

(B) Each Construction or Equipment Contract shall contain the following provision:

"Except in any emergency endangering life or property, no change shall be made by the contractor unless he or she has received a prior written order from HUD approved on its face by HUD authorizing the change, and no claim for an adjustment of the contract price

or time shall be valid unless so ordered."

### **Section 13 - Payment to Contractors.**

(A) Each Construction or Equipment contract may provide for partial payments by the HA to the contractor. In such event, the Construction or Equipment Contract shall provide that the contractor shall supply to the HA, in a form satisfactory to HUD, a detailed estimate showing a complete breakdown of the contract price. Partial payment shall be made in accordance with periodic estimates based upon said detailed breakdown and with appropriate supporting data. The periodic estimates shall cover work performed (including materials delivered to and properly stored on the site with the approval of the HA) during the preceding period, and shall be duly certified and approved by persons designated by the HA. In making periodic partial payments, the HA shall retain at least 10 percent of the amount of each periodic estimate until final completion and acceptance of all work covered by the particular contract: Provided, That after one-half of the work has been completed, and if the work is progressing satisfactorily and continues to so progress, the HA may make the remaining partial payments in full for the work subsequently completed.

(B) Each Construction or Equipment Contract shall provide that final payment to the contractor by the HA of amounts retained under subsection (A) shall not be made until: (1) the contractor has furnished a release, in a form approved by HUD, of all claims against the HA arising under and by virtue of such Construction or Equipment Contract, or other than such claims, if any (the basis, scope, and amount of each of which are clearly defined and stated) as may be specifically excepted by the contractor from the operation of such release; and (2) the contractor has furnished evidence satisfactory to the HA that the contractor has paid, and that his or her subcontractors have paid, all sums due to laborers, mechanics, and materialmen.

### **Section 14 - Acceptance of Contract Work and Completion of Contracts.**

(A) Each Construction or Equipment Contract shall require that the work covered thereby shall be completed within the time specified therein and such extensions as may be granted by the HA. The HA shall grant no such extension without approval thereof by HUD.

(B) With respect to each Construction or Equipment Contract, the HA may accept the work thereunder in parts or in its entirety. Such acceptance may be acceptance of the work involved either as: (1) fully complete and satisfactory; or (2) completed but with an adjustment in price for noncompliances; or (3) completed subject to the correction of specific minor items. No work shall be so accepted by the HA unless such acceptance is approved by HUD, or HUD has waived such approval: provided, That the HA may accept work required in the correction of specific minor items without the approval of HUD.

(C) After acceptance of all work (including the correction of any specific minor items) under

each Construction or Equipment Contract, the HA shall submit for approval by HUD a certificate of: (1) full completion; or (2) full completion but with an adjustment in price for noncompliances, and shall include in such certificate a statement of the final amount due and payable to the contractor.

**Section 15 - Development Cost.**

(A) "Date of Full Availability" with respect to each project shall mean the last day of the month in which substantially all dwelling units in such project became available for occupancy.

(B) "Initial Operating Deficit" of any project as of the end of the Initial Operating Period thereof shall mean the amount, if any, by which the Operating Expenditures thereof to such date exceeded the Operating Receipts.

**Section 16 - Development Cost Budgets.**

(A) Until such time as a budget of Development Cost (herein called "Development Cost Budget") is approved by HUD for any project, the breakdown of the Maximum Development Cost set forth in the applicable Development Program shall constitute the approved Development Cost Budget for such project.

(B) At the time the HA requests HUD approval of the award of contracts for the Main Construction Work of any project, it shall submit for HUD approval a Development Cost Budget for such project that shall be based upon: (1) the amount of the proposed award(s); (2) costs and obligations incurred to such date; (3) the estimated amount of costs and obligations not yet incurred; and (4) an allowance for contingencies in such amount as HUD may approve.

(C) In the event that in the judgment of the HA it appears necessary with respect to any project to incur Development Cost in excess of the total amount shown in the last previously approved Development Cost Budget for such project, or that it appears necessary with respect to any of the main classifications of Development Cost to incur costs in excess of the amount shown therefor in the last previously approved Development Cost Budget for such project plus the share of the allowance for contingencies allocated to such main classifications, or if for any other reason the HA deems it advisable, it may prepare and submit to HUD for its approval a revised Development Cost Budget for such project.

(D) Not earlier than six months nor later than twenty-four months after the Date of Full Availability of each project, the HA shall submit for HUD approval a final Development Cost Budget for such project which shall be based upon: (1) costs and obligations incurred to such date including a reasonable allowance for disputed, contingent, or unliquidated liabilities, and for legal and other costs and expenses in connection with the settlement of such liabilities; and (2) the estimated amount of costs and obligations not yet incurred for work, equipment, and

services deemed necessary for the completion of such project. No other allowance for contingencies shall be included in such final Development Cost Budget.

(E) HUD shall promptly review each proposed Development Cost Budget and notify the HA of its approval or disapproval thereof. If HUD disapproves any proposed Development Cost Budget, the HA shall be so notified in writing and be furnished with a detailed explanation of the reasons for such disapproval. Upon approval by HUD of any Development Cost Budget for any project, such budget shall supersede all previously approved budgets for such project, and the total of such budget shall thereafter and for all purposes of this ACC be the Maximum Development Cost of such project, and shall for all purposes of this ACC correspondingly revise the aggregate Maximum Development Cost of all the projects.

(F) The HA shall not with respect to any project incur costs in excess of the amounts shown in the last previously approved Development Cost budget for such controlled accounts as may be specified by HUD.

#### **Section 17 - Actual Development Cost.**

(A) The HA shall, as promptly as possible consistent with the maintenance of its rights against its contractors, settle and pay all disputed, contingent, or unliquidated items of Development Cost on all projects.

(B) Whenever the HA shall be satisfied that all the development work on each project has been properly completed, and that the entire Development Cost on such project (including all items that may have theretofore been disputed, contingent, or unliquidated) has been fully paid, the HA shall submit to HUD for its approval a certificate setting forth the total amount of the Development Cost of such project (herein called the "Actual Development Cost"), stating that: (1) all such development work has been completed; (2) the entire Development Cost or liabilities therefor incurred by the HA have been fully paid; (3) there are no undischarged mechanics', laborers', contractors', or material-men's liens on such project on file in any public office where the same should be filed in order to be valid liens against such project; and (4) the time in which such liens could be filed has expired. Upon approval by HUD, such certificate shall be known as the "Actual Development Cost Certificate." The determination of the amount of the Actual Development Cost contained in such Actual Development Cost Certificate so approved by HUD shall be final and conclusive for all purposes of this ACC, and upon the determination of Actual Development Cost, a copy of the approved Actual Development Cost Certificate shall be attached to this ACC and shall be deemed to further amend the ACC to state the Actual Development Cost.

(C) If the HA shall unduly delay in the submission of the Actual Development Cost Certificate for any project, HUD may give notice to the HA that the amount of the Development Cost of such project incurred to the date of such notice shall be considered to be the Actual Development

Cost of such project, and such notice shall constitute the Actual Development Cost Certificate for such project for all the purposes of this ACC, and shall be deemed to amend the ACC to state the Actual Development Cost.

(D) Promptly after the issuance of the Actual Development Cost Certificate for any project the HA shall: (1) if such project is then permanently financed, deposit any remaining balance of the monies theretofore received for the purpose of the development of such project in the Advance Amortization Fund; or (2) if such project is not then permanently financed, apply any such remaining balance to the payment of outstanding Advance Notes or Temporary Notes issued in connection with such project.

(E) Subsequent to the issuance of the Actual Development Cost Certificate for any project, no cost for additional development work shall be incurred by the HA without the approval of HUD. In the event that the HA and HUD agree that additional development work is necessary, the Actual Development Cost Certificate shall be amended to include the cost of such additional development work.

## ATTACHMENT VI

### Special Requirements Applicable to Projects Financed Through the Issuance of Tax-Exempt Bonds or Notes Sold to the Federal Financing Bank

---

Section		Page
Section 1	Reconstruction and Restoration.	VI-1
Section 2	Advances by HUD; Mortgage.	VI-2
Section 3	Bond Resolutions and Fiscal Agent.	VI-2
Section 4	Delivery of Bonds.	VI-3
Section 5	Annual Contributions.	VI-4
Section 6	Debt Service Fund.	VI-7
Section 7	Advance Amortization Fund.	VI-8
Section 8	General Limitations on Annual Contributions.	VI-9
Section 9	Pledge of Annual Contributions.	VI-9
Section 10	Refunding of Bonds.	VI-10
Section 11	Faith of the United States Pledged to Payment of Annual Contributions.	VI-10
Section 12	Continuance of Annual Contributions.	VI-11
Section 13	Rights and Obligations of HUD During Tenure Under Section 18, Part A, of the ACC.	VI-11

This attachment lists special requirements applicable to projects financed by tax-exempt bonds or notes sold to the Federal Financing Bank. These requirements shall expire when all such bonds and notes associated with a particular project are paid off.

#### **Section 1 - Reconstruction and Restoration.**

(A) If a project, or any portion of a project, is damaged or destroyed, the HA shall establish promptly (by settlement approved by the HA and HUD, or by litigation) and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. In addition, the HA shall reconstruct, restore or repair the project, except as otherwise provided in this section.

(B) The HA shall deposit into the General Fund the proceeds of any claims and any other monies provided for the reconstruction, restoration, or repair of a project and shall reserve such funds for these purpose(s). Unless otherwise approved by HUD, the HA shall use these funds to pay for the cost of reconstructing, restoring, or repairing the project. Any funds that remain after completing the work and paying off all costs associated with the work are to be applied as follows: (1) to pay off any indebtedness that the HA may have incurred to provide such funds; (2) to reimburse any other reserve or other account that may have been used to provide the funds; and (3) as unreserved Operating Receipts.

(C) If the reconstruction, restoration, or repair of the project can be accomplished substantially as one operation, is not to be performed by the HA's regular staff, and the estimated cost is in excess of \$10,000, the HA shall ensure that the work is done in compliance with the requirements of section 5, Part A, of the ACC.

(D) Upon approval by HUD, the HA may determine that all or part of the damage to or destruction of a project shall not be reconstructed, restored, or repaired. In such event, the HA shall deposit into the Advance Amortization Fund the proceeds of any claims against insurers or others as a result of the damage or destruction, to the extent these proceeds are not used to reconstruct, restore, or repair the project.

#### **Section 2 - Advances by HUD; Mortgage.**

(A) Each advance provided by HUD to a HA for the development of a project shall be evidenced by an obligation duly issued and delivered by the HA, in a form satisfactory to HUD, which obligation shall bear interest at the applicable Loan Interest Rate from the date the advance is made, and shall otherwise conform to the following:

(1) Each obligation (herein called a "Project Loan Note") evidencing an advance made for the Development Cost of any project not permanently financed, together with interest on such note, shall be due and payable on demand.

(2) Each obligation (herein called a "Permanent Note"), evidencing an advance made for the development cost of any permanently financed project, together with interest on the Note, shall (subject to the HA's right to prepay some or all of this amount) be payable on the first day of the month following each Annual Contribution Date. Such amount is payable in annual installments (applicable first to interest and then to principal) equal to the portion of the Debt Service Annual Contribution allocable to the Note, in accordance with section 5(C) of this Attachment. Each Permanent Note issued to refund or renew other Permanent Notes, in whole or in part, shall be payable in installments equal to the installments payable upon the Notes so refunded or renewed. Each Permanent Note shall further provide that the holder of the Note may declare the Note to be due and payable in full at any time: (1) when there is any default in the payment of any installment of principal or interest; or (2) when the HA is in substantial



default; or (3) upon the termination of this ACC.

