

APPENDIX I
FORM OF HAS MUNICIPAL AGREEMENT
CONTRACT FOR THE PROVISION OF UNIFORM HOUSING
AFFORDABILITY CONTROL SERVICES

THIS AGREEMENT is made on the _____ day of _____, 20___, by and between the State of New Jersey (the “State”), acting by and through the Housing Affordability Service (“HAS”) in the New Jersey Housing and Mortgage Finance Agency (“Agency”) and _____, as administrative agent for the municipality of _____, _____ County, New Jersey (the “Municipality”).

WITNESSETH

WHEREAS, pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (the “Act”), the Municipality is implementing or has implemented a program to provide affordable housing units to very-low-, low-, and moderate-income households desiring to live within the Municipality; and

WHEREAS, the Agency has promulgated housing affordability controls regulations, codified in the New Jersey Administrative Code at N.J.A.C. 5:80-26.1 et seq. (the “UHAC Regulations”), to implement the Act by ensuring that low- and moderate-income housing units that are created under the Act are occupied by very-low-, low-, and moderate-income households for appropriate periods of time; and

WHEREAS, N.J.A.C. 5:80-26.15 provides that affordability controls are to be administered by an administrative agent acting on behalf of a municipality, and provides further that the municipality shall designate or approve such administrative agent; and

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WHEREAS, the Municipality has designated HAS to be the administrative agent for the purposes of providing affordability control services for all affordable housing units within the Municipality,

NOW, THEREFORE, HAS and the Municipality hereby agree as follows:

Section 1. Term

This Agreement is effective as of the ____ day of _____, 20__, for a term of three (3) years, terminating at the close of business on the ____ day of _____, 20__, subject to the termination and renewal provisions set forth at Section 5 below.

Section 2. Applicability and Supersession

This Agreement defines and governs all terms between the parties with respect to affordability controls for affordable housing units provided pursuant to the Act and supersedes all prior agreements or documents related thereto. HAS and the Municipality acknowledge that pursuant to the UHAC Regulations, the State is acting hereunder primarily as an agent of the Municipality. Anything herein to the contrary notwithstanding, the Municipality hereby delegates to HAS, and HAS hereby accepts, primary responsibility for enforcing substantive provisions of the Act and the UHAC Regulations.

Section 3. Exclusions

This Agreement does not apply to units funded under

- a. The Federal Low-Income Housing Tax Credit program established pursuant to Section 42 of the Internal Revenue Code;
- b. The Federal HOME program, 24 C.F.R. § 92.252(e), § 92.254(a)(4);
- c. The National Housing Trust Fund program, 24 C.F.R. Part 891;
- d. The HUD 202 program, 24 C.F.R. Part 891;
- e. The HUD 811 program, 24 C.F.R. Part 891;

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- f. The HUD HOPE VI program;
- g. The Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 1291; or
- h. Any other program excluded pursuant to the Act or the UHAC Regulations.

Section 4. Termination and Renewal

- a. This Agreement may be terminated by either party by giving sixty (60) days advanced written notice to the other party, to the address and in the form as set forth in Section 8, below; provided, however, that no such termination may take effect unless and until a successor administrative agent has been selected by the Municipality, approved by all required governmental authorities, and executed an agreement substantially in the form hereof with the Municipality.
- b. Unless terminated, this Agreement shall automatically be renewed for two (2) successive terms of two (2) years each. The Municipality shall pay the Agency at the Agency's then current rate during such successive term(s).

Section 5. Exclusivity of Agreement; Project Amendments

- a. For the term hereof, and without exception, this Agreement will govern the provision of affordability control services for all projects and units located within the Municipality that are within the jurisdiction of the Act and/or the UHAC Regulations.
- b. Individual projects for which affordability control services are to be provided hereunder shall each be evidenced by a contract amendment ("Project Amendment") that has been executed by HAS, by the Municipality, and by the project developer. All such Project Amendments must be in the specific form set forth as Exhibit A hereto.
- c. The annexation of a fully executed original of a Project Amendment to HAS' original of this Agreement is a condition precedent to the provision of any affordability control services to the related project.

