

**A REGULAR MEETING OF THE
BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF
SAN BERNARDINO**

TO BE HELD TELEPHONICALLY
August 10, 2021 AT 3:00 P.M.

Zoom Meeting – Board of Commissioners will be forwarded instructions
Members of the public may call:
Call In Number (669) 900-6833
Meeting ID: 843 3326 4675
Password: 210264

This meeting is being held in accordance with the Brown Act as currently in effect under the State of Emergency Services Act, the Governor's Emergency Declaration related to COVID-19 and the Governor's Executive Order N-29-20 issued on March 17, 2020, that allows attendance by the Board of Commissioners, Housing Authority staff, and the public to participate and conduct the meeting by teleconference, videoconference, or both.

Members of the public wishing to participate should call in using the teleconference information stated above. Public comments, limited to 250 words or less, can only be submitted via web at <https://hacsb.com/board-of-commissioners/> and/or via email at publiccomment@hacsb.com and will be read into the record, limited to 3 minutes per comment. Some comments may not be read due to time limitations.

AGENDA

PUBLIC SESSION

- 1) Call to Order and Roll Call
- 2) Additions or deletions to the agenda
- 3) General Public Comment - Any member of the public may address the Board of Commissioners on any matter not on the agenda that is within the subject matter jurisdiction of the Board. To make a comment on a specific agenda item, please submit your comments via email or online by 1:00 p.m. on the Tuesday of the Board meeting. Comments should be limited to 250 words or less Please submit your comments via web at <https://hacsb.com/board-of-commissioners/> and email at publiccomment@hacsb.com. Your comments will be placed into the record at the meeting. Efforts will be made to read the comments into the record, but some comments may not be read due to time limitations.

CLOSED SESSION

- 4) **CONFERENCE WITH LABOR NEGOTIATORS**
Pursuant to Gov't Code Section 54957.6:
HACSB designated negotiator/representative: Jennifer Dawson, Director of Human Resources
Employee organization: Teamsters Local 1932

DISCUSSION CALENDAR

(Public comment is available for each item on the discussion calendar)

- 5) Receive the Executive Director's Report for August 10, 2021. (Page 1)
- 6) Receive the board building presentation for August 10, 2021, on procedures for the Board of Commissioners to process and resolve claims brought against the Housing Authority of the County of San Bernardino. (Page 2)
- 7) Adopt Resolution No. 115 approving revisions to the Administrative Plan governing the Housing Authority of the County of San Bernardino's rental assistance programs. (Page 3-70)
- 8) Adopt Resolution No. 116 approving payment standards for the Emergency Housing Voucher Program effective August 10, 2021. (Pages 71-75)
- 9) 1 – Approve Memorandum of Understanding between the Housing Authority of the County of San Bernardino and Victim Service Providers for referral services for the Emergency Housing Voucher program.
- 2 – Authorize and direct the Executive Director to execute and deliver the Memorandum of Understanding and any related documents, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction. (Pages 76-86)
- 10) Adopt Resolution No. 118 approving revisions to the Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking governing the Housing Authority of the County of San Bernardino's Public Housing and Housing Choice Voucher Program. (Pages 87-94)
- 11) Approve purchase orders via piggyback contracts with Home Depot U.S.A. Inc., and HD Supply Facilities Maintenance Ltd., for a five-year period beginning August 8, 2021 through July 31, 2026 for the purchase of maintenance, repair, operating, and industrial supplies and other related products through a cooperative agreement with U.S. Communities Government Purchasing Alliance in a total amount not to exceed \$2,489,834. (Pages 95-96)
- 12) 1 – Award contract No. PC1212, effective September 1, 2021, to Base Hill, Inc. dba Jan Point for janitorial services agency-wide, in an amount not to exceed \$500,000 for a four year base period beginning September 1, 2021 through August 31, 2025, with one

single-year option to extend through August 31, 2026.

2 – Authorize and direct the Executive Director to execute and deliver the contract to Base Hill, Inc. dba Jan Point, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction. (Pages 97-127)

- 13) 1 – Approve an appropriation for construction management and real estate development consulting services in amount not to exceed \$450,000 for a three-year period through August 10, 2024.

2 – Approve seven contracts for on-call construction management and real estate development consulting services with the following vendors, in the total aggregate not to exceed amount of \$450,000, for a three-year period beginning August 11, 2021, through August 10, 2024, with two single year options to extend through August 10, 2026.

- a. Partner Engineering and Science, Inc.
 - b. Murow Development Consultants
 - c. Atrium Construction Services
 - d. SeaPointe Group, Inc.
 - e. The Howell Group, Inc.
 - f. Moote Companies, LLC
 - g. IMG Construction Management
- (Pages 128-250)

- 14) 1 – Approve a Quitclaim Deed with Reservation of Right of Entry (Partial Easement) from Southern California Gas Company for the abandonment in place of a 2 inch (and 1 inch) natural gas pipeline (together “Abandoned Pipeline”) located within the Right of Way on real property owned by the Housing Authority of the County of San Bernardino and Housing Partners I, Inc., at 131 E. Lugonia Ave in the city of Redlands.

2 – Authorize and direct the Executive Director, upon consultation with Legal Counsel, to accept and sign, finalize and record the Quitclaim Deed with Reservation of Right of Entry (Partial Easement) with the County of San Bernardino Recorder and any ancillary documents or exhibits necessary to effectuate the abandonment. (Pages 251-262)

- 15) 1 – Approve recording of the Final Map for Arrowhead Grove, former Waterman Gardens site, Tract # 18829, located in San Bernardino, subject to City of San Bernardino City Council approval:

- a) Approve, or ratify as necessary, recording and authorize the Executive Director to sign the Final Map.
- b) Authorize the Executive Director to sign the Subdivision Improvement Agreement.
- c) Authorize the Executive Director to Negotiate and Execute Agreement(s) as necessary to effectuate the recording of the Final Map for Tract #18829, including but not limited to Performance, Warranty, Maintenance and Monumentation bonds as required by the City of San Bernardino and, upon consultation with legal counsel, to execute any other non-substantive action necessary to complete the recording.

2 – Instruct the Executive Director or her designee to do the following:

- a) Prepare the Final Map for recording.
 - b) Prepare the Subdivision Improvement Agreement for recording
- (Pages 263-287)

- 16) 1 – Adopt Resolution No. 117 to:
- a. Approve a Ground Lease Agreement between the Housing Authority of the County of San Bernardino and Arrowhead Grove LLC
 - b. Approve a Ground Lease Loan Agreement between the Housing Authority of the County of San Bernardino and Arrowhead Grove LLC in an amount not to exceed the current appraised value of the property and documents ancillary to the Ground Lease Loan Agreement including:
 - i. Promissory Note
 - ii. Deed of Trust
 - iii. Approve documents as required by the United States Department of Housing and Urban Development to complete the transfer of the remainder parcels of the former Waterman Gardens public housing site
- 2 – Authorize the Executive Director of the Housing Authority of the County of San Bernardino, upon consultation with Legal Counsel, to make non-substantive modifications, execute and deliver the Loan Agreement, Ground Lease Agreement, and United States Department of Housing and Urban Development related documents and the ancillary documents necessary to carry out and close the transaction.
(Pages 288-393)

CONSENT CALENDAR

APPROVAL OF CONSENT ITEMS: # 17 - 19

- 17) Approve the meeting minutes for the Board of Commissioners of the Housing Authority of the County of San Bernardino Regular Meeting held on July 13, 2021.
(Pages 394-403)
- 18) Approve and file Agency-wide Financial Statements through April 2021.
(Pages 404-406)
- 19) Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of May 2021.
(Pages 407-411)
- 20) Individual Board member Comments
- 21) Adjourn

This agenda contains a brief description of each item of business to be considered at the meeting. In accordance with the Ralph M. Brown Act, this meeting agenda is posted at least 72 hours prior to the regularly scheduled meeting at the Housing Authority of the County of San Bernardino (HACSB) Building located at 715 East Brier Drive, San Bernardino, California, 92408. The agenda and its supporting documents can be viewed online at <http://www.hacsb.com>. However, the online agenda may not include all available supporting documents or the most current version of documents.

If you challenge any decision regarding any of the above agenda items in court, you may be limited to raising only those issues you or someone else raised during the public testimony period regarding that agenda item or in written correspondence delivered to the Board of Commissioners at, or prior to, the public hearing.

It is the intention of the HACSB to comply with the Americans with Disabilities Act (ADA). If you require special assistance, HACSB will attempt to accommodate you in every reasonable manner. Please contact Sylvia Robles at (909) 890-6318 at least 48 hours prior to the meeting to inform us of your particular needs.

HACSB ofrece asistencia idiomática gratis. Para ayuda con este documento, por favor llámenos al (909) 890-0644.

**REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD
OF ACTION**

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Executive Director's Report for August 10, 2021

RECOMMENDATION(S)

Receive the Executive Director's Report for August 10, 2021.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in a financial impact to the Housing Authority of the County of San Bernardino (HACSB) as there is no financial impact associated with this item.

BACKGROUND INFORMATION

The Executive Director's report summarizes ongoing initiatives of HACSB's strategic plan, Moving to Work activities, overall agency updates, as well as other initiatives federally regulated by the United States Department of Housing and Urban Development.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

**REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD
OF ACTION**

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Board Building Presentation for August 10, 2021

RECOMMENDATION(S)

Receive the board building presentation for August 10, 2021, on procedures for the Board of Commissioners to process and resolve claims brought against the Housing Authority of the County of San Bernardino.

(Presenter: Fred Galante, General Legal Counsel)

GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in a financial impact to the Housing Authority of the County of San Bernardino (HACSB) as there is no financial impact associated with this item.

BACKGROUND INFORMATION

Per the United States Department of Housing and Urban Development (HUD) Commissioner Lead the Way Training, board building is required to provide the Board of Commissioners with information regarding ongoing initiatives of HACSB's strategic plan, Moving to Work (MTW) activities, overall agency updates, as well as other initiatives federally regulated by HUD.

This month's board building presentation will include information on procedures for the Board of Commissioners to process and resolve claims brought against the Housing Authority of the County of San Bernardino.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 27, 2021.

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Revisions to the Administrative Plan Governing the Housing Authority of the County of San Bernardino's Rental Assistance Programs

RECOMMENDATION(S)

Adopt Resolution No. 115 approving revisions to the Administrative Plan governing the Housing Authority of the County of San Bernardino's rental assistance programs.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

HACSB communication is open, honest and consistent.

HACSB clients, programs, and properties are embraced by all communities.

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

Approval of the proposed revisions to the Administrative Plan will have no direct financial impact to the Housing Authority of the County of San Bernardino's (HACSB) annual budget.

BACKGROUND INFORMATION

HACSB's Housing Choice Voucher (HCV) Administrative Plan outlines the adopted policies that govern the HCV program as well as other HACSB rental assistance programs. These programs provide rental subsidies for low-income families leasing homes in the private rental market. The Administrative Plan is required of all housing authorities administering an HCV program and is reviewed and updated as needed to maintain compliance with Public and Indian Housing Notices (PIH), Federal Register Notices as issued by the United States Department of Housing and Urban Development (HUD), and HACSB's Moving to Work (MTW) activities.

The primary reason for updating the Administrative Plan is to add Emergency Housing Voucher (EHV) program policies. HUD provided housing authorities with several program mandates, waivers, and flexibilities related to the implementation of the EHV program. The proposed revisions include the EHV requirements and recommended regulatory flexibilities.

In addition to the EHV policies to the Administrative Plan, HUD recently added some new COVID-19 waivers and extended other in-place waivers. Therefore, the Administrative Plan revisions reflect updated COVID-19 emergency operations. Other revisions have been made throughout the Administrative Plan to promote consistent application of policies and procedures. Attached is a table summarizing the proposed revisions along with the corresponding sections from the Administrative Plan with the redline changes.

Revisions to the Administrative Plan Governing the Housing Authority of the County of San Bernardino's Rental Assistance Programs
August 10, 2021

To ensure alignment with HUD regulations and HACSB's MTW Annual Plan, it is recommended the Board adopt the resolution to approve the proposed changes to the Administrative Plan.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

HOUSING AUTHORITY RESOLUTION NO. 2021-115

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE
COUNTY OF SAN BERNARDINO APPROVING REVISIONS TO THE ADMINISTRATIVE PLAN
GOVERNING THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO'S RENTAL
ASSISTANCE PROGRAMS**

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino (HACSB) is required to maintain an Administrative Plan which outlines regulations necessary to administer the Housing Choice Voucher subsidized programs on behalf of the United States Department of Housing and Urban Development (HUD); and

WHEREAS, HUD requires public housing agencies to amend their Administrative Plan to incorporate changes and define policy relative to administration of the Housing Choice Voucher subsidized programs; and

WHEREAS, HACSB desires to amend its policies and procedures to administer the Emergency Housing Voucher program, update COVID-19 emergency operations, and revise language in other sections.

OPERATIVE PROVISIONS

**NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY
OF THE COUNTY OF SAN BERNARDINO DOES RESOLVE AS FOLLOWS:**

Section 1. The Board of Commissioners finds that all of the facts set forth in the Recitals are true and correct, and are incorporated herein by reference.

Section 2. The Board of Commissioners hereby approves the revisions to the Administrative Plan governing the Housing Authority of the County of San Bernardino's rental assistance programs, attached hereto as Exhibit "A" and incorporated by reference herein.

Section 3. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of Commissioners of the Housing Authority of the County of San Bernardino, by the following vote:

AYES: COMMISSIONER:

NOES: COMMISSIONER:

ABSENT: COMMISSIONER:

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO) ss.

I, _____, Secretary of the Board of Commissioners of the Housing Authority of the County of San Bernardino, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the Board of Commissioners, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of Tuesday, _____, 20__.

Secretary

Summary of Proposed Administrative Plan Changes, August 2021

Section	Topic	Change
1.5.2	Housing Services Program Types	Added Emergency Housing Vouchers to the list of Housing Services Program Types
2.1.3.1.2	Referral Based Special Purpose Programs	Added Emergency Housing Vouchers to list of referral based special purpose programs that do not utilize the HCV waiting list
2.2.5.3	Method for Placement on the Tenant-Based Waiting List – Emergency Housing Voucher Program	Added section about establishment of a separate waiting list for the Emergency Housing Voucher program
2.2.8.3.2	Mainstream Program Preference	Clarified that less applicants may be selected under the Mainstream preferences if there is an insufficient number of applicants on the waiting list who meet one of the preferences
2.3	Completion of Full Application	Revised the language concerning incomplete applications for admission to correspond with current procedures
3.11.5.6	Housing Services Program Determination – Traditional, Regulatory Assistance for Special Purpose Program – Emergency Housing Voucher Program	Added Emergency Housing Vouchers under the traditional, regulatory assistance for special purpose program category
6.1.1 & 6.1.2	General Income Determination Requirements – Term-Limited Lease Assistance, Streamlined Lease Assistance, Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher Programs	Added Emergency Housing Vouchers under the general income determination requirements
6.2.1.5.1	Welfare Assistance – Term-Limited Lease Assistance and Streamlined Lease Assistance	Revised footnote to apply Activity #5's treatment of sanctioned welfare income to EHV
6.2.1.9.1 & 6.2.1.9.2	Assets – Term-Limited Lease Assistance, Streamlined Lease Assistance, Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher Programs	Added Emergency Housing Vouchers under the general asset calculation requirements
6.2.1.10	Adoption Assistance	Added Emergency Housing Vouchers under the treatment of adoption assistance

Summary of Proposed Administrative Plan Changes, August 2021 (Continued)

Section	Topic	Change
6.2.2.1.1 & 6.2.2.1.2	Income Exclusions – Term-Limited Lease Assistance, Streamlined Lease Assistance, Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher Programs	Added Emergency Housing Vouchers under the treatment of earnings of full-time students
6.2.2.8	Earned Income Disallowance	Clarified that earned income disallowance applies to both the VASH and EHV programs
6.4.7.2	Temporary Hardship Exemptions	Clarified that unforeseen loss of income is a complete loss of the income as opposed to an income reduction
7.1.1	Release of Information and Verification Expiration Dates	Added VASH and Emergency Housing Vouchers under the verification expiration requirements
7.3.1, 7.3.2, 7.3.3 & 7.3.4	General Verification Policies for Continued Assistance for MTW Programs	Added Emergency Housing Vouchers under the general verification policies. Also, corrected error concerning information verified at recertification for the VASH program.
7.4.2.1	Social Security Numbers – Emergency Housing Voucher Program	Added HUD waiver of the requirement that an applicant must document social security number prior to admission to the EHV program
7.4.7.1	Citizenship or Eligible Immigration Status – Emergency Housing Voucher Program	Added HUD waiver of the requirement that an applicant document eligible immigration status prior to admission to the EHV program
7.5.5.1 & 7.5.5.2	Assets and Income from Assets	Added Emergency Housing Vouchers under the treatment of assets and asset income
8.2.1 & 8.2.2	Applicant Briefings & Participant Move Briefings	Revised the language concerning the term of the voucher to provide the option for an automatic extension at voucher issuance. For example, in a tight housing market, the initial voucher term would be 60 days with an automatic 60-day extension for a search period of 120 days
8.6, 8.6.1 & 8.6.2	Family Obligations Agreement or Voucher Conditions & Extensions	Revised the language to provide consistency with Sections 8.2.1 and 8.2.2 and added section to include HUD required 120 voucher term for the Emergency Housing Voucher program. Revised the language concerning extensions to provide consistency with previous sections and added examples of extenuating circumstances for approval of voucher extensions beyond a 120-day term

Summary of Proposed Administrative Plan Changes, August 2021 (Continued)

