Part I
PBRA Housing Assistance Payments Contract for the Conversion of **Public Housing** to Project-Based Section 8 (Rental Assistance Demonstration Component 1)

U.S. Department of Housing and Urban Development
Office of Multifamily Housing Programs

Type of Financing at Time of Conversion:	Section 8 Project Number:	FHA Project Number (if applicable):

This contract is a housing assistance payments contract (HAP Contract) between the United States of America, acting through the Department of Housing and Urban Development (HUD), and _____ (Owner). The HAP Contract is subject to Notice PIH 2012-32 (HA), as revised or amended from time to time (or any successor document) ("RAD Notice"), including 24 C.F.R. Part 880 (as in effect November 5, 1979, as amended), as modified and as published in Appendix I of Notice PIH 2012-32 (HA).

1.1 Statutory Authority, Purpose of HAP Contract, and HAP Contract Terminology.

(a) **Statutory Authority.** The HAP Contract is entered pursuant to the Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 673 – 675 (Nov. 18, 2011); as amended by the Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 635 (Jan. 17, 2014); as further amended by the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2757 – 2758 (Dec. 6, 2014), as further amended from time to time; section 8 of the United States Housing Act of 1937 (Act), 42 U.S.C. 1437 et seq.; and the Department of Housing and Urban Development Act, 42 U.S.C. 3531 et seq.

(b) **Purpose.** The purpose of the HAP Contract is to effectuate the conversion of Public Housing to a Multifamily Housing project with Project-Based Rental Assistance under section 8 of the Act.

(c) **Terminology.** Terms in the HAP Contract that are not otherwise defined herein have the definition given in the RAD Notice, including those terms defined in Appendix I of the RAD Notice setting forth 24 C.F.R. Part 880 except as struck in part. Terms that are not defined in the RAD Notice (including Appendix I) shall have the meanings given in 24 C.F.R. Part 5, which applies pursuant to 24 C.F.R. § 880.104(d). In addition, "Year of Conversion" shall mean the time from the effective date of the HAP Contract through the end of that calendar year; "First Full Year" shall mean the first full calendar year of the HAP Contract beginning the year after the calendar year of the effective date.[1]

1.2 Scope; Assignability of HAP Contract; and HUD Requirements.

(a) **Scope of HAP Contract.** The HAP Contract consists of Part I, Part II, and the exhibits identified in section 1.4(d) of the HAP Contract, which are hereby incorporated into and made a part of the HAP Contract.

[1] To clarify, in cases in which a project converts in December and the effective date of the Contract is January 1, the Year of the Conversion is the calendar year starting on the effective date and the First Full Year begins the year following.

(b) **Assignability of HAP Contract.** HUD may assign the HAP Contract at any time to a public housing agency (PHA) for the purpose of PHA administration of the HAP Contract to the extent permitted under any Annual Contributions Contract (ACC) between HUD and the PHA. Unless and until HUD assigns the HAP Contract to a PHA, HUD shall be the Contract Administrator (CA) and, in that capacity, a party to the HAP Contract. Upon any assignment of the HAP Contract by HUD to a PHA, the PHA shall assume all the contractual obligations of HUD under the HAP Contract (or of any PHA to which HUD had previously assigned the HAP Contract) and shall replace HUD (or any PHA to which HUD had previously assigned the HAP Contract) as the CA and as a party to the HAP Contract during the ACC term.

(c) **HUD Requirements.** The HAP Contract shall be construed and administered in accordance with the RAD Notice. With the exception of the provisions of 24 C.F.R. Part 880 and section 8 of the Act that are identified in Appendix I and Appendix II of the RAD Notice, respectively, as inapplicable, the HAP Contract shall further be construed and administered in accordance with all statutory requirements and all HUD regulations and other requirements, including any amendments to and/or changes in statutory requirements, HUD regulations (including 24 C.F.R. Part 880), and other requirements. However, any changes in HUD requirements, except to the extent required by statute, that are inconsistent with the provisions of sections 2.5(a)(1) or 2.8 shall not be applicable.

(d) **Statutory Changes during Term.** If any statutory change during the term of the HAP Contract is inconsistent with section 2.5(a)(1) or 2.8 of the HAP Contract, and if HUD determines and so notifies the Contract Administrator and the Owner, that the Contract Administrator is unable to carry out the provisions of such sections because of such statutory change, then the Contract Administrator or the Owner may terminate the HAP Contract upon notice to the other party. Notwithstanding such termination, the project shall remain subject to the RAD Use Agreement encumbering the property on which the project is located.

1.3 Effective Date, Initial Term, and Funding For Initial Term of HAP Contract.

(a) **Effective Date and Initial Term.** The HAP Contract begins on _____ and shall run for an initial term of twenty (20) years.

(b) **Funding for Initial Term.**

(1) Funding for the Year of Conversion. In the Year of Conversion (as defined in 1.1(c)), the HAP Contract shall be funded only from public housing amounts obligated prior to the effective date of the HAP Contract, and from any additional public housing amounts that HUD obligates in full or in part, subject to the availability of sufficient appropriations, for the remainder of the calendar year in which the HAP Contract becomes effective. Owner acknowledges that this amount for the first year may be less than the contract rent for subsequent years.