(B) HUD shall not demand payment of, nor pledge, sell, or otherwise dispose of any Project Loan Note unless: (1) the HA is in substantial default; or (2) HUD has given notice of the termination of this ACC in accordance with section 17(H), Part A, of this ACC.

(C) Each Project Loan Note or Permanent Note issued in connection with a project shall be secured, to the extent authorized or permitted by law, by a mortgage, deed of trust, or other equivalent lien upon the project.

### **Section 3 - Bond Resolutions and Fiscal Agent.**

(A) Before the delivery of the first issue of bonds, the HA shall enter into, and thereafter maintain, a fiscal agency agreement, in substantially the form prescribed by HUD. Immediately upon executing the agreement, the HA shall furnish HUD with executed or conformed copies of the agreement as may be required by HUD.

(B) The Fiscal Agent named in the Bond Resolutions in connection with the first issue of Bonds shall also be named as Fiscal Agent in all subsequent Bond Resolutions, and shall administer the Debt Service Fund and the Advance Amortization Fund. The HA shall require the Fiscal Agent to furnish HUD with such reports and other data relating to accounts under this ACC as may reasonably be required by HUD.

### **Section 4 - Delivery of Bonds.**

(A) Delivery of (including payment for) each issue of Bonds shall be made at the time and place established in the terms of the offering.

(B) At such time all amounts paid by purchasers of the bonds on account of accrued interest shall be paid to the Fiscal Agent for deposit in the Debt Service Fund, and all amounts paid on account of premiums shall be paid to the Fiscal Agent for deposit in the Advance Amortization Fund or, with the approval of HUD, be used for the repurchase of bonds.

(C) At such time, and as a condition precedent to the delivery of such bonds, the HA shall deposit or cause to be deposited with the Fiscal Agent in the Debt Service Fund from the bond proceeds (or from any other monies of the HA, including monies available for such purpose under section 5(C)(6) of this Attachment) an amount equal to: (1) the interest on the issue of bonds becoming due and payable six months after the Bond Date of such issue, less (2) any portion thereof deposited in the Debt Service Fund on account of accrued interest, and less (3) any amount which may then be on deposit in the Debt Service Fund for such purpose.

(D) At such time, and as a condition precedent to the delivery of such bonds, the HA shall advance or cause to be advanced from the bond proceeds (or from any other monies of the HA) to the Fiscal Agent for deposit in the Debt Service Fund an amount equal to: (1) the interest on such issue of Bonds becoming due and payable twelve months after the Bond Date of such issue, less (2) any portion thereof deposited in the Debt Service Fund on account of accrued interest. At a later date, the HA shall be reimbursed by the Fiscal Agent for such advance in accordance with section 6(E) of this Attachment.

(E) At such time the HA shall pay or cause to be paid from the bond proceeds (or from other monies of the HA) the principal of and interest on all outstanding Project Loan Notes, Permanent Notes, and Project Notes to the extent that the principal of such Notes includes an amount for any part of the Development Cost financed by such issue of Bonds.

(F) Upon delivery of the first issue of Bonds to finance any part of the Development Cost of a Project, such Project shall be considered to be "Permanently Financed."

(G) If, at the time of the delivery of an issue of Bonds, the HA does not have available the amount set forth in subsection (D) of this section to advance to the Fiscal Agent for deposit in the Debt Service Fund, HUD shall advance on account of the loan herein provided an amount equal to such deficiency. Such advance shall be made and deposited in the manner described in subsection (D) of this section, but shall not be included in the amount of the Minimum Development Cost of any project. The Fiscal Agent shall, on behalf of the HA, reimburse HUD for such advance at the time and in the manner provided for reimbursement of similar advances to the HA, in accordance with section 6(E) of this Attachment. Such advance shall bear interest at the Loan Interest Rate and the interest shall be paid from Operating Receipts as an Operating Expenditure.

#### **Section 5 - Annual Contributions.**

(A) HUD shall make annual contributions to the HA for each project. Such annual contributions shall include Debt Service Annual Contributions (or Basic Annual Contributions in respect to Leased Housing projects) and Additional Annual Contributions pursuant to section 11, Part A, of the ACC. HUD (1) shall make Debt Service Annual Contributions to the HA for each permanently financed project; and (2) may, in its determination, make Debt Service Annual Contributions to the HA for each project that is not permanently financed. The date upon which each Debt Service Annual Contribution is payable (except the first Debt Service Annual Contribution with respect to a project not permanently financed, which may be made available as of the Date of Full Availability of such project) shall be known as the "Annual Contribution Date." If the Annual Contribution Date is not specifically set forth in this ACC, it shall be deemed to be the fifteenth day of the fourth, fifth or sixth month of the fiscal year, as determined by HUD.

(B) The first Debt Service Annual Contribution with respect to each permanently financed project shall be due and payable on the Annual Contribution Date which is seventeen months and fourteen days after the Bond Date of the first issue of bonds issued to finance any part of the development cost of the project. For projects that are not permanently financed, the first Debt Service Annual Contribution may be made available as of the Date of Full Availability of the project and shall be determined in accordance with subsection (C)(1)(d) of this section 5. If the first Debt Service Annual Contribution for a project is made available as of the Date of Full Availability of the project, the second Debt Service Annual Contribution with respect to the project may be made on the Annual Contribution Date that occurs not less than twelve months subsequent to the Date of Full Availability. Subsequent annual contributions shall be due and payable on each Annual Contribution Date thereafter.

C) On each Annual Contribution Date, HUD shall pay (subject to reduction as provided in this section 5) Debt Service Annual Contributions for each project for which any Debt Service Annual Contributions are then payable.

(1) The amount of the Debt Service Annual Contribution shall be equal to the sum of the level debt services of all unmatured issues of bonds, bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date, as specified in the applicable Bond Resolution, plus an amount or amounts allocable to Permanent (or Project Loan Notes, as follows:

(a) For each project that is permanently financed by an issue of bonds equal to the minimum development cost first established for the project, an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of the minimum development cost of the project which exceeded as of the last day of such fiscal year the principal amount of such issue of bonds would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for such project; and

(b) For each project that is permanently financed by an issue of bonds in an amount less than the amount of the minimum development cost first established for the project, an amount equal to (i) the applicable minimum loan interest rate times the amount by which the minimum development cost as first established for the project exceeds the principal amount of such issue of bonds, plus (ii) an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the portion of the minimum development cost of the project which exceeds, as of the last day of the fiscal year, the minimum development cost as first established for the project would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project; and (iii) commencing on the Annual Contribution Date next following

the last maturity date of such issue of bonds, the amount of the level debt service of such issue of bonds; and

(c) For each project that is financed by a permanent note in lieu of bonds, an amount, as determined by HUD, which, if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of the minimum development cost of the project that exceeded (as of the last day of such fiscal year) the minimum development cost as first established for the project would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project; and

(d) For each project that is not permanently financed, an amount, as determined by HUD, which if applied annually at the interest rate (adjusted to the nearest one-eighth of one percent) charged the HA during the next preceding fiscal year in respect to the unamortized portion of that figure determined by HUD to be that below which the development cost of the project shall in no event fall would fully amortize such portion not later than the first day of the month following the last Annual Contribution Date for the project.

Upon delivery of any issue of bonds to refund Permanent or Project Loan Notes, the amount of the level debt service of such issue of bonds shall be in lieu of the portion of the Debt Service Annual Contribution allocable to such Notes whether pursuant to clause (a), (b), (c), or (d) above.

(2) On each Annual Contribution Date, the actual amount of the Debt Service Annual Contribution to be paid (herein called the "Accruing Annual Contribution") shall be an amount equal to the Debt Service Annual Contribution less (1) the amount then on deposit in the Debt Service Fund for the reduction of annual contributions pursuant to subsection (B) of section 6 of this Attachment, and (2) any amount then on deposit in the Debt Service Fund, pursuant to subsection (B) of section 4 of this Attachment, on account of interest accrued on any issue of Bonds after a date that is six months after the Bond Date of such issue.

(3) Notwithstanding any other provision of this ACC, HUD may make payment of any Accruing Annual Contribution in semi-annual installments as follows: (a) the first installment shall be paid on the Annual Contribution Date in the amount, if any, by which (i) the Accruing Annual Contribution exceeds (ii) the amount of principal and interest that shall become due and payable on the next following anniversary of the Bond Date on all bonds outstanding at the end of the preceding fiscal year and that bears a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date; (b) the balance of such Accruing Annual Contribution shall be paid on the date six months after such Annual Contribution Date.

(4) At least thirty days prior to each Annual Contribution Date, the Fiscal Agent shall file with HUD a report showing the amount of each deposit made into the Debt Service Fund since the

next preceding Annual Contribution Date and the balance in the Debt Service Fund as of the date of such report.

(5) Except as otherwise provided in subsections (C)(6) and (7) of this section 5, HUD shall pay each Accruing Annual Contribution, or installment thereof, to the Fiscal Agent for deposit in the Debt Service Fund. At the time of such payment, HUD shall furnish to the HA and to the Fiscal Agent a statement showing (in detail and with appropriate explanations) the amount of the Accruing Annual Contribution, and the method by which the Accruing Annual Contribution shall be paid. Each such statement shall include a schedule showing, on the basis of information available to HUD, the distribution of the funds in the Debt Service Fund to be made pursuant to section 6 of this Attachment.

(6) On each Annual Contribution Date on which any Permanent, Project Loan, or Project Notes issued in connection with any project with respect to which an annual contribution is then payable remain outstanding and until full repayment, with interest at the applicable Loan Interest Rate, of all expenditures, if any, made by HUD in connection with any such Project pursuant to section 13 of this Attachment, such portion of the Accruing Annual Contribution, which if deposited in the Debt Service Fund would (together with the monies then on deposit in said Fund for the reduction of annual contributions pursuant to this ACC plus the amount of the second installment, if any, of such Accruing Annual Contribution) exceed the sum of: (a) an amount equal to the principal and interest becoming due and payable during the twelve month period following such Annual Contribution Date on each issue of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date, plus (b) an amount equal to the aggregate Bond Service Carry-Over required to be on deposit in the Debt Service Fund on the next succeeding Annual Contribution Date, may be withheld by HUD, and applied to the full extent thereof. Such amount shall be applied, first, to reimburse the HA for any advance made pursuant to section 4(D) of this Attachment. Thereafter, such amounts shall be used pay the interest and principal of such Notes and to repay such expenditures in proportion, with respect to each such project, to the applicable portion of the Debt Service Annual Contribution determined pursuant to clauses (a), (b), (c), or (d) of section 5(C)(1) of this Attachment. However, any amounts that would otherwise be applied to the payment of principal under the second order of preference may be withheld for not more than twelve months and be used for the payment of interest on any bonds that may be subsequently issued to refund such Notes and expenditures.

(7) When monies sufficient for the payment and discharge of all bonds have been deposited in trust for such purpose with the Fiscal Agent, Accruing Annual Contributions, and monies otherwise payable to the Debt Service Fund shall be applied, as approved by HUD, to the payment of the Notes and expenditures and in the proportions as prescribed in subsection (C)(6) of this section 5. Monies so applied by the HA during the twelve month period preceding each Annual Contribution Date which, except for the provisions of this subsection (C)(7), would have been on deposit on such Annual Contribution Date in the Debt Service Fund for the reduction

of annual contributions, shall be deemed to have been on deposit in the Debt Service Fund on such Annual Contribution Date for the purpose of subsection (2) of this section 5(C).

(8) HUD shall not pay or make available any Accruing Annual Contribution pursuant to this ACC in excess of an amount which, together with all monies then on deposit in the Debt Service Fund, shall be sufficient to fully pay and retire the outstanding Bonds, Permanent Notes, Project Loan Notes, and Project Notes issued in connection with all projects for which annual contributions become payable and to repay, with interest at the applicable Loan Interest Rate, all expenditures made by HUD in connection with the development of such projects pursuant to section 13 of this Attachment. The obligation of HUD to pay or make available Debt Service Annual Contributions pursuant to this ACC with respect to any such project shall terminate when: (a) all such Bonds and Notes issued in connection with the project have been fully paid and retired, or when monies sufficient for their payment and retirement have been deposited in trust for such purpose in accordance with the terms of such bonds and notes; and (b) all such expenditures, with interest thereon, by HUD in (connection with such project are fully repaid.