Section	Topic	Change
8.10	Emergency Housing Voucher Services and Support	Added section about the housing search assistance and financial assistance available under the EHV program
9.3	Eligible Types of Housing	Added shared housing option to list of eligible housing types, which allows a voucher holder to rent a unit occupied by another household, such as renting a room in a 3-bedroom house
9.4	Ineligible Types of Housing	Revised restriction on unit occupied by owner for shared housing in accordance with HUD guidance
9.6.1	Lease Review – Term-Limited Lease Assistance, Streamlined Lease Assistance, and Traditional, Regulator Assistance for Special Purpose Programs	Added that a shorter lease term for certain housing types, like shared housing, may be permitted
9.6.5	Lease Review – Emergency Housing Voucher Program	Added HUD waiver allowing for an initial lease term of less than one (1) year for the Emergency Housing Voucher program
10.1 & 10.1.1	Types of Inspections & Pre-inspection	Added pre-inspection option for the EHV program and included VASH, EHV and Mainstream programs under biennial inspections as permitted under HUD regulations
10.1.2	Initial Inspection	Added provision that the lease must begin within 45 days of the date the unit passed initial inspection or the RFTA was received (for pre-inspected units).
10.1.3	Annual and Biennial Inspections	Added VASH, EHV and Mainstream programs to the units inspected biennially
10.5	Inspections – Shared Housing	Added special inspection considerations for shared housing situations
11.3.2	Rent Reasonableness – Traditional, Regulatory Assistance for Special Programs	Clarified that this section includes VASH and EHV. The payment standard rent cap provision under the MTW Plan is not authorized by HUD for these programs
11.3.4	Rent Reasonableness After Initial Lease-Up	Added clarification allowing rent to exceed payment standards for traditional regulatory assistance programs, including VASH and EHV
11.3.5	Rent Reasonableness in Shared Housing	Added section to describe the rent reasonableness process for a shared housing unit

Summary of Proposed Administrative Plan Changes, August 2021 (Continued)

Section	Topic	Change
11.5.1	Payment Standards - Term-Limited Lease Assistance, Streamlined Lease Assistance, and Veterans Affairs Supportive Housing (VASH) Programs	Clarified the payment standard increases will generally be applied at a participant's first recertification following the payment standard increase. For payment standard reductions, the payment standard will remain unchanged for families who were under HAP contract when the reduction occurred.
11.5.3	Payment Standards – Shared Housing	Added section to describe how the payment standard is determined for a shared housing unit
11.5.4	Payment Standards – Emergency Housing Voucher Program	Added section to describe use of a separate payment standard schedule for the Emergency Housing Voucher program
12.1.2 & 12.1.3	Recertifications – Streamlined Lease Assistance, Veterans Affairs Supportive Housing (VASH), and Emergency Housing Vouchers (EHV) Programs	Added Emergency Housing Voucher program to biennial and triennial recertifications.
13.5	Lease and Contract Term	Added that a shorter lease term for certain housing types may be permitted (see section 9.6.1)
15.1 & 15.1.1	Mandatory Denial of Assistance Reasons – Emergency Housing Voucher Program	HUD established alternative requirements related to the denial of admission to the Emergency Housing Voucher program. Added section outlining the reasons for mandatory denial of assistance
16.2.2.4	Additional Termination Reasons – Emergency Housing Voucher Program	Added section providing that assistance will be terminated when funding for the EHV program ends
19.1.2 & 19.1.3	Allowable Moves under Portability – Emergency Housing Voucher Program	Added HUD requirement that the Housing Authority may not restrict an EHV family from exercising portability because they are a non-resident applicant
19.4	Billing Procedures	Added information about additional fees that the receiving PHA may be eligible to receive under the EHV program
20.6.2	Determining Contract Rent to Owner	Updated process for owner requested rent increases under the project-based voucher program to align with HUD requirements
20.7	Selection of Project-Based Assistance Program Participants	Revised section to reflect the priority order in which project-based assistance participants are selected

Summary of Proposed Administrative Plan Changes, August 2021 (Continued)

Section	Topic	Change
20.7.2.3	Permanent Supportive Housing	Added Bloomington III to the list of Permanent Supportive Housing developments
20.9.2.1	Project-Based Voucher Policies Specific to Rental Assistance Demonstration Units	Updated wrong-sized unit policy for RAD conversions to provide consistency with MTW Plan Added more detail concerning the treatment of zero HAP/over-income tenants in RAD units
20.9.2.3	Supportive Services Guidelines and Requirements	Added footnote related to the HACSB's supportive services waiver
20.10	Local Project-Based Voucher Subsidy for Tax Credit Developments	Added updates to Activity 27 that were included in the 2021 MTW Plan related to rent caps, minimum income requirement and alternative method of conducting annual recertifications
20.19.1	Mandatory Transfers	Added that a project-based voucher tenant may be eligible for a unit transfer if the unit is damaged and uninhabitable and deleted language related to payment to owner for under or over occupied units as the provision relates to in-place participants and is inapplicable to unit transfers
20.19.2	Participant Requested Transfers	Deleted language indicating that there are other non-specified reasons that unit transfers may be approved
Chapter 22	Emergency Operations	Updated expiration dates of waivers and added several new waivers

Housing Authority of the County of San Bernardino

Housing Services Program Administrative Plan

Revised: ~~April~~ August 2021

continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

To administer the Housing Services program, the Housing Authority enters into a contractual relationship with HUD. The Housing Authority also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit. For the program to work and be successful, all parties involved – HUD, the Housing Authority, the owner, and the family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program.

1.5.2 Housing Services Program Types

The Housing Authority administers ten distinct types of Housing Services programs. All of the types, except for Term-Limited Lease Assistance, may be either tenant-based or project-based. Term-Limited Lease Assistance is only available in the tenant-based program.

- **Term-Limited Lease Assistance** – Participants in the Term-Limited Lease Assistance program execute a Family Obligations Agreement (FOA) with the Housing Authority.¹ Each participant receives five years of housing assistance as long as they remain compliant with the FOA and continue to remain eligible for the program. This program became effective for all new non-elderly/non-disabled, tenant-based participants on January 1, 2012, including the former Upland Housing Authority waiting list applicants who are pulled on or after July 1, 2017, and all port-in families, families exercising mobility through the Project-Based Voucher program, and non-legacy families in Rental Assistance Demonstration (RAD) units exercising mobility who are briefed on or after November 1, 2017.
- **Streamlined Fixed Lease Assistance for Elderly/Disabled Families** – Elderly/Disabled families who become participants after November 1, 2014 or were existing participants admitted to the program prior to November 1, 2014 and who have a recertification effective date of February 1, 2015 or later² will participate in the Streamlined Fixed Lease Assistance program.³ This also applies to the former

¹ The FY 2011 Moving to Work Annual Plan included Activity 20: Term-Limited Lease Assistance program.

² The recertification process for families with a February 1, 2015 or later effective date will be commenced in November, 2014.

³ The FY 2013 Moving to Work Annual Plan included Activity 22: Streamlined Lease Assistance programs. The Streamlined Fixed Lease Assistance program serves elderly/disabled families and the Streamlined Tiered Lease Assistance program serves Career Focused Families. Participants, who were not Term-Limited Lease Assistance program participants and who had a recertification effective date prior to February 1, 2015, participated in the

Housing Authority of the County of San Bernardino

Housing Services Program Administrative Plan

Revised: ~~April~~-August 2021

Upland Housing Authority (UHA) elderly/disabled families as a result of the voluntary transfer on July 1, 2017 with a recertification date of January 1, 2018 or later; future Plan references to Streamlined Fixed Lease Assistance families will also apply to these former UHA families. Each participant family has their income calculated based on gross income and receives no allowances or deductions. Rent is determined based on a set percentage of income throughout participation in the program.

- **Streamlined Tiered Lease Assistance for Career-Focused Families** – Existing participants who received assistance prior to January 1, 2012 and are not elderly/disabled households but who have a recertification effective date of February 1, 2015 or later are part of the Streamlined Tiered Lease Assistance for Career Focused Families program. This also applies to the former Upland Housing Authority (UHA) career focused families as a result of the voluntary transfer on July 1, 2017 with a recertification date of January 1, 2018 or later; future Plan references to Streamlined Tiered Lease Assistance families will also apply to these former UHA families. Each participant family has their income calculated on gross income and receives no allowances or deductions. Rent is determined based on an increasing percentage of income at each recertification.
- **Streamlined Fixed Lease Assistance for Career-Focused Families** – All non-elderly and non-disabled families admitted under the project-based voucher program and sponsor-based project-based voucher program after January 1, 2017, will participate in the Streamlined Fixed Lease Assistance for Career-Focused Families program.
- **Veteran's Affairs Supportive Housing (VASH)** – Assists homeless veterans with severe psychiatric or substance abuse disorders. The Housing Authority and Veterans Administration Medical Center have partnered to provide rental voucher and supportive services to eligible veterans. Except as otherwise specified in this document, the policies for HACSB's Moving to Work program shall apply to this program.
- **Local Disaster Short-Term Rental Assistance Program** – Assistance through this program will be limited to families displaced as the direct result of a local disaster. A local disaster is an event that occurs within the County of San Bernardino and may include a natural disaster, an act of terrorism, or other event

Transitional Assistance for MTW Families program until their next recertification, at which time they were transitioned to the Streamlined Lease Assistance program that they were determined to be eligible for. These participants were subject to HACSB rules that were implemented for MTW families. These specific rules were noted in the prior versions of the Administrative Plan.

Housing Authority of the County of San Bernardino

Housing Services Program Administrative Plan

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as determined by the Housing Authority. The qualification of a local disaster shall be declared by the Housing Authority through its governing board. The income and rental subsidy for this program shall align with the Streamlined Lease Assistance program methodologies. Except as otherwise specified in this policy, the policies for HACSB's Housing Choice Voucher Program shall apply to this program.

- **Family Unification** - The Family Unification Program (FUP) is administered in partnership with the San Bernardino County Department of Children and Family Services (DCS). Tenant-Based Voucher (TBV) rental assistance is provided to families for which the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care; or the delay in the discharge of the child, or children, to the family from out-of-home care. Applications from residents of San Bernardino County are referred through DCS. The income and rental subsidy for this program shall align with the Streamlined Lease Assistance program methodologies. Except as otherwise specified in this policy, the policies for HACSB's Housing Choice Voucher Program shall apply to this program.
- **Mainstream Vouchers** (formally Mainstream 5 and Mainstream 811) - Provides rental assistance for a family containing a member who is a person with disabilities between the ages of 18 – 61 to enable the family to rent suitable and accessible housing in the private market. Effective January 1, 2021, Mainstream 5 participants will transition to the Streamlined Lease Assistance for Elderly and Disabled at recertification.
- **Traditional, Regulatory Assistance for Special Purpose Programs** – Certain HUD programs are not eligible for inclusion in the Moving to Work Demonstration. These programs are administered in accordance with federal regulations and the specific criteria established by the special purpose program. HACSB's MTW Agreement and MTW Plans do not apply to any of these program types. These programs include:
 - **Continuum of Care** – Provides rental assistance for hard to serve homeless persons with disabilities in connection with supportive services funded from sources outside the program.
 - **Housing Opportunities for People with AIDS (HOPWA)** – HACSB has partnered with the Foothill AIDS Project to offer rental assistance and supportive services to persons with HIV or AIDS.
 - **Master Leasing Program** – Funded by the State of California Mental Health, this program serves mentally ill or developmentally disabled families

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in a group home setting. Case management and comprehensive support services are provided for participants of this program.

- **Family Self-Sufficiency** – The Family Self-Sufficiency (FSS) program enables families to increase their earned income and eliminate their dependency on public assistance and housing subsidies. Under the FSS program, low-income families are provided opportunities for education, job training, counseling and other forms of social service assistance while receiving housing assistance. The income and housing subsidy for this program shall align with the Traditional, Regulatory Assistance programs methodologies. Except as otherwise specified in this policy, the policies for HACSB's Housing Choice Voucher Program shall apply to this program.
- **Emergency Housing Vouchers** – Emergency Housing Vouchers authorized under the American Rescue Plan Act of 2021 to provide rental assistance to low-income families that are homeless; at risk of being homeless; fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability. Eligibility under these categories is defined in Notice PIH 2021-15 and program applicants are referred by the Coordinated Entry System and other partner organizations, who have Memorandum of Understanding with the Housing Authority.

1.6 Rules and Regulations

This Administrative Plan is set forth to define the Housing Authority's local policies for operation of the housing programs in the context of Federal laws and regulations. All issues related to the Housing Services program not addressed in this document are governed by the HACSB's MTW Agreement, MTW Plans, federal regulations, HUD memos, notices and guidelines, state and local laws, and other applicable laws. Applicable regulations include:

- CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 100: Fair Housing Act
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Project-Based Vouchers

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2.1.3.1 Special Purpose Program Admissions

Special purpose funding or Moving to Work activities with specific eligibility criteria may be implemented by the Housing Authority. Such housing assistance funding shall be for the individuals and families indicated in the federal, State or local requirements, rules, and regulations for each program. In some cases, use of the tenant-based waiting list is required or a separate waiting list must be established.

2.1.3.1.1 Mainstream Program

Families will be selected from the general tenant-based voucher wait list based on their eligibility for the Mainstream program, wait list position (application sequence or lottery number), and applicable local preferences. Families may apply for assistance (by applying directly to the wait list or through a referral from a partner agency) at any time when the tenant-based voucher wait list is open. If the general tenant-based voucher wait list is closed and does not have enough applicants to fill the available funding, the Housing Authority may open the wait list only to applicants who qualify for the Mainstream Program.

2.1.3.1.2 Referral Based Special Purpose Programs

Other special purpose programs are referral based and families may be admitted outside of the waiting lists. A referral based special purpose program may be either a tenant-based or project-based program. Subject to available funding, families are admitted through referrals from designated partners on a first come, first served basis for certain programs, including, but not limited to:

- Continuum of Care (formerly known as Shelter Plus Care)
- Housing Opportunities for People With AIDS (HOPWA)
- Veteran's Affairs Supportive Housing (VASH)
- Family Unification Program (FUP)
- Emergency Housing Vouchers (EHV)

2.1.3.1.3 Moving to Work Activities

The following HUD approved Moving To Work activities are non-waiting list special admissions:

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not already on the wait list must be added to the wait list by order of referral. The Housing Authority may open the wait list only to accept DCS referrals.

2.2.5.3 Emergency Housing Voucher Program

If the number of referrals exceeds the number of vouchers available under the Emergency Housing Voucher (EHV) program, the Housing Authority will establish a separate waiting list. Referrals will be placed in order by the date and time the referral was received. The program has no waiting list preferences. Once the voucher issuance period has ended, the applicants on the waiting list will be notified that the program is no longer available. Applicants on the EHV waiting list are not eligible to be transferred to any other waiting list.

2.2.6 Change in Applicant Circumstances

Applicants are required to inform the Housing Authority in writing of changes in mailing address and household size via the applicant portal. Applicants are also required to respond to requests from the Housing Authority to update information on their pre-application and to determine their continued interest in assistance.

2.2.7 Removal from the Waiting List and Purging [24 CFR 982.204]

The Housing Authority may request each applicant to respond to a request for current information and/or confirmation of continued interest to ensure that the waiting list is current and accurate. This process will be conducted through the applicant portal and by mail. The Housing Authority is authorized to remove the names of applicants who do not respond to requests for information or periodic updates. An applicant who fails to respond to a Housing Authority mailing within the time frame indicated will be removed from the waiting list without further notice. An extension may be considered as a reasonable accommodation if requested in advance by a person with a disability. Notices will be made available in accessible format upon the request of a person with a disability.

The family's response must be in writing and may be delivered in person, by mail, through the applicant portal or by fax. Responses should be postmarked or received by the HACSB no later than the due date on the HACSB notification. If the family fails to respond by the due date, the family will be removed from the waiting list without further notice.

If an email notification from the applicant portal returns a delivery error or no response is received, a notification will be mailed to the applicant. If the notification is returned by the Post Office, the applicant will be removed from the waiting list without further notice. The returned envelope and original letter will be maintained in the file.

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2.2.8.1 Income Targeting [24 CFR 982.201(b)(2)]

In accordance with the Housing Authority's Moving To Work Agreement, each fiscal year the Housing Authority will reserve a minimum of seventy-five percent (75%) of its Housing Services program new admissions for families whose income does not exceed fifty percent (50%) of the area median income. HUD refers to these families as "very low-income families." The Housing Authority will admit families who qualify under the very low-income limit to meet the income targeting requirement, regardless of preference.

HUD may award HACSB funding for a specified category of families on the waiting list. HACSB must use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, HACSB may skip families on the waiting list that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 2.2.8. Selection from the Waiting List [24 CFR 982.204].

The Housing Authority's targeting requirement does not apply to low income families continuously assisted as provided for under the 1937 Housing Act. The Housing Authority is also exempted from this requirement where the Housing Authority is providing assistance to low or moderate income families entitled to preservation assistance under the tenant-based program as a result of a mortgage prepayment or opt-out.

2.2.8.2 Comparable Mix [Moving to Work Standard Agreement]

The Housing Authority may also target families on the waiting list in order to meet the terms of its Moving to Work Agreement with HUD. The Housing Authority is required to, "maintain a comparable mix of families by family size, as would have been served or assisted had the amounts not been used under the demonstration."

2.2.8.3 Wait List Preferences

HACSB will select applicants from the waiting list using the local admission preferences described in the following sections.

2.2.8.3.1 Veteran Preference

As required by California Health and Safety Code (§34322.2), HACSB will give priority to families of veterans and servicemen within each preference category.

2.2.8.3.2 Mainstream Program Preference

HACSB will give a limited preference to non-elderly persons with disabilities who are transitioning out of institutional or other segregated settings, at serious risk of institutionalization, homeless, or at risk of becoming homeless, or persons who previously

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experienced homelessness and are currently a participant in a permanent supportive housing or rapid rehousing program. The definitions stated in the 2019 Mainstream Notice of Funding Availability (NOFA) are used for the Mainstream Program preference. The preference is limited to ten (10) Mainstream vouchers or Mainstream turn-over vouchers per calendar year, whichever is less. However, fewer applicants may be selected under the Mainstream preferences if an insufficient number of applicants on the waitlist meet one of the preferences.