(2) Funding for the Remainder of the Initial Term. Starting in the First Full Year (as defined in section 1.1(c)) and in each subsequent year in which the HAP Contract is effective, subject to the availability of sufficient appropriations, HUD will obligate funding in accordance with this HAP Contract and provide the Owner written notification of (i) the amount of such additional funding, (ii) the approximate period of time within the HAP Contract term to which it will be applied.

1.4 Fiscal Year, Project Description, Statement of Services, and Exhibits.

(a) **Fiscal Year.** The ending date of each Fiscal Year shall be _____.
(Insert March 31, June 30, September 30, or December 31, as approved by HUD.) The Fiscal Year for the project shall be the 12-month period ending on this date. However, the first Fiscal Year for the project is the period beginning with the effective date of the Contract and ending on the last day of the Fiscal Year. The project must comply with 24 CFR part 5, subpart H, as amended, revised, or modified by HUD.

(b) **Project Description** (Print or type the street address(es) and the number of units by bedroom size.).

(c) **Statement of Services, Maintenance and Utilities Provided by the Owner.**

(1) Services and Maintenance (check those included in rent):

☐Parking ☐Trash Removal ☐Nursing Care
☐Laundry Facilities ☐Swimming Pool ☐Tennis Courts
☐Linen/Maid Service
☐_____
☐_____
☐_____

(2) Equipment in Unit (check those included in rent):

☐Range ☐Dishwasher ☐Kitchen Exhaust Fan
☐Refrigerator ☐Carpet ☐Ceiling Fans
☐Air Conditioner ☐Drapes ☐_____
☐Disposal ☐Mini Blinds ☐_____

(3) Utilities (Check those included in rent. For each item, even those not included in rent, enter E, F, or G on line beside that item; E = electric; G = gas; F = fuel oil or coal):

☐Heating ☐Hot Water ☐Lights, etc.
☐Cooling ☐Cooking ☐Water/Sewer

(4) Other:

(d) **Exhibits.** The exhibits to the HAP Contract consist of the following:

(1) **Exhibit 1A**: Initial Schedule of Contract Units and Contract Rents;

(2) **Exhibit 1B**: Revised Schedule of Contract Units and Contract Rents (if applicable as the result of Tenant-Paid Utility Savings);

(3) **Exhibit 2**: Affirmative Fair Housing Marketing Plan; and

(4) **Exhibit 3**: Addendum to the HAP Contract—Labor Standards

1.5 Contract Rent Levels.

(a) **Initial Contract Rent Levels.** The initial Contract Rent for each contract unit shall be as stated in Exhibit 1A, which is attached to and made a part of the HAP Contract. Initial Contract Rents do not take effect until the First Full Year (as defined in Section 1.1(c)). As of the beginning of the First Full Year, and unless the Contract Rents are revised in accordance with section 1.5(b), the Contract Rent for each bedroom size (i.e., number of bedrooms) shall be the initial Contract Rent as reflected in Exhibit 1A.

(b) **Revised Contract Rent Levels.** If applicable as the result of Tenant-Paid Utility Savings in accordance with the provision of the RAD Notice governing such savings for Project-Based Rental Assistance Conversions (i.e., Attachment 1C of the RAD Notice), or successor provision, the revised Contract Rent for each contract unit shall be as stated in Exhibit 1B, which is attached to and made a part of the HAP Contract, and which shall be adjusted annually, or continue to be adjusted annually, in the manner prescribed in section 2.8 of the HAP Contract. The revised Contract Rents shall become effective on the first day of the month following the date on which HUD approves the cost certification submitted by the Owner after completion of the Work (as defined and set forth in the RAD Conversion Commitment (RCC)).

(c) **Year of Conversion Contract Rent**. During the Year of Conversion (as defined in Section 1.1(c)), the Owner is due subsidy in the amount described in Section 1.3(b)(1). Contract Rents shall equal such subsidy amounts plus any portions payable by Families in accordance with HUD regulations.

1.6 Contract Administrator's Obligation to Offer to Renew and Owner's Obligation to Accept Offers to Renew. The Contract Administrator and the Owner acknowledge and agree that upon expiration of the initial term of the HAP Contract, and upon expiration of each renewal term of the HAP Contract, the Contract Administrator shall offer to renew the HAP Contract and the Owner shall accept each offer to renew the HAP Contract, subject to the terms and conditions applicable at the time of each offer, and further subject to the availability of appropriations for each year of each such renewal.

1.7 Owner's Obligation to Operate Project. The Owner agrees to operate the project for the full initial term of the HAP Contract specified in section 1.3(a) and for each renewal term in accordance with the HAP Contract, the RAD Notice, all statutory requirements, and all HUD regulations and other requirements, including any amendments to and/or changes in statutory requirements, HUD regulations (including 24 C.F.R. Part 880), and other requirements.