#### **Section 6 - Debt Service Fund.**

(A) Upon the delivery of any issue of bonds, there shall be deposited in the Debt Service Fund the amounts required pursuant to subsections (B), (C), and (D) of section 4 of this Attachment.

(B) Within sixty calendar days after the end of each fiscal year, the HA shall deposit with HUD for the reduction of debt service annual contributions:

(1) The amount of the interest on each issue of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to the Annual Contribution Date next following the end of such fiscal year, which accrued during such fiscal year after (i) the date that is six months after the Bond Date of each such issue of Bonds; or (ii) the date of delivery of such issue, whichever is later, up to (i) the Date of Full Availability of the project financed by such issue or (ii) the end of such fiscal year, whichever is earlier; and

(2) The amount of any unpaid interest, on Permanent Notes and Project Notes issued in connection with any project that was permanently financed on or before the last day of such fiscal year by an issue of Bonds bearing a Bond Date not later than seventeen months and fourteen days prior to the Annual Contribution Date next following the end of such fiscal year, up to (i) the Date of Full Availability of such project or (ii) the end of such fiscal year, whichever is earlier.

(C) Upon receipt from HUD of each Accruing Annual Contribution or installment thereof, such amount shall be deposited in the Debt Service Fund.

(D) On each interest payment date of the bonds, the Fiscal Agent shall, out of the Debt Service Fund, pay the principal and interest maturing on the bonds.

(E) On the first day of the month following each Annual Contribution Date the Fiscal Agent shall, out of the Debt Service Fund, reimburse the HA for any advance made pursuant to subsection (D) of section 4 of this Attachment on account of interest on issues of bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual Contribution Date.

(F) On the first day of the month following each Annual Contribution Date, the Fiscal Agent, after (1) paying all bonds and bond interest that have then become due and payable, or that will become due and payable on the next succeeding anniversary of the Bond Date, (2) making provision for the Bond Service Carry-Over, shall, unless otherwise approved by HUD, apply the balance in the Debt Service Fund in the following order: First, to the payment of interest and principal of the notes and repayment of the expenditures in the same manner, and to the same extent as prescribed in subsection (C)(7) of section 5 of this Attachment; and, Second, to transfer to the Advance Amortization Fund. In making provision for the payment of the bonds and bond interest that shall become due on the next succeeding anniversary of the Bond Date and for the Bond Service Carry-over, the Fiscal Agent shall consider the second installment, if any, of the Accruing Annual Contribution as if it had actually been paid on the Annual Contribution Date.

#### **Section 7 - Advance Amortization Fund.**

(A) There shall be deposited in the Advance Amortization Fund the following: (1) bond premiums as provided in subsection (B) of section 4 of this Attachment; (2) amounts transferred from the Debt Service Fund, as provided in subsection (F) of section 6 of this Attachment, and (3) proceeds of claims against insurers and others arising out of damage to or destruction of any project to the extent provided in subsection (D) of section 1 of this Attachment.

(B) The Fiscal Agent shall as rapidly as possible apply all monies deposited in the Advance Amortization Fund, as directed by the HA with the approval of HUD: (1) to the payment of interest of the notes and the repayment of expenditures in the same manner and to the same extent as prescribed in subsection (C)(7) of section 5 of this Attachment; (2) to the purchase, at not more than the cost of redemption, of any outstanding bonds; and (3) to the redemption of any outstanding bonds on the terms provided in the Bond Resolutions. All bonds purchased or redeemed by or on behalf of the HA shall be immediately cancelled and shall not be reissued.

(C) In the event that, sixty-one days after the end of any fiscal year, it appears that the balance then on deposit in the Advance Amortization Fund, together with all monies then on deposit in the Debt Service Fund together with a Debt Service Annual Contribution, would be sufficient to fully pay and retire the outstanding bonds, permanent notes, project loan notes, and project

notes issued in connection with projects for which annual contributions have then become payable and to repay, with interest at the applicable Loan Interest Rate, all expenditures made by HUD in connection with the development of such projects pursuant to section 13 of this Attachment, the Fiscal Agent shall on such date deposit in the Debt Service Fund for the reduction of annual contributions the balance then remaining in the Advance Amortization Fund, and any deposits that would, except for this subsection (C), be made to the Advance Amortization Fund shall be made to the Debt Service Fund for the reduction of annual contributions.

**Section 8 - General Limitations on Annual Contributions.**

(A) Notwithstanding any other provision of this ACC, not more than one annual contribution for each year of the Maximum Contribution Period of any project shall be paid or made available by HUD for such project; nor shall any such annual contribution be paid or made available for any such project subsequent to the end of the Maximum Contribution Period of such project.

(B) No annual contribution shall be paid or made available by HUD for any project (except as provided in section 12 of this Attachment) unless such project is exempt from all real and personal property taxes levied or imposed by the State, city, county, or other political supervision.

(C) No annual contributions shall be paid or made available by HUD for any project (except as provided in section 12 of this Attachment) in the event of the acquisition of such project by a third party in any manner including a bona fide foreclosure under a mortgage or other lien.

**Section 9 - Pledge of Annual Contributions.**

(A) The amounts required by subsections (B), (C), and (D) of section 4 of this Attachment to be deposited in the Debt Service Fund upon delivery of each issue of Bonds on account of the interest on such issues of bonds that becomes due and payable six months and twelve months, respectively, from the Bond Date of such issue shall be pledged to the payment of such interest.

(B) The Accruing Annual Contribution that is due and payable on each Annual Contribution Date (including the second installment thereof if any) together with (1) the aggregate Bond Service Carry-Over, if any, required to be on deposit in the Debt Service Fund on such Annual Contribution Date, and (2) all other amounts required to be deposited in the Debt Service Fund for the reduction of annual contributions during the twelve month period ending with such Annual Contribution Date, shall be pledged as follows:

(1) An amount equal to the principal and interest becoming due and payable during the twelve month period following such Annual Contribution Date on each issue of Bonds bearing a Bond Date not later than seventeen months and fourteen days prior to such Annual



Contribution Date shall be pledged for the payment of such principal and interest;

(2) An amount equal to the aggregate Bond Service Carry-Over required to be on deposit in the Debt Service Fund on the next succeeding Annual Contribution Date shall be pledged for the purpose of providing such Carry-Over; and

(3) An amount equal to the sum of the portions of the Debt Service Annual Contributions as determined pursuant to clauses (a), (b), (c), and (d) of section 5(C)(1) of this Attachment shall be pledged for the payment of the interest and principal of the Permanent Notes, Project Loan Notes and Project Notes and repayment of expenditures made by HUD pursuant to section 13 of this Attachment in connection with Projects with respect to which annual contributions have become payable.

(C) The annual contributions to be made available by HUD hereunder shall not, without the approval of HUD, be pledged for any purpose other than as specifically provided in this ACC.

#### **Section 10 - Refunding of Bonds.**

The HA may, with the approval of HUD, refund any outstanding issue of Bonds upon such terms and conditions as may be mutually agreed upon between the HA and HUD.

#### **Section 11 - Faith of the United States Pledged to Payment of Annual Contributions.**

As set forth in the Act, the faith of the United States is solemnly pledged to the payment of all annual contributions contracted for in this ACC, and by the provisions of the Act there is authorized to be appropriated in each Federal fiscal year, out of any money in the Treasury of the United States not otherwise appropriated, the amounts necessary to provide for such payment.

#### **Section 12 - Continuance of Annual Contributions.**

(A) HUD hereby determines that sections 17 and 18, Part A, of the ACC include provisions that are in accordance with section 6(g)(2) of the Act.

(B) Whenever the annual contributions, pursuant to this ACC, have been pledged by the HA as security for the payment of the principal and interest on the Bonds or other obligations issued pursuant to this ACC, HUD (notwithstanding any other provisions of this ACC) shall continue to make the annual contributions provided in this ACC available for the projects so long as any of such Bonds or obligations remain outstanding; and, in any event, such annual contributions shall in each year be at least equal to an amount which, together with such income or other funds as are actually available from the projects for the purpose at the time such annual contribution

is made, shall suffice for the payment of all installments, falling due within the next succeeding twelve months, of principal and interest on the Bonds or other obligations for which the annual contributions provided for in this ACC have been pledged as security: provided, That in no case shall such annual contributions be in excess of the maximum sum specified in this ACC, nor for longer than the remainder of the maximum period fixed by this ACC.

**Section 13 - Rights and Obligations of HUD During Tenure Under  
Section 18, Part A, of the ACC.**

Neither the conveyance of title to or the delivery of possession of the projects by the HA pursuant to section 18, Part A, of the ACC, nor the acceptance of such title or possession by HUD, shall abrogate or affect in any way any indebtedness of the HA to HUD arising under this ACC, and in no event shall any such conveyance or delivery or any such acceptance be deemed to constitute payment or cancellation of any such indebtedness.

# ATTACHMENT VII

## Insurance Requirements

---

Section		Page
Section 1	Mandatory and Optional Insurance Coverage.	VII-1
Section 2	Authorized Insurance Companies.	VII-2
Section 3	Certificates of Insurance.	VII-2
Section 4	Waivers and Self-Insurance Funds.	VII-2

### Section 1 - Mandatory and Optional Insurance Coverage.

The following types of insurance are either required or should be purchased if the HA determines that exposure exists.

- (A) **Commercial Property.** Mandatory. Each policy must be written with a blanket limit, on a replacement cost basis, and with an agreed value clause eliminating any coinsurance provision.
- (B) **Commercial General Liability.** Mandatory.
- (C) **Workers Compensation and Employers Liability.** Mandatory.
- (D) **Owned and Non-Owned Automobile Liability.** Mandatory.
- (E) **Theft, Disappearance, and Destruction.** Mandatory only if the amount of cash and checks on hand at any one time exceeds the amount prescribed by HUD.
- (F) **Employee Dishonesty.** Mandatory.
- (G) **Boiler and Machinery.** Mandatory only if steam boilers have been installed. However, coverage is recommended if there is extensive central air conditioning, electrical transformers, or similar equipment.
- (H) **Flood.** Mandatory only for property located in a flood plain, as determined in the Federal Government's National Flood Insurance Program.

(I) **Directors and Officers or Public Officials Liability.** Optional coverage, but highly recommended.

(J) **Lead-Based Paint Liability.** Mandatory for HAs undergoing lead-based paint testing and abatement.

(K) **Law Enforcement Liability.** Optional, but highly recommended where the exposure exists, and the Commercial General Liability insurer has excluded coverage.

### **Section 2 - Authorized Insurance Companies.**

Insurance must be purchased from an insurance company or other entity that is licensed or duly authorized to write insurance in the State where the HA is located.

### **Section 3 - Certificates of Insurance.**

At each renewal, the HA shall promptly have certificates of insurance submitted by the insurers to HUD describing the types of coverage, limits of insurance, policy numbers, and inception and expiration dates.

### **Section 4 - Waivers and Self-Insurance Funds.**

Requests for waivers not to purchase any form of required insurance, or to establish a self-insurance fund in lieu of purchasing insurance, must be submitted to HUD for approval with a justification as to why the request should be approved.