2.2.8.3.3 Other Preferences

Applications or referrals from designated partners received under “other preferences” described below will be assisted on a first come, first served basis and receive the highest priority on the wait list. Under these categories, applications and/or referrals may be accepted to the wait list for the tenant-based voucher program regardless of whether the Housing Authority wait list is open or closed, subject to available funding:

- A family participating in a Continuum of Care (CoC) program administered by the Housing Authority when CoC funding is not renewed;
- Participants that have utilized the Veterans Affairs Supportive Housing (VASH) Continuum of Care (CoC), or Housing Opportunities for People with Aids (HOPWA) for a 3 year term, no longer require supportive services and are eligible to transition to the voucher program provided they meet all other eligibility requirements. Verification from the supportive services provider stating that supportive services are no longer needed is required;
- No Child Left Unsheltered (NCLU) Families described below;⁷
- Families referred by HUD as part of a witness relocation program; or
- Families who are involuntarily displaced as described below.

2.2.8.3.3.1 No Child Left Unsheltered (NCLU)

Under NCLU, the Housing Authority assists unsheltered families with children and young adults participating in the Department of Children and Family Services Foster Care Aftercare Program.

Families with children must be unsheltered at time of application, but do not otherwise qualify as chronically homeless under the HUD definition, but who:

⁷ The FY 2014 MTW Plan, Activity 23: No Child Left Unsheltered, set aside 40 tenant-based or project-based vouchers for the program. The FY 2018 MTW Plan modified the activity to add 20 tenant-based vouchers specifically for families participating in the Aftercare program. The FY 2019 MTW Plan modified the activity to add that the NCLU families are transitioned to the TLA or SLA activity after two years of participation for those admitted after October 1, 2019.

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2.2.9 Verification of Preferences

Any preference claimed on the pre-application or while the family is on the waiting list will be verified in accordance with the Housing Authority's verification policies after the family is selected from the waiting list and prior to completing the full application described in this Chapter. The qualification for the preference must exist at the time the preference is claimed and at the time of verification because a claim of preference determines placement on the waiting list. If the Housing Authority denies a preference, the Housing Authority will notify the applicant in writing of the reasons why the preference was denied and return the applicant to the waiting list without the benefit of the preference. Families who are returned to the waiting list for not meeting the claimed preference are not entitled to an informal review as they have not been found ineligible. Applicants may exercise other rights if they believe they have been discriminated against.

2.3 Completion of a Full Application [HCV GB, p. 4-16]

After an applicant is selected from the waiting list, and any preference is verified (if applicable), the applicant will be contacted through email and mail to complete a full application in the applicant portal or on HACSB supplied forms provided through the mail. All adult members of an applicant's household will be required to complete and sign forms and submit required documentation.

The Housing Authority uses the full application process to document the family's circumstances in greater detail and verify information which has been provided by the family and to ensure that the information is complete.

Correspondence during the full application process will be in English. For limited English proficient applicants, the Housing Authority will provide translation services in accordance with the Housing Authority's Language Access Plan.

Applicants who fail to ~~respond to~~submit the full application and/or documentation request, with good cause, and want an extension must make the request for extension no later than ~~ten (10) business days from~~ the original due date of the documents. If an applicant fails to ~~respond to~~submit the full application by the due date, without notifying the Housing Authority, their application will be removed from the waiting list without further notice. However, if the applicant ~~responds to~~submits their intake but does not complete the entire full application ~~nor submit~~with the additional documents needed by the due date, the Housing Authority will send a denial letter.

Upon request, reasonable accommodation will be made for persons with a disability who requires an advocate or accessible offices. A designee will be allowed to participate in

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the full application process, but only with permission from the person with a disability. If an application is denied due to failure to complete the full application and supporting documentation, the applicant will be notified in writing.

In addition to the full application, all adult members must sign the HUD-9886, "Authorization for the Release of Information/Privacy Act Notice", the full application, the declarations and consent forms related to citizenship/immigration status, and any other documents required by the Housing Authority. Applicants will be required to sign specific verification forms for information which is not covered by the HUD-9886. Every adult household member also must sign a consent form to release criminal conviction records and to allow the Housing Authority to receive records and use them in accordance with HUD regulations. Failure to sign all required forms will be cause for denial of the application.

Assistance cannot be provided to the family until all Social Security Number documentation requirements are met. However, if the Housing Authority determines that an applicant family is otherwise eligible to participate in the program, they will have ten (10) days to provide the SSN documentation. Documentation may include the Social Security card or other documentation issued by the Social Security Administration or a Federal, State or local government agency that includes the name and SSN of the individual. If the information is not supplied within the required time period, the Housing Authority will provide the family a written notification of denial for assistance.

If the Housing Authority determines during or after the review of the full application that additional information or document(s) are needed, the Housing Authority will request the information or document(s) in writing. The notification will include if information is not received within the specified timeframe, the applicant will be denied assistance. The family will be given ten (10) business days to supply the information.

2.3.1 Term-Limited Lease Assistance Program

Families will be required to sign a statement that they are aware that they will only receive rental assistance for a maximum of five (5) years. The head of household will also be required to sign an Individual Training and Services Plan (ITSP) committing to participation in self-sufficiency related activities, programs and services during the five years of rental assistance.

2.3.2 Verification

Information provided by the applicant will be verified, using the verification policies outlined in Chapter 7 of this Administrative Plan.

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3.11.5.5 Master Leasing Program

The Master Leasing program is funded by the State of California Mental Health funds and serves mentally ill or developmentally disabled families with intensive supportive services provided by the Department of Behavioral Health.

3.11.5.6 Emergency Housing Voucher Program

The Emergency Housing Voucher Program is for individuals and families who are homeless, at risk of homelessness, fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, or recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability. Referrals are received by the Coordinated Entry System and other partner organizations, who have Memorandum of Understanding with the Housing Authority.

3.12 Denial of Assistance [24 CFR 982.201(f)(1) and 982.552(a)(2)]

Denial of assistance for an applicant family may include denying placement on the waiting list; denying or withdrawing a voucher or family obligations agreement; refusing to enter into a Housing Assistance Payment or Lease Assistance Payment contract or approve a lease; and refusing to process or provide assistance under portability procedures.

Families from the waiting list who are determined to be ineligible will be notified in writing of the reason for denial and given an opportunity to request an informal review if they do not agree with the decision. This policy also applies to incoming families from other housing authorities that have not yet received assistance in the Housing Authority's jurisdiction. Refer to Chapter 15 for more information on the informal review process.

3.13 Violence Against Women Act

The Violence against Women Reauthorization Act of 2013 (VAWA 2013) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. Specifically, Section 606(4)(A) of VAWA adds an addition provision to Section 8 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the housing choice voucher program. The addition provision is that an applicant or participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking is not an appropriate reason for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission [24 CFR 5.2005].

3.13.1 Definitions [24 CFR 5.2003]

The following defines the terms as used in the VAWA legislation:

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CHAPTER 6: ANNUAL INCOME, ADJUSTED ANNUAL INCOME AND FAMILY RENT SHARE CALCULATION

6. Introduction [24 CFR 982.54(d)]

This chapter describes all policies related to income calculations and the calculation of family rent share for the Housing Services programs.

6.1 General Income Determination Requirements [24 CFR 5.609]

The Housing Authority generally includes all income received by all family members except for income that is specifically excluded. Annual income means all amounts, monetary or not which:

- Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- Are anticipated to be received from a source outside the family during the twelve (12) month period following admission or the regularly scheduled recertification effective date; and
- Are not specifically excluded.

6.1.1 Term-Limited Lease Assistance, Streamlined Lease Assistance, ~~and~~ Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher Programs

For the purposes of initial eligibility, the Housing Authority also will calculate the amounts from assets to which any member of the family has access. These assets will be used to determine if the family exceeds the income limit threshold but will not be included for purposes of calculating total annual income or family rent share.

The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations and further information on family members is included in Chapter 4.

This section applies to the Veterans Affairs Supportive Housing (VASH) program effective January 1, 2019, or as soon as practicable thereafter.

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Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster children and foster adults ¹³	Income for the care of a foster child or foster adult, including Kin GAP income, is included.
Head, spouse, or cohead and other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded, are included.
Full-time students 18 years of age or older (not head, spouse, or cohead)	Employment (earned) income is excluded [24 CFR 5.609(c)(11)]. ¹⁴ All other sources of income, except those specifically excluded by the regulations, are included.

6.1.2 Traditional, Regulatory Assistance for Special Purpose Programs

This section does not apply to the Veterans Affairs Supportive Housing (VASH) ~~program~~ and Emergency Housing Voucher programs (see 6.1.1).

Annual income also means amounts derived from assets to which any member of the family has access. Assets are included in the annual income calculation for initial eligibility and recertifications, and to determine family rent share. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations and further information on family members is included in Chapter 4.

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c)(2)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included.

¹³ HACSB's MTW Activity 5: Simplified Income Determination includes all income for the care of foster children.

¹⁴ HACSB's MTW Activity 5: Simplified Income Determination excludes all earned income from Full-Time Students.

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Summary of Income Included and Excluded by Person	
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or cohead)	Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

6.2 Annual Income

Annual income is the total income a family has after adding all income inclusions and exclusions as described in this section. Adjusted annual income is discussed in 6.4 and recognizes allowances and deductions from annual income for certain Housing Services programs.

The Housing Authority is required to count all income anticipated to be received from a source outside the family during the twelve (12) month period following admission or recertification effective date.

The Housing Authority generally will use current circumstances to determine anticipated income for the coming twelve (12) month period. HUD authorizes the Housing Authority to use other than current circumstances to anticipate income when:

1. An imminent change in circumstances is expected
2. It is not feasible to anticipate a level of income over a twelve (12) month period (e.g., seasonal or cyclic income)
3. The Housing Authority believes that past income is the best available indicator of expected future income

The Housing Authority is required to use HUD's Enterprise Income Verification (EIV) system in its entirety as a third-party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance.

The Housing Authority will use pay-stubs to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where the Housing Authority does not determine it is necessary to obtain additional third-party data.

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6.2.1.4 Payments in Lieu of Earnings [24 CFR 5.609]

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts.

6.2.1.5 Welfare Assistance [24 CFR 5.603(b) and 24 CFR 5.615]

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments.

6.2.1.5.1 Term-Limited Lease Assistance and Streamlined Lease Assistance

The Housing Authority must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. This rule applies only if a family was receiving Housing Services program assistance at the time the sanction was imposed.

The Housing Authority must include in annual income "imputed" welfare income when a welfare agency imposes a sanction that reduces a family's welfare income because of one of the following:

1. Fraud by a family member in connection with the welfare program; or
2. Failure to participate in an economic self-sufficiency program; or
3. Noncompliance with a work activities requirement.

HACSB will also include in annual income imputed welfare income when the sanction is the result of:

4. A situation where a family member has not complied with other welfare agency requirements.¹⁵

¹⁵ HACSB's MTW Activity 5: Simplified Income Determination allows for all welfare income to be counted, regardless of certain sanctions. This policy applies to Term-Limited Lease Assistance, Streamlined Lease Assistance, ~~and~~ VASH ~~and~~ EHV programs.

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The imputed income is the amount the family would have received if the family had not been sanctioned. This requirement does not apply to reductions in welfare benefits where one of the following has occurred:

1. The expiration of a lifetime time limit on receiving benefits;
2. A situation where a family member has complied with welfare agency economic self-sufficiency or work activities requirements but cannot or has not obtained employment, such as in a case where the family member has complied with welfare program requirements, but the durational time limit, such as a cap on the length of time a family can receive benefits, causes the family to lose their welfare benefits.

The Housing Authority will obtain written verification from the welfare agency stating that the family's benefits have been reduced for fraud or noncompliance with economic self-sufficiency or work activities requirements. The welfare agency, at the request of the Housing Authority, will inform the Housing Authority of:

- The amount and term of specified welfare benefit reduction for the family;
- The reason for the reduction; and
- Subsequent changes in term or amount of reduction.

The Housing Authority has a written memorandum of understanding in place with the local welfare agency which assists the Housing Authority in obtaining the necessary information regarding welfare sanctions.

The Housing Authority and the local welfare agency have mutually agreed to notify each other of any economic self-sufficiency and/or other appropriate programs or services that would benefit program participants.

6.2.1.5.2 Traditional, Regulatory Assistance for Special Purpose Programs

The Housing Authority must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. This rule applies only if a family was receiving Housing Services program assistance at the time the sanction was imposed.

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the Housing Authority must include in annual income "imputed" welfare income. The Housing Authority must request that the

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6.2.1.9 Assets [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]

6.2.1.9.1 Term-Limited Lease Assistance, Streamlined Lease Assistance, ~~and~~ Veterans Affairs Supportive Housing, and Emergency Housing Voucher Programs

For the purposes of initial eligibility, the Housing Authority will calculate the amounts from assets to which any member of the family has access. These assets will be used to determine if the family exceeds the income limit threshold but will not be included for purposes of calculating total annual income or family rent share.

This section applies to the Veterans Affairs Supportive Housing (VASH) program effective January 1, 2019, or as soon as practicable thereafter.

6.2.1.9.2 Traditional, Regulatory Assistance for Special Purpose Programs

This section does not apply to participants of the Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher programs (see 6.2.1.9.1).

Assets are included in the annual income calculation for initial eligibility and recertifications. Assets also are used to determine family rent share.

6.2.1.9.3 Assets Overview

Assets will be calculated using the policies in this Section. HUD requires that the Housing Authority include in annual income the “interest, dividends, and other net income of any kind from real or personal property” [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the Housing Authority must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

6.2.1.9.4 General Policies

The Housing Authority generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes the Housing Authority to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over twelve (12) months or (3) the Housing Authority believes that past income is the best indicator of anticipated income.

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Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)]. Necessary personal property consists of only those items not held as an investment, and may include clothing, furniture, household furnishings, jewelry, and vehicles, including those specially equipped for persons with disabilities.

6.2.1.9.12.7 Life Insurance [HCV GB, p.5-26]

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

6.2.1.10 Adoption Assistance

Adoption assistance income is included as part of the families' annual adjusted income for the following programs: Term-Limited Lease Assistance, Streamlined Lease Assistance, ~~and~~ Veterans Affairs Supportive Housing (VASH), and Emergency Housing Voucher programs.¹⁶

This section applies to the Veterans Affairs Supportive Housing (VASH) program effective January 1, 2019, or as soon as practicable thereafter.

6.2.2 Income Exclusions

Certain types of income are excluded from annual income. This section describes all income exclusions.

6.2.2.1 Excluded Earned Income [24 CFR 5.609 and Notice PIH 2009-19]

- Temporary, nonrecurring or sporadic income, including gifts, is not included in annual income. Sporadic income is income that is not received periodically and cannot be reliably predicted. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than one-hundred and eighty (180) days

¹⁶ HACSB's MTW Activity 5: Simplified Income Determination includes all income from adoption assistance.

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Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)]. Necessary personal property consists of only those items not held as an investment, and may include clothing, furniture, household furnishings, jewelry, and vehicles, including those specially equipped for persons with disabilities.

6.2.1.9.12.7 Life Insurance [HCV GB, p.5-26]

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

6.2.1.10 Adoption Assistance

Adoption assistance income is included as part of the families' annual adjusted income for the following programs: Term-Limited Lease Assistance, Streamlined Lease Assistance, ~~and~~ Veterans Affairs Supportive Housing (VASH), and Emergency Housing Voucher programs.¹⁶

This section applies to the Veterans Affairs Supportive Housing (VASH) program effective January 1, 2019, or as soon as practicable thereafter.

6.2.2 Income Exclusions

Certain types of income are excluded from annual income. This section describes all income exclusions.

6.2.2.1 Excluded Earned Income [24 CFR 5.609 and Notice PIH 2009-19]

- Temporary, nonrecurring or sporadic income, including gifts, is not included in annual income. Sporadic income is income that is not received periodically and cannot be reliably predicted. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than one-hundred and eighty (180) days

¹⁶ HACSB's MTW Activity 5: Simplified Income Determination includes all income from adoption assistance.

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- Employment income earned by children (including foster children) under the age of eighteen (18) years is not included in annual income [24 CFR 5.609(c)(1)].
- Income earned by a live-in aide, as defined in is not included in annual income.
- Income from some federal programs is specifically excluded from consideration as income including:
 - Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
 - Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b))
 - Awards under the federal work-study program (20 U.S.C. 1087 (u))
 - Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
 - Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
 - Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the Housing Authority or owner, on a part-time basis, that enhances the quality of life in the development. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].
- Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].
- Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income.
- Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income.

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6.2.2.1.1 Term-Limited Lease Assistance, Streamlined Lease Assistance, ~~and~~ Veterans Affairs Supportive Housing (VASH), Emergency Housing Voucher Programs

Earnings for each full-time student eighteen (18) years old or older (except for the head, spouse, or cohead) are not counted¹⁷.

This section applies to the Veterans Affairs Supportive Housing (VASH) program effective January 1, 2019, or as soon as practicable thereafter.

6.2.2.1.2 Traditional, Regulatory Assistance for Special Purpose Households

This section does not apply to participants of the Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher programs (see 6.2.2.1.1).

Earnings in excess of \$480 for each full-time student eighteen (18) years old or older (except for the head, spouse, or cohead) are not counted.

6.2.2.2 Excluded Periodic Payments [24 CFR 5.609 and FR Notice 11/24/08]

- Lump-sums received as a result of delays in processing Social Security and SSI payments
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA)
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)].
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)].
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)].
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.

¹⁷ HACSB's MTW Activity 5: Simplified Income Determination excludes all earned income from Full-Time Students.

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- Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05) children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1821), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821)
- Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4))
- Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) and comparable disaster assistance provided by the States, local government, and disaster assistance organizations (42 U.S.C. 5155(d))

6.2.2.6 Earned Income Disallowance [24 CFR 5.617]

6.2.2.7 Term-Limited Lease Assistance and Streamlined Lease Assistance

There is no earned income disallowance for families participating in the Term-Limited Lease Assistance and Streamlined Lease Assistance programs.¹⁸

6.2.2.8 Traditional, Regulatory Assistance for Special Purpose Programs

This section applies to Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher programs.

