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Historical Overview: The United States Department of Housing and Urban Development (“HUD”) Section 8 Project-Based Rental Assistance program (PBCA).

In 1937, Congress authorized HUD to provide rent benefits to low-income families and individuals, which included direct payments from HUD to owners of privately owned dwellings.

In 1974, Congress through the Housing and Community Development Act, gave HUD the option to pay the subsidies through an intermediary (a Public Housing Agency) under an annual contribution contract. Under the project-based Section 8 rental assistance program HUD enters into contracts with property owners to provide rental assistance for a fixed period of time for low-income families. Project-based Section 8 assistance may be provided only for tenants with incomes no greater than 80 percent of the area median income (AMI) and tenants generally pay rent equal to 30 percent of adjusted household income. When these contracts began expiring in 1997, Congress authorized their renewal. At that time, HUD was facing deep budget cuts and planned to reduce its staff by one-third. To deal with the prospect of its inability to manage the contracts, HUD began to outsource some contract administration services through the intermediaries

In 1999, HUD began an initiative to contract out the oversight and administration of most of its project-based contracts, through single contracts known as performance-based annual contribution contracts (PBACC) - in each of the 50 states to a public housing agency (PHA).

In the State of Vermont the performance-based contract administration (“PBCA”) services are administered by the Vermont State Housing Authority (VSHA). The VSHA administers 128 contracts to multi-family properties through Housing Assistance Payment (HAP) contracts to 3,394 households. Subsidy paid to owners of the multi-family projects total \$24,927,515.00.

The VSHA is responsible for conducting on-site management reviews of assisted projects; adjusting contract rents; reviewing, processing, and paying monthly vouchers submitted by owners; renewing contracts with property owners; and responding to health and safety issues at the property. Since 2000, HUD has successfully contracted with public housing agencies across the country to provide administrative support services to HUD’s Section 8 Project-Based Contract Administration (PBCA) housing program. In 2012 HUD abruptly changed the rules and for the first time labelled the contracts as “cooperative agreements.” In response, private contractors successfully challenged HUD through litigation at the Government Accountability Office (GAO) and later at the Court of Appeals for the Federal Circuit. In April 2015, the Supreme Court denied HUD’s petition for writ of certiorari ending the litigation and upholding the Federal Circuit’s holding that HUD should use procurement contracts to administer the project-based Section 8 program.

The United States Department of Housing and Urban Development (“HUD”) has stated its intention to procure performance-based contract administration (“PBCA”) services in connection with HUD’s project-based rental assistance program (the “PBCA Procurement”) in the course of 2017.

HUD will not be able to limit the procurement to Public Housing Agencies – this opens up the opportunity for anyone to bid. HUD is in discussions about whether or not to divide the country into 5 regional contracts.

This will require the VSHA and other state public bodies throughout the nation to compete with private corporations and other entities.

The VSHA has entered into a dialogue with 13 other similar public bodies of states in the Northeast and Mid-Atlantic Region of the country intended to devise a multi-pronged unified strategy to compete under and or challenge the HUD procurement process.

In order for VSHA to participate in any regional collaboration, we must have a modification to our enabling legislation.

VSHA is seeking an amendment to its statute 24 V.S.A. § 4005(e). The purpose of the amendment is to best position the VSHA to preserve its hands-on-role in the administration of federal project-based rental subsidies and to allow enough flexibility for VSHA to participate in any entity the working group of Northeast Region states ultimately decides gives all of us the best chance of retaining Section 8 contract administration in our respective states. This may include (a) being able to act as a subcontractor of a larger entity, and allowing that larger entity to operate within the State so long as it contracts with us; (b) being able to act as a prime contractor with responsibility for a regional HUD contract, or (c) being able to act as a member and/or partner and/or contractor in a new entity or joint venture that operates on a regional basis

An incorporation of the general powers of a Vermont nonprofit would cover all of those pending possibilities except the first one (which is covered expressly in the proposed revision to subsection (e) (1).) The wholesale incorporation of 11 B section 3.02 was chosen because it is an easy reference. However, the only additional powers actually needed or needed to be confirmed for the current purpose are those granted in 11B V.S.A. Section 3.02 subdivisions (9), (10), (16), and (18), highlighted in the attachment. The rest are either irrelevant to the current purpose (but, we think, harmless) or already granted in our main statute.”

Our amendment does not impact either local housing authorities or other State agencies. The amendment does not touch the existing jurisdiction or in any way diminish the powers of local housing authorities or State agencies.