## AGENDA ITEM SUMMARY

---

**MEETING DATE:** May 22, 2019

**ITEM NUMBER:** 3C

**FROM:** Executive Director

---

**SUBJECT:** Letter of Intent for Moving To Work Designation

---

**RECOMMENDATION:** **Adopt Resolution No. 2019-03** Authorizing the Submittal of a Letter of Intent to Obtain HUD Moving to Work (MTW) Designation under the Second Cohort of the MTW Expansion and, if awarded MTW status, the Intension to comply with MTW objectives, statutory requirements and the Operating Notice

---

### **BACKGROUND SUMMARY:**

During the April meeting, the Board discussed a recent HUD notice inviting qualified PHAs to submit a letter of intent (LOI) to apply to participate in the Moving to Work Demonstration Program for: Cohort #2 – Rent Reform. The request for Letters of Interest (LOI) invited Public Housing Authorities (PHA) to express interest in rent policies demonstrations. MTW allows PHAs to design and test innovative, locally designed housing and self-sufficiency strategies for low-income families by permitting PHAs to use assistance received under Sections 8 and 9 of the United States Housing Act of 1937, as amended, 42 U.S.C. 1437, *et seq.*, (1937 Act) more flexibly and by allowing certain exemptions from existing public housing and Housing Choice Voucher (HCV) program rules, as approved by HUD.

The Housing Authority is interested in submitting a letter of intent (LOI) that would allow us to apply to participate in the following two policy demonstrations in this order of preference.

1. MTW Test Rent #1 – Tiered Rent (Income-Based): Households are grouped by income into tiers. Within each tier, rents (or, in the HCV program, participant contribution) are fixed. Any income increase within a tier does not affect the household's rent/tenant contribution. Rents are income based to be affordable at approximately 30% income. When income increases, rent is not determined until the next triennial re-examination. If rent decreases significantly, families can apply for a hardship exemption to have rent re-determined before their next triennial recertification.
2. MTW Test Rent #3 – Stepped Rent: 3% Step (Decoupled from Income): Rents are increased annually (or, in the HCV program, the participant contribution is increased) according to a fixed schedule of some percentage of a fixed value. HUD's notice suggests 3% of FMR. However, our LOI specifies that we would only consider a modified version of this stepped rent policy, such that increases are limited to less than 3% and/or increases are based on some value other than FMR (such as payment standard).

Staff is recommending approval of a letter of intent only, so that we may continue to explore the possibility of participation in this MTW co-hort. Much information and discussion would be needed prior to actually submitting an application for participation or entering into an agreement to participation in the MTW demonstration.

**RECOMMENDATION:** **Adopt Resolution No. 2019-03** Authorizing the Submittal of a Letter of Intent to Obtain HUD Moving to Work (MTW) Designation under the Second Cohort of the MTW Expansion and, if awarded MTW status, the Intension to comply with MTW objectives, statutory requirements and the Operating Notice

**BEFORE THE HOUSING AUTHORITY OF THE COUNTY  
OF SANTA CRUZ, STATE OF CALIFORNIA**

**RESOLUTION NO. 2019-03**

On the motion of Commissioner  
Duly seconded by Commissioner  
The following resolution is adopted:

**RESOLUTION AUTHORIZING THE SUBMITTAL OF A LETTER OF  
INTENT TO OBTAIN THE MOVING TO WORK (MTW) DESIGNATION  
UNDER THE SECOND COHORT OF THE MTW EXPANSION AND THE  
INTENSION TO COMPLY WITH MTW OBJECTIVES, STATUATORY  
REQUIREMENTS AND THE OPERATIONS NOTICE.**

WHEREAS, the Housing Authority of the County of Santa Cruz (herein referred to as “Applicant”) is a public entity established under the laws of California and empowered to own property, borrow money, and give security for loans; and

WHEREAS, the US Department of Housing and Urban Development (HUD) is authorized to grant MTW designation to Public Housing Authorities (PHA), has opened a second cohort of the MTW Expansion, has requested interested PHAs submit a Letter of Intent (LOI) and Board Resolution approving the PHAs desire to obtain MTW designation, stating the intention to comply with MTW objectives, statutory requirements and the Operation Notice, and in order of preference which rent policies the PHA is willing to implement; and

WHEREAS, the Applicant wishes to submit a letter of intent to obtain MTW designation through HUD’s Second Cohort ‘Rent Reform,’ is willing to implement MTW Test Rent #1 – Tiered Rent (Income Based) or MTW Test Rent #3 – Stepped Rent: 3% Step if the basis for the initial step is Payment Standards or some other non-FMR value and/or with permission to limit step increases to an amount lower than 3%, in that order of preference, and if awarded intends to comply with MTW objectives, statutory requirements, and the Operation Notice.

NOW, THEREFORE, BE IT RESOLVED THAT

1. The PHA shall be authorized to submit to HUD a MTW Expansion Letter of Intent and any other required documents to implement MTW Test Rent #1 – Tiered Rent (Income Based) or a modified version of MTW Test Rent #3 – Stepped Rent: 3% (with the basis for the initial step as a value other than the FMR and/or permission to limit step increases to an amount lower than 3%) in that order of preference.

PASSED AND ADOPTED by the Commissioners of the Housing Authority of the County of Santa Cruz, State of California, this Twenty-Second day of May, 2019 by the

following vote:

AYES:

NOES:

ABSENT:

ATTEST:

---

Chairperson of the Authority

---

Secretary of the Authority



## AGENDA ITEM SUMMARY

---

**MEETING DATE:** May 22, 2019

**ITEM NUMBER:** 3D

**FROM:** Executive Director

---

**SUBJECT:** Procurement Policy Revision

---

**RECOMMENDATION:** Adopt **Resolution No. 2019-04:** Approval of Revised Procurement Policy

---

### **BACKGROUND SUMMARY:**

The agency's current procurement policy was comprehensively revised in January of 2017. The Office of Management and Budget (OMB) recently released a memorandum which impacts some of the thresholds contained within the procurement policy. The OMB's memo raises the threshold for micro purchases from \$3,000 to \$10,000, with the exception of construction contracts which will continue to have a micro purchase threshold of \$2,000. The procurement method for micro purchases requires at least one quote, provided the quote is considered reasonable based on recent research, experience, or similar purchases. In addition to micro purchases, the OMB's memo also increases the threshold for simplified acquisitions from \$150,000 to \$250,000. The procurement policy requires that simplified acquisitions (also referred to as "small purchase procedures") include a reasonable number of quotes (preferably three). To align with the new simplified acquisitions threshold, procurements that exceed \$250,000 will now to require approval from the Board of Commissioners prior to award and/or contract execution. Previously, procurements that exceeded \$100,000 required Board approval.

These changes are in accordance with the National Defense Authorization Acts (NDAA). Generally, the higher thresholds would not be effective until implemented in the Federal Acquisition Regulation (FAR), however, the OMB's memo grants an exception to that requirement. Staff drafted a revised procurement policy to reflect the higher thresholds for micro purchases, simplified acquisitions, and procurements requiring approval by the Board of Commissioners.

### **RECOMMENDATION:**

Adopt **Resolution No. 2019-04:** Approval of Revised Procurement Policy

# PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: 20197-01XX04

## Table of Contents

Section	Description	Page
<b>1.0</b>	<b>Introduction</b>	<b>3</b>
1.1	General	3
<b>2.0</b>	<b>General Provisions</b>	<b>3</b>
2.1	General	3
2.2	Application	3
2.3	Definition	4
2.4	Exclusions	4
2.5	Changes in Laws and Regulations	4
2.6	Public Access to Procurement Information	4
<b>3.0</b>	<b>Ethics in Public Contracting</b>	<b>4</b>
3.1	General	4
3.2	Conflict of Interest	4
3.3	Gratuities, Kickbacks, and Use of Confidential Information	5
3.4	Prohibition Against Contingent Fees	5
<b>4.0</b>	<b>Procurement Planning</b>	<b>5</b>
4.1	General	5
<b>5.0</b>	<b>Procurement Methods</b>	<b>6</b>
5.1	Petty Cash Purchases	6
5.2	Small Purchase Procedures	6
5.3	Sealed Bids	6
5.4	Competitive Proposals	8
5.5	Noncompetitive Proposals	10
5.6	Cooperative Purchasing/Intergovernmental Agreements	12
<b>6.0</b>	<b>Independent Cost Estimate (ICE)</b>	<b>12</b>
6.1	General	12
<b>7.0</b>	<b>Cost and Price Analysis (CPA)</b>	<b>12</b>
7.1	General	12
<b>8.0</b>	<b>Solicitation and Advertising</b>	<b>13</b>
8.1	Method of Solicitation	13
8.2	Time Frame	14
8.3	Form	14
8.4	Time Period for submission of Bids	14
8.5	Cancellation of Solicitations	14
8.6	Credit (or Purchasing) Cards	16

# PROCUREMENT POLICY

Adopted: 501/2225/20197

Resolution No.: 20197-01XX04

## Table of Contents (cont'd)

Section	Description	Page
9.0	<b>Bonding Requirements</b>	16
9.1	General	16
10.0	<b>Contractor Qualifications and Duties</b>	17
10.1	Contractor Responsibility	17
10.2	Suspension and Debarment	18
10.3	Vendor Lists	18
11.0	<b>Contract Pricing Arrangements</b>	18
11.1	Contract Types	18
11.2	Options	18
12.0	<b>Contract Clauses</b>	19
12.1	Contract Pricing Arrangements	19
12.2	Required Forms	19
13.0	<b>Contract Administration</b>	19
13.1	General	19
14.0	<b>Specifications</b>	19
14.1	General	19
14.2	Limitation	20
15.0	<b>Appeals and Remedies</b>	20
15.1	General	20
15.2	Informal Appeals Procedure	20
15.3	Formal Appeals Procedure	20
16.0	<b>Assistance to Small and Other Businesses</b>	21
16.1	Required Efforts	21
16.2	Goals	22
16.3	Definitions	22
17.0	<b>Board Approval of Procurement Actions</b>	23
17.1	Authority	23
18.0	<b>Delegation of Contracting Authority</b>	23
18.1	Delegation	23
18.2	Procedures	23
19.0	<b>Documentation</b>	23
19.1	Required Records	23
19.2	Level of Documentation	24
19.3	Record Retention	24
20.0	<b>Disposition of Surplus Property</b>	24
20.1	General	24
21.0	<b>Funding Availability</b>	24
21.1	General	24

# PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

## 1.0 INTRODUCTION

**1.1 General.** Established for the Housing Authority of the County of Santa Cruz (hereinafter, “the Agency”) by Action of the Agency Board of Commissioners (Board) on January 25, 2017, this Procurement Policy (Policy) complies with the Annual Contributions Contract (ACC) between the Agency and the United States Department of Housing and Urban Development (HUD), Federal Regulations at 2 CFR §200.317 through §200.326, *Procurement Standards*, the procurement standards of the Procurement Handbook for Public Housing Authorities (PHAs), HUD Handbook 7460.8, REV 2, and applicable State and Local laws.

## 2.0 GENERAL PROVISIONS

**2.1 General.** The Agency shall:

**2.1.1** Provide for a procurement system of quality and integrity;

**2.1.2** Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Agency;

**2.1.3** Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable and valuable prices available to the Agency;

**2.1.4** Promote competition in contracting; and

**2.1.5** Assure that the Agency purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

**2.2 Application.** This Policy applies to all procurement actions of the Agency, regardless of the source of funds, except as noted under “exclusions” below. However, nothing in this Policy shall prevent the Agency from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

**2.3 Definitions.**

**2.3.1 Construction.** Construction means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

also includes the supervision, inspection, and other onsite functions incidental to the actual construction. For purposes of this section, “maintenance work” is excluded. "maintenance work" includes all of the following:

- (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
- (2) Minor repainting.
- (3) Resurfacing of streets and highways at less than one inch.
- (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
- (5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems.

