updated January 2006

APPENDIX I

# FORM OF HAS MUNICIPAL AGREEMENT

## CONTRACT FOR THE PROVISION OF HOUSING AFFORDABILITY CONTROL SERVICES

*THIS AGREEMENT*, entered into as of this the ___ day of _____, 20___, by and between the STATE OF NEW JERSEY (the "State"), acting by and through the New Jersey Housing and Mortgage Finance Agency, with offices at 637 South Clinton Avenue in the City of Trenton, County of Mercer and State of New Jersey, ("Agency"), and _____ a municipality and instrumentality of the State, acting by and through its _____, who has offices at _____(the "Municipality").

WITNESSETH

*WHEREAS*, under authorization of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, *et seq*., hereinafter the "Act") the Municipality is implementing a program to provide affordable housing units to low and moderate-income households desiring to live within the Municipality;

*WHEREAS*, at Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code, the State has promulgated affordability controls in regulations designed to implement the Act, by assuring that low and moderate-income units that are created under the Act are occupied by low and moderate-income households for an appropriate period of time (the "Rules");

*WHEREAS*, Section 5:80-26.14 of the Rules provides that affordability controls are to be administered by an administrative agent acting on behalf of a municipality, and provides further that a municipality may select the Agency's Housing Affordability Service ("HAS") to administer such controls; and

*WHEREAS*, the Municipality has selected HAS to be the administrative agent for the purposes of providing affordability control services for all affordable housing constructed and to be constructed within the Municipality,

*NOW THEREFORE*, the State and the Municipality hereby agree to the following terms and conditions:

Section 1. Term

This Agreement shall become effective as of the ___ day of _____, 20___, and shall have a term of three (3) years, terminating at the close of State business on the ___ day of _____, 20___, subject to the termination and renewal provisions set forth in *Section 5*, below..

Section 2. Applicability and Supersession

This Agreement shall define and govern all terms between the parties with respect to affordability controls for affordable housing units provided under the Act, and shall supersede all prior agreements or documents related thereto.

Section 3. Exclusions

This Agreement shall not apply to units funded under:

a. The Federal Low-Income Housing Tax Credit program under 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 HUD 202 program, 24 C.F.R. Part 891;

d. The HUD 811 program, 24 C.F.R. Part 890;

e. The HUD HOPE VI program;

f. Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 60; or

g. Or any other program excluded under the Rules.

Section 4. Agency and Enforcement Delegation

The State and the Municipality acknowledge that under the Rules the State is acting hereunder primarily as an agent of the Municipality. Anything herein to the contrary notwithstanding, however, the Municipality hereby delegates to the State, and the State hereby accepts, primary responsibility for enforcing substantive provisions of the Act and the Rules.

Section 5. Termination and Renewal

a. The Agreement may be terminated by either party, by giving six (6) months advanced written notice to the other, to the address and in the form as set forth in *Section 15*, below, provided however, that no such termination may take effect unless and until an alternate administrative agent has been selected by the Municipality and approved by all required governmental authorities.

b. Unless terminated, this Agreement shall automatically be renewed for two (2) successive terms of three (3) years each.

Section 6. Exclusivity of Agreement, Project Amendments

a. For the term hereof, and without exception, this Agreement shall govern the provision of affordability control services for all projects located within the Municipality that fall under the jurisdiction of the Act.

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 the State, by the Municipality and by the project developer. All such Project Amendments shall be in the specific form set forth as *Exhibit A*, hereto.

c. The annexing of a fully executed original of a Project Amendment to HAS' original of this Agreement shall be a condition precedent to the provision of any affordability control services to the related project.

Section 7. Responsibilities of The State

The State shall perform or assign all of the duties and responsibilities of an administrative agent as are set forth in the Rules, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, as such Rules may from time to time be amended.

Section 8. Responsibilities of The Municipality

The Municipality shall:

a. Provide to the State the name, title and telephone number of the municipal official who shall be responsible for liaison with the State on all matters related to this Agreement;

b. Use its best efforts to ensure that applicable local ordinances are not in conflict with either the Rules 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 the administrative agent of a change in billing address, payment delinquency of two billing cycles, transfer of title, or institution of a writ of foreclosure on all affordable units.

d. Provide all reasonable and necessary assistance to the State in support of efforts to enforce provisions of the Act, the Rules, deed covenants, mortgages court decisions or other authorities governing the affordability control services to be provided under the Agreement.

Section 9. Notices

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

if to the State:

New Jersey Housing and Mortgage Finance Agency
Housing Affordability Service
637 South Clinton Avenue
Trenton, NJ 08650-2085

if to the Municipality:

....
....
....
Attn: .....

Section 10. 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 shall not constitute a consent to waiver of or excuse for any other different or subsequent breach of the same of other provision, nor as a result shall either part relinquish any rights which it may have under this Agreement. No terms or provisions hereof shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the waiving party.

Section 11. Incorporation of Standard State Conditions

*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 12. Priority of Documents

Should a conflict or inconsistency exist between the terms of this Agreement and *Exhibits A,* and *B,* incorporated herein by reference, said conflict or inconsistency shall be resolved by giving precedence to the Agreement and Exhibits in the following order:

1. Agreement (Including *Exhibit A*)
2. *Exhibit B* (State Conditions)

Section 13. Merger and Amendment

This written Agreement, together with its Exhibits, constitutes the sole agreement between the parties with respect to the matters covered therein, and no other written or oral communication exists which shall bind the parties with respect thereto, provide however that this Agreement may be modified by written amendments clearly identified as such and signed by both the State and the Municipality.

Section 14. Partial Invalidation of Agreement

Should any provision of this Agreement be deemed or held to be invalid, ineffective or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect.

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

THE STATE OF NEW JERSEY
HOUSING AND MORTGAGE FINANCE AGENCY

BY:

_____

xxxxxxxxxxxxx
Title

updated January 2006

THE MUNICIPALITY OF_____

BY_____

xxxxxxxxxxxxx

Title

*ACKNOWLEDGEMENTS*

On this the day of , 20 before me came _____, to me known and known to me to be the _____ of the Housing and Mortgage Finance Agency of the State of New Jersey, who states that (s)he has signed said Agreement on behalf of said State 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 states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein.

_____

NOTARY PUBLIC