1.8 Flood Insurance Applicability.

☐ If the preceding box is checked, the Owner agrees that the project will be covered, during the life of the property, regardless of transfer of ownership, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

Signature Page

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses any writing containing any materially false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of the executive branch of the Government of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

As evidenced by the signature below of their authorized representative, the Owner and HUD hereby agree to the terms of this HAP Contract, the scope of which is set forth in section 1.2(a) of the HAP Contract.

Owner

Name of Owner (Print or Type)

_____

By: _____
Signature of authorized representative

Name of Signatory (Print or Type)

_____

Official Title (Print or Type)

_____

Date (mm/dd/yyyy): _____

United States of America
Secretary of Housing and Urban Development

By: _____
Signature of authorized representative

Name of Signatory (Print or Type) Thomas R. Davis

_____

Official Title (Print or Type) Director, Office of Recapitalization

_____

Date (mm/dd/yyyy): _____

Exhibit 1A

Initial Schedule of Contract Units and Contract Rents

Number of Contract Units	Number of Bedrooms	Contract Rent	Utility Allowance	Gross Rent

[1]

Exhibit 1B

Revised Schedule of Contract Units and Contract Rents (if applicable)
[*after HUD-Approved Utility Allowances, as revised*]

Number of Contract Units	Number of Bedrooms	Contract Rent	Utility Allowance	Gross Rent

[1]

Exhibit 2

Affirmative Fair Housing Marketing Plan

Exhibit 3

Addendum to the HAP Contract—Labor Standards

This addendum is used for both the Project-Based Voucher HAP Contract and the Project-Based Rental Assistance ("PBRA") HAP Contract under the Rental Assistance Demonstration and is applicable for all construction or repair work on projects that are initiated within eighteen (18) months after the effective date of the HAP contract. For PBRA HAP Contracts, it is "Exhibit 4" to the HAP Contract.

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1. HUD-FEDERAL LABOR STANDARDS PROVISIONS

The owner is responsible for inserting the entire text of section 1 of this Addendum in all construction contracts for construction or repair work on the project that is initiated within eighteen (18) months of the effective date of the HAP contract and, if the owner performs any rehabilitation work on the project, the owner must comply with all provisions of section 1. (Note: Sections 1(b) and (c) apply only when the amount of the prime contract exceeds $ 100,000.)

(a)(1)(i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made part hereof regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's [12514] payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination

(including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the

classification requested is not performed by a classification in the wage determination; (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(1)(ii)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determinations or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the

contractors under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due.

(3)(i) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section l(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing

apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not

be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5 (a)(3)(i), and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the [12515] payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 3801 et seq. of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to

submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4)(i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions

of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and

individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR part 3 which are incorporated by reference in this Addendum.

(6) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in section 1(a)(1) through (11) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section 1(a).

(7) Contract Terminations; Debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

(10)(i) Certification of Eligibility. By entering into this Addendum, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR part 24. [12516]

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Addendum are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Addendum to his employer.

(b) Contract Work Hours and Safety Standards Act. The provisions of this paragraph (b) are applicable only where the amount of the prime contract exceeds $ 100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

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

(2) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for Unpaid Wages and Liquidated Damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

(c) Health and Safety. The provisions of this paragraph (c) are applicable only where the amount of the prime contract exceeds $ 100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

2. WAGE AND CLAIMS ADJUSTMENTS

The owner shall be responsible for the correction of all violations under section 1 of this Addendum, including violations committed by other contractors. In cases where there is evidence of underpayment of salaries or wages to any laborers or mechanics (including apprentices and trainees) by the owner or other contractor or a failure by the owner or other contractor to submit payrolls and related reports, the owner shall be required to place an amount in escrow, as determined by HUD sufficient to pay persons employed on the work covered by the Addendum the difference between the salaries or wages actually paid such employees for the total number of hours worked and the full amount of wages required under this Addendum, as well as an amount determined by HUD to be sufficient to satisfy any liability of the owner or other contractor for liquidated damages pursuant to section 1 of this Addendum. The amounts withheld may be disbursed by HUD for and on account of the owner or other contractor to the respective employees to whom they are due, and to the Federal Government in satisfaction of liquidated damages under section 1.

3. EVIDENCE OF UNIT(S) COMPLETION; ESCROW

(a) The owner shall evidence the completion of the unit(s) by furnishing the Contract Administrator a certification of compliance with the provisions of sections 1 and 2 of this Addendum, and that to the best of the owner's knowledge and belief there are no claims of underpayment to laborers or mechanics in alleged violation of these provisions of the Addendum. In the event there are any such pending claims to the knowledge of the owner, the Contract Administrator, or HUD, the owner will place a sufficient amount in escrow, as directed by the Contract Administrator or HUD, to assure such payments.

(b) The escrows required under this section and section 2 of this Addendum shall be paid to HUD, as escrowee, or to an escrowee designated by HUD, and the conditions and manner of releasing and approving such escrows shall be approved by HUD.