2.3.2 Procurement. The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

**2.3.3 Simplified Acquisition Threshold.** The Simplified acquisition threshold means the dollar amount below which the Agency may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the adoption of this Procurement Policy the simplified acquisition threshold is \$~~150~~250,000, but this threshold shall be periodically adjusted for inflation under 41 U.S.C. 1908.

**2.4 Exclusions.** This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, *e.g.*, fee-for-service revenue under 24 CFR §990. These excluded areas are subject to applicable State and local requirements.

**2.5 Changes in Laws and Regulations.** In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

**2.6 Public Access to Procurement Information.** Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the U.S. Freedom of Information Act and the California Public Records Act, Government Code Section 6250 and following.

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

### 3.0 ETHICS IN PUBLIC CONTRACTING

- 3.1 General.** The Agency hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law.
- 3.2 Conflicts of Interest.** No employee, officer, Board member, or agent of the Agency shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:
- 3.2.1** An employee, officer, Board member, or agent involved in making the award;
  - 3.2.2** His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister);
  - 3.2.3** His/her partner; or
  - 3.2.4** An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
- 3.3 Gratuities, Kickbacks, and Use of Confidential Information.** No officer, employee, Board member, or agent of the Agency shall ask for or accept gratuities, favors, or items of more than nominal value (i.e. inexpensive hat with logo) from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.
- 3.4 Prohibition against Contingent Fees.** Contractors wanting to do business with the Agency must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

### 4.0 PROCUREMENT PLANNING

- 4.1 General.** Planning is essential to managing the procurement function properly. Hence, the Agency will periodically review its record of prior purchases, as well as future needs, to:
- 4.1.1** Find patterns of procurement actions that could be performed more efficiently or economically;

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

- 4.1.2 Maximize competition and competitive pricing among contracts and decrease the Agency's procurement costs;
- 4.1.3 Reduce Agency administrative costs;
- 4.1.4 Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests); and
- 4.1.5 Minimize errors that occur when there is inadequate lead time.

Consideration shall be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

### 5.0 PROCUREMENT METHODS

- 5.1 **Petty Cash Purchases.** Purchases under \$200 may be processed through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, *e.g.*, one week or one month. For all Petty Cash Accounts, the Agency shall ensure that security is maintained and only authorized individuals have access to the account. These accounts shall be periodically reconciled and replenished by submission of a voucher to the PHA finance officer; and, the account is periodically audited by the finance officer or designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.
- 5.2 **Micro Purchases.** -As to purchases under \$~~103~~,000 (\$2,000 for construction contracts), known as Micro Purchases, the agency shall use small purchase procedures below. However, the agency is only required to obtain one quote, provided the quote is considered reasonable (*e.g.*, based on recent research, experience, or purchases). To the extent practicable, Micro Purchases shall be distributed equitably among qualified vendors. .
- 5.3 **Small Purchase Procedures.** For any amounts above the Petty Cash ceiling, but not exceeding the Simplified Acquisition Threshold of \$~~150~~250,000 or greater depending upon adjustments for inflation under 41 U.S.C. 1908. , the Agency may use small purchase procedures. Under small purchase procedures, the Agency shall obtain a reasonable number of quotes (preferably three) To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Price quotes, may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the responsive and responsible vendor that submits the lowest cost to the Agency. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. If non-price factors are used, they shall be disclosed to all those solicited. The names,

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

addresses, and/or telephone numbers of the offerors and persons contacted, and the dates and amount of each quotation shall be recorded and maintained as a public record.

- 5.4 **Prohibition Against Contract Splitting.** The Agency shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.
- 5.5 For purchases over ~~\$100~~250,000. For purchases and contracts in excess of ~~\$100~~250,000, all such bids shall be submitted to the Board of Commissioners by the Executive Director with a recommendation for award of the contract to the lowest responsible bidder.
- 5.5.1 For Construction / Development Contracts greater than \$1500,000 – The Housing Authority will incorporate the clauses contained in form HUD-5370, and the applicable Davis-Bacon wage decision.
- 5.5.2 For Non-Construction Contracts (without maintenance work) greater than \$100,000 – The Housing Authority will incorporate the clauses contained in form HUD-5370C.
- 5.5.3 For Maintenance Contracts (including non-routine maintenance work) greater than \$100,000. The Housing Authority will incorporate the clauses contained in form HUD-5370C.
- 5.6 **Sealed Bids.** Sealed bidding, also known as Invitation for Bids (IFB), shall be used for all contracts that exceed the simplified acquisition threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy. Under sealed bids, the Agency publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed ~~\$150~~250,000. For Architect/Engineer service contracts, sealed bidding should not be used and instead the process described for selecting Architect/Engineer services at Section 5.7.4 should be used.
- 5.6.1 **Conditions for Using Sealed Bids.** The Agency shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; three or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.
- 5.6.2 **Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest



## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

responsible and responsive bidder whose bid meets the requirements of the IFB. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.

**5.6.3 Bid Opening and Award.** Bids shall be opened publicly and in the presence of at least one witness. All bids received shall be recorded on an abstract (tabulation) of bids, which shall then be made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.

**5.6.4 Mistakes in Bids.** Correction or withdrawal of erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the Agency or fair competition shall not be permitted.

**5.7 Competitive Proposals.** Unlike sealed bidding, the competitive proposal method, also known as Request for Proposals (RFP), permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the Agency, considering price and other factors, *e.g.*, technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

**5.7.1 Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. As detailed within Section 7.2.B of HUD Procurement Handbook 7460.8 REV 2, "Only under limited circumstances

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

would construction services be procured by competitive proposals;” accordingly, construction services will most typically be procured utilizing the sealed bid (IFB) or small purchase procedures .

- 5.7.2 Form of Solicitation.** Other than A/E services, developer-related services and energy performance contracting, competitive proposals shall be solicited through the issuance of an RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The Agency may assign price a specific weight in the evaluation factors or the Agency may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
- 5.7.3 Evaluation.** The proposals shall be evaluated only on the factors stated in the RFP. Where not apparent from the evaluation factors, the Agency shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.
- 5.7.4 Negotiations.** Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror’s proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the Agency and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the Agency's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform an offeror that its price is considered by the Agency to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the Agency's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

**5.7.5 Award.** After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the Agency provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

**5.7.6 Architect/Engineer Services.** The Agency shall contract for Architect/Engineer services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding shall not be used for Architect/Engineer solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Unless expressly provided in this Purchasing Policy, QBS procedures shall not be used to purchase other types of services, other than Energy Performance Contracting and Developer services, though architectural/engineering firms are potential sources.

### **5.8 Noncompetitive Proposals.**

**5.8.1 Conditions for Use.** Procurement shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals (sole- or single-source) may be used only when the award of a contract is not

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:

**5.8.1.1** The item is available only from a single source, based on a good faith review of available sources;

**5.8.1.2** An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Agency, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;

**5.8.1.3** HUD authorizes the use of noncompetitive proposals; or

**5.8.1.4** After solicitation of a number of sources, competition is determined inadequate.

**5.8.2** **Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:

**5.8.2.1** Description of the requirement;

**5.8.2.2** History of prior purchases and their nature (competitive vs. noncompetitive);

**5.8.2.3** The specific exception in 2 CFR §200.320(f)(1)-(4) which applies;

**5.8.2.4** Statement as to the unique circumstances that require award by noncompetitive proposals;

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

- 5.8.2.5 Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- 5.5.2.6 Statement as to efforts that will be taken in the future to promote competition for the requirement;
- 5.5.2.7 Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
- 5.8.2.8 Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

**5.9 Cooperative Purchasing/Intergovernmental Agreements.** The Agency may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The Agency may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR §200.317 through §200.326.

## 6.0 INDEPENDENT COST ESTIMATE

**6.1 General.** For all purchases above the Simplified Acquisition Threshold including contract modifications, the Agency shall prepare an independent cost estimate prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

## 7.0 COST AND PRICE ANALYSIS (CPA)

**7.1 General.** The Agency shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

**7.1.1 Petty Cash and Micro Purchases.** No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

- 7.1.2 Small Purchases.** A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the independent cost estimate, or any other reasonable basis.
- 7.1.3 Sealed Bids.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the independent cost estimate, and where the Agency cannot reasonably determine price reasonableness, the Agency must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.
- 7.1.4 Competitive Proposals.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, the Agency must compare the price with the independent cost estimate. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the independent cost estimate, the Agency must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.
- 7.1.5 Contract Modifications.** A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$~~150~~250,000.

## 8.0 SOLICITATION AND ADVERTISING

### 8.1 Method of Solicitation.

- 8.1.1 Petty Cash and Micro Purchases.** The Agency may contact only one source if the price is considered reasonable.

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

- 8.1.2 Small Purchases.** The Agency must contact a reasonable number of sources (preferably three). Quotes may be solicited orally, through fax, E-Procurement, or by any other reasonable method.
- 8.1.3 Sealed Bids and Competitive Proposals.** Solicitation must be done publicly. The Agency must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.
- 8.1.3.1** Advertising in newspapers or other print mediums of local or general circulations.
  - 8.1.3.2** Advertising in various trade journals or publications (for construction).
  - 8.1.3.3** E-Procurement. The Agency may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR §200.317 through §200.326, State and local requirements, and the Agency's procurement policy.
- 8.2 Time Frame.** For purchases of more exceeding the simplified acquisition threshold, the public notice should run not less than once each week for two consecutive weeks.
- 8.2 Form.** Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).
- 8.4 Time Period for Submission of Bids.** A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the time period may be adjusted as determined by the Executive Director.
- 8.5 Cancellation of Solicitations.**
- 8.5.1** An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
    - 8.5.1.1** The supplies, services or construction is no longer required;
    - 8.5.1.2** The Agency can no longer reasonably expect to fund the procurement;
    - 8.5.1.3** Proposed amendments to the solicitation are of such magnitude that a new solicitation would be desirable; or



## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

- 8.5.1.4 Other similar reasons.
- 8.5.2 A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
  - 8.5.2.1 The supplies or services (including construction) are no longer required;
  - 8.5.2.2 Ambiguous or otherwise inadequate specifications were part of the solicitation;
  - 8.5.2.3 All factors of significance to the Agency were not considered;
  - 8.5.2.4 Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  - 8.5.2.5 There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
  - 8.5.2.6 For good cause of a similar nature when it is in the best interest of the Agency.
- 8.5.3 The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- 8.5.4 A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- 8.5.5 If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the Agency's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either
  - 8.5.5.1 Re-solicit using an RFP; or
  - 8.5.5.2 Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the Agency's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.



## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

**8.5.6** If problems are found with the specifications, the Agency should cancel the solicitation, revise the specifications and re-solicit using an IFB.

**8.6 Credit (or Purchasing) Cards.** Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card. When using credit cards, the Agency shall adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

### 9.0 BONDING REQUIREMENTS

**9.1 General.** The standards under this section apply to construction contracts that exceed the Simplified Acquisition Threshold. There are no bonding requirements for small purchases or for competitive proposals. The Agency may require bonds in these latter circumstances when in its discretion it deems appropriate; however, non-construction contracts generally do not require bid bonds.

**9.1.1 Bid Bonds.** For construction contracts exceeding the Simplified Acquisition Threshold, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

**9.1.2 Payment Bonds.** For construction contracts exceeding the Simplified Acquisition Threshold, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four forms:

**9.1.2.1** A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified; or

**9.1.2.2** A performance and payment bond in a penal sum of 100% of the contract price; or

**9.1.2.3** Separate performance and payment bonds, each for 50% or more of the contract price

These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State of California. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on

# PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~ 20197

Resolution No.: ~~20197-01XX04~~ 20197-01XX04

bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

## 10.0 CONTRACTOR QUALIFICATIONS AND DUTIES

### 10.1 Contractor Responsibility

**10.1.1** The Agency shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

**10.1.1.1** Have adequate financial resources to perform the contract, or the ability to obtain them;

**10.1.1.2** Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments;

**10.1.1.3** Have a satisfactory performance record;

**10.1.1.4** Have a satisfactory record of integrity and business ethics;

**10.1.1.5** Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

**10.1.1.6** Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,

**10.1.1.7** Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

**10.1.2** If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

**10.2 Suspension and Debarment.** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 CFR §200.317 through §200.326) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, Agency staff shall, as detailed within Section 10.2.H.1

# PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each such search.

- 10.3 Qualified Bidder's List.** All interested businesses shall be given the opportunity to be included on qualified bidder lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to, such prequalified suppliers.