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Section 6. Responsibilities of HAS

HAS shall perform all of the duties and responsibilities of an administrative agent as set forth at N.J.A.C. 5:80-26.15 and elsewhere in the UHAC Regulations, including those set forth at N.J.A.C. 5:80-26.17 and 26.19, as such rules may from time to time be amended.

Section 7. Responsibilities of the Municipality

The Municipality shall:

- a. Provide to HAS the name, title, email address, and telephone number of the municipal official or such other individual(s) who will be responsible for liaison with HAS on all matters related to this Agreement;
- b. Use its best efforts to ensure that applicable local ordinances are not in conflict with the Act, the UHAC Regulations, or the provisions of this Agreement;
- c. Ensure that all restricted units are identified as affordable within the tax assessor's office and any municipal utility authority (MUA). The Municipality and MUA shall promptly notify HAS of a change in billing address, payment delinquency of two or more billing cycles, transfer of title, institution of a writ of foreclosure, or any other event of which they become aware that indicates any applicable unit is not being, or may in the future not be, used as housing for very-low-, low-, or moderate-income persons with respect to any affordable units.
- d. Provide all reasonable and necessary assistance to HAS in support of efforts to enforce provisions of the Act, the UHAC Regulations, deed covenants, mortgages, court decisions, or other authorities governing the affordability control services to be provided pursuant to this Agreement.

Section 8. Notices

All notices and other written communications between HAS and the Municipality shall be to the addresses and personnel specified below:

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if to HAS:

New Jersey Housing and Mortgage Finance Agency
Housing Affordability Service
637 South Clinton Avenue
P.O. Box 18550
Trenton, NJ 08650-2085

if to the Municipality:

...

....

....

Attn:

Section 9. Non-Waiver of Conditions

The failure of either party to insist upon strict performance of any provision of this Agreement in any one or more instances does not constitute a consent to waiver of or acceptance of any other different or subsequent breach of the same or other provision, nor as a result thereof does either party relinquish any rights it may have under this Agreement. No terms or provisions hereof shall be deemed waived and no breach accepted unless such waiver or consent is in writing and signed by an authorized individual acting on behalf of the consenting or waiving party

Section 10. Incorporation of Standard State Conditions

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Exhibit B, the general provisions required to be included in this Agreement by the Office of the Attorney General, “ _____,” is hereby incorporated into and made a part of this Agreement.

Section 11. Priority of Documents

Should a conflict or inconsistency exist between the terms of this Agreement, including Exhibit A, and Exhibit B, incorporated herein by reference, the conflict or inconsistency shall be resolved by giving precedence to this Agreement, including Exhibit A.

Section 12. Merger and Amendment

This written Agreement, together with Exhibits A and B, constitutes the entire agreement between the parties with respect to the matters covered herein, and no other written or oral communication will bind the parties with respect thereto, provided, however, that this Agreement may be modified by written amendments clearly identified as such and signed by duly authorized representatives on behalf of both HAS and the Municipality.

Section 13. Partial Invalidation of Agreement

If any provision of this Agreement is determined or adjudged to be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions will remain in full force and effect.

IN WITNESS WHEREOF, HAS and the Municipality have executed this Agreement as of the date first above written.

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

BY: _____

Title

THE MUNICIPALITY OF _____

BY: _____

Title

ACKNOWLEDGEMENTS

On this the ____ day of _____, 20__ before me came _____, to me known and known to me to be the _____ of the New Jersey Housing and Mortgage Finance Agency (the “Agency”), who stated that they signed this Agreement on behalf of the Agency for the purposes stated therein.

NOTARY PUBLIC

On this the ____ day of _____, 20__, before me came _____ known and known to me to be _____ of _____, the Municipality identified as such in the foregoing Agreement, who stated that they are duly authorized to execute this Agreement on behalf of the Municipality, and that they have so executed the Agreement for the purposes stated therein.

NOTARY PUBLIC