

Energy Performance Contract
Section 30
Reviews and Approvals
Guidebook

U.S. Department of Housing and Urban Development
Public and Indian Housing – Office of Field Operations (PIH-OFO)

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Introduction

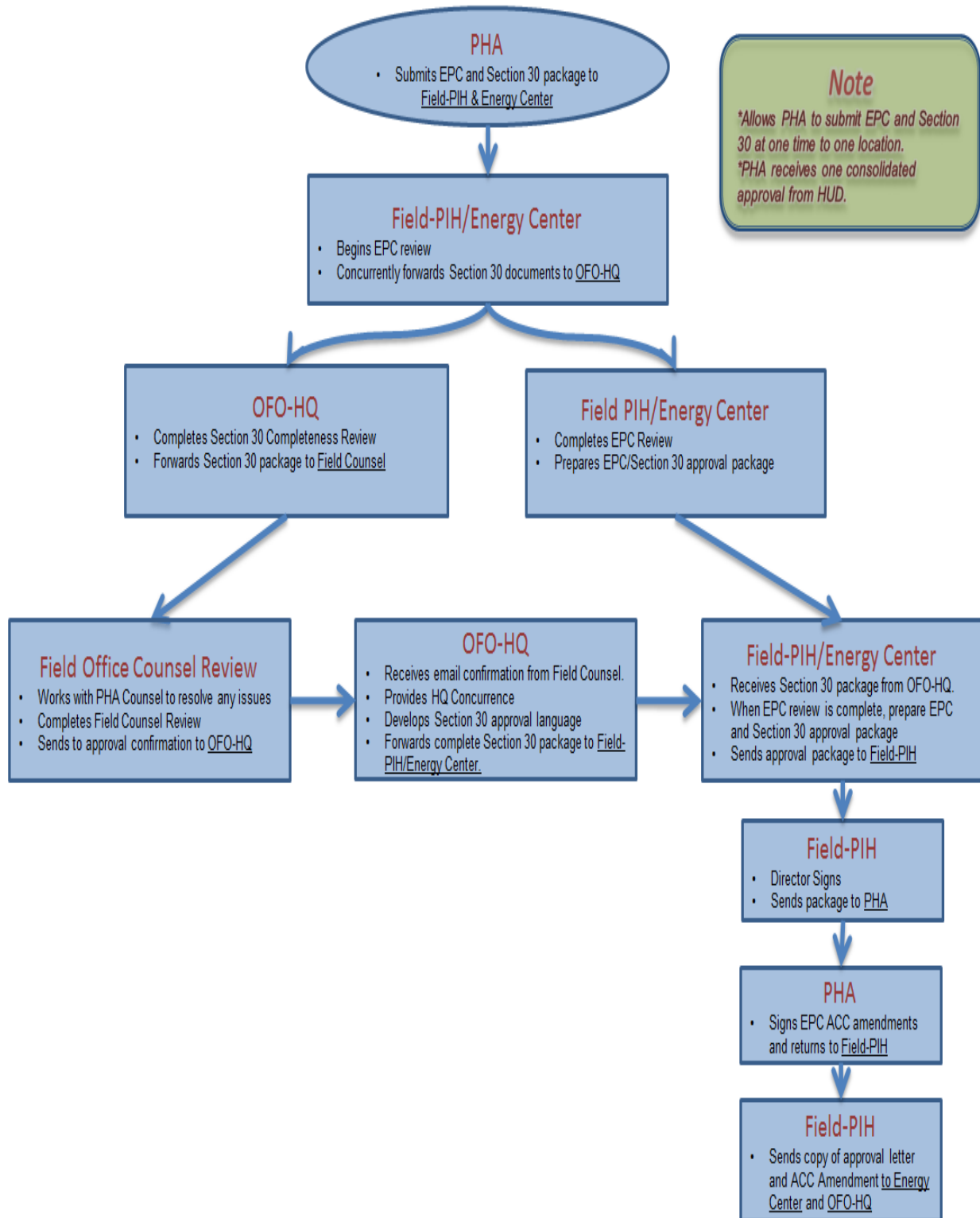
When a Public Housing Authority (PHA) requests an Energy Performance Contract (EPC) approval from the U.S Department of Housing and Urban Development (HUD), it can also be required to submit a Section 30 approval request. A PHA's EPC may require a financing transaction that involves a security interest or other encumbrance in public housing property. In these cases, PHAs are required to obtain written approval from HUD of the security interest or encumbrance pursuant to Section 30 of the U.S. Housing Act of 1937 (1937 Act). In situations where ownership of the equipment resides with the PHA and a lien or other encumbrance exists on the equipment, a Section 30 approval is necessary.

PHAs are required to send Section 30 proposals as part of the EPC proposal to Public and Indian Housing (PIH) Field Offices and the HUD Energy Center. Field-PIH or the Energy center will then forward the Section 30 package to HUD Office of Field Operations (OFO-HQ) program staff to review the contents of the proposal and coordinate concurrence from Field Office Counsel. If the submission is approvable, OFO-HQ will develop the EPC Section 30 approval language for inclusion in the EPC approval letter and ensure that the Energy Performance Contract ACC Amendment to the Consolidated Annual Contributions Contract is executed by the PHA and Field Office Director. This allows for the PHA to receive one consolidated approval letter from HUD for the entire EPC project.

HUD's Section 30 review focuses narrowly upon the security interest or encumbrance, and does not evaluate or approve the financing. HUD approval of EPCs and associated Energy Services Agreements do not constitute approval of the security interests and therefore a separate Section 30 approval must be obtained.

Under some lease-purchase agreements (otherwise known as municipal leases, the typical financing structure for an EPC), ownership of the equipment may reside with the third party, e.g., a bank, ESCo, etc. Under this scenario, where the ownership resides with a third party, a Section 30 approval is not required.