The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time.

This disallowance applies only to individuals in families already participating in the Traditional, Regulatory Assistance for Special Purpose Program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one (1) of the following events:

1. Employment of a family member who is a person with disabilities and who was previously unemployed for one (1) or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than would be received for 10 hours of work per week for 50 weeks at the established minimum

¹⁸ HACSB's MTW Activity 5: Simplified Income Determination eliminates the Earned Income Disallowance for MTW programs.

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- wage. The applicable minimum wage is the greater of federal, state or local minimum wage.
2. Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
 3. New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six (6) months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six (6) month period must be at least \$500.

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "prior income." The Housing Authority defines prior income, or prequalifying income, as the family member's last certified income prior to qualifying for the EID. The family member's prior, or prequalifying, income remains constant throughout the period that he or she is receiving the EID.

During the initial twelve (12) month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The twelve (12) months are consecutive, regardless of breaks in employment. The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

During the second twelve (12) month exclusion period, the exclusion is reduced to at least half (50 percent) of any increase in income attributable to employment or increased earnings. The twelve (12) months are consecutive.

The EID has a two (2) year (24 month) lifetime maximum. The two (2) year eligibility period begins at the same time that the initial exclusion period begins and ends twenty-four (24) months later.

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monthly income will be multiplied by twenty-four percent (24%) or thirty percent (30%) depending upon the family's admissions date to determine the new monthly rent share. For families participating in the Streamlined Tiered Lease Assistance for Career-Focused Families program, the new monthly income will be multiplied by the most recent tiered rent percentage established at recertification to determine the new monthly rent share.

6.4.7.2 Temporary Hardship Exemptions

HACSB also recognizes that certain hardships may exist on a temporary basis. The temporary relief that HACSB will offer families depends on the type of hardship being experienced by the family. Families initially leasing under the Streamlined Lease Assistance program may qualify for a temporary hardship exemption upon verification the family has no household income. To be considered for a hardship exemption, a written request must be submitted to the Housing Authority. No more than one temporary hardship exemption request may be received within a 12 month period. The table below describes each type of temporary hardship exemption that may be approved by the Housing Authority.

Temporary Hardship Reason	Temporary Hardship Exemption Relief
Unforeseen involuntary loss of employment; or unforeseen <u>complete</u> loss of income due to major illness as determined by a medical professional. Period of income loss must be anticipated to exceed 30 consecutive days following the date of receipt of the written request.	Family's income will be recalculated and for up to 6 months the family's rent will be based upon most recent percentage established at recertification or the minimum rent, whichever is higher. HACSB will provide a 30 day notice that the rent will revert to the previous rent amount at the end of the approved term. The family's income will not be re-reviewed until the next recertification. The exemption period can be extended up to six additional months if the length of the illness is longer than the initial term.
Significant medical expenses over \$2,500 for single medical event for Streamlined Fixed families only.	Family's income will be recalculated at a 5% reduction to the fixed percentage and for 6 months the family's rent will be based upon that percentage or the minimum rent, whichever is higher.
Unforeseen involuntary permanent loss of income for an adult family member who is attending high school.	Family's income will be recalculated and for 6 months the family's rent will be based upon most recent percentage established at recertification or the minimum rent, whichever is higher. HACSB will provide a 60 day notice that the rent will revert to the previous rent amount at the end of the 6 months. The family's income will not be re-reviewed until the next recertification.

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If the temporary hardship is due to loss of income, the income of the family member, who experienced the income loss, will be removed from the family income, and the rent amount will be based on the remaining family income. Because the family is not required to report interim income changes, the source of income to be removed under the hardship exemption may differ from the reported income change. At the end of the exemption period, the income that had been removed will be added back to the family income and will not be recalculated. If a recertification occurs during the hardship exemption period, the hardship exemption for the affected family member will remain until the end of the approved hardship period. However, the income of other family members will be updated at recertification.

For example, the last reported income may have been self-employment of \$1,000 per month. However, since the last recertification the family member ended self-employment and started receiving a regular wage of \$2,000 per month. This interim change was not required to be reported by the family. Now, the family is reporting an unforeseen, involuntary loss of employment. The hardship exemption would remove the \$1,000 per month self-employment from the family income, and after six months the \$1,000 would be added back to the family income.

6.4.7.3 Pre-Implementation and Program Transfer Hardship Exemptions

Prior to implementation of the Streamlined Lease Assistance (SLA) programs and transfers to SLA from other programs, HACSB will conduct a detailed data analysis. As part of that data analysis, certain households may be likely to experience a disproportionate impact as the result of the implementation or program transfer. A temporary hardship exemption would allow the family to maintain their previous total family rent share for up to six (6) months. HACSB would send a sixty (60) day notice that the family would be subject to the new streamlined calculation at the end of six (6) months. For those families that are currently renting a unit that is larger than their approved subsidy standard HACSB will offer these families either the opportunity to move or the opportunity to have a temporary hardship exemption.

6.4.8 Traditional, Regulatory Assistance for Special Purpose Programs

The family rent share for a household is determined by using the largest of the following: ten percent (10%) of Monthly Annual Income, thirty percent (30%) of Monthly Annual Adjusted Income or the applicable minimum rent. Family rent share also considers whether the family has rented a unit whose contract rent is above the payment standard. Any amount over the payment standard must be paid for by the family and cannot be subsidized by the Housing Authority.

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CHAPTER 7: VERIFICATION POLICIES

7. Introduction [24 CFR Part 5 Subparts B, D, E & F, 982.158 & 5.617]

The Housing Authority verifies all initial and continued eligibility factors. This chapter outlines the Housing Authority's policies for verification which are designed to ensure only eligible applicants are admitted, participants remain eligible for continued assistance and that program integrity is maintained.

7.1 Release of Information and Verification Expiration Dates [24 CFR 982.516, 982.551 and 5.230]

Applicants and program participants must provide true and complete information to the Housing Authority whenever information is requested. The Housing Authority will obtain proper authorization from the family before requesting information from independent sources.

Family refusal to supply any information and to sign consent forms for Release of Information is a violation of family obligations and will result in denial of admission or termination of assistance.

7.1.1 Term-Limited Lease Assistance, ~~and Streamlined Lease Assistance, Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher Programs~~

All adult family members will be required to sign the HACSB-MTW 9886 "Authorization for Release of Information/Privacy Act Notice" that replaces HUD form-9886. In addition to the Authorization for Release of Information/Privacy Act Notice, the Housing Authority requires family members to sign other specific authorization for release of information forms. Each member requested to consent to the release of specific information will be provided with a copy of the appropriate forms for their review and signature.

For applicants, verifications may not be more than one-hundred and twenty (120) days old at the time of orientation.²³ For participants, they are valid for one-hundred and eighty (180) days from date of receipt.²⁴

²³ HACSB's MTW Activity 5: Simplified Income Determination allows verifications to be not more than 120 days old at the time of the briefing.

²⁴ HACSB's MTW Activity 5: Simplified Income Determination allows for the increase of the number of days verifications are valid.

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- Disability status
- Family relationships
- Student status
- Allowances
- Deductions
- If applicable, eligibility for special program type

7.3 Verification Policies for Continued Assistance

The Housing Authority will require households to provide documentation for the factors described in this section at recertification and interim recertification as applicable.

7.3.1 General Verification Policies for Continued Assistance for MTW Programs

For families participating in the HACSB MTW program, ~~and~~ Veterans Affairs Supportive Housing (VASH) ~~program and Emergency Housing Voucher programs~~, HACSB will use the following verification hierarchy. This section applies to the Veterans Affairs Supportive Housing (VASH) program effective January 1, 2019, or as soon as practicable thereafter.

For income sources that are available for verification in HUD's Enterprise Income Verification (EIV) system or other available Up-Front Income Verification (UIV) systems, HACSB will compare the documents provided by the household with the information in the EIV/UIV systems. Currently, income sources that are available in EIV include income from wages, unemployment benefits, Social Security, and Supplemental Security Income. Income sources that may be available through other UIV systems include Temporary Assistance to Needy Families and income from wages through the Work Number.

If there is a discrepancy of \$200 or more per month between the documents provided by the household and the EIV/UIV system, HACSB will require third-party written verification of the income. If the Housing Authority is unable to obtain third-party written verification it will then attempt to receive third-party oral verification. If those attempts are unsuccessful, HACSB will rely on the documents provided by the household to calculate income.

If there is a discrepancy of less than \$200 per month between the documents provided by the household and the EIV/UIV system, HACSB will calculate income based on the most recent verification of the source and the associated amount of income from that source.

If data that is generally available in the UIV/EIV systems is not available due to recent employment or other unknown reasons, HACSB will rely on documents provided by the assisted family.

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For all income sources that are not generally available in EIV/UIV, HACSB will rely on documents provided by the household. However, the Housing Authority reserves the right to conduct written or oral third-party verification on all income sources. Families must provide documentation to support all sources of income except for fully excluded income sources. If a household does not provide supporting documentation it is a violation of family obligations and the participant may lose their housing assistance. If the Housing Authority, at its discretion chooses to further verify an income source, it will attempt to first obtain third-party written verification. If that attempt to receive verification is unsuccessful, HACSB will request third-party oral verification. If those attempts are unsuccessful, HACSB will rely on the documents provided by the household to calculate income or family self-certification where applicable.²⁷

Per PIH Notice 2013-04, HACSB will accept an applicant or participant's self-certification of fully excluded income sources (such as food stamps) and the related income amounts on the initial application and recertification packets. HACSB is not required to (1) Verify the income in accordance with the HUD-prescribed verification hierarchy; (2) Document in the tenant file why third party verification was not available as required by 24 CFR 960.259(c)(i) and 24 CFR 982.516(a)(2); and (3) Report the income in Section 7 of the form HUD-50058.

In addition to the income verification policies described above, each family member age 18 and older will be asked if there has been any update in criminal activity. If there has been any change in criminal activity, the Housing Authority will obtain verification.

7.3.2 General Verification Policies for Continued Assistance for Traditional, Regulatory Assistance for Special Purpose Programs

For families participating in traditional, regulatory assistance for special purpose programs, the Housing Authority will use the current HUD verification hierarchy.

This section does not apply to participants of the Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher programs (see 7.3.1).

²⁷ HACSB's MTW Activity 5: Simplified Income Determination created a modified verification hierarchy for HACSB's MTW programs.

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Level	Verification Method/Technique	Applies To
6	HUD Enterprise Income Verification (EIV) System	All sources of income verifiable through EIV, including: wages, unemployment benefits, Social Security, and Supplemental Security Income
5	Other Upfront Income Verification (UIV) System	All sources of income not verifiable through the EIV system
4	Written Third-Party Verification: an original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or request date	All sources of income not verifiable through the EIV/UIV systems; tenant-disputed EIV information
3	Written Third-Party Verification Form: A standardized form is provided to a third party source by mail, fax, or email. The form is completed by the third party.	All sources of income not verifiable through a higher level of verification; when higher levels of verification are rejected by HACSB
2	Oral Third-Party Verification	All sources of income not verifiable through a higher level of verification
1	Tenant Declaration	All sources of income not verifiable through a higher level of verification

Per PIH Notice 2013-04, HACSB will accept an applicant or participant's self-certification of fully excluded income sources (such as food stamps) and the related income amounts on the initial application and recertification packets. HACSB is not required to (1) Verify the income in accordance with the HUD-prescribed verification hierarchy; (2) Document in the tenant file why third party verification was not available as required by 24 CFR 960.259(c)(i) and 24 CFR 982.516(a)(2); and (3) Report the income in Section 7 of the form HUD-50058.

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In addition to the income verification policies described above, each family member age 18 and older will be asked if there has been any update in criminal activity. If there has been any change in criminal activity, the Housing Authority will obtain verification.

~~7.3.3 Term-Limited Lease Assistance and Streamlined Lease Assistance, and Veterans Affairs Supportive Housing (VASH) Programs~~

~~This section applies to the Veterans Affairs Supportive Housing (VASH) program effective January 1, 2019, or as soon as practicable thereafter.~~

The Housing Authority will verify the following factors at recertification²⁸:

- Annual Income
- Student status

~~7.3.4 Traditional, Regulatory Assistance for Special Purpose Programs~~

~~This section does not apply to participants of the Veterans Affairs Supportive Housing (VASH) program (see 7.3.3).~~

The Housing Authority will verify the following at recertification:

- Assets²⁹
- Annual Income
- Student status
- Allowances
- Deductions

7.4 General Verification Procedures

This section outlines how the Housing Authority will verify each of the above described criteria. All verification factors are described in this section but the Housing Authority will only verify factors that are required for each program type.

7.4.1 Verification of Legal Identity

The Housing Authority requires each household member to provide one of the following forms of verification of legal identity:

²⁸ HACSB's MTW Activity 20: Term-Limited Lease Assistance and Activity 22: Streamlined Lease Assistance eliminated deductions and allowances from the income and rent calculation.

²⁹ For Emergency Housing Voucher and Veteran Affairs Supportive Housing programs, assets are excluded from the rent calculation and will not be verified at recertification.

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to each new child and the required documentation within ninety (90) calendar days of the child being added to the household. A ninety (90) day extension will be granted if the Housing Authority determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the Housing Authority is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

7.4.2.1 Emergency Housing Voucher Program

During the initial eligibility determination for the Emergency Housing Voucher program, the Housing Authority will accept self-certification of social security number if documentation is unavailable. However, documentation of the social security number must be received within 180 days of admission. Further extensions may be provided if the partnering organization confirms that good faith efforts have been made to obtain the necessary documentation. For household additions after admission, section 7.4.2 applies.

7.4.3 Documentation of Age

A birth certificate or other official record of birth is the preferred form of age verification for all family members under the age of eighteen (18). For family members over eighteen (18) the preferred form of age verification is a government-issued identification. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable. If an official record of birth or evidence of social security retirement benefits cannot be provided, the Housing Authority will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

7.4.4 Family Relationships

Applicants and program participants are required to identify the relationship(s) of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter. Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

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the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals. The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance.

7.4.7.1 Emergency Housing Voucher Program

During the initial eligibility determination for the Emergency Housing Voucher program, the Housing Authority will accept self-certification of eligible immigration status if documentation is unavailable. However, documentation of eligible immigration status must be received within 180 days of admission. Further extensions may be provided if the partnering organization confirms that good faith efforts have been made to obtain the necessary documentation. For household additions after admission, section 7.4.7 applies.

7.4.8 Verification of Preference Status

The Housing Authority prefers that Veteran's status is verified by the DD214. However, the Housing Authority may accept a military ID or honorable discharge documents.

7.5 Additional Income Verification Procedures

Chapter 6 of this Administrative Plan describes in detail the types of income that are included and excluded. Any income reported by the family must be verified. This part provides Housing Authority additional detail on how to verify income sources.

7.5.1 Employment Income

Families with earned income generally will be required to provide two consecutive months of pay stubs. The Housing Authority may require additional months of pay stubs for sporadic or seasonal employment income. Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

7.5.2 Business and Self-Employment Income

Business owners and self-employed persons will be required to provide:

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7.5.4 Alimony or Child Support

The way the Housing Authority will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments. If the family declares that it receives regular payments, verification will be sought in the following order.

- Copy of the receipts and/or payment stubs for the sixty (60) days prior to the request
- Third-party verification form from the state or local child support enforcement agency
- Third-party verification form from the person paying the support
- Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it *receives irregular or no payments*, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

- A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts
- If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

7.5.5 Assets and Income from Assets [HCV GB, p. 5-28]

7.5.5.1 Term-Limited Lease Assistance, Streamlined Lease Assistance, ~~and~~ Veterans Affairs Supportive Housing (VASH), and Emergency Housing Voucher Programs²⁹

This section applies to the Veterans Affairs Supportive Housing (VASH) program effective January 1, 2019, or as soon as practicable thereafter.

For the purposes of initial eligibility, the Housing Authority will verify the amounts from assets to which any member of the family has access. These assets will be used to determine if the family exceeds the income limit threshold but will not be included for

²⁹ HACSB's MTW Activity 5: Simplified Income Determination eliminates assets for the purposes of calculating the family's rent portion. However, asset income is verified at initial eligibility and used to determine income eligibility.

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purposes of calculating total annual income or family rent share. Asset income generally will be verified by two consecutive months' statements.

7.5.5.2 Traditional, Regulatory Assistance for Special Purpose Programs

This section does not apply to participants of the Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher programs (see 7.5.5.1).

Assets are included in the annual income calculation for initial eligibility and recertifications, and are used to determine family rent share. Net asset income in excess of \$5000 generally will be verified by two consecutive months' statements. Per Notice PIH 2013-26 the Housing Authority will accept a family's self-certification for assets of less than \$5,000.

7.5.5.3 Assets Disposed of for Less than Fair Market Value

The Housing Authority is also required to verify assets disposed of for less than fair market value. The Housing Authority will require the family to certify whether any assets have been disposed of for less than fair market value in the preceding two (2) years. The Housing Authority needs to verify only those certifications that warrant documentation and as a result will verify the value of assets disposed of only if:

- The Housing Authority does not already have a reasonable estimation of its value from previously collected information, or
- The amount reported by the family in the certification appears obviously in error.

7.5.6 Net Income from Rental Property

Families with income from rental property must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the Housing Authority will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

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CHAPTER 8: FAMILY OBLIGATIONS AGREEMENT AND VOUCHER ISSUANCE

8. Introduction

This chapter covers the Housing Authority's process for applicants to search for a unit, including the contents of the briefing that is conducted for families.

8.1 Issuance of Assistance Documents

Applicants and participants of the Housing Services program are issued a document that allows them to search for a unit. This assistance document is known as the Family Obligations Agreement for the Term-Limited Lease Assistance program and the Streamlined Lease Assistance programs. The document is known as a Voucher for the Traditional, Regulatory Assistance for Special Purpose programs.

When funding is available, the Housing Authority will issue assistance documents to applicants who have been determined to be eligible for the Housing Services program. In addition, move documents may be issued to households that are either required to move or approved to move in accordance with the Housing Authority's Program Moves policies.