## 11.0 CONTRACT PRICING ARRANGEMENTS

- 11.1 Contract Types.** Any type of contract which is appropriate to the procurement and which will promote the best interests of the Agency may be used, **provided the cost - plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used.** All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the Agency. For all cost reimbursement contracts, the Agency must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

- 11.2 Options.** Options for additional quantities or performance periods may be included in contracts, provided that:

**11.2.1** The option is contained in the solicitation;

**11.2.2** The option is a unilateral right of the Agency;

**11.2.3** The contract states a limit on the additional quantities and the overall term of the contract;

**11.2.4** The options are evaluated as part of the initial competition;

**11.2.5** The contract states the period within which the options may be exercised;

**11.2.6** The options may be exercised only at the price specified in or reasonably determinable from the contract; and

**11.2.7** The options may be exercised only if determined to be more advantageous to the Agency than conducting a new procurement.

# PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

## 12.0 CONTRACT CLAUSES

- 12.1 Contract Pricing Arrangements.** All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the Agency.
- 12.2 Required Forms.** Additionally, the forms HUD-5369; 5369-A; 5369-B; 5369; 5370; 5370-C (Sections I and II); 51915; and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than the Simplified Acquisition Threshold, as well as any forms/clauses as required by HUD for small purchases, shall be used, as applicable, in all corresponding solicitations and contracts issued by the Agency.
- 12.3 Required Contract Clauses:** The Agency shall ensure that each contract executed by the Agency contains the required contract clauses detailed within 2 CFR §200.326 and Appendix II whenever applicable, , such as the following:
- 12.3.1** Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
  - 12.3.2** Termination for cause and convenience,
  - 12.3.3** Equal Employment Opportunity, Termination for default,
  - 12.3.4** Davis-Bacon Act (40 U.S.C. 3141–3148),
  - 12.3.5** Anti-Kickback Act,
  - 12.3.6** Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), reporting requirements,
  - 12.3.7** Rights to Inventions Made Under a Contract or Agreement,
  - 12.3.8** Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387)
  - 12.3.9** Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201),
  - 12.3.10** Debarment and Suspension (Executive Orders 12549 and 12689),
  - 12.3.11** Examination of records by Comptroller General, retention of records for three years after closeout,
  - 12.3.12** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352),
- The operational procedures required by section IIA of this statement shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the Agency.

## 13.0 CONTRACT ADMINISTRATION

- 13.1 General.** The Agency shall maintain a system of contract administration designed to ensure that Contractors perform in accordance with their contracts. These systems shall

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

- 13.2 Record Retention.** The Agency will retain all significant and material documentation and records concerning all procurements for a period of at least three years after final payment and all matters pertaining to the contract are closed. If any claims or litigation are involved, the records shall be retained until all issues are finally and satisfactorily resolved.

### 14.0 SPECIFICATIONS

- 14.1 General.** All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the Agency's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

- 14.2 Limitation.** The following types of specifications shall be avoided:

- 14.2.1** Geographic restrictions not mandated or encouraged by applicable Federal law (except for Architect/Engineer contracts, which may include geographic location as a selection factor if adequate competition is available);
- 14.2.2** Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).
- 14.2.3** Unnecessary bonding or experience requirements.

Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

### 15.0 APPEALS AND REMEDIES

- 15.1 General.** It is Agency policy to resolve all contractual issues informally at the PHA level and without litigation. Disputes will not be referred to HUD unless all

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

**15.2 Informal Appeals Procedure.** The Agency shall adopt an informal bid protest/appeal procedure for contracts of under the Simplified Acquisition Threshold. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer. HUD will only review protests in cases of violations of Federal law or regulations and failure of the PHA to review a complaint or protest.

**15.3 Formal Appeals Procedure.** A formal appeals procedure shall be established for solicitations/contracts of more than the Simplified Acquisition Threshold.

**15.3.1 Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

**15.3.2 Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in Agency. Contractor claims shall be governed by the Changes clause in the relevant form HUD-5370.

## 16.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES

**16.1 Required Efforts.** Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the HACM project are used when possible. Such efforts shall include, but shall not be limited to:

**16.1.1** Including such firms, when qualified, on solicitation mailing lists;

**16.1.2** Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;

## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

- 16.1.3** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- 16.1.4** Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- 16.1.5** Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- 16.1.6** Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR §135 (so-called Section 3 businesses); and
- 16.1.7** Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.
- 16.2 Goals.** Shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in Agency prime contracts and subcontracting opportunities.
- 16.3 Definitions.**

  - 16.3.1** A small business is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR §121 should be used to determine business size.
  - 16.3.2** A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
  - 16.3.3** A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.



## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

- 16.3.4** A “Section 3 business concern” is as defined under 24 CFR §135.
- 16.3.5** A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR §654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

### 17.0 BOARD APPROVAL OF PROCUREMENT ACTIONS

- 17.2 Authority.** The Board appoints and delegates procurement authority to the Executive Director (ED) in the amount not to exceed ~~\$25+00,000~~ and is responsible for ensuring that any procurement policies and procedures adopted are appropriate for the Agency. All procurements that exceed ~~\$25+00,000~~ must have approval from the Board prior to award and/or contract execution.

### 18.0 DELEGATION OF CONTRACTING AUTHORITY

- 18.1 Delegation.** While the ED is responsible for ensuring that the Agency’s procurements comply with this Policy, the ED may delegate in writing all procurement authority as is necessary and appropriate to conduct the business of the Agency.
- 18.2 Procedures.** Further, and in accordance with this delegation of authority, the ED shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The ED shall also establish a system of sanctions for violations of the ethical standards described in Section 3.0 herein, consistent with Federal, State, or local law.

### 19.0 DOCUMENTATION

- 19.1 Required Records.** The Agency must maintain records sufficient to detail the significant history of each procurement action. These records shall include, but shall not necessarily be limited to, the following:
- 19.1.1** Rationale for the method of procurement (if not self-evident);
  - 19.1.2** Rationale of contract pricing arrangement (also if not self-evident);
  - 19.1.3** Reason for accepting or rejecting the bids or offers;
  - 19.1.4** Basis for the contract price (as prescribed in this handbook);
  - 19.1.5** A copy of the contract documents awarded or issued and signed by the Contracting Officer;



## PROCUREMENT POLICY

Adopted: ~~501/2225/20197~~

Resolution No.: ~~20197-01XX04~~

**19.1.6** Basis for contract modifications; and

**19.1.7** Related contract administration actions.

**19.2 Level of Documentation.** The level of documentation should be commensurate with the value of the procurement.

**19.3 Record Retention.** Records are to be retained for a period of three years after final payment and all matters pertaining to the contact are closed.

### **20.0 DISPOSITION OF SURPLUS PROPERTY**

**20.1 General.** Property no longer necessary for the Agency's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations.

### **21.0 FUNDING AVAILABILITY**

**21.1 General.** Before initiating any contract, the Agency shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.

## AGENDA ITEM SUMMARY

---

**MEETING DATE:** May 22, 2019

**ITEM NUMBER:** 6A

**FROM:** Executive Director

---

**SUBJECT:** Agency Budget for FY 2019-2020

---

**RECOMMENDATION:** Approve Agency Budget for FY 2019-2020; Adopt **Resolution No. 2019-05:** Approval of Operating Budget for Low Income Public Housing for Fiscal Year 2019-20

---

### **BACKGROUND SUMMARY:**

The draft agency budget for FY 2019-20 was presented at the April 24<sup>th</sup> board meeting. As discussed, the release of HUD's CY2019 Section 8 HAP funding letter establishes an unprecedented 20% renewal funding inflation factor. This is a direct result of the agency's decision to conduct an independent Fair Market Rent (FMR) survey in lieu of using FMRs calculated by HUD. The 20% inflation factor is applied to actual HAP spending from CY2018 to determine funding levels for calendar year 2019. The resulting \$14.5 million increase in HAP renewal funding will allow the agency to provide housing assistance to more families in our community as we work toward achieving full lease up.

Section 8 admin fees provide the majority of the agency's administrative funding. A monthly per unit admin fee is earned for every family that is housed. Each year, Congress establishes the admin fee proration level which reduces the full per unit admin fee funding that HUD has historically used as the benchmark level of funding for housing authorities to efficiently operate a voucher program. The proposed budget was prepared using a blended admin fee proration level of 82% for CY2019 and an estimated 77% for CY2020 based on industry forecasts. Please refer to the chart on page 5 for historical admin fee proration levels. Even slight changes to the admin fee proration level can have a significant impact on the agency's ability to cover the administrative costs of operating the voucher programs. Budgeted salary figures reflect full staffing levels, annual step increases where applicable, and include a 2.5% Cost of Living Adjustment (COLA), effective at the beginning of the fiscal year.

Additionally, HUD guidelines require specific Board approval of the Low Income Public Housing (LIPH) Program operating budget. The LIPH budget is included within the Agency Budget. Board approval of this resolution is a HUD imposed requirement through Form HUD-52574.

**RECOMMENDATION:** Approve Agency Budget for FY 2019-2020; Adopt **Resolution No. 2019-05:** Approval of Operating Budget for Low Income Public Housing for Fiscal Year 2019-20

PHA Board Resolution  
Approving Operating Budget

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing -  
Real Estate Assessment Center (PIH-REAC)

OMB No. 2577-0026  
(exp. 07/31/2019)

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income public housing program and provides a summary of the proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the public housing agency (PHA) and the amounts are reasonable, and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

PHA Name: .....PHA Code:

PHA Fiscal Year Beginning: .....Board Resolution Number:

Acting on behalf of the Board of Commissioners of the above-named PHA as its Chairperson, I make the following certifications and agreement to the Department of Housing and Urban Development (HUD) regarding the Board's approval of (check one or more as applicable):

DATE

- Operating Budget approved by Board resolution on:
- Operating Budget submitted to HUD, if applicable, on:
- Operating Budget revision approved by Board resolution on:
- Operating Budget revision submitted to HUD, if applicable, on:

I certify on behalf of the above-named PHA that:

1. All statutory and regulatory requirements have been met;
2. The PHA has sufficient operating reserves to meet the working capital needs of its developments;
3. Proposed budget expenditure are necessary in the efficient and economical operation of the housing for the purpose of serving low-income residents;
4. The budget indicates a source of funds adequate to cover all proposed expenditures;
5. The PHA will comply with the wage rate requirement under 24 CFR 968.110(c) and (f); and
6. The PHA will comply with the requirements for access to records and audits under 24 CFR 968.110(i).

I hereby certify that all the information stated within, as well as any information provided in the accompaniment herewith, if applicable, is true and accurate.

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012.31, U.S.C. 3729 and 3802)

Print Board Chairperson's Name:	Signature:	Date:
---------------------------------	------------	-------

## AGENDA ITEM SUMMARY

---

**MEETING DATE:** May 22, 2019

**ITEM NUMBER:** 6B

**FROM:** Executive Director

---

**SUBJECT:** Update and Revision of Agency Bylaws

---

**RECOMMENDATION:** Approve Revision to Agency Bylaws

---

**BACKGROUND SUMMARY:**

With the exception of a revision to the Housing Authority bylaws in January 2018 changing the time of the annual and regular Board meetings from 1pm to 11:30am, the Agency Bylaws have not been updated or revised in decades. The attached update and revision was drafted with the assistance of our Agency's general council. Changes have been noted using the track changes tool. The revision and update brings our Bylaws into alignment with current HUD procurement regulations, the Brown Act, and Agency practices.