Section 30 Process Chart



Section 30 Required Submission Documentation

Exhibit Draft Attachment	Required Documentation
A	<ul style="list-style-type: none"> • Copies of <u>current</u> (i.e., have not expired and will not expire during the term of the EPC) and <u>effective</u> (i.e., no liens or encumbrances prior to the Declarations of Trust) Modernization DOT (form HUD-52190-B) for Non-Mixed Finance public housing properties <ul style="list-style-type: none"> ○ Project Dates must be present in the HUD-52190-B forms: <ul style="list-style-type: none"> Date the PHA entered into the overall public housing ACC, form box (3) and Date of the Last Capital Fund ACC Amendment (Annual ACC Amendments obligating a FY of Capital Funds), form box (4).
(As required)	<ul style="list-style-type: none"> • Copies of current and effective Declarations of Restrictive Covenants (DORCs) for mixed finance public housing properties.
B	<ul style="list-style-type: none"> • PHA Section 30 Approval Request Letter describing financing and security interest or encumbrance and requesting HUD's approval.
C	<ul style="list-style-type: none"> • PHA's Legal Counsel Opinion opining that: <ul style="list-style-type: none"> ○ 1) The PHA has authority to enter into the transaction, ○ 2) The applicable security interests or encumbrances have been or will be recorded to the property subject to the financing, ○ 3) The transaction complies with the requirements of the 1937 Act, as amended, federal regulations, and the ACC, as amended, and ○ 4) The PHA will enter into an EPC ACC Amendment.
D	<ul style="list-style-type: none"> • Board resolution authorizing the PHA to: <ul style="list-style-type: none"> ○ Undertake the EPC financing, ○ Enter into all financing documents, ○ provide all security interests or encumbrances associated with EPC, and ○ The Executive Director or other executive staff to negotiate/sign all legal documents.
E	<ul style="list-style-type: none"> • Matrix for each project on which a security interest or encumbrance is requested listing: <ul style="list-style-type: none"> ○ Project Name, ○ Project Number, ○ Address (building addresses and or site descriptions), AND ○ Description of security interest or encumbrance being provided, identification of how/when security interest will be released, etc.
F	<ul style="list-style-type: none"> • Schedule that provides the following information for the loan relative to the term of the EPC: <ul style="list-style-type: none"> ○ Amount of the loan; ○ Term of the loan (years); ○ Interest rate; ○ Interest rate fixed? (y/n); ○ Loan fully amortizing? (y/n); ○ Prepayment permitted? (y/n); ○ Lockout period? (y/n); if lockout period, term (years); and ○ Description of any yield maintenance provision (prepayment penalties are not permitted).

G	<ul style="list-style-type: none"> • And <u>ONE</u> of the following options: <ul style="list-style-type: none"> ○ PHA counsel certification that DOTs encumber all non-mixed finance PH properties (subject to security interest or other encumbrances) and Modernization DOTs are recorded prior to security interest, and will be effective for financing term, ○ When PHA counsel certification is unavailable, PHA may submit title report with a certification from PHA that DOTs and title report cover all public housing properties, both real and personal property, that will be subject to security interest or encumbrances related to the EPC.; OR, ○ PHA counsel certification that DORCs represent all mixed finance PH properties subject to security interest and DORCs are recorded prior to security interest, and will be effective for financing term.
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Submission Steps

PHA Submission

To obtain Section 30 approval related to an EPC transaction, PHAs must submit Section 30 approval documents to both the appropriate HUD Field Office and the Energy Center.

1. Create a Section 30 submission package that includes:
 - a. Copies of current and effective Modernization Declarations of Trusts (DOTs)
 - b. Copies of current and effective Declarations of Restrictive Covenants (DORCs) (*as needed*)
 - c. PHA Section 30 Approval Request letter
 - d. PHA Legal Counsel Opinion on the transaction
 - e. Board Resolution authorizing EPC financing
 - f. Matrix describing details for each project for which the security interest is granted
 - g. Loan Schedule with details on the loan relative to the EPC
 - h. PHA Counsel Certification that the DOTs or DORCs represent all proprieties subject to security interest or other encumbrances
2. Submit the Section 30 documents with the EPC submission to the appropriate HUD PIH Field Office and the Energy Center
 - a. Email submissions to the HUD Energy Center, directed to Anthony Misercola: OFOEnergyCenter@hud.gov

Completeness Review

Once the package is received, the PIH Field Office or the Energy Center will begin the EPC review while concurrently forwarding the Section 30 documents to OFO-HQ. OFO-HQ will then conduct a Completeness Review of the submission to ensure that all required documentation is present and complete. Once this review is complete, the package will go to the appropriate Field Counsel for their review.

1. All submission documents are accounted for and complete

- a. Refer to submission document list and Completeness Review checklist for more information
2. Forward Documents to proper Field Counsel office for concurrence

Field Office Counsel Review

Field Office Counsel shall review the DOTs, and PHA counsel opinions (or in the alternative, a title report) and provide an e-mail confirmation to OFO-HQ.

1. Review the DOTs and PHA Counsel opinions for two things:
 - a. That they have current DOTs on all of the PHA's public housing property, cover the entire period of the financing and that there are no encumbrances ahead of the DOTs
 - b. The Counsel's opinion meets the requirements of section 6 of the EPC ACC Amendment
2. Provide approval in a memo to OFO-HQ, the Field Office PIH Director, or whomever you received the request from
 - a. Evidence of approval will be stated in the HUD Approval Letter

If PHA's attempt to deviate from the standard language in the EPC Amendment, it must come to PIH and OGC HQ for approval. This process is designed to keep most of the review and approval in the Field Counsel Offices and within the PIH Office of Field Operations.

HQ Concurrence and Approval

After the Field Counsel has confirmed their concurrence, OFO-HQ will coordinate HUD HQ concurrence; develop approval language and the ACC amendment.

1. Obtain internal concurrence with Office of General Counsel HQ and the Director of OFO
2. Develop the approval language for inclusion in the final EPC approval letter
 - a. The language should approve only those security interests requested by the PHA and intended to be approved by the Field Office
3. Develop ACC amendment
4. Forward completed language to the Field Office PIH/Energy Center who will incorporate it into their final approval letter

Once the approval letter for both the EPC and Section 30 is complete, it along with an updated ACC amendment will go to the appropriate field office for the Director's signature and execution to the PHA.

5. Sent Final Approval letter for EPC and Section 30 to Field Office Public Housing Director
6. Public Housing director has signed the ACC amendments on behalf of HUD
7. PHA Director has signed ACC amendment and returned to the Field Office
8. One fully executed ACC amendment has been returned to the PHA, another has been placed in the PHA's ACC amendment file, and another has been sent to OFO-HQ

The OFO-HQ shall retain all other documents associated with the PHA's Section 30 review and approval.