8.2 Briefings [24 CFR 982.301]

All households must attend an oral briefing in order to be issued a Family Obligations Agreement or Voucher, whichever is applicable, for initial lease-up or for a program move. An oral briefing may be conducted in-person, on the telephone or via video conference. If a briefing is conducted over the telephone or video conference, written materials will be mailed or emailed to the family and the family may be instructed to watch an informational video prior to the oral portion of the briefing.

8.2.1 Applicant Briefings

When an applicant family, including portability and special program admissions, is initially issued a Family Obligation Agreement or a Voucher, depending on the program the family is eligible for, the Housing Authority conducts a mandatory briefing session, as required by HUD. The head of household must attend the briefing session. These briefings may be conducted in groups or as individual meetings. All briefings will be conducted in English, however, for Limited English Proficient (LEP) applicants, the Housing Authority will provide translation services in accordance with the Agency's LEP plan.

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The Housing Authority will not issue an assistance document to a family unless the Head of Household has attended a briefing and signed either the Family Obligation Agreement or Voucher, whichever is applicable. Applicants who provide prior notice of inability to attend a briefing will automatically be scheduled for the next briefing. Applicants who fail to attend scheduled briefings, without prior notification and approval of the Housing Authority, may be denied admission based on failure to supply information needed for certification.

The Housing Authority will conduct individual briefings for disabled families at their home, upon request by the family, if required as a reasonable accommodation. Should a household attend a group briefing and require additional individual assistance they will be referred to the appropriate staff person.

The Voucher and Family Obligations Agreement expiration date will be sixty (60) days after issuance plus any automatic extension. An extension may be granted solely at the discretion of the Housing Authority in accordance with the policies in 8.6.42.

8.2.2 Participant Move Briefings

Participants will be required to attend a pre-move briefing and a briefing. Prior to attending the pre-move briefing households must complete the Request to Move form as well as all required recertification documentation. Participants who miss their scheduled pre-briefing may request to be rescheduled. After the pre-move briefing and upon submission of a completed move packet, households will be scheduled for a move briefing.

At the move briefing, the family will be issued either a Family Obligations Agreement or Voucher to move depending on their program type. The expiration date will be sixty (60) days after issuance plus any automatic extension. An extension may be granted solely at the discretion of the Housing Authority in accordance with the policies in 8.6.1.

If the participant misses the move briefing the family will be automatically rescheduled for the next move briefing. If the family misses the second move briefing and is under a mandatory move, the Housing Authority will proceed with termination. For families who are making elective or permissible moves, the Housing Authority may proceed with termination notification.

8.3 Information Provided at Briefing Session

The Housing Authority's objectives are to ensure that families selected to participate are successful in obtaining an acceptable housing unit and that they have sufficient

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- Acknowledgement of Receipt of Documents
- Additional Program Specific Documentation

8.4 Encouraging Participation in Areas Without Low Income or Minority Concentration [24 CFR 982.301(a)(3)]

At the briefing, families are encouraged to search for housing in non-impacted areas. After the briefing, the Housing Authority will assist families who want to search for housing in non-impacted areas who wish to do so. The assistance provided to such families includes:

- Counseling with the family.
- Direct contact with owners.
- Providing information about services in various non-impacted areas.
- Meeting with neighborhood groups to promote understanding.
- Formal or informal discussions with owner groups.
- Formal or informal discussions with social service agencies.
- Meeting with rental referral companies or agencies.
- Meeting with fair housing groups or agencies.

Owners in all neighborhoods within the Housing Authority's jurisdiction are encouraged to post their property listings in various ways (internet listings, newspapers, rental pamphlets, etc.) to ensure greater mobility and housing choice to very low-income households. The Housing Authority will provide information about housing listings. If the family includes a person with disabilities, the family may request a current listing of accessible units known to be available.

8.5 Security Deposit Requirements [24 CFR 982.313]

Security deposits charged by owners may not exceed those charged to unassisted families (or the maximum prescribed by State or local law).

8.6 Family Obligations Agreement or Voucher Conditions [24 CFR 982.301(b)(1)]

During the briefing session, each family is issued a Family Obligations Agreement or Voucher, which represents a contractual agreement between the Housing Authority and the family, specifying the rights and responsibilities of each party. It does not constitute admission to the program, which occurs when the lease and contract become effective.

In the event the Housing Authority does not have sufficient budget authority to support issued Family Obligations Agreements and/or Vouchers, the Housing Authority may recall

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the family. If the family is recalled, the Housing Authority will return the family to the waiting list to await new eligibility when funds become available.

The Family Obligations Agreement and Voucher are valid for a period of sixty (60) calendar days from the date of issuance plus any automatic extension. The family must submit a Request For Tenancy Approval (RFTA) within the ~~sixty (60) calendar day period~~ initial term or approved extension. When a Request for Tenancy Approval is received, the term of the voucher will be suspended while the Housing Authority processes the request.

8.6.1 Emergency Housing Voucher Program

The initial search term for an EHV will be 120 days. Any extensions beyond the initial term must meet the requirements of Section 8.6.2.

8.6.2 Extensions [24 CFR 982.303(b)]

The Housing Authority may grant extensions to Family Obligations Agreements and Vouchers. An extension may be granted automatically when the Family Obligations Agreement or Voucher is issued or Aa family may request an extension. All requests for extensions must be received, in writing, prior to the expiration date.

Extensions may be granted in thirty (30), or sixty (60) day increments, up to a maximum search term of one-hundred and twenty (120) calendar days (initial sixty (60) days plus a maximum sixty (60) day extension), if necessary for the family to locate a suitable unit. The Housing Authority may make an exception of up to one-hundred and eighty (180) days for extenuating circumstances, such as a long-term illness or other family emergency, or up to a maximum term of two-hundred and seventy (270) calendar days for hospitalization or as a reasonable accommodation. Such matters will be considered on an individual basis and must be supported by verifiable third-party documentation.

8.6.32 Expirations [24 CFR 982.303(a)]

If the Family Obligations Agreement or Voucher search term has expired, and has not been suspended or extended by the Housing Authority or expires after an extension, the family will be denied assistance. The family will not be entitled to a review or hearing. If the family is currently assisted and remains eligible for participation, they may remain as a participant in their unit if there is an assisted lease/contract in effect and the unit remains eligible.

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- The court has to have awarded emancipated minor status to the minor; or
- The Housing Authority has to have verified that social services and/or the Juvenile Court has arranged for another adult to be brought into the assisted unit to care for the child/children for an indefinite period.

8.9 Family Voluntarily Relinquishes Housing Services Program Assistance

The family may voluntarily relinquish their assistance at any time. In such cases, the Housing Authority will provide the owner of the property with a thirty (30) calendar day notice indicating that rental assistance will terminate based on the family's request. The family will become fully responsible for the contract rent after thirty (30) calendar days.

Generally, the Housing Authority will not reinstate a family once a request for voluntary termination has been received. However, as a reasonable accommodation, the Housing Authority will review requests for reinstatements received within six (6) months and make a determination on a case-by-case basis. However, households will have their income eligibility re-determined in accordance with HUD guidelines.

If a family voluntarily relinquishes their assistance in lieu of facing termination, the Housing Authority will continue to seek to recover any monies that may be due to the Housing Authority as a result of misrepresentation or other breach of program in accordance with Chapter 18 of this Administrative Plan.

8.10 Emergency Housing Voucher Services and Support

Under the Emergency Housing Voucher (EHV) program, the Housing Authority receives a one-time service fee of \$3,500 for each EHV allocated to the Housing Authority. Eligible uses of the service fee include housing search assistance and financial assistance for costs associated with leasing a unit. Assistance with leasing costs includes application fees, holding fees, security deposit assistance, utility deposit assistance/utility arrears, landlord incentives, moving assistance, essential household items, and renter's insurance if required by the lease. HUD requires that housing authorities provide housing search assistance to EHV families for the initial (first-time) lease-up. HACSB will work to identify other funding sources for housing search assistance. However, if other sources cannot cover the full cost, HACSB will use the service fee for housing navigation services. Additionally, HACSB will use the service fee for landlord signing bonuses and security deposits. The security deposit assistance will only be provided if it cannot be funded by a partner organization. Security deposit assistance will be in the form of a one-time grant, which is refundable to the tenant upon move-out and cannot exceed the lesser of \$2,500

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or two months rent. If funding permits, the services fee may also be used for any eligible service described in the this section.

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9.3 Eligible Types of Housing [24 CFR 982.352]

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the Housing Services Program. Generally, a family may choose any available rental dwelling unit on the market in the Housing Authority's jurisdiction. This includes the dwelling unit they are currently occupying. The Housing Authority may approve any of the following types of housing:

- Single-family dwellings, including condos and townhouses;
- Manufactured homes and space for rent (the Housing Authority may also provide assistance for a family that owns the manufactured home and leases only the space). The rent calculation for space rent is included in Chapter 11.5;
- Multifamily dwellings (apartment buildings);
- Shared housing (a single housing unit occupied by an assisted family and another resident or residents); and
- Housing Authority owned units which are not subsidized by the Housing Authority (subject to HUD-prescribed requirements).

A family may own a rental unit but cannot reside in it while being assisted. The Housing Authority may not permit a family to lease a unit which is receiving project-based assistance or any duplicative rental subsidies.

9.4 Ineligible Types of Housing [24 CFR 982.352(a)]

The Housing Authority will not approve:

- A unit occupied by the owner or by any person with an interest in the unit, except for a:
 - ~~The only exception to this is for a mm~~ manufactured home that is owned by the family but leases only the space. Under this circumstance, the Housing Authority will approve the unit; or-
 - shared housing arrangement as long as the owner is not a member of the participant's household or related by blood or marriage to the participant;
- Nursing homes or other institutions that provide care;
- School dormitories and institutional housing;
- Structures that have not been properly converted. Owners will be required to provide finalized permits for all conversion work when the integrity and/or soundness of structure is in question;
- Converted garages or other structures not intended to be living areas; or
- Any other types of housing prohibited by HUD.

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The lease must provide that the owner may terminate tenancy if a tenant is:

- Fleeing to avoid prosecution or custody or confinement after conviction for a crime, or attempt to commit crime, that is a felony under the laws of the place from which the individual flees
- Violating a condition of probation or parole imposed under Federal or State law

For this purpose, the family is considered to be in possession of the unit when the family has a key to the unit and the unit is fully available for the family's exclusive use.

9.6.1 Term-Limited Lease Assistance, Streamlined Lease Assistance, and Traditional, Regulatory Assistance for Special Purpose Programs

The initial term of the assisted dwelling lease generally must be for at least one (1) year and match the term of the contract executed between the Housing Authority and the owner. A lease with a shorter term for certain housing types, like shared housing, may be permitted. Some Special Purpose Programs may allow for a shorter lease term as applicable.

9.6.3 Local Disaster Short-Term Rental Assistance Program

The initial term of the assisted dwelling lease generally may be for less than one (1) year and match the term of the contract executed between the Housing Authority and the owner.

9.6.4 Family Unification Program

The initial term of the assisted dwelling lease generally may be for less than one (1) year and match the term of the contract executed between the Housing Authority and the owner.

9.6.5 Emergency Housing Voucher Program

The initial lease term will be for one (1) year unless the landlord's standard practice is to offer a shorter lease term.

9.7 Prohibition Against Side Payments [24 CFR 982.451(b)(4) and 982.501(c)]

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the Housing Authority's payments to the owner. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are

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CHAPTER 10: INSPECTIONS STANDARDS

10. Introduction

Every unit assisted under the Housing Services program must meet the Housing Authority's inspection standards prior to initial occupancy of the unit and throughout the term of the contract between the owner and the Housing Authority. HACSB requires all units to meet Housing Quality Standards (HQS), which are the HUD minimum quality standards for units that receive assistance under the Housing Services program. In addition, the Housing Authority also requires all units to meet additional criteria in alignment with HUD requirements, California law, local codes and other Housing Authority policies. The Housing Authority inspection standards apply to units both in the tenant-based and project-based programs.

This Chapter describes the inspection types and responsibilities of the owner and family and the consequences of non-compliance with the Housing Authority's inspection standards for both families and owners participating in the tenant-based program. Inspection types and responsibilities for the project-based program are described in Chapter 20.

10.1 Types of Inspections [24 CFR 982.405]

There are ~~five~~six types of inspections the Housing Authority will perform:

1. Pre-inspection (EHV program): For the EHV Program, the Housing Authority may pre-inspect available units that EHV families may be interested in leasing in order to maintain a pool of eligible units.
- ~~4-2.~~ Initial/Move-in: The Housing Authority conducts initial inspections upon receipt of a Request for Tenancy Approval (RFTA). The unit must pass the inspection before the effective date of the Contract.
- ~~2-3.~~ Annual: Families who participate in any of the Housing Authority's Traditional, Regulatory Assistance (excluding homeownership families) for Special Purpose programs, except as noted below, will have an annual inspection conducted on their unit.

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- ~~3-4.~~ **Biennial**³²: For families who participate in the authorities Moving to Work programs; ~~Term-Limited Lease Assistance and Streamlined Lease Assistance~~ VASH, EHV and Mainstream, units will be inspected biennially. For these units, an inspection must be conducted within twenty-four (24 months) of the last inspection.
- ~~4-5.~~ **Special/Complaint**: At request of the owner, the family, an agency, or a third-party a unit will be inspected to ensure compliance with the Housing Authorities Inspection Standards.
- ~~5-6.~~ **Quality Control**: The Housing Authority will conduct inspections on a random sample of units to ensure consistency and accuracy. Quality Control inspections may also include inspections to determine if additional bedrooms approved for Reasonable Accommodations are being utilized as intended.

All utilities must be in service prior to the effective date of the contract between the owner and the Housing Authority. If the utilities are not in service at the time of inspection, the Inspector will schedule a reinspection or accept documentation from the utility companies. The tenant or owner (whoever is responsible for the utilities according to the RFTA) must have them turned on before the effective date of the lease and all verification must be received prior to the start of the lease.

If the tenant is responsible for supplying the stove and/or the refrigerator, the Housing Authority will allow the stove and refrigerator to be placed in the unit after the inspection as long as unit has passed all other inspection criteria. The Housing Authority will accept the tenant's self-certification that the items have been placed in the unit and may conduct a follow-up inspection to verify the self-certification.

10.1.1 Pre-inspection (EHV only)

HACSB may pre-inspect available units that EHV families may be interested in leasing in order to maintain a pool of eligible units. All pre-inspected units will be inspected in accordance with Housing Quality Standards. The pre-inspection will remain valid for 45 days following the inspection pass date to the date of receipt of the RFTA as long as there has been no intervening tenancy.

³² The FY 2010 Moving To Work Annual Plan included a Local Inspection Standards activity which allows the Housing Authority to conduct biennial inspections on certain qualifying units. In addition the June 25, 2014, Federal Register Notice / Vol. 79, No. 122, allows PHA's to transition all recurring inspections to a biennial schedule.

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10.1.2 Initial Inspection [24 CFR 982.401(a)]

The Housing Authority will conduct an initial inspection in the unit identified by the family and owner in the Request for Tenancy Approval.

The Housing Authority will determine whether the unit satisfies the inspection standards and notify the family and owner of the determination within a reasonable time frame.

The initial inspection will be conducted to:

- Determine if the unit and property meet all HUD required HQS criteria and all HACSB established inspections criteria that are defined in this plan.
- Document the current condition of the unit as to assist in future evaluations whether the condition of the unit exceeds normal wear and tear.
- Document information to be used for determination of rent-reasonableness.

If the unit fails the initial inspection, the Housing Authority will conduct a re-inspection if requested by the owner and upon verification repairs have been completed. The lease must begin within 45 days of the date that the unit passed inspection or from the date of receipt of the RFTA (for pre-inspected units).

10.1.23 Annual and Biennial Inspections [24 CFR 982.405 (a)]

The Housing Authority conducts an inspection of each unit under Contract biennially for Moving to Work, VASH, EHV, and Mainstream program units and annually for all other units in the Housing Services program. Deficiencies which cause a unit to fail must be corrected by the landlord unless it is a fail for which the participant is responsible.

The family must allow the Housing Authority to inspect the unit at reasonable times with reasonable notice. The Housing Authority considers reasonable hours to conduct an inspection between routine hours Monday through Friday.

The Housing Authority will notify the family and landlord in writing at least ten (10) days prior to the inspection. If the family is unable to be present, they must reschedule the appointment so that the inspection is completed within thirty (30) days.

If the family does not contact the Housing Authority to reschedule the inspection, or if the family misses two (2) inspection appointments, the Housing Authority will consider the family to have violated a family obligation and their assistance may be terminated in accordance with the termination procedures in Chapter 16 of this Administrative Plan.

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- separate sleeping areas in the unit, there must be a detector for each sleeping area.
- There must be at least one Carbon Monoxide detector on each level of the unit.
- Carbon Monoxide detectors cannot be installed directly above, or next to a fuel burning appliance.
- If the device is a combination carbon monoxide device and smoke detector, then the combined device must emit an alarm or voice warning in a manner that clearly differentiates between a carbon monoxide alarm warning and a smoke detector warning.
- Electrical
 - Operable Ground-Fault Circuit Interrupter (GFCI) devices shall be required in all units. GFCI outlets shall be installed in bathrooms and kitchens to prevent electrical shock.
- Smoke Detectors
 - At the time of HQS inspection, units must meet California Health and Safety Code requirements. Landlords must conform with local and/or state requirements by installing smoke detectors within each bedroom, other sleeping areas, and immediate vicinity outside of bedrooms (hallways).