**RECOMMENDATION:** Approve Revision to Agency Bylaws

**BYLAWS OF THE HOUSING AUTHORITY**

**OF THE**

**COUNTY OF SANTA CRUZ**

**ARTICLE I – THE HOUSING AUTHORITY**

Section 1. Name of Authority. The name of the Authority shall be the “Housing Authority of the County of Santa Cruz”.

Section 2. Seal of Authority. The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority and the year of its organization.

Section 3. Office of Authority. The office of the Authority shall be at ~~2931 Mission Street, Santa Cruz~~ 2160 41<sup>st</sup> Avenue, Capitola, California or such other location duly established in the County of Santa Cruz, California.

**ARTICLE II – BOARD OF COMMISSIONERS AND BOARD COMPENSATION**

Section 1. Board of Commissioners. Pursuant to the California Health and Safety Code § 34246, the Authority is governed by a Board of Commissioners. The Board of Commissioners shall be composed of seven (7) members.

Section 2. Compensation. The Authority shall compensate Commissioners for attendance at meetings at ~~the~~ a per diem rate allowable under California state law. The current compensation rate is per diem payment for attendance at not more than four meetings of the Authority per month, which shall not exceed fifty dollars (\$50) per day. Compensation shall not be more than the amount paid for similar positions in other local government agencies in the area.

**ARTICLE III - OFFICERS**

Section 1. Officers. The officers of the Authority shall be a Chair, a Vice Chair and an Executive Secretary who shall be the Executive Director.

Section 2. Chair. The Chair shall preside at all meetings of the Authority Board of Commissioners.

Section 3. Vice Chair. The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair; and in case of the resignation or death of the Chair, the Vice Chair shall perform such duties as are imposed on the Chair until such time as the Authority shall elect a new Chair.

Section 4. Secretary. The Secretary shall be the Executive Director of the Authority and is hereinafter referred to as the Executive Director. As Executive Director, he/she shall have general supervision over the administration of its business and affairs, subject to the direction of the Authority Board of Commissioners. He/she shall be charged with the administration of Authority programs and management of the housing projects of the Authority.

The Executive Director shall keep the records of the Authority, shall act as recording secretary of the meetings of the Authority Board of Commissioners and record all votes thereof, and shall keep a record of the proceedings of the Authority Board of Commissioners in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his/her office. He/she shall keep in safe custody the seal of the Authority and shall have the power to affix such seal to all instruments authorized to be executed by the Authority.

The Executive Director shall have the care and custody of all funds of the Authority. The Executive Director shall deposit all of the Authority's funds in the name of the Authority in such bank financial institution(s) as the Board of Commissioners may selected in accordance with the procurement policy~~accordance with the investment policy of the Authority.~~

~~The compensation of the Executive Director shall be determined by the Authority.~~

Section 5. Additional Duties. The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority or these Bylaws or rules and regulations of the Authority.

Section 6. Election or Appointment. The Chair and Vice Chair shall be elected at the annual meeting of the Authority Board of Commissioners from among the Commissioners of the Authority, and shall hold office for one (1) year or until their successors are elected and qualified.

Section 7. Vacancies. Should the offices of Chair or Vice Chair become vacant, the Authority Board of Commissioners shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office.

Section 8. Additional Authority Personnel. The Authority may from time to time employ such personnel as it deems necessary to exercise its powers, duties, and functions as prescribed by the California Housing Authorities Law, as amended, and all other laws of the State of California applicable thereto. The selection and compensation of the Executive Director shall be by the Authority Board of Commissioners subject to the laws of the State of California. The selection of individuals to fill personnel positions other than the position of Executive Director shall be by the Executive Director. The Authority Board of Commissioners delegates the authority and responsibility for establishing job descriptions and the compensation applicable to other personnel positions, subject to the Board of Commissioners adopted budget and the laws of the State of California, to the

Executive Director, ~~shall establish those other personnel positions, job descriptions and the compensation therefore, subject to the laws of the State of California.~~

## **ARTICLE IV – MEETINGS**

Section 1. Annual Meeting. The annual meeting of the Authority shall be held on the fourth Wednesday of August at 11:30 a.m. at the regular meeting place of the Authority.

Section 2. Regular Meetings. Regular meetings of the Authority shall be held on the fourth Wednesday of each month at 11:30 a.m. at the regular meeting place of the Authority or at such time and place as may from time to time be determined by resolution of the Authority Board of Commissioners. In the event a day of regular meeting shall be a legal holiday, said meeting shall be held on the next succeeding business day. Regular meeting agendas shall be posted at least seventy-two (72) hours prior to the regular meeting in a location that is freely accessible to members of the public and on the Authority's internet website.

Section 3. Special Meetings. The Chair of the Board of Commissioners may, when he/she deems it warranted, and shall, upon the written request of a majority of Commissioners~~two (2) Commissioners~~, call a special meeting of the Authority for the purpose of transacting any business designated in the notice of the special meeting. ~~The written notice for a special meeting shall be delivered to each Commissioner and to each local newspaper of general circulation and radio or television station requesting notice in writing and posted on the Authority's internet website. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice, shall be mailed to each Commissioner at his/her business or home address at least forty-eight (48) hours prior to the date of such special meeting. The call for a special meeting shall be delivered to each local newspaper of general circulation and radio or television station requesting notice in writing at least twenty-four (24) hours prior to the date of such special meeting.~~ The call and notice for a special meeting shall be posted at least twenty-four (24) hours prior to the special meeting in a location that is freely accessible to members of the public. At such special meeting no business shall be considered other than as designated in the call.

Section 4. Brown Act. All Board of Commissioner meetings shall be noticed and held in compliance with the Ralph M. Brown Act (Government Code §§ 54950 et seq.)

Section 54. Conduct of Meetings. All meetings of the Authority shall be conducted as determined by the Chair, provided, however, that upon the request of any two (2) Board ~~Members~~Commissioners, a meeting shall be conducted in accordance with Robert's Rules of Order. The priority of officers to chair any meeting is:

1. Chair
2. Vice-Chair

Section ~~65~~. Authority of Board of Commissioners or Staff Participation in Meetings. The Board of Commissioners may appear at meetings from remote locations through teleconferencing. All votes taken during a teleconferenced meeting shall be by roll call. Each teleconference location shall be identified in the notice and agenda of the meeting, and each teleconference location shall be accessible to the public. An agenda shall be posted at all teleconference locations. The agenda shall provide an opportunity for the members of the public to address the Board of Commissioners directly at each teleconference location. During a teleconference, at least a quorum of the Commissioners shall participate from locations within the boundaries of the Housing Authority's jurisdiction.

Staff may duly appear at meetings from remote locations through any use of direct communication, personal intermediaries, or technological devices.

Section ~~76~~. Quorum. ~~The powers of the Authority shall be vested in the Commissioners thereof in office from time to time~~. Four (4) Commissioners shall constitute a quorum for the purpose of conducting the Authority's business and exercising its powers and for all other purposes, but a smaller number or the Board of Commissioners or the Executive Director may adjourn from time to time until a quorum is obtained.

Section ~~87~~. Order of Business. At the regular meetings of the Authority, the following shall be the order of business:

1. Roll Call
2. Consideration of Late Additions and Changes to the Agenda
3. Consent Agenda
4. Oral Communication
5. Unfinished business
6. New Business
7. Written Correspondence
8. Report of Executive Director
9. Report from Board ~~Members~~ Commissioners
10. Closed session (if needed)
11. Report on closed session
12. Adjournment

Routine matters which normally require no discussion may be placed on a Consent Agenda. Any Commissioner or member of the public may require any item(s) to be removed from such Consent Agenda for discussion and action. All items remaining on such Consent Agenda will be voted on and passed by a single motion.

Business normally on the Consent Agenda will include Approval of Minutes. The Chair shall designate which items shall be placed on the Consent Agenda.



Section ~~98~~. Resolutions. Approved resolutions shall be entered in the record of the proceedings of the Authority.

Section ~~109~~. Manner of Voting. The voting on all questions coming before the Authority shall require approval by a majority of the quorum voting thereon, and the ayes and the noes shall be entered upon the minutes of each meeting.

Section ~~1140~~. Vacancy. A vacancy shall exist and shall be reported in writing by the Chair of the Commission to the Board of Supervisors, pursuant to Government Code Section 1770 et seq. A Commissioner vacates his or her seat whenever a Commissioner fails to attend three consecutive regular meetings without good cause entered in the minutes of the Board of Commissioners.

Any notice of resignation shall be submitted in writing to the Chair of the Commission and forwarded by the Chair of the Commission to the Board of Supervisors. Any vacancy caused by the death, incapacitation or any other circumstance shall be reported in writing by the Chair of the Commission to the Board of Supervisors.

#### **ARTICLE V. - COMMUNICATIONS**

Section 1. Website. The Housing Authority ~~may have~~shall maintain a website to provide information to the general public regarding activities, meetings and items of interest related to the Authority.

Section 2. Identification of Persons and/or Positions Authorized to Change Website. The Executive Director, and his/her designee(s), In addition to the Board of Commissioners, the following persons and/or positions are authorized to approve the initial composition and subsequent changes of substantive content to the Authority website: ~~the Executive Director~~. Changes of substantive content by other persons or positions shall require prior approval by the Executive Director ~~or the Board~~.

#### **ARTICLE VI – FINANCIAL PROCEDURES**

Section 1. Line Item Budget. The Board shall approve an annual line item budget detailing the expenditures intended for the upcoming year. Financial actions consistent with the budget are authorized to be performed by the Executive Director in conformance with the warrant procedure.

Section 2. Warrant Procedure. The Authority's warrants (checks) may be issued upon the signature of both the Executive Director or Deputy Executive Director and the Finance Director. Checks shall be stored in a locked cabinet at the Authority Offices. One Authority employee removes checks from the locked cabinet while being observed by a second designated employee who signs off on the ~~check numbers removed. The Executive Director and Finance Director shall each review and sign the check log at least monthly~~the number of checks allotted for the check run, and if applicable, the check

numbers listed on the checks. The Executive Director and the Finance Director shall review and approve the transactions.

The Finance Director shall keep regular books of accounts showing receipts and expenditures and shall render to the Authority annually (or more frequently when requested by the Authority Board of Commissioners), an account of his/her transactions and also of the financial condition of the Authority. The Executive Director and the Finance Director shall give such bond for the faithful performance of his/her duties as the Authority may determine.

Section 3. Procurement and Disposition Policy. Bids, contracts and property dispositions exceeding ~~\$100,000~~the HUD Simplified Acquisition Threshold of \$250,000 shall be presented to the Board for approval. Bids, contracts and property dispositions under ~~\$100,000~~250,000 shall follow the procurement and disposition policies adopted from time to time by the Board.

Section 4. Reimbursement for Seminars, Conferences, Workshops and Similar Events. Reimbursable attendance at a seminar, conference, workshop, or similar event directly related to Housing Authorities, by a Commissioner of the Board, shall first be approved by a majority vote of a quorum of the Board. Post-attendance reimbursement may be available in situations in which Board approval would not be available prior to the date of attendance. Other Authority official or employee reimbursement for such attendance may be authorized by the Executive Director within the travel line item in the budget approved by the Authority Board and in accordance with the policies adopted by the Board.

Section 5. Ethics Training. Pursuant to California Government Code Section 53235, all Commissioners are required to receive training in general ethics principles and ethics laws relevant to their public service. Commissioners must complete two hours of such ethics training within one year of their first day of service. Thereafter, each Commissioner shall receive at least two hours of ethics training every two years. The Authority will provide information on available ethics training opportunities to the Board at least once annually.

The Authority must keep records documenting the dates that each Commissioner satisfied his/her ethics training requirements and the entity that provided the training. Records of each ethics training activity must be kept on file for at least five years from the date of the activity.

## **ARTICLE VII – SIGNATURES ON INSTRUMENTS**

Section 1. Authority to Sign Certain Documents. The Executive Director is authorized to sign contracts, releases, receipts, and similar documents in the name of the Authority.

The Finance Director, ~~and Deputy Executive Director,~~ if designated in writing by the Executive Director or the Authority Board, is authorized to sign contracts, releases, and similar documents in the name of the Authority.

~~Section 2. Authority to Sign Checks (Warrants). See Article VI, Section 2.~~

## **ARTICLE VIII – RECORDS RETENTION**

Section 1. Record Retention Policy. The Authority Board of Commissioners shall adopt a records retention policy that adheres to the laws of the State of California and the U.S. Department of Housing and Urban Development rules regarding the retention of records.

## **ARTICLE IX – AMENDMENTS**

Section 1. Amendments to Bylaws. The Bylaws of the Authority shall be amended only with the approval of at least four (4) of the Commissioners of the Authority at a duly held meeting of the Authority Board.



**County of Santa Cruz Board of Supervisors  
Agenda Item Submittal**

**From:** Board of Supervisors: Administration  
(831) 454-2200

**Subject:** At-Large reappointment to the Housing Authority Board of Commissioners (Tenant Rep. over 62 Years)

**Meeting Date:** April 16, 2019

**Recommended Action(s):**

- 1) Accept nomination of Richard F. Schmale for reappointment to the Housing Authority Board of Commissioners, as an at-large tenant representative over 62 years of age, in accordance with Resolution No. 389-69, for a term to expire May 12, 2021; and
- 2) Return for consideration of final appointment on April 23, 2019.

**Executive Summary**

Accept nomination for reappointment to fill an at-large tenant representative over 62 years of age position on the Housing Authority Board of Commissioners.

**Background**

Based on the letter received, Richard F. Schmale has been nominated to serve an additional two-year term, as the at-large tenant representative over 62 years of age, with final appointment to be considered on April 23, 2019.

**Submitted by:**

Ryan Coonerty, Chair, Board of Supervisors

**Attachments:**

Letter of Housing Authority Board - Reappointment of Richard F. Schmale

**APPOINTED**  
4/23/19



---

2160 41st Avenue | Capitola, California 95010 | Tel: 831.454.9455 | Fax: 831.469.3712 | [www.hacosantacruz.org](http://www.hacosantacruz.org)  
Also serving Hollister and San Juan Bautista | Tel: 831.637.0487

April 8, 2019

Board of Supervisors  
County of Santa Cruz  
701 Ocean Street Suite 500  
Santa Cruz, CA 95060

RE: At-large vacancy on the Housing Authority of the County of Santa Cruz Board of Commissioners (Tenant Representative over 62 years of age)

Dear Members of the Board:

As you know the at-large term for the tenant representative (over the age of 62) to the Housing Authority of the County of Santa Cruz, Board of Commissioners currently held by Mr. Richard Schmale, will expire on May 12, 2019. I'm writing you today in support of Mr. Schmale's reappointment to this position.

Mr. Schmale has served as an engaged and active member of this body representing the views of participants in the Housing Choice Voucher Program (HCV). Retaining Mr. Schmale's knowledge and expertise with the agency would be an important asset for us. Mr. Schmale continues to be a tenant in good standing within our HCV program. I respectfully request the members of the Santa Cruz County Board of Supervisors consider Mr. Schmale for reappointment to the Housing Authority Board of Commissioners as an at-large tenant representative over 62 years of age. We look forward to having him serve a fifth term on our Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Panetta", written over a circular scribble.

Jennifer Panetta  
Secretary  
Board of Commissioners  
[jennyp@hacosantacruz.org](mailto:jennyp@hacosantacruz.org)  
(831)454-9455 x 231

## AGENDA ITEM SUMMARY

---

**MEETING DATE:** May 22, 2019

**ITEM NUMBER:** 8

**FROM:** Executive Director

---

**SUBJECT:** Executive Director's Report – May 22, 2019

---

**RECOMMENDATION:** Receive Report

---

### **BACKGROUND SUMMARY:**

Please call or e-mail me with questions you might have on any of the Agenda Items for the May 22, 2019 meeting. I would be happy to give you additional background or answer any of your questions in advance of the meeting. My direct phone number is (831) 454-5931 and my email address is [jennyp@hacosantacruz.org](mailto:jennyp@hacosantacruz.org).

**Housing Choice Voucher Waiting List Update:** The Housing Authority opened the Section 8 Housing Choice Voucher waiting lists for Santa Cruz County and the cities of Hollister / San Juan Bautista from October 17<sup>th</sup> – December 6<sup>th</sup> 2018. After the removal of duplicate applications, a total of 12,738 applicants were added to the Santa Cruz County waiting list, and 8,823 applicants were added to the waiting list for the cities of Hollister and San Juan Bautista. In early May, letters were sent to all applicants on the waiting lists to confirm their placement on the waiting list(s), and to inform them of their preference information and lottery numbers. Additionally, the top 1,000 local applicants on the Santa Cruz County list have been contacted to collect information about whether or not they may be eligible for the lease-in-place preference. All applicants on the prior waiting lists have been contacted and invited to submit applications. We expect to transition to the new waiting lists in the next few months. Once the software conversion is complete, we will reach out to all waiting list applicants again to inform them of the new waiting list portal, to instruct them to register on the portal, to update their address and preference information, and to inform them about the functionality of the new online portal.

**Proposed HUD Rule Requiring Legal Residency:** On May 10, 2019 HUD proposed new rules reinterpreting section 214 of the Housing and Community Development Act of 1980. The proposed rule would require 'responsible entities' who manage financial assistance from HUD under programs including LIPH, Section 8 and others, to require and submit immigration status documents through the Systematic Alien Verification for Entitlements (SAVE), run by Dept. of Homeland Security (DHS) on every applicant and participant. The proposed rule would require this submission at initial eligibility for applicants and new members added to households, and at the next regular reexamination for existing

participants who have not submitted evidence through SAVE. The proposed rule would require that if the family fails to submit evidence of eligibility status or if the evidence fails to establish eligible immigration status, then any household members without eligible immigration status must either leave the household or the responsible entity must deny or terminate assistance. Submitting a declaration not contending eligible immigration status would no longer be acceptable. Proration of assistance would no longer be available. The notice states “HUD believes that an individual without verified eligible status living in a mixed household receiving long-term prorated assistance is benefiting from HUD financial assistance in a way that is prohibited by Section 214.” The Housing Authority will submit comments to HUD opposing the proposed changes and will work with industry advocates such as CAHA and NAHRO.

**HUD Income Limits:** HUD has released new income limits for 2019 as of April 24, 2019. The income limits have increased approximately 10%, depending on income category and household size. HUD income limits determine income eligibility for the Section 8 and Low Income Public Housing programs. Therefore, as income limits increase, more families are income eligible for assistance. The new income limits are attached for your information.

**Housing Authority Agency Report: 50<sup>th</sup> Anniversary Edition:** Your packets today include the 50<sup>th</sup> Anniversary edition of the bi-annual Agency Report for 2019/2020. The report highlights many of our Agency’s accomplishments over the past 50 years, along with current success stories, infographics, a landlord profile, and a few other short articles about relevant topics such as our office move, our FMR study, the new vouchers we’ve received, and changes at Buena Vista Migrant Center. The Housing Authority’s “birthday” is July 31<sup>st</sup>. Once the dust settles from our software conversion and any issues with our new online portals are resolved, we will conduct additional community outreach to celebrate this milestone, distribute our agency report, and highlight agency successes with elected officials, non-profits, government agencies, landlords, and the general public.

**Legislative Update:** After a disappointing draft budget from the Trump Administration proposing deep cuts, the House and Senate Appropriations T-HUD subcommittees are working to develop their draft 2020 appropriations bills. Both sub-committees are expected to release their proposed appropriations bills in June.



# FY 2019 INCOME LIMITS DOCUMENTATION SYSTEM

[HUD.gov](#) [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

## FY 2019 Income Limits Summary

Selecting any of the buttons labeled "Explanation" will display detailed calculation steps for each of the various parameters.

FY 2019 Income Limit Area	Median Family Income	FY 2019 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
<b>San Benito County, CA HUD Metro FMR Area</b>	\$84,500	Very Low (50%) Income Limits (\$) <a href="#">Explanation</a>	35,700	40,800	45,900	<b>51,000</b>	55,100	59,200	63,250	67,350
		Extremely Low Income Limits (\$) * <a href="#">Explanation</a>	21,450	24,500	27,550	<b>30,600</b>	33,050	35,500	39,010	43,430
		Low (80%) Income Limits (\$) <a href="#">Explanation</a>	57,150	65,300	73,450	<b>81,600</b>	88,150	94,700	101,200	107,750

**NOTE:** San Benito County is part of the **San Benito County, CA HUD Metro FMR Area**, so all information presented here applies to all of the **San Benito County, CA HUD Metro FMR Area**. HUD generally uses the Office of Management and Budget (OMB) area definitions in the calculation of income limit program parameters. However, to ensure that program parameters do not vary significantly due to area definition changes, HUD has used custom geographic definitions for the **San Benito County, CA HUD Metro FMR Area**.

The **San Benito County, CA HUD Metro FMR Area** contains the following areas: San Benito County, CA;

\* The FY 2014 Consolidated Appropriations Act changed the definition of extremely low-income to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit or the poverty guideline as established by the Department of Health and Human Services (HHS), provided that this amount is not greater than the Section 8 50% very low-income limit. Consequently, the extremely low income limits may equal the very low (50%) income limits.

Income Limit areas are based on FY 2019 Fair Market Rent (FMR) areas. For information on FMRs, please see our associated FY 2019 [Fair Market Rent documentation system](#).





# FY 2019 INCOME LIMITS DOCUMENTATION SYSTEM

[HUD.gov](http://HUD.gov) [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

## FY 2019 Income Limits Summary

Selecting any of the buttons labeled "Explanation" will display detailed calculation steps for each of the various parameters.

FY 2019 Income Limit Area	Median Family Income \$	FY 2019 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
<b>Santa Cruz- Watsonville, CA MSA</b>	\$98,000	Very Low (50%) Income Limits (\$) <a href="#">Explanation</a>	42,950	49,100	55,250	<b>61,350</b>	66,300	71,200	76,100	81,000
		Extremely Low Income Limits (\$)* <a href="#">Explanation</a>	25,800	29,450	33,150	<b>36,800</b>	39,750	42,700	45,650	48,600
		Low (80%) Income Limits (\$) <a href="#">Explanation</a>	68,900	78,750	88,600	<b>98,400</b>	106,300	114,150	122,050	129,900

**NOTE:** Santa Cruz County is part of the **Santa Cruz-Watsonville, CA MSA**, so all information presented here applies to all of the **Santa Cruz-Watsonville, CA MSA**.

The **Santa Cruz-Watsonville, CA MSA** contains the following areas: Santa Cruz County, CA;

\* The FY 2014 Consolidated Appropriations Act changed the definition of extremely low-income to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit or the poverty guideline as established by the Department of Health and Human Services (HHS), provided that this amount is not greater than the Section 8 50% very low-income limit. Consequently, the extremely low income limits may equal the very low (50%) income limits.

Income Limit areas are based on FY 2019 Fair Market Rent (FMR) areas. For information on FMRs, please see our associated FY 2019 [Fair Market Rent documentation system](#).

For last year's Median Family Income and Income Limits, please see here:

[FY 2018 Median Family Income and Income Limits for Santa Cruz-Watsonville, CA MSA](#)