Contacts

If you have any questions or concerns regarding section 30 proposals, please contact:

[OFO-HQ Contact](#)

Andrew Erwin, Program Analyst

(202) 402-5647

Andrew.H.Erwin@hud.gov

[HQ-OGC Contact](#)

Vickie Longosz, Senior Attorney

(202) 402-5266

Vickie.S.Longosz@hud.gov

[Energy Center Contact](#)

Anthony Misercola, Quality Assurance Specialist

(716) 551-5755

OFOEnergyCenter@hud.gov

PIH Field Office Directory:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/about/field_office

Exhibit A - Declarations of Trust Example

COPIES OF MODERNIZATION DECLARATIONS OF TRUST (FORM HUD-52190-B)

<http://www.hud.gov/offices/adm/hudclips/forms/files/52190-b.pdf>

AUTHORITY'S COUNSEL CERTIFICATION

In regard to the Section 30 Approval Request of the Housing Authority of the **XXXX** (the "Authority") for its Energy Performance Contract ("EPC") with _____ (please see the opinion letter of even date herewith regarding same), the undersigned counsel for the Authority does hereby certify that a current and effective Modernization Declaration of Trust (Form HUD-52190-B) is recorded at the [NAME OF RECORDING OFFICE] in [BOOK/PAGE #], against all currently held real estate and Projects numbered _____, _____, and _____ of the Authority and that the security interest and all encumbrances related to the EPC will be subject to said Declaration of Trust as currently recorded and that such security interest and encumbrances are and will be subject to any future Modernization Declaration of Trusts during the term of the financing of the EPC.

Dated this ____ day of _____, 2011.

[NAME OF FIRM]

Printed Name: _____

Exhibit B - Approval Request Letter Example

August 28, 2013

Chicago HUD Office
Director, Office of Public Housing
U.S. Department of Housing and Urban Development
Chicago, IL

Re: PHA Section 30 Approval for an EPC

Dear PIH Director,

Attached is the request for Section 30 approval for the **XXXX** Housing Authority (the "Authority") Energy Performance Contract (EPC). On **XXXX** 2013, HUD approved the EPC. We are attaching a copy of the EPC approval letter to comply with the HUD revised EPC/Section 30 approval process.

We believe that the Section 30 submission is complete and satisfies HUD policies and requirements, specifically, HUD Notice P1H-2011-36 (HA) issued July 8, 2011 (the "Guidance") and the most recently published Section 30 Completeness Checklist. See attachment A.

Accordingly, we request your approval of the security interest described in this submittal to enable the PHA to begin construction and installation of heating equipment prior to the onset of fall/winter.

In accordance with the requirements of the most recent guidance, this submittal is being made in electronic format.

Please let me know if you have any questions or require any additional information. My tenants, commissioners, staff; community and I will deeply appreciate your prompt attention to this matter. We look forward to hearing from you soon. Thank you very much for your assistance.

Sincerely,

Executive Director

Copy to:

Anthony Misercola, HUD – Energy Center
Andrew Erwin, HUD – Office of Field Operations

Exhibit C - PHA Legal Counsel Opinion Example

[*NOTE THIS AND OTHER TEMPLATES ARE FOR ESCO SUPPORTED EPCS, APPROPRIATE LANGUAGE CHANGES SHOULD BE USED FOR SELF-MANAGED EPCS]

AUTHORITY'S COUNSEL OPINION LETTER

[TO BE PLACED ON AUTHORITY COUNSEL'S LETTERHEAD]

_____, 2013

Chicago HUD Office
Director, Office of Public Housing
U.S. Department of Housing and Urban Development
Chicago, IL

Re: Housing Authority of the City of **XXXX** Section 30 Approval

Dear Mr. **XXXX**:

We have acted as counsel to Housing Authority of **XXXX** ("PHA") in connection with the Energy Performance Agreement ("EPA") transaction between PHA and **XXXX** (the "Transaction").

In rendering the opinions set forth below, we have examined and relied upon (a) the statutes of the State of **XXXX**; (b) Articles of Agreement and Bylaws of PHA; (c) Resolutions of PHA of at or near even date; (d) Certificate of Existence for PHA of at or near even date and issued by the **XXXX** Secretary of State; and (e) the Master Equipment Lease-Purchase Agreement duly executed by PHA, as Lessee which has been incorporated by reference into Equipment Schedule No. 01, each between the PHA, as Lessee and **XXXX** (PHA), as Lessor, the form of the Certificate of Acceptance and Payment Request attached to Equipment Schedule No. 01, the Custodial Agreement among **XXXX**, as Lessor, **XXXX** (PHA), as Lessee and Bank of **XXXX**, as custodian (hereinafter collectively referred to as the "Transaction Documents"). In addition, we have examined such other certificates, documents and materials and have made such other investigation and inquiries as we have deemed necessary in connection with this opinion.

The opinions hereinafter expressed are qualified to the extent that the validity or enforceability of any provisions in the Transaction Documents, or of any rights granted pursuant thereto, may be subject to and affected by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights or creditors generally. Furthermore, no opinion is expressed as to whether any provisions thereof are specifically enforceable in equity.

Chicago HUD Office
Director, Office of Public Housing
U.S. Department of Housing and Urban Development
Chicago, IL
Re: **XXXX** Housing Authority

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Based on the foregoing, and subject to the conditions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. **XXXX** (PHA) is a public body, corporate and politic, duly organized and validly existing under the laws of Illinois, with powers adequate to own its properties, and to carry on business as presently conducted by it.
2. **XXXX** (PHA) has full power and authority to authorize the execution and delivery of the Transaction Documents to which it is a party.
3. The Transaction Documents to which **XXXX** (PHA) is a party have been duly authorized by all necessary action and, when executed and delivered by **XXXX** (PHA), the Transaction Documents will constitute legal, valid, and binding obligations of **XXXX** (PHA) enforceable in accordance with their respective terms.
4. **XXXX** (PHA) has the authority to enter into the Transaction and provide a copy of the Transaction Documents, and the Transaction complies with the requirements of the U.S. Housing Act of 1937, as amended, federal regulations, and the Annual Contributions Contract, as amended, between **XXXX** (PHA) and the Secretary of Housing and Urban Development.
5. The execution and delivery by **XXXX** (PHA) of the Transaction Documents and the performance by **XXXX** (PHA) of its obligations under the Transaction Documents will not constitute a default, or conflict with or violate the provisions of PHA's organizational documents or Bylaws, or to the best of our knowledge, any indenture, mortgage, deed of trust, contract, agreement, instrument, order of judgment to which **XXXX** (PHA) or any of its property is now bound.
6. To the best of our knowledge, under existing law, no approval, authorization or other action by, or filing with, any federal, state, municipal or other governmental commission, board or agency, is required in connection with the execution and delivery by **XXXX** (PHA) of the Transaction Documents, the borrowing of money pursuant to the Transaction Documents, or the performance of any other transaction contemplated by the Transaction Documents to be performed by **XXXX** (PHA).

Chicago HUD Office
Director, Office of Public Housing
U.S. Department of Housing and Urban Development
Chicago, IL
Re: **XXXX** Housing Authority

August 28, 2013 Page Three

7, There is no action, suit, proceeding or investigation pending, or, to the best of our knowledge, threatened, against **XXXX** (PHA) which if adversely determined would, in any single case or in the aggregate, materially and adversely affect its properties, existence, financial condition or business or materially impair its right to carry on its business substantially as now conducted or as contemplated to be conducted during the term of the Transaction Documents.

8, Nothing has come to our attention to indicate that there is or has been, up to the date hereof, any breach of any of the representations, warranties or agreements of **XXXX** (PHA) set forth in the Transaction Documents or any actual alleged occurrence or situation in any way inconsistent therewith.

The opinions above express the professional judgment of the attorney's participating in the EPC transaction as to the legal issues addressed herein. By rendering such opinions, the undersigned does not become an insurer or guarantor of that expression of professional judgment or of the transaction opined upon, nor does the rendering of this opinion guarantee the outcome of any legal dispute that may arise out of the transaction. The opinions expressed above are based upon such laws as are in effect on the date hereof, and we expressly disclaim any undertaking to advise you of any subsequent changes therein.

We are issuing this opinion solely for the benefit of the U.S. Department of Housing and Urban Development, and its successors and assigns. This opinion may not be relied upon by any other person or entity.

Very truly yours, Attorney LLP

Exhibit D - Board Resolution Example

AUTHORITY'S AUTHORIZING RESOLUTION

A RESOLUTION OF THE COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF **XXXX** AUTHORIZING THE EXECUTION AND DELIVERY OF AN [ENERGY PERFORMANCE CONTRACT], A MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT AND SEPARATE EQUIPMENT SCHEDULES, A CUSTODIAL AGREEMENT THE DOG OF WAR AND THE ISSUANCE OF LEASE REVENUE CUSTODIAL RECEIPTS; AND A PURCHASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION

WHEREAS, the Housing Authority of the **XXXX** (the "*Lessee*"), a public body corporate and politic duly organized and existing as a political subdivision of the State of **XXXX**, is authorized by the laws of the State of **XXXX** to purchase, acquire and lease personal property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, the Lessee desires to purchase, acquire and lease certain equipment constituting personal property necessary for the Lessee to perform essential governmental functions (the "*Equipment*"); and

WHEREAS, in order to acquire such Equipment, the Lessee proposes to enter into that certain [Energy Performance Contract] (the "*Energy Performance Contract*") with **XXXX**, and that certain Master Equipment Lease-Purchase Agreement (the "*Agreement*") and separate Equipment Schedules from time to time as provided in the Agreement with **XXXX** Finance, Inc. (the "*Lessor*") and that certain Custodial Agreement with the Lessor and a bank trust department or trust company as custodian (the "*Custodian*"), the forms of which have been presented to the governing body of the Lessee at this meeting; and

WHEREAS, the Lessor and Lessee have determined that it is most efficient to securitize the payments of principal and interest to be paid by Lessee under the Agreement by assigning the Agreement to the Custodian pursuant to a Custodial Agreement and issuing Lease Revenue Custodial Receipts representing direct, fractional interests in the Agreement, which Lease Revenue Custodial Receipts will be underwritten by **XXXX**, Inc., an affiliate of the Lessor (the "*Underwriter*"), and sold to investors, pursuant to a Purchase Agreement with Lessee, the form of which has been presented at this meeting (the "*Purchase Agreement*"); and

WHEREAS, the Commissioners of the Lessee deem it for the benefit of the Lessee and for the efficient and effective administration thereof to enter into the Energy Performance Contract and the Agreement and the separate Equipment Schedules as provided in the Agreement for the

purchase, acquisition and leasing of the Equipment therein, and to be therein described on the terms and conditions therein provided; and

WHEREAS, Treasury Regulations Section 1.150-2 (the “*Reimbursement Regulation*”) sets forth the rules for determining when proceeds of tax-exempt obligations are deemed spent for purposes of applying Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, including the arbitrage yield restrictions and rebate requirements under Section 148, if the proceeds are used to reimburse expenditures made prior to the date of issue of the tax-exempt obligations; and

WHEREAS, the Reimbursement Regulation requires that a declaration of official intent to reimburse the expenditures (“*Declaration of Official Intent*”) be made not later than sixty (60) days after payment of the original expenditure, and that an allocation in writing evidencing use of proceeds of a reimbursement bond to reimburse an original expenditure be made within eighteen (18) months after the later of the date the original expenditure is paid or the date the equipment is placed in service or abandoned, but in no event later than three (3) years after the original expenditure is paid.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Commissioners of the Housing Authority of the City of XXXX as follows:

Section 1. Prior HUD Approval; Approval of Documents. The terms, authorizations and transactions set forth in and contemplated by this resolution are subject to the receipt by the Lessee of the United States Department of Housing and Urban Development (“*HUD*”) approval letter to be delivered by HUD to the Lessee (the “*HUD Approval Letter*”) with respect to the project and financing contemplated herein. The obligations of the Lessor, the Lessee and the Underwriter with respect to the project and financing described herein are subject to the condition that the terms set forth in the HUD Approval Letter are reasonably and mutually acceptable to the Lessor, the Lessee and the Underwriter. The Lessee is hereby authorized to undertake the Energy Performance Contract and the financing thereof and to provide all security interests associated with such financing as described in the Agreement. The form, terms and provisions of the Energy Performance Contract, the Agreement, the Custodial Agreement and the separate Equipment Schedules, a Continuing Disclosure Agreement with respect to the Custodial Receipts and the Purchase Agreement are hereby approved in substantially the forms presented at this meeting, with such insertions, omissions and changes as shall be negotiated and approved by the Executive Director of the Lessee or other members of the governing body of the Lessee executing the same, the execution of such documents being conclusive evidence of such approval; and the Executive Director of the Lessee is hereby authorized and directed to execute, and any employee of the Lessee is hereby authorized and directed to attest and countersign the Energy Performance Contract, the Agreement, the Custodial Agreement and each Equipment Schedule and any related Exhibits attached thereto, the Continuing Disclosure Agreement and Purchase Agreement and to deliver the Energy Performance Contract, the Agreement, the Custodial Agreement and each Equipment Schedule (including such Exhibits), the Continuing Disclosure Agreement and Purchase Agreement to the respective parties thereto, and any employee of the Lessee is hereby authorized to affix the seal of the Lessee to such documents.

Section 2. Approval Parameters. The approval provided in Section 1 above shall be full, complete and binding so long as in any event the final maximum principal amount of the Agreement (and therefore the Lease Revenue Custodial Receipts) does not exceed _____ and No/100 Dollars (\$_____) and the all inclusive interest cost does not exceed the rate of _____ percent (_____%) per annum. In the event the foregoing parameters, or any one of them, are not met, consummation of the contemplated transactions shall require further approval of the Commissioners in their sole discretion.

Section 3. Other Actions Authorized. The officers and employees of the Lessee shall take all action necessary or reasonably required by the parties to the Energy Performance Contract, the Agreement, the Custodial Agreement and each Equipment Schedule to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Certificates of Acceptance and Payment Requests and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Energy Performance Contract, the Agreement, the Custodial Agreement and each Equipment Schedule, the Continuing Disclosure Agreement and the Purchase Agreement. The preparation and distribution to the purchasers of the Lease Revenue Custodial Receipts of the Preliminary Official Statement and the Official Statement describing the Lessee, the Energy Performance Contract, the Agreement and other information are hereby approved, authorized and confirmed in substantially the form presented at this meeting, and the Executive Director or his or her designees, their execution to constitute conclusive evidence of such approval. The Executive Director or his or her designees are further authorized to “deem final” the Preliminary Official Statement as required by subparagraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended.

Section 4. Declaration of Official Intent; Designation of Qualified Tax Exempt Obligation. This is a Declaration of Official Intent within the meaning of Treasury Regulations Section 1.150-2. The Lessee intends and reasonably expects that a portion of the original expenditures made by the Lessee in connection with the Energy Performance Contract will be reimbursed with proceeds of the Agreement.

Lessee hereby represents that it reasonably expects that it will not issue more than \$10,000,000 of tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined in the Code) during the calendar year for 2011. Lessee hereby designates Equipment Schedule No. 01 issued pursuant to the terms of the Agreement as a “qualified tax-exempt obligation” for purposes of and within the meaning of Section 265(b)(3) of the Code.

Section 5. Appointment of Authorized Lessee Representatives. The Executive Director of the Lessee is hereby designated to act as authorized representative of the Lessee for purposes of the Energy Performance Contract, the Agreement, the Custodial Agreement and each Equipment Schedule, the Continuing Disclosure Agreement, and the Purchase Agreement until such time as the Commissioners of the Lessee shall designate any other or different authorized representative for purposes of the Energy Performance Contract, the Agreement, the Custodial

Agreement and each Equipment Schedule, the Continuing Disclosure Agreement and the Purchase Agreement.

Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the Commissioners of the Lessee as of this ____ day of September, 2011.

(Seal)

Housing Authority of the XXXX,
as Lessee

By: _____
Name: _____
Title: _____

Exhibit E – Project Matrix Example

Project Name	Address	Project Number	Security Interest Impacts Entire Project?	Security Interest
XXXX	XXXX	## #-#	Yes	See Below
XXXX	XXXX	## #-#	Yes	See Below
XXXX	XXXX	## #-#	Yes	See Below
XXXX	XXXX	## #-#	Yes	See Below

DESCRIPTION OF THE SECURITY INTEREST

Under the terms of the Lease Purchase Agreement, the Authority will grant a security interest in (among other things, as further described below) the Equipment to be installed at the **XXXX** project (Site No. **##-#**), the **XXXX** project (Site No. **##-#**), the **XXXX** project (Site No. **##-#**), and the **XXXX** project (Site No. **##-#**).

Under the terms of the Lease Purchase Agreement, the Authority will grant a security interest in the following:

- (a) The Equipment being installed pursuant to the Performance Contract, which shall be subject to the Declaration of Trust covering the respective projects, This security interest shall be evidenced by a UCC-1 and a fixture filing recorded against the Equipment. The Equipment will include:

(1) Project #####-### XXXX

- Upgrade # common area lighting fixtures and install # occupancy sensors
- Upgrade # apartment lighting fixtures
- Install # energy efficient refrigerators
- Replace # common area thermostats with new programmable thermostats
- Install # temperature-limiting thermostats

(2) Project #####-### XXXX

- Upgrade # common area lighting fixtures
- Upgrade # apartment lighting fixtures
- Install # energy efficient refrigerators
- Replace # common area thermostat with new programmable thermostat
- Convert common area HVAC from 1-zone to 2-zones
- Insulate # linear feet of piping

(3) Project #####-### XXXX

- Upgrade # common area lighting fixtures and install # occupancy sensors

- Upgrade # apartment lighting fixtures
- Convert # electric dryer hookups to gas
- Install # vending machine control
- Install # energy efficient refrigerators
- Replace # common area thermostats with new programmable thermostats

(4) Project #####-### XXXX

- Upgrade # common area lighting fixtures and install # occupancy sensors
- Upgrade # apartment lighting fixtures
- Install #energy efficient refrigerators
- Replace # common area thermostats with new programmable thermostats
- Install # temperature-limiting thermostats

The security interest includes any additions, attachments and substitutions to the Equipment, as well as any revenues or other proceeds from the Equipment.

- (b) The energy incentives received by the Authority from HUD with respect to the Performance Contract, as approved by HUD in a letter to the Authority dated November #, 20##. This security interest shall be evidenced by a UCC-1 filing recorded against the incentives.
- (c) Any amounts payable by the vendor to the Authority under the terms of the Performance Contract, including specifically any amounts payable with respect to the performance guaranty. This security interest shall be evidenced by a UCC-1 filing recorded against such amounts payable.

Exhibit F - Loan Information Schedule Example

[*NOTE THIS AND OTHER TEMPLATES ARE FOR ESCO SUPPORTED EPCS, APPROPRIATE LANGUAGE CHANGES SHOULD BE USED FOR SELF-MANAGED EPCS]

Description of the Financing

The Authority is proposing to enter into a Master Equipment Lease Purchase Agreement, and Equipment Schedule No. 01 there under, both dated as of [DATE TO BE DETERMINED], 2013 (collectively, the "Lease Purchase Agreement"), as lessee, with XXXXXXXXX, Inc., City, State, as lessor, (the "Lessor"). The Lease Purchase Agreement will be entered into by the Authority to finance the installation of certain energy conservation measures (the "Equipment") pursuant to that certain [Energy Performance Contract] (the "Performance Contract") between the Authority and _____ (the "Contractor"), dated as of _____, 20##, as amended.

Simultaneously with the execution and delivery of the Lease Purchase Agreement, the Lessor will assign the Lease Purchase Agreement into an irrevocable custodial account pursuant to a Custodial Agreement dated as of [DATE TO BE DETERMINED], 20## (the "Custodial Agreement") between Lessor, a banking institution with trust powers, as custodian (the "Custodian"), and acknowledged and agreed to by the Authority. Under the terms of the Custodial Agreement, Lease Revenue Custodial Receipts, Series 2011 (the "Custodial Receipts") will be issued which will evidence a direct ownership interest in the Lease Purchase Agreement. The direct ownership interest represented by the Custodial Receipts in the underlying Lease Purchase Agreement includes specifically the right to receive specific future payments of interest and principal derived from rental payments (the "Rental Payments") to be made by the Authority under the Lease Purchase Agreement. The Custodial Receipts are not a separate obligation of the Authority, but merely represent ownership interests in the Lease Purchase Agreement.

The Custodian will be the nominal holder of the Lease Purchase Agreement for the benefit of each purchaser of a Custodial Receipt and others who acquire beneficial ownership interest in a Custodial Receipt (the "Beneficial Owners") and will collect the Rental Payments to be made by the Authority under the Lease Purchase Agreement. The Custodian will distribute to each Beneficial Owner of the Custodial Receipts the Beneficial Owner's pro-rata interest in such Rental Payments, as will be described in the Custodial Agreement.

The Lease Purchase Agreement and the Custodial Receipts will be a general obligation of the Authority payable from (i) the energy incentives received by the Authority from HUD with respect to the Performance Contract, as approved by HUD in an approval letter to the Authority dated _____, 20##, (ii) any amounts payable by the Contractor to the Authority under the terms of the Performance Contract, including specifically any amounts payable with respect to the performance guaranty, and (iii) any other source of legally available funds. NOTE THAT A SECURITY INTEREST IS BEING GRANTED ONLY ON ITEMS (i) AND (ii). See Exhibit B, "Description of the Security Interest," for additional information.

Additionally, the Lease Purchase Agreement and the Custodial Receipts will be secured by a security interest in the Equipment, subject to the DOTs, as further described in Exhibit D "Description of the Security Interest."

Under the terms of the Lease Purchase Agreement, the Authority will hold title to the Equipment throughout the term of the financing.

The principal amount of the financing will be an amount not in excess of \$ _____ and the estimated interest rate of the financing will be a rate not to exceed _____% per annum.

The term of the financing will be ____ years plus the construction period (which is estimated to be _____ [months/year]).

Under the terms of the Lease Purchase Agreement, the security interest will be released upon payment in full of all amounts payable by the Authority under the Lease Purchase Agreement.

Loan Summary

Loan Amount	\$	
Term of the loan (years)		
Fixed interest rate	%	y/n
Loan fully amortizing		y/n
Lockout period If yes, (provide years)	# of years	y/n
Description of an yield maintenance provisions		

Exhibit G - PHA Counsel Certification Example

COUNSELORS AT
LAW

August #, 20##

Chicago HUD Office
Director, Office of Public Housing
U.S. Department of Housing and Urban Development
Chicago, IL

Re: Equipment Lease Purchase Agreement
between **XXXX** and

XXXX Housing Authority

Dear Mr. **XXXX**:

We have acted as counsel to **XXXX** Housing Authority ("HA"), of (Address), somewhere, USA in connection with the above-referenced Energy Performance Contract Transaction ("EPC").

In rendering the opinions set forth below, we have examined the records available at the **XXXX** County Registry of Deeds, solely insofar as such records relate to Modernization Declarations of Trusts (Form HUD-52910-B) of record at said Registry for the period beginning from the date the PHA acquired the specific property through the date hereof, 8:00 a.m., with respect to the following Projects:

- 1 . **XXXX** Address
- 2 . **XXXX** Address
- 3 . **XXXX** Address
- 4 . **XXXX** Address
- 5 . **XXXX** Address
- 6 . **XXXX** Address
- 7 . **XXXX** Address

(collectively the "Projects"), which Projects represent all of the non-mixed finance public housing properties, both real and personal, of PHA that will be subject to the security interest or other encumbrance related to the EPC. We have also examined the statutes of the State of Illinois with respect to the recording of instruments and documents which relate to or affect title to and interests in land and real estate. In addition, we have examined such other certificates, documents, and materials and have made such other investigation and inquiries as we have deemed necessary in connection with this opinion.

Chicago HUD Office
 Director, Office of Public Housing
 U.S. Department of Housing and Urban Development
 Chicago, IL
 August 26, 2013 Page Two

The opinions hereinafter expressed are qualified by the following matters:

1. Rights of persons or business entities in possession of the Premises, but not of record, whether under unrecorded instruments or otherwise.
2. Errors and omissions of the aforesaid Registry in indexing documents or other matters affecting or pertaining to the title to the Premises.
3. Various recorded easements for utilities, antennae and the like.

Based on the foregoing, and subject to the conditions, qualifications, limitations and exceptions set forth herein, we are of the opinion that:

1. The Modernization Declarations of Trusts (Form HUD-52910-B0 with legal descriptions for the Projects attached thereto have been recorded in the **XXXX** County Registry of Deeds as follows:

A.) Acquisition Date:

<u>Project No.</u>	<u>Date of Recording</u>	<u>Book/Page of Recording</u>
1. XXXX — Address,	1/12/12	Book #####, Page ###
2. XXXX — Address,	1/12/12	Book #####, Page ###
3. XXXX — Address,	1/12/12	Book #####, Page ###
4. XXXX — Address,	1/12/12	Book #####, Page ###

B.) Declaration of Trust Recoding Date at the County Registry of Deeds:

1. XXXX	— Address	1 /12/2012	Book #####, Page ###
2. XXXX	— Address	1 /12/2012	Book #####, Page ###
3. XXXX	— Address	1 /12/2012	Book #####, Page ###
4. XXXX	— Address	1 /12/2012	Book #####, Page ###

Chicago HUD Office
Director, Office of Public Housing
U.S. Department of Housing and Urban Development
Chicago, IL

August #, 20##
Page Three

2. In each instance, the Modernization Declarations of Trust (Form HUD-52910-B) for the Projects have been duly executed and recorded in the County Registry of Deeds in accordance with the laws of the State of **XXXX**, prior to the security interest or other encumbrance that will be recorded pursuant to the EPC. As such, the Modernization Declarations of Trust (Form HUD-52910-B) shall have priority over the security interest or other encumbrance that will be recorded pursuant to the EPC.

3. So long as PHA is obligated to operate the Projects in accordance with the Annual Contributions Contracts, as amended between PHA and the United States of America, Secretary of Housing and Urban Development ("HUD"), the Modernization Declarations of Trust (Form HUD-52910-B) will remain in full force and effect, and constitute valid and subsisting trusts for the purpose of securing the observance and performance of PHA's covenants and agreements not to sell, convey, lease, mortgage or otherwise encumber the Projects of any part thereof, except and in the manner provided in said Modernization Declarations of Trust (Form HUD-52910-B). Furthermore, the Modernization Declaration of Trust shall encumber the Projects and be effective for the term of the EPC financing.

4. Under the laws of the State of Illinois, said Modernization Declarations of Trust (Form HUD-52910-B) are recordable instruments and the recordation of same constitutes constructive notice to all persons, firms, corporations, and governmental agencies of the entire contents of said instrument, regardless of whether or not such persons, firms, corporations, or governmental agencies had actual notice of such contents.

This letter does not constitute a guaranty of title. We have prepared this letter for your sole use and benefit and, consequently, **XXXX** Law Firm, LLP reserves the exclusive right of reproduction.

Sincerely yours,

cc

Appendix A - Section 30 Approval Language Template

To be inserted into the EPC Approval Letter if HUD is approving a security interest or encumbrance as part of the EPC.

Section 30 Financing

Section 30 of the 1937 Act provides that the "Secretary may, upon such terms and conditions as the Secretary may prescribe, authorize a public housing agency or mortgage or otherwise grant a security interest in any public housing project or other property of the public housing agency." Pursuant to this authority, HUD hereby approves the following security interests relating to the EPC: ***(INCLUDE ONLY THOSE SECURITY INTERESTS WHICH THE PHA IS REQUESTING AND THE FIELD OFFICE IS APPROVING: (a, b, AND/OR c)***

(a) "a security interest in the energy conservation equipment identified in the EPC Section 30 Proposal and associated with the EPC, as well as any revenues or other proceeds from the equipment (Equipment)(HUD's approval is subject to a modernization DOT being recorded prior to any liens or encumbrances placed on the Equipment pursuant to the EPC)."

(b) "the energy incentives received by the Authority from HUD pursuant to this EPC approval."

(c) "any amounts payable to the Authority by the ESCO pursuant to the EPC."

The (name) Field Office has approved the (name) Housing Authority ("Authority") EPC proposal to finance the installation of additional Energy Conservation Measures ("ECMs") at the public housing projects known as _____, _____, and _____ (the "EPC Projects"). The Authority is requesting a (Phase type) EPC Section 30 proposal in a total project cost amount of up to \$ (amount) .

(IF PROPOSAL IS AN ADDEDUM TO A PREVIOUS EPC INCLUDE: "The Authority proposal is an addendum to an existing Phase I Energy Performance Contract for the installation of additional ECMs and to extend the EPC lender agreement term from (date) to (date) years.")

On (date) , (name) , Attorney Advisor, HUD (name) Field Office, advised that HUD's Declaration of Trust ("DOT") has been recorded and has first priority on the EPC Projects.

As a condition of this approval, the Authority must execute three copies of the EPC Annual Contributions Contract (ACC) Amendment. All three copies must be executed by the Authority and then delivered to the (name) Field Office, where the Director of

Public Housing will execute all copies on behalf of HUD. The Field Office will keep one copy for their use and return the other two copies to the Authority. The Authority should retain one copy, the other copy with two original signatures should be returned to the Office of Field Operations at HUD Headquarters. The closing binders and the required post approval documentation should be sent to:

Andrew Erwin
U.S. Department of Housing and Urban Development
Office of Capital Improvements
451 7th Street, SW, Room 4108
Washington, DC 20410

If you have any questions or concerns, please contact Andrew Erwin at (202) 402-5647 or by email at andrew.h.erwin@hud.gov

Appendix B - HUD ACC Template

ENERGY PERFORMANCE CONTRACT (EPC) ACC AMENDMENT TO CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT XXX HOUSING AUTHORITY (XX001)

Section 1. This Energy Performance Contract (EPC) ACC Amendment to the Consolidated Annual Contributions Contract (“Financing Amendment”) covers the security interest for the EPC program undertaken by the _____, a housing authority which is a public body and body corporate and politic of the _____ (“Authority”) as the debtor (“Debtor” or “Authority”), with _____, or successors, as the lessor, (“Lessor”), and _____, as the Energy Services Company (“ESCO”) to be carried out pursuant to the EPC Program as authorized by Section 9(e)(2)(C) of the United States Housing Act of 1937 (“1937 Act”) and in accordance with Section 30 of the 1937 Act, together with the proceeds of the financing (“Financing”).

Section 2. This Financing Amendment is amendment number ___ to the Consolidated Annual Contributions Contract Form HUD-53012A and Form HUD-53012B Number: _____ dated _____, _____ (together with any amendments thereto and modifications thereof, the “ACC”).

Section 3. The ACC is amended to evidence the approval by HUD of the security interests related to the EPC identified in Section 1 of this Financing Amendment, and as further defined in HUD’s EPC Section 30 Proposal Approval Letter. This Financing Amendment is part of the ACC.

Section 4. If, for reasons noted in the HUD Approval Letter, the Authority causes the HUD Approval Letter to lapse, then this ACC Amendment shall be null and void.

Section 5.

(A) By executing this Financing Amendment, the Authority represents, warrants and agrees that prior to terminating or amending any form of required insurance or seeking permission to self insure in accordance with Section 4 of Attachment VII of Additional Terms and Conditions, constituting Part B of the ACC and the public housing requirements, it shall apply to HUD for a waiver of any form of required insurance or permission to self insure, and it shall obtain written approval from HUD to amend its Section 30 approval and this Financing Amendment to explicitly permit such action.

(B) By executing this Financing Amendment, the Authority certifies to HUD and, as applicable, agrees that:

(1) it will immediately notify HUD of (a) any material change in any representations, statements, certifications or other matters contained in the Authority's Section 30 Proposal, this Financing Amendment and any Riders thereto, (b) any default of which it has notice under any agreement associated with the EPC, and; (c) any amounts paid to the Authority by the ESCO.

(2) it will ensure that the EPC transaction, including but not limited to any financing documents entered into by or on behalf of the Authority, including requirements for admission to public housing, continued occupancy of, management, and modernization or development of public housing unit funds from this transaction is in accordance with all requirements applicable to public housing, including the 1937 Act, HUD regulations thereunder (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), the ACC, this Financing Amendment, the HUD-approved Section 30 proposal, the Authority's standard public housing admissions and occupancy policies adopted in accordance with Federal law and described in the Authority's approved Public Housing Agency Annual Plan (the "Plan") if required, or any approved amendment to the Plan or, for Moving to Work ("MTW") Authorities, any contrary provisions in the MTW Agreement, as those requirements may be amended from time to time. The requirements set forth in subparagraph (2) of this Section 5(B) are hereafter to be collectively referred to as the "Applicable Public Housing Requirements."

(C) Excepting any of the Authority's assets arising under any program not administered by HUD under the 1937 Act, or as otherwise specifically approved in writing by HUD and described in Section 5(C)(1) below, that, all legal documents that are part of this transaction shall not and do not contain any guarantees, indemnifications, rights of set-off, or other pledges involving the assets of any public housing Project (as the term "Project" is defined in the Annual Contributions Contract) or any Housing Choice Voucher (HVC) related assets of the Authority.

(1) The Authority may provide a security interest or encumbrance in, and the Lessor or any third party may have recourse to the following without further HUD approval (unless explicitly indicated in this section, guarantees and indemnifications involving public housing funds are not permitted): (a) a security interest in the energy conservation equipment financed pursuant to the EPC as well as any revenues or other proceeds from the equipment ("Equipment"); (b) the energy incentives received by the Authority from HUD; and (c) any amounts payable to the Authority by the ESCO pursuant to the EPC.

(2) Other than as listed in Section 5(C)(1) above, the Authority acknowledges that it will not and has not provided any party with a pledge, encumbrance, guarantee, indemnification or legal right of recourse involving:

- (a) any of their public housing Projects;
- (b) any operating receipts (as the term "operating receipts" is defined in the ACC);
- (c) any of their HCV receipts;
- (d) any of their Capital Funds; or
- (e) Any of their public housing operating reserve reflected in the Authority's annual Operating Budget and required under the ACC.

(3) Should any assets of the Authority be identified, at a later date, as meeting the criteria set forth in Section 5(C), any guarantees, indemnifications, rights of set off, or other pledges involving those assets will be deemed null, void and unenforceable.

(4) Notwithstanding anything to the contrary herein, Sections 5 and 17 of the ACC apply should any financing proceeds be used for non-public housing purposes. The failure of the Authority to comply

with the ACC may constitute a default and HUD reserves the right to enforce all remedies available to it under the ACC and any amendments thereto.

(5) The Authority recognizes and agrees that all obligations created pursuant to the transaction approved by HUD do not constitute a debt or liability of HUD or the United States of America, the full faith and credit of the United States is not pledged to the payment of the obligations, and payment of the obligations is not guaranteed by HUD or the United States. No action taken by these parties or in these documents shall result in any liability to the federal government.

(D) The Authority warrants that it will include, or cause to be included:

(1) in all its agreements or contracts with the participating parties to the transaction, and in all contracts with any party involving the use of Financing proceeds, a provision that nothing contained in the ACC or this Financing Amendment and any Riders thereto, nor in any agreement or contract between the parties, nor any act of HUD, the Authority, or any of the parties, will be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD, and that the obligations created pursuant to this transaction do not constitute a debt or liability of HUD or the United States, the full faith and credit of the United States is not pledged to the payment of the obligations, payment of the obligations is not guaranteed by HUD or the United States, and no action taken by these parties or in these documents shall result in any liability to the federal government, and that any pledge of public housing funds by the Authority is subject to the availability of appropriations.

(2) in all its agreements or contracts with participating parties to the transaction, and in all contracts with any party involving the use of Financing proceeds, language that prohibits cross-default provisions between this financing transaction and any other financing transaction to which the Authority is a party.

Section 6.

(A) Counsel must opine to the following for each requirement listed in Section 6 of this Financing Amendment:

(1) An examination of the authority of all parties to the Financing Documents and all persons executing the documents on behalf of the parties has been made and that the parties and said persons were authorized to enter into and execute the Financing Documents; and

(2) Each document constitutes a valid and legally enforceable agreement or contract under the laws of the Authority's state of formation and the commitments and/or agreements evidenced thereby can be carried out in accordance with their terms under state and local law, and conform to the provisions of applicable public housing requirements, including the HUD Approval Letter and the requirements of this Financing Amendment, and that there is nothing in such document that conflicts with, or is inconsistent with, Applicable Public Housing Requirements, including the HUD Approval Letter and this Financing Amendment.

(B) Counsel may rely upon the certification of other persons, or the written statements or opinions of other counsel, provided that a copy of each such certification, statement, or opinion must be attached to the opinion of that counsel.

(C) If counsel predicates an opinion upon "information and belief," then in all such cases the counsel's opinion must contain, or have attached thereto, a statement or description of all of the information upon which the belief of counsel is predicated.

In consideration of the foregoing covenants, the parties do hereby set forth their seals:

_____ **Housing Authority (#####)**

By (Signature of Executive Director)

(Name of Executive Director)

Executive Director

UNITED STATES OF AMERICA

**Secretary of Housing and Urban
Development**

By (Signature of Public Housing Director)

(Name of Public Housing Director)

Director, Public Housing Office

HUD _____ Office

Date: _____

Appendix C - Acronyms List

ACC	Annual Contributions Contract
DORC	Declarations of Restrictive Covenants
DOT	Declarations of Trust
EPC	Energy Performance Contract
ESCo	Energy Service Company
Field-PIH	Public and Indian Housing field offices located throughout the country
FY	Fiscal Year
HUD	U.S. Department of Housing and Urban Development
OFO	Office of Field Operations
OFO-HQ	Office of Field Operations, Headquarters staff
OGC	Office of General Counsel
PHA	Public Housing Authority
PIH	Public and Indian Housing