10.5 Shared Housing

The entire unit, including the portion of the unit available for use by the assisted family under its lease, must meet HACSB's inspection standards. In addition, the family must have access to a living room, a bathroom, food preparation and refuse disposal facilities. These facilities may be shared or private (for the exclusive use of the assisted family). The entire unit must provide adequate space and security for all assisted and unassisted residents. The private, non-shared space for each assisted family must contain at least one bedroom for each two persons in the family. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

10.6 Lead Based Paint

The Housing Authority policy on lead based paint aims to cover the regulations as described in The Lead-Based Paint Poisoning Prevention Act as amended (24 U.S.C. 4821-4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR Part 35 Subparts A, B, M and R which apply to the Housing Services program. These requirements apply to dwelling units built prior to 1978

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11.3.2 Traditional, Regulatory Assistance for Special Purpose Programs, including VASH and EHV

The Housing Authority may approve a lease above the payment standard for the unit size.

11.3.3 Appealing a Rent Reasonableness Determination

If the owner of the property disagrees with the rent reasonable determination, the owner may appeal the decision in writing by submitting an appeal that includes a list of comparable rental units that the owner has identified. The Housing Authority will not approve a contract rent above the applicable payment standard. Before using a list of rental units submitted by the owner, the Housing Authority shall confirm that the units are indeed comparable using the criteria outlined above. If the units are not comparable, the Housing Authority will not use these units in the rent comparability survey and the owner will be notified of the decision.

11.3.4 Rent Reasonableness After Initial Lease-Up

The owner may request a rent adjustment in accordance with the owner's lease and the contract with the Housing Authority. For rent increase requests after initial lease-up, the Housing Authority may request owners to provide information about the rents charged for other units on the premises, if the premises include more than four (4) units. In evaluating the proposed rents in comparison to other units on the premises the Housing Authority will consider any rent setting policies by the owner for existing tenants, in addition to unit size and length of tenancy in the other units.

The Housing Authority will determine whether the requested increase is reasonable and will notify the owner in writing of the determination. The Housing Authority will not approve a contract rent above the applicable payment standard, except for traditional regulatory assistance programs for special purpose programs, including VASH and EHV.

The Housing Authority will also make a redetermination of rent reasonableness at any other time if directed to do so by HUD, or in accordance with the payment standards, or at any other time. At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined (either increase or decrease) or redetermined by the Housing Authority.

11.3.5 Rent Reasonableness in Shared Housing

The rent paid to the owner for the assisted family may not exceed the pro-rata portion of the reasonable rent for the shared unit. For the reasonable rent determination, HACSB will consider whether the bathroom and/or kitchen is private or shared. When these

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facilities are private versus shared, HACSB may provide additional consideration when determining the reasonable rent.

11.4 Payment Acceptance and Certification

Owners will be advised that by accepting each monthly payment from the Housing Authority s/he will be certifying that the rent to owner is not more than rent charged by owner for comparable unassisted units in the premises. If requested, the owner must provide to the Housing Authority information on rents charged by the owner for other units in the premises or elsewhere. The Housing Authority will only request information on the owner's units elsewhere if the Housing Authority has cause to demonstrate that the owner has a tendency to charge higher rents to program participants or if needed for rent reasonableness comparables.

11.5 Payment Standards for the Housing Services Program [24 CFR 982.4)]

The payment standard is used to calculate the housing assistance payment for a family. *Payment standard* is defined as "the maximum monthly assistance payment for a family assisted in the program (before deducting the total tenant payment by the family)."

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the Housing Authority's subsidy standards or (2) the payment standard for the size of the dwelling unit rented by the family. The payment standard for space rent is calculated by using forty percent (40%) of the 2 bedroom fair market rent with utilities.

11.5.1 Term-Limited Lease Assistance, Streamlined Lease Assistance, and Veterans Affairs Supportive Housing (VASH) Programs

This section applies to new admissions and changes of unit under the Veterans Affairs Supportive Housing (VASH) program effective January 1, 2021, or as soon as practicable thereafter.

The Housing Authority has established a comprehensive payment standard schedule that is based on rental submarkets in the County of San Bernardino.³³

On an annual basis the Housing Authority will review the local payment standards. The agency may subsequently increase or decrease the payment standards. ~~Adjustments to the p~~Payment standard increase will generally be applied at the participant's first

³³ The FY 2009 Moving to Work Annual Plan including Activity 12: Local Payment Standards which authorized the creation of local payment standards for the County of San Bernardino.

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recertification which occurs after the Housing Authority adjustment. However, an increase to the Local Payment Standards will not be automatically applied at recertification if the participant has leased a unit that is larger than their approved voucher subsidy size ("over-housed" participants). Increases to the Local Payment Standards will apply to over-housed participants only if a rent increase is requested by the landlord and approved in accordance with HACSB's rent reasonableness policies. For operational or fiscal purposes the Housing Authority may apply the redetermined payment standards prior to the next recertification.

Before increasing the payment standard, the Housing Authority may review the budget to determine the impact projected subsidy increases would have on funding available for the program and the number of families served. For this purpose, the Housing Authority will compare the number of families who could be served under a higher payment standard with the number assisted under current payment standards.

If the payment standard is reduced, the payment standard will remain unchanged for families that are under HAP contract when the payment standard reduction occurred.

11.5.2 Traditional, Regulatory Assistance for Special Purpose Programs

This section does not apply to participants of the Veterans Affairs Supportive Housing (VASH) program admitted or changing units effective January 1, 2021 (see 11.5.1).

For participants in Traditional, Regulatory Assistance for Special Purpose Programs the payment standard schedule is based on HUD's Fair Market Rents. The payment standard schedule is updated annually. Increases in the payment standard will be applied at the participant's next annual recertification. Decreases in the payment standard will be applied at the participant's second annual recertification after the effective date of the decrease.

For special purpose program families the Housing Authority may approve a payment standard of up to 120 percent of FMR if required as a reasonable accommodation for a family that includes a person with disabilities per Notice PIH 2013-26.

11.5.3 Shared Housing

The payment standard for a family in shared housing is the lower of the applicable program's payment standard for the family unit size or the pro-rata share of the program's payment standard for the shared housing unit size. The pro-rata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private, non-shared space by the total number of bedrooms in the unit.

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Example: Household contains 3 people and is issued a 2-bedroom FOA/voucher. The shared housing unit is a 3-bedroom and the family will be occupying 2 bedrooms:

- 2 Bedrooms for assisted family ÷ 3 Bedrooms in the unit .667 pro-rata share
- 2 BR payment standard: \$1,200
- 3 BR payment standard: \$1,695
- \$1,695 x .667 (pro-rata share) = \$1,131
- \$1,131 is lower than the \$1,200 payment standard for the 2 BR family unit size
- \$1,131 is the payment standard used to calculate the HAP

11.5.4 Emergency Housing Voucher Program

For the Emergency Housing Voucher program, a separate payment standard schedule is used. The schedule groups the nine (9) local submarkets into three (3) regions. If any of the local submarket payment standards within the region exceed 120% of FMR, the highest local submarket payment standard will be used for the entire region. All other payment standards will be set between 90 – 120% of FMR.

11.6 Rent to Owner Increases

As stated in the Tenancy Addendum, the owner must notify the Housing Authority at least sixty (60) days before the proposed effective date of any intended rent increase. The tenant must be notified in writing, and a copy of the written notice to the tenant must be submitted to the Housing Authority.

As authorized by the contract between the Housing Authority and the owner, the Housing Authority will not approve a rent increase if the contract is in abatement for owner-related inspection deficiencies. In accordance with the Tenancy Addendum and the contract, the Housing Authority will disapprove requests made during the initial term of a lease.

The Housing Authority will use the payment standards criteria as defined in 11.3 and rent reasonableness to determine the approval of a request for a rent increase. If necessary to ensure financial viability of the of the program, the Housing Authority may limit the value of approvable rent increases, in its voucher programs, to an amount less than the average value of previously approved rent increases. For example, if the average value of rent increases in the previous fiscal year was 10% of the previous contract rent, the Housing Authority will cap the rent increase at a value less than 10% of the previous contract rent. If the new rent is not approved, the Housing Authority will advise both the owner and the family if a partial rent increase/decrease is identified and approved, the Housing Authority will notify the owner, and process the partial adjustment.

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CHAPTER 12: RECERTIFICATIONS

12. Introduction [24 CFR 982.516]

This chapter defines the Housing Authority's policy for conducting annual, biennial, and interim recertifications for participants in the Housing Services programs. It also explains the interim reporting requirements for families, and the standards for timely reporting.

12.1 Recertifications

Families participating in the Housing Services programs must participate in regular recertifications of income and family composition.

12.1.1 Term-Limited Lease Assistance

All participants in the Term-Limited Lease Assistance will be recertified on a biennial basis in accordance with the policies outlined in this Chapter. Interim reporting requirements are described in Section 12.8

In addition to the biennial recertification requirements, families participating in the Term-Limited Lease Assistance program must meet at least annually with the Community Family Empowerment Services (FES) staff. The head of household will sign an Individual Training and Services Plan during their annual review. The head of household will be required to provide annual updates to FES staff.

Every year, participants will be required to sign an acknowledgement letter that details the remaining number of years they may continue to receive rental assistance. Approximately six (6) months prior to the end of the assistance, families and landlords will receive an additional notification. At the expiration of the Lease Assistance Payment (LAP) contract, if the participant desires to continue occupancy, the owner and the participant must make separate leasing arrangements.

12.1.2 Streamlined Lease Assistance ~~and~~ Veterans Affairs Supportive Housing (VASH) and Emergency Housing Voucher (EHV) Programs³⁴

Effective January 1, 2019, or as soon as practicable thereafter, elderly-only fixed-income families in the Streamlined Lease Assistance and VASH programs will be recertified on a

³⁴ HACSB's MTW Activity 4: Biennial and Triennial Recertifications extended biennial or triennial recertifications to all families participating in Housing Services programs except for those in the Traditional, Regulatory Assistance for Special Purpose programs.

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triennial basis in accordance with the policies outlined in this chapter³⁵. An elderly-only fixed-income family is one that has no members under the age of 57 and has at least 90% of its income from fixed sources.

All other participants in the Streamlined Lease Assistance, ~~and~~ VASH, ~~and~~ EHV programs will be recertified on a biennial basis in accordance with the policies outlined in this Chapter.

Interim reporting requirements are described in Section 12.8.

12.1.3 Traditional, Regulatory Assistance for Special Purpose Programs Except Veterans Affairs Supportive Housing (VASH) ~~and~~ Emergency Housing Voucher (EHV)

This section does not apply to participants of the Veterans Affairs Supportive Housing (VASH) program (see 12.1.2).

All participants in the Traditional, Regulatory Assistance for Special Purpose Programs will be recertified on an annual basis in accordance with the policies outlined in this Chapter. Interim reporting requirements are described in Section 12.8.

12.2 Scheduling Recertifications

The Housing Authority will notify participants by mail and/or email of their upcoming recertification generally between ninety (90) days to one-hundred and twenty (120) days in advance of their anniversary date. Participants will be provided with a Recertification Packet that they must complete and return within the required time frame either by mail, in person, drop box or Resident Portal. If the Recertification Packets are not returned or are not completed appropriately, the family may be scheduled for a telephone or in-person interview. All adult household members will be required to attend the recertification interview. If the head of household is unable to attend the interview, the appointment will be rescheduled.

If requested as an accommodation by a person with a disability, the Housing Authority will provide the notices in an accessible format. The Housing Authority will also mail the notice to a third party, if requested as reasonable accommodation for a person with disabilities. These accommodations will be granted upon verification that they meet the need presented by the disability.

³⁵ HACSB's MTW Activity 4: Biennial and Triennial Recertifications allows elderly-only fixed-income families to be recertified every three years.

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13.3.1 Term-Limited Lease Assistance and Streamlined Lease Assistance

Certain Permissible Moves for families participating in the Term-Limited Lease Assistance and Streamlined Lease Assistance that may be approved at the discretion of the Housing Authority include, but are not limited, to:

- The family has been granted a hardship exemption due to a decrease in the payment standard;
- Documented threats/acts of violence against any household member.

13.4 Denial of Moves

In addition to the Program Moves policies described above, HUD regulations permit the Housing Authority to deny moves for two additional reasons:

- Insufficient Funding
- Grounds for Denial or Termination of Assistance

13.4.1 Insufficient Funding

The Housing Authority will deny a family permission to move on grounds that Housing Authority does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the Housing Authority; (b) the Housing Authority can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the Housing Authority can demonstrate that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs.

13.4.2 Grounds for Denial of Assistance or Termination

If the Housing Authority has grounds for denying or terminating a family's assistance, the Housing Authority will act on those grounds. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances. VAWA allows exceptions to these grounds for denial or termination of assistance for families who are otherwise in compliance with program obligations, but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.353(b)]

13.5 Lease and Contract Terms

Generally, the initial lease and contract term is one year no matter what the move reason, for participants in the MTW Programs and the Traditional, Regulatory Assistance for

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Special Purpose programs. However, some programs or certain housing types may have shorter lease terms when appropriate.

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- not require, the Housing Authority to admit an otherwise-eligible family if the household member has completed a Housing Authority-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).
2. The Housing Authority determines that any household member is currently engaged in the use of illegal drugs. The Housing Authority defines *currently engaged in* as any use of illegal drugs during the previous year.
 3. The Housing Authority has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
 - a. In determining reasonable cause, the Housing Authority will consider all credible evidence, including but not limited to, any record of convictions, charges, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. The Housing Authority will also consider mitigating circumstances, on a case by case basis such as evidence from treatment providers or community-based organizations providing services to household members.
 4. Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
 5. Any household member is subject to a lifetime registration requirement under a state sex offender registration program

15.1.1 Emergency Housing Voucher Program

HUD has established alternative requirements related to the denial of admission to the Emergency Housing Voucher (EHV) program. The reasons for denial to the EHV program are as follows:

1. Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
2. Any household member is under a State sex offender registration program.
3. If the household engaged in or threatened abusive or violent behavior toward Housing Authority personnel within the previous 12 months.

assistance if any member of the household has been evicted from federally-assisted housing in the last 10 years for drug-related criminal activity.

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4. Any household member fails to sign and submit consent forms for obtaining information.

The other denial of assistance reasons in Section 15.2 do not apply to EHV at admission. However, after the family has been placed under a HAP contract with EHV assistance, the Housing Authority's regular screening criteria outlined in this Chapter applies to new household members.

15.2 Other Denial of Assistance Reasons [24 CFR 982.225(b), 982.312, 982.553(a), 982.553(b)]

In addition to the HUD-required mandatory denials of admission, the Housing Authority may also deny assistance for other reasons. However, the Housing Authority may consider mitigating circumstances that are described in section 15.2.3.

15.2.1 Criminal Background and Drug Screening

The Housing Authority reviews each person's criminal background for a period of seven (7) years prior to consideration for admission. Criminal background includes any conviction, charges or outstanding warrant for, or reasonable belief of engagement in any violent or drug-related criminal activity, Grand Theft Housing, and perjury or fraud to obtain assistance.

The Housing Authority will deny assistance if any adult member has engaged in any of the following criminal activities (as evidence by conviction(s) or a preponderance of evidence that the activity actually occurred), within the seven (7) years prior to consideration for admission:

1. Homicide, murder, voluntary manslaughter;
2. Rape, sexual battery, or other aggravated sex-related crimes;
3. Child molestation, child sexual exploitation;
4. Assault and battery;
5. Trafficking distribution, manufacture, sale, use or possession of illegal firearm;
6. Threatening or intimidating assault including but not limited to the unlawful discharge of firearms at any location
7. Aiding and abetting in the commission of a crime involving violence;
8. Engagement in drug manufacture (including synthetic drugs), sale, distribution, use or possession with or without intent to manufacture, sell, distribute, or use that may pose a risk to public health and safety;
9. Other violent or drug-related offenses that may pose a threat to public health and safety, including involvement in criminal street gang activity;

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The hardship committee will review each request and the family will be provided an opportunity to present justification for their request. If approved by the committee, an extension will be granted to the family for such duration as determined by HACSB.

16.2.2.1.5 Total Term of Assistance

The total term of assistance, including any extension(s) granted as the result of a hardship exemption(s), shall not exceed seven (7) years. The family's assistance shall conclude no later than 7 years from the initial lease date.

16.2.2.2 Local Disaster Short-Term Rental Assistance Program

In addition to the above described reasons, the Housing Authority may terminate the contract if a participant in the Local Disaster Short-Term Rental Assistance program has reached its term of participation.⁴⁶ There is no appeal to the expiration of assistance; however, the family may request an extension of the assistance as a hardship exemption.

16.2.2.2.1 Term of Assistance

The term of assistance shall begin on the initial lease date and shall not exceed two (2) years.

16.2.2.3 Family Unification Program (FUP)

In addition to the above described reasons, the Housing Authority will terminate the contract if a participant admitted as a FUP-eligible youth has reached its term of participation. There is no appeal to the expiration of assistance.

16.2.2.3.1 Term of Assistance

The term of assistance shall begin on the initial lease date and shall not exceed thirty-six (36) months.

16.2.2.4 Emergency Housing Voucher (EHV) Program

The EHV program is funded through September 30, 2030. In addition to the above described reasons, the Housing Authority will terminate the assistance if funding for the EHV program is not extended or HUD does not provide alternative funding to continue rental assistance.

16.2.3 Consideration of Circumstances [24 CFR 982.552]

HUD permits the Housing Authority to consider relevant circumstances when deciding whether to deny admission or terminate assistance for the criminal activity described in

⁴⁶ The FY 2017 Moving to Work Annual Plan created Activity 26: Local Disaster Short-Term Rental Assistance program.

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CHAPTER 19: PORTABILITY

19. Introduction

Freedom of choice is a hallmark of the Housing Services program. Therefore, HUD regulations impose few restrictions on where families may live or move with continued assistance. Federal regulations permit families participating in the Housing Services program to move with continued assistance to a unit outside of the Housing Authority's jurisdiction under portability procedures. However, a family may move with assistance only to an area where there is at least one (1) Public Housing Authority (PHA) administering the program. If there is more than one PHA in the area, the Housing Authority may choose the receiving PHA.

This chapter sets forth HUD regulations and Housing Authority policies governing moves outside the Housing Authority's jurisdiction.

19.1 Allowable Moves under Portability for Applicants [24 CFR 982.353 and 24 CFR 982.355]

Applicants may be allowed to move under portability in accordance with the policies described in this section.

19.1.1 Term-Limited Lease Assistance and Streamlined Lease Assistance⁴⁹

Applicant families must first lease up in the Housing Authority's jurisdiction and may only be permitted to move in accordance with the Program Moves policies outlined in Chapter 13 of this Administrative Plan. The Housing Authority will consider exceptions to this policy for purposes of reasonable accommodation reasons related to domestic violence, dating violence, sexual assault, or stalking. However, any exception to this policy is subject to the approval of the receiving PHA.

The Housing Authority is responsible for determining whether the family is income eligible in the area to which the family wishes to move. If an applicant family is not income eligible in that area, the Housing Authority must inform the family that they may not move there and receive assistance.

⁴⁹ The Housing Authority's FY 2009 Moving to Work Annual Plan including Activity 8: Local Policies for Portability.

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19.1.2 Traditional, Regulatory Assistance for Special Purpose Programs, Except for the Emergency Housing Voucher Program

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the Housing Authority's jurisdiction at the time the family's application for assistance was submitted, the family must live in the County of San Bernardino with assistance for at least twelve (12) months before requesting portability.

The Housing Authority will consider exceptions to this policy for purposes of special purpose program regulatory compliance, reasonable accommodation or reasons related to domestic violence, dating violence, sexual assault, or stalking. However, any exception to this policy is subject to the approval of the receiving Housing Authority. HUD also gives the Housing Authority discretion to deny a portability move by an applicant family for insufficient funding and grounds for denial or termination of assistance.

The Housing Authority is responsible for determining whether the family is income eligible in the area to which the family wishes to move. If the applicant family is not income eligible in that area, the Housing Authority must inform the family that they may not move there and receive assistance.

19.1.3 Emergency Housing Voucher (EHV) Program

Families assisted through the EHV program may exercise portability regardless of the family's residency at time of application. If the receiving PHA does not administer an EHV program, it may absorb the family under its own ACC or bill the initial PHA. If the receiving PHA does administer EHV, it may either bill or absorb the family if an EHV voucher is available. If portability is in connection to the family's initial lease-up under EHV, the initial PHA and receiving PHA must consult and coordinate on EHV services and assistance.

19.1.4 Local Disaster Short-Term Rental Assistance Program

Families assisted through this program may not exercise portability to another jurisdiction unless the receiving PHA will absorb the family.

19.2 Allowable Moves Under Portability for Participants [24 CFR 982.353(d)(2) and 24 CFR 982.355(c)(1)]

The Housing Authority will determine whether a participant family may move out of the jurisdiction with continued assistance in accordance with the policies described in this Chapter and Chapter 13 of this Administrative Plan.

The Housing Authority will not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. VAWA creates an exception to this

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Payment Standards for the Emergency Housing Voucher Program

RECOMMENDATION(S)

Adopt Resolution No. 116 approving payment standards for the Emergency Housing Voucher Program effective August 10, 2021.

(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

The United States Department of Housing and Urban Development (HUD) has provided funding for 455 Emergency Housing Vouchers (EHV) for 18 months starting July 1, 2021, in an amount of \$4,818,456. The estimated cost for the proposed payment standards is \$4,754,881 for the 18-month period. Approval of the proposed payment standards have the potential of increasing the average Per Unit Cost (PUC) of EHV to a level that exceeds the current Per Unit Funding (PUF). Funding for the program began July 1, 2021 but leasing will be occurring over the next several months. Thus, any increases to the PUC will be offset by unspent funds from the prior months. However, HUD has indicated that it will provide increased program funding as needed to support the 455 vouchers awarded. Appropriation to perform this action will be included in a budget revision to the Housing Authority of the County of San Bernardino's (HACSB) 2020-21 annual budget and will be included in the annual budget for 2021-22.

BACKGROUND INFORMATION

On May 5, 2021 HUD published Notice Public and Indian Housing (PIH) 2021-15 concerning the implementation of the EHV program. The notice contains several regulatory waivers and administrative flexibilities that housing authorities may adopt in order to remove potential barriers for EHV recipients. The notice acknowledges that many rental markets are very competitive and that EHV recipients, who are homeless or at risk of homelessness, may have lower incomes, limited or poor credit histories, and limited established rental histories, as well as other challenges, which may make landlords reluctant to rent to them. As such, HUD is permitting housing authorities to establish separate payment standards for the EHV program to increase the potential pool of available units for EHV. The separate payment standards may be set at any level between 90-120 percent of the published Fair Market Rent (FMR). Additionally, housing authorities may request HUD approval to apply MTW activities to the EHV program.

The proposed EHV payment standards utilize both the flexibility provided in Notice PIH 2021-15 and HACSB's MTW flexibilities to widen the potential pool of available units for EHV recipients. Like the payment standards for special purposed programs, the EHV payment standards are divided into three regions representing different segments of the County of San Bernardino.

Generally, the EHV payment standards will be set at a percentage of the FMR for the regions. However, if any of the local payment standards within a region exceed 120% of FMR, the highest submarket payment standard will apply to the entire region. Grouping the payment standards into three regions will provide a broader range of housing opportunities for EHV households, encourage greater landlord acceptance of the vouchers, and simplify the program for landlords and recipients.

The proposed EHV payment standards are structured as follows:

- Desert Region: 100% of FMR
- Central Region: 120% of FMR, except 1-bedroom, which is the Submarket 7 Local Payment Standard (123% of FMR)
- Western Region: Submarket 8 Local Payment Standards (121 – 142% of FMR)

The proposed 2020-21 payment standards for EHV by region are included in the attached proposed schedule.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

HOUSING AUTHORITY RESOLUTION NO. 2021-116

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO APPROVING THE PAYMENT STANDARDS FOR THE EMERGENCY HOUSING VOUCHER PROGRAM EFFECTIVE AUGUST 10, 2021

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino (the “Authority”) is a duly formed housing authority of the State of California, and is vested with the responsibilities set forth in Division 24, Part 2, Article 4 (Sections 34310-34334) of the California Health and Safety Code, which includes providing low- and moderate-income housing within its jurisdiction; and

WHEREAS, the Authority administers the Housing Choice Voucher program for the United States Department of Housing and Urban Development (HUD); and

WHEREAS, the Authority administers HUD programs through grants and other federal resources including the Emergency Housing Voucher Program (EHV);

WHEREAS, housing authorities are required to establish payment standards which set the maximum subsidy payment a family can receive from the housing authority each month; and

WHEREAS, HUD annually sets Fair Market Rents (FMR) which are used by housing authorities to develop the payment standards for traditional regulatory assistance programs; and

WHEREAS, HACSB annually sets Local Payment Standards for the Moving to Work program based on a rental market study; and

WHEREAS, to remove barriers and expand housing options for EHV recipients, the payment standards for Emergency Housing Voucher program are based on higher of a percentage of the FMR or the Local Payment Standards; and

OPERATIVE PROVISIONS

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO DOES RESOLVE AS FOLLOWS:

Section 1. The Board of Commissioners finds that all of the facts set forth in the Recitals are true and correct, and are incorporated herein by reference.

Section 2. The Board of Commissioners hereby approves the proposed payment standards for the Emergency Housing Voucher program effective August 10, 2021, a copy of which is attached hereto and incorporated by reference herein.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of Commissioners of the Housing Authority of the County of San Bernardino, by the following vote:

AYES:

NOES:

ABSENT:

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO) ss.

I, _____, Secretary of the Board of Commissioners of the Housing Authority of the County of San Bernardino, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the Board of Commissioners, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of Tuesday, _____, 20__.

Secretary

**Housing Authority of the County of San Bernardino
Emergency Housing Voucher Program
Effective August 10, 2021 (FY 2020-2021)**

Desert Region

0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom	6 Bedroom
\$955	\$1,106	\$1,390	\$1,917	\$2,369	\$2,724	\$3,080
Submarket 1 - Desert						
May include the following cities: Baker, Daggett, Ridgecrest, Trona, Yermo, Amboy, Cima, Earp, Edwards, Essex, Fort Irwin, Hinkley, Ludlow, Mountain Pass, Newberry Springs, Nipton, Parker Dam, Vidal						
Submarket 2 - Victor Valley / Barstow						
May include the following cities: Adelanto, Apple Valley, Barstow, Helendale, Hesperia, Lucerne Valley, Oro Grande, Phelan, Pinon Hills, Victorville						
Submarket 3 - Morongo Valley / 29 Palms						
May include the following cities: Joshua Tree, Landers, Morongo Valley, Pioneer Town, 29 Palms, Yucca Valley						

Central Region

0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom	6 Bedroom
\$1,146	\$1,356	\$1,668	\$2,300	\$2,843	\$3,269	\$3,696
Submarket 4 - Mountains						
May include the following cities: Angelus Oak, Big Bear City, Big Bear Lake, Blue Jay, Cedar Glen, Crest Park, Crestline, Fawnskin, Forest Falls, Green Valley Lake, Lake Arrowhead, Lytle Creek, Mt. Baldy, Rimforest, Running Springs, Skyforest, Sugarloaf, Twin Peaks, Wrightwood						
Submarket 5 - San Bernardino North						
May include the following cities: Cedarapines Park, Patton, San Bernardino (North)						
Submarket 6 - San Bernardino South						
May include the following cities: San Bernardino (South)						
Submarket 7 - East Valley						
May include the following cities: Bryn Mawr, Grand Terrace, Highland, Loma Linda, Mentone, Redlands, Yucaipa						
Submarket 9 - Central Valley						
May include the following cities: Bloomington, Colton, Muscoy, Rialto						

Western Region

0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom	6 Bedroom
\$1,300	\$1,565	\$1,910	\$2,365	\$2,866	\$3,300	\$3,726
Submarket 8 - West Valley						
May include the following cities: Chino, Chino Hills, Fontana, Guasti, Montclair, Ontario, Rancho Cucamonga, Upland						

The regions listed above are identified by census tracts; city names are a suggestive guide only. Please note: some cities fall within multiple submarkets and/or regions. For more information, please use the Payment Standard Census Tract Resource at www.hacsb.com/landlords.

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Memorandum of Understanding with Victim Service Providers for the Emergency Housing Voucher Program

RECOMMENDATION(S)

1. Approve Memorandum of Understanding between the Housing Authority of the County of San Bernardino and Victim Service Providers for referral services for the Emergency Housing Voucher program.
2. Authorize and direct the Executive Director to execute and deliver the Memorandum of Understanding and any related documents, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.

(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

HACSB clients, programs, and properties are embraced by all communities.

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

This is a non-financial Memorandum of Understanding (MOU) with no financial impact currently expected.

BACKGROUND INFORMATION

On May 10, 2021, the Housing Authority of the County of San Bernardino (HACSB) was awarded 455 Emergency Housing Vouchers (EHV) via the American Rescue Plan Act of 2021. The United States Department of Housing and Urban Development (HUD) issued guidance for the administration of the EHV's requiring the program to be referral based through the jurisdictional Continuum of Care (CoC) program and the Coordinated Entry System (CES). On July 13, 2021, the Board of Commissioners approved a Memorandum of Understanding (MOU) between HACSB and the CoC whose representing body is the Interagency Council on Homelessness (ICH) to facilitate referrals.

HUD has provided additional guidance on the requirement to work with Victim Service Providers (VSPs) to receive referrals of qualified households. The guidance states that public housing authorities must enter into a separate MOU with the VSPs to take direct referrals from outside the CoC CES when VSPs are not part of a community's CoC CES. In accordance with that guidance, HACSB has prepared a separate MOU for direct referrals from those VSPs who do not utilize the San Bernardino County CoC CES.

The MOU establishes the process of housing referred households and the responsibilities of HACSB and VSPs.

Memorandum of Understanding with Victim Service Providers for the Emergency Housing
Voucher Program
August 10, 2021

The MOU as per HUD guidance will be a “live” document and may need to be amended periodically as the program develops. Furthermore, the proposed MOU utilizes the template provided by HUD through PIH Notice 2021-15.

PROCUREMENT

Not applicable

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

Memorandum of Understanding
Emergency Housing Voucher Program

This Memorandum of Understanding (MOU) has been created and entered into

Between

Housing Authority of the County of San Bernardino

715 E. Brier Drive, San Bernardino CA 92408

And

Victim Service Providers

I. Introduction

The Housing Authority of the County of San Bernardino (HACSB) has been awarded 455 Emergency Housing Vouchers (EHV) through the American Rescue Plan Act of 2021 also known as the stimulus package. The EHV are effective as of July 1, 2021 and sunset in September 30, 2030. After September 30, 2023, no new families can be issued an EHV, but families on the program as of this date will continue to be assisted until the sunset date. The U.S. Department of Housing and Urban Development (HUD) provides HACSB with funding to administer the EHV program (Program). The Program requires that HACSB enter into a Memorandum of Understanding (MOU) with the Continuum of Care and Victim Service Providers (VSPs), if VSPs are not included under the Coordinated Entry System. The VSPs agreeing to this MOU are identified individually on the signature pages but are referred to herein as VSPs.

II. Goals and Standards for Success

The goal of the Program is to ensure that the available Program vouchers are utilized for EHV eligible individuals and families in a timely manner.

- A. HACSB and the VSPs agree and commit to administering the Program in accordance with all program requirements.
- B. The goals and standards for success for administering the Program are defined as:
 - 1. By August 31, 2021, finalize processes to enable referrals for EHV's.
 - 2. By September 30, 2021, MOU execution.
 - 3. By October 1, 2021, or as soon as the Coordinated Entry System (CES) referral and services component is implemented, begin to receive referrals at HACSB for EHV's.

4. By June 30, 2022, fully utilize EHV's by expending all funding for eligible purposes or utilizing 455 EHV's.
- C. Vouchers will be issued based on a first come first serve basis via referrals from the VSPs.
- D. The following HACSB staff will serve as the lead Program liaisons:
Lead HACSB Liaison:
Kristin Maithonis, Assistant Director of Housing Services
(909) 890-5390
kmaithonis@hacsb.com

VSP leads are identified on the signature page.

III. Program Referrals

VSPs will refer individuals and families to HACSB who meet the following Program eligibility requirements as defined in Public and Indian Housing (PIH) Notice 2021-15:

Low-income individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking.

The VSPs will prioritize referrals as follows:

1. Victims currently in victim centered housing programs
2. Current participants of victim serving programs
3. Referrals received from non-victim serving organizations but certified as eligible for EHV's by the VSP's.

IV. Services

The following services will be provided to assist individuals and families to have success in the Program:

- A. VSPs providing referrals will support referred individuals and families in completing applications and obtaining necessary supporting documentation to support applications for assistance while aiding households in addressing barriers.
- B. VSPs providing referrals will ensure that appointment notifications from HACSB are delivered to eligible individuals and families and will assist eligible households in keeping appointments with HACSB and responding to document needs of HACSB.
- C. HACSB will establish windows of time for EHV applicants to complete intake documents for EHV.
- D. VSPs will provide housing search assistance for eligible individuals and families.
- E. VSPs will provide counseling on compliance with rental lease requirements and HACSB Program requirements.

- F. VSPs will assess individuals and families who may require financial assistance for moving expenses, including application fees, holding deposits, security deposits, utility hook-up fees, utility deposits, and furnishings and provide such assistance if funding is available.
- G. VSPs will coordinate with HACSB concerning the unmet moving assistance needs of EHV recipients, where applicable.

IV. HACSB Roles and Responsibilities

- A. Coordinate with VSPs concerning unmet moving assistance needs of EHV recipients.
- B. Accept direct referrals for eligible individuals and families through the CoC Coordinated Entry System via CES and directly from VSPs.
- C. Commit a sufficient number of staff and necessary resources to ensure that the application, certification, and voucher issuance processes are completed in a timely manner.
- D. Commit a sufficient number of staff and resources to ensure that inspections of units are completed in a timely manner.
- E. Designate a staff member to serve as the lead EHV liaison.
- F. Comply with the provisions of this MOU.

V. VSP Roles and Responsibilities

- A. Designate and maintain a lead EHV liaison to communicate with HACSB.
- B. Refer sufficient eligible individuals and families to HACSB according to the prioritization criteria.
- C. Support eligible individuals and households in completing and applying for supportive documentation to accompany admissions applications to HACSB (i.e. self-certifications, birth certificate, social security card, etc.)
- D. Attend EHV participant briefings when needed.
- E. Provide housing search assistance for eligible individuals and families to include, but not limited to, helping the EHV recipient with identifying and visiting potentially available units during the housing search, providing transportation, assisting with the completion of rental applications and forms, and helping to expedite the leasing process.
- F. Assess individuals and families who may require financial assistance for moving expenses, including application fees, holding deposits, security deposits, utility hook-up fees, utility deposits, and furnishings and provide such assistance if funding is available.
- G. Coordinate with HACSB concerning the unmet moving assistance needs of EHV recipients, where applicable.

H. Provide counseling on compliance with rental lease requirements and HACSB Program requirements.

I. Comply with the provisions of this MOU.

VI. Program Evaluation

HACSB and VSPs agree to cooperate with HUD, provide requested data to HUD or HUD-approved contractor delegated the responsibility of program evaluation protocols established by HUD or HUD-approved contractor, including possible random assignment procedures.

VIII. Fiscal Responsibilities

This is a non-financial MOU. HACSB and VSPs are individually responsible for any costs incurred by their respective organizations due to commitments described in this MOU.

IX. Term

The MOU is effective upon execution and expires June 30, 2026, but may be terminated earlier in accordance with provisions of Section X of this MOU. This MOU may be extended for three (3)-year periods upon written agreement of all Parties, unless terminated earlier under the provisions of Section X.

X. Early Termination

- A. This MOU may be terminated without cause upon thirty (30) days written notice by any Party of this MOU. The HACSB Executive Director is authorized to exercise HACSB rights with respect to any termination of this MOU. Each VSP's Executive Director, or his/her appointed designee, has authority to terminate this MOU on behalf of the organization.
- B. If, during the term of this MOU, State and/or Federal funds appropriated for the purposes of this MOU are reduced or eliminated, any Party may immediately terminate this MOU upon written notice to the other Parties.
- C. The Parties acknowledge that the HACSB may receive additional Emergency Housing Vouchers. The Parties agree to accept any HACSB duly-approved, written updates to the MOU, which are required for the receipt of additional vouchers.

XI. Indemnification and Insurance

- A. The HACSB agrees to indemnify, defend and hold harmless the VSP, and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and or liability arising out of this MOU from the negligence of the HACSB, including the acts, errors or omissions of the HACSB and for any costs or expenses incurred by the VSP on account of any claim resulting from the acts or negligence of the HACSB or

its authorized officers, employees, agents, and volunteers, except where such indemnification is prohibited by law.

- B. The VSP agrees to indemnify, defend and hold harmless the HACSB and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and or liability arising out of this MOU from the negligence of the VSP, including the acts, errors or omissions of the VSP and for any costs or expenses incurred by the HACSB on account of any claim resulting from the acts or negligence of the VSP or its authorized officers, employees, agents, and volunteers, except where such indemnification is prohibited by law.
- C. In the event that the Parties are determined to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this MOU, each Party shall indemnify the other Parties to the extent of its comparative fault.
- D. HACSB is a member of a risk retention pool for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation. Each VSP will carry one million (\$1,000,000.00) per occurrence in General Liability insurance unless the Parties warrant that through their respective programs of self-insurance or membership in risk retention pool, as applicable, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this MOU. Such coverage shall include, but shall not be limited to, protection against claims arising from activities contemplated under this MOU. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement. HACSB is to be named as an additional insured on any contracts of insurance under this paragraph. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Contractor shall be named as an additional insured with respect to such general liability insurance policy.

XII. General Provisions

- A. No waiver of any of the provisions of the MOU documents shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- B. Any alterations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of each Party as an

amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.

- C. This MOU is not assignable by any Party, in whole or in part, without the other Parties' prior written consent.
- D. In the event of any dispute under this MOU, each Party to this MOU shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.
- E. This MOU shall be governed by and construed in all aspects in accordance with the laws of the State of California without regard to principles of conflicts of laws. The Parties agree to the exclusive jurisdiction of the federal court located in the County of Riverside and the state court located in San Bernardino County, for any and all disputes arising under this MOU, to the exclusion of all other federal and state courts.
- F. In the event HACSB determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this MOU or breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all Parties.
- G. The Parties acknowledge and hereby agree that HACSB may approve additional VSPs to join as parties to this MOU by way of an addendum to this MOU and that no further action or approval of those VSPs that are parties to this MOU at the time others are added shall be required to effect the addition of such additional VSPs.

XIII. Conclusion

- A. This MOU, consisting of 7 pages and the VSP signature pages is the full and complete document describing services to be rendered by VSPs and HACSB including all covenants, conditions and benefits.
- B. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective departments to the terms and conditions set forth in this document.
- C. This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The Parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other Parties an original signed MOU upon request.

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo _____

Title: Executive Director _____

Date: _____

Victim Service Providers (VSPs) signature pages are attached.

Memorandum of Understanding
Emergency Housing Voucher Program

VSP Signature Page

Organization: _____

Mailing address: _____

Lead Program Liaison Name/Title: _____

Phone number: _____

Email: _____

I certify that my organization provides services to individuals and family fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking or human trafficking and that I am authorized to commit my organizations to the requirements under this MOU.

(Organization name)

By: _____

Name: _____

Title: _____

Date: _____

Memorandum of Understanding
Emergency Housing Voucher Program

VSP Signature Page

Organization: _____

Mailing address: _____

Lead Program Liaison Name/Title: _____

Phone number: _____

Email: _____

I certify that my organization provides services to individuals and family fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking or human trafficking and that I am authorized to commit my organizations to the requirements under this MOU.

(Organization name)

By: _____

Name: _____

Title: _____

Date: _____

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Revisions to the Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Governing the Housing Authority of the County of San Bernardino's Public Housing and Housing Choice Voucher Program

RECOMMENDATION(S)

Adopt Resolution No. 118 approving revisions to the Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking governing the Housing Authority of the County of San Bernardino's Public Housing and Housing Choice Voucher Program.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

HACSB communication is open, honest and consistent.

HACSB clients, programs, and properties are embraced by all communities.

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

Approval of the proposed revisions to the Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking will have no direct financial impact to the Housing Authority of the County of San Bernardino's (HACSB) annual budget.

BACKGROUND INFORMATION

On November 16, 2016, the Final Rule of the Violence Against Women's Act (VAWA) was published in the Federal Register. On December 19, 2016, the United States Department of Housing and Urban Development (HUD) issued guidance to Public Housing Authorities on implementing the VAWA Final Rule. The Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking, which was adopted by the Board of Governors on May 23, 2017, applies to both HACSB's federally subsidized Public Housing communities and Housing Choice Voucher and Project-Based Voucher communities and contains the policies related to transferring program participants who are eligible to move under VAWA.

On May 5, 2021, HUD published implementation guidance for the Emergency Housing Voucher (EHV) program. In order to be eligible for EHV, an individual or family must meet one of four eligibility categories:

- Homeless; or
- At risk of homelessness; or
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking; or

Revisions to the Emergency Transfer Plan for Domestic Violence, Dating Violence, Sexual Assault, or Stalking Governing the Housing Authority of the County of San Bernardino's Public Housing and Housing Choice Voucher Programs
August 10, 2021

- Recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability.

HUD specifies that recipients of EHV must be referred by the Coordinated Entry System and Victim Service Providers. Further, HUD strongly encourages housing authorities to make EHV assistance available to facilitate VAWA emergency transfers as outlined in the housing authority's Emergency Transfer Plan. The recommended revision to HACSB's Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking adds a provision that EHV assistance, if available, will be provided to a participant approved for VAWA emergency transfer upon request.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

HOUSING AUTHORITY RESOLUTION NO. 2021-118

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO APPROVING REVISIONS TO THE EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino (HACSB) is required to maintain an Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking which outlines Public Housing and Housing Choice Voucher Program policies and procedures related to emergency unit transfers under the Violence and Against Women Act; and

WHEREAS, HUD requires public housing agencies to amend their Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking to incorporate changes and define policy relative to emergency unit transfers due to domestic violence, dating violence, sexual assault, or stalking; and

WHEREAS, HACSB desires to amend its policies and procedures concerning program transfers to the Emergency Housing Voucher program.

OPERATIVE PROVISIONS

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO DOES RESOLVE AS FOLLOWS:

Section 1. The Board of Commissioners finds that all of the facts set forth in the Recitals are true and correct, and are incorporated herein by reference.

Section 2. The Board of Commissioners hereby approves the revisions to the Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking for the Housing Authority of the County of San Bernardino's Public Housing and Housing Choice Voucher Program, attached hereto as Exhibit "A" and incorporated by reference herein.

Section 3. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of Commissioners of the Housing Authority of the County of San Bernardino, by the following vote:

AYES: COMMISSIONER:

NOES: COMMISSIONER:

ABSENT: COMMISSIONER:

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO) ss.

I, _____, Secretary of the Board of Commissioners of the Housing Authority of the County of San Bernardino, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the Board of Commissioners, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of Tuesday, _____, 20__.

Secretary



HOUSING AUTHORITY OF THE
COUNTY OF SAN BERNARDINO

Housing Authority of the County of San Bernardino

Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence,
Sexual Assault, or Stalking

Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Emergency Transfers

The Housing Authority of the County of San Bernardino (HACSB) is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),¹ HACSB allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.² The ability of HACSB to honor such requests for tenants currently receiving assistance, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether HACSB has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies what constitutes tenants eligibility for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that regulates policies and compliance over federally subsidized housing programs and ensures HACSB complies with VAWA.

Eligibility for Emergency Transfers

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer, if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer. A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan. Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant shall notify HACSB's management office and submit a written request for a transfer to the property manager or designated representative.

¹ Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

² Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

HACSB will provide reasonable accommodations for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under HACSB's program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.
3. Complete HUD Form 5382 or 5383 if applicable.

Confidentiality

HACSB will keep confidential any information that the tenant submits in requesting an emergency transfer, and any information about the emergency transfer, unless the tenant gives HACSB written permission to release the information on a time limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights For All Tenants, under the Violence Against Women Act for more information about HACSB's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

HACSB cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. HACSB will act as quickly as possible, however, to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. HACSB may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit. [If a tenant requests and is eligible to receive an Emergency Housing Voucher \(EHV\), HACSB will approve a program transfer to EHV if an EHV is available.](#)³ If HACSB has no safe and available units to accommodate the request for an eligible tenant, HACSB will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, HACSB will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Safety and Security of Tenants

³ [PIH Notice 2021-15 permits PHAs to make Emergency Housing Vouchers available to facilitate an emergency transfer in accordance with VAWA.](#)

Pending processing of the transfer and the actual transfer, dependent on approval, the tenant is urged to take all reasonable precautions to be safe. Tenants who are, or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, the hotline is accessible by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network's National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking may obtain information of services from Southern California Domestic Shelter at <http://riverside.courts.ca.gov/selfhelp/socaldvshelterinfo.pdf>

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Purchase Orders to Home Depot U.S.A., Inc., and HD Supply Facilities Maintenance, LTD for Maintenance, Repair, Operating and Industrial Supplies

RECOMMENDATION(S)

Approve purchase orders via piggyback contracts with Home Depot U.S.A. Inc., and HD Supply Facilities Maintenance Ltd., for a five-year period beginning August 8, 2021 through July 31, 2026 for the purchase of maintenance, repair, operating, and industrial supplies and other related products through a cooperative agreement with U.S. Communities Government Purchasing Alliance in a total amount not to exceed \$2,489,834.

(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

HACSB is a leading developer and provider of affordable housing in the County of San Bernardino.

HACSB clients, programs, and properties are embraced by all communities.

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

The term of the purchase orders is through July 31, 2026 and are not expected to exceed \$2,489,834. Funds are available through the Housing Authority of the County of San Bernardino's (HACSB) Public Housing and Authority Owned Portfolio operating budgets.

BACKGROUND INFORMATION

To keep its housing portfolio in good repair, HACSB currently purchases maintenance, repair, industrial, and operating supplies for approximately 1,300 housing units and 42 buildings/offices scattered throughout San Bernardino County, from Home Depot U.S.A., Inc. (Home Depot) and HD Supply Facilities Maintenance Ltd. (HD Supply) through the U.S. Communities Government Purchasing Alliance (U.S. Communities) Cooperative Procurement Agreement (Agreement).

U.S. Communities is a government purchasing cooperative that reduces the cost of goods and services by aggregating the purchasing power of public agencies nationwide and providing procurement resources and solutions to local and state government agencies, school districts, higher education, and nonprofits. Utilizing this system, HACSB is able to procure more efficiently and effectively while receiving the best government pricing through the Agreement for which Home Depot and HD Supply are contracted vendors. When maintenance supplies are needed, HACSB utilizes purchase orders to obtain maintenance supplies through the contracted vendor's online purchasing system. The vendor then bills HACSB directly for the orders placed.

Purchase Orders to Home Depot U.S.A., Inc., and HD Supply Facilities Maintenance, LTD for Maintenance, Repair, Operating and Industrial Supplies
August 10, 2021

PROCUREMENT

Consistent with the requirements of 2 CFR §200.317 through §200.326 and the U.S. Department of Housing and Urban Development procurement Handbook for Public Housing Agencies issued March 2, 2007, a Housing Authority may enter into agreements with other governmental agencies and regional or national intergovernmental purchasing networks or associations to obtain needed supplies or services if such agreements foster economy and efficiency.

U.S. Communities was solicited by a lead public agency, Maricopa County, AZ., in accordance with its public purchasing rules and regulations. Each solicitation contains language allowing a housing authority to use cooperative procurement for existing contracts to take advantage of the best overall government pricing. With no cost to participate and no minimum order requirements, housing authorities of any size have the ability to purchase the products, services and solutions they need at volume discount prices.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Janitorial Contract with Base Hill, Inc. dba Jan Point for Janitorial Services

RECOMMENDATION(S)

1. Award contract No. PC1212, effective September 1, 2021, to Base Hill, Inc. dba Jan Point for janitorial services agency-wide, in an amount not to exceed \$500,000 for a four year base period beginning September 1, 2021 through August 31, 2025, with one single-year option to extend through August 31, 2026.
2. Authorize and direct the Executive Director to execute and deliver the contract to Base Hill, Inc. dba Jan Point, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

HACSB is a leading developer and provider of affordable housing in the County of San Bernardino.

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

The total contract amount is not expected to exceed \$500,000 for the initial four-year term which is funded by the Housing Authority of the County of San Bernardino's (HACSB) property operations budget. The amount for FY 2022 is included in the budget and will be included for the subsequent fiscal years included in this contract.

BACKGROUND INFORMATION

HACSB currently contracts with various trade contractors to supplement our internal maintenance staff to maintain our affordable housing and administrative offices. HACSB currently operates multiple offices on our affordable housing sites as well as administrative buildings. To ensure a uniform clean and business-like appearance at all sites, HACSB currently contracts with a professional janitorial service company.

PROCUREMENT

On March 18, 2021, HACSB issued a Request for Proposal (RFP) PC1212 for Janitorial Services which resulted in the receipt of five proposals. Outreach efforts included email invitations to contractors and 46 vendor notifications through the agency's electronic bidding software, PlanetBids.com. The proposals were evaluated per the requirements of the Invitation for Bid (IFB) in which Base Hill, Inc. dba Jan Point had the best price, considered responsive, and determined best qualified to provide this service to HACSB.

Janitorial Contract with Base Hill, Inc. dba Jan Point for Janitorial Services for Housing Authority County of San Bernardino Affordable Housing and Administrative offices.
August 10, 2021.

Sealed bids were received by the deadline from the following organizations:		
<u>Contractors Name</u>	<u>Location</u>	<u>Evaluation Score:</u>
Base Hill, Inc. dba Jan Point	Santa Fe Springs, CA	262
EcoBrite Services	Lehi, UT	257
Executive Facilities Services, Inc	Riverside, CA	257
Haynes Building Service	Irwindale, CA	243
Ultimate Maintenance Services	Lawndale, CA	220

Based on the responses for these services, which were solicited to an adequate number of sources and in accordance with Title 2 Code of Federal Regulations Part 200, staff recommends awarding a contract for janitorial services to Base Hill, Inc. dba Jan Point.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

THIS CONSULTING, SERVICES, AND NON-ROUTINE MAINTENANCE RELATED SERVICES AGREEMENT (NON-CONSTRUCTION) ("Agreement") (PC1212) is made as of the **1st day of September 2021** ("Effective Date") by and between **Base Hill, Inc. dba Jan Point ("Contractor")**, a California Corporation (*if applicable*) and the Housing Authority of the County of San Bernardino, a California public entity ("HACSB").

RECITALS

WHEREAS, HACSB is a public entity in San Bernardino County, State of California, committed to provide affordable and safe public housing for low and moderate income families; and

WHEREAS, Contractor has offered to provide certain services to HACSB, and HACSB wishes to retain Contractor for the provision of such services.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Contractor and HACSB hereby agree as follows:

ARTICLE 1. Statement of Work. Contractor shall furnish all labor, materials, tools, equipment, and supervision to perform all work required in the Statement of Work set forth on Exhibit "A", attached hereto and incorporated herein by reference ("Work"). In connection with its performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Contract Documents. This Agreement incorporates by reference all the following documents ("Contract Documents"):

1. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Work) (Form HUD 5370), attached hereto as Exhibit "B" and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit "C" and incorporated herein by reference ("Additional Provisions").
3. Work Authorization, attached hereto as Exhibit "D" and incorporated herein by reference.
4. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U. S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 3. Term; Time of Completion. Contractor shall commence work under this agreement for a **four (4) year base period with the option to extend one (1) year term** beginning on **September 1, 2021** and expiring on **August 31, 2025** unless for any reason funds which have been appropriated for the provision of these services are no longer available, or until such time as terminated per the terms of the agreement in accordance with contract provisions in Article 19 Contractor shall not commence work prior to the date of issuance by HACSB of a work authorization in the form set forth on Exhibit "D", attached hereto and incorporated herein by reference ("Work Authorization"). HACSB shall have the option to extend the engagement for up to an additional one (1) year term. The optional year shall be exercised by written amendments executed by each party with board approval for additional funding on option years if needed. Option year will begin on **September 1, 2025** and expire no later than **August 31, 2026**. Following issuance of a Work Authorization, Contractor shall timely complete the Work in accordance with the schedule requirements specified in Exhibit "A", and within the term of this Agreement.

ARTICLE 4. Price. Unless otherwise specified in the Statement of Work, HACSB agrees to pay Contractor a not-to-exceed amount of **\$500,000** for the provision of work per the fee schedule **for the four (4) base year contract period**. Details defined in Exhibit A – Scope of Services – Fee Schedule. Price as set forth herein, is in consideration for and provides full and complete compensation for the Work and the performance by Contractor of all of its obligations hereunder. Terms are defined in the Additional Provisions, and includes a guarantee of task completion.

ARTICLE 5. Performance of Work. Contractor shall perform its duties on premises approved by HACSB, during HACSB's regular work days and normal work hours and warrants that it shall perform the Work in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor acknowledges that HACSB has the right to review the Work performed by Contractor and may, in its discretion, reject the Work, or any part thereof, as set forth in the Additional Provisions. In the event HACSB rejects any or all the Work, at HACSB's election: (a) Contractor shall promptly correct any such deficiencies in the Work, or (b) the deficient Work shall be stricken from this Agreement and Contractor shall not be paid for such portion of the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees, and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of Contractor or its subcontractors who is determined by HACSB to be uncooperative, incompetent, a threat to the adequate or timely completion of the Work, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Work in a manner acceptable to HACSB, shall be promptly removed from the Work by the Contractor and shall not be re-employed to perform any of the Work under this Agreement.

ARTICLE 6. HACSB's Right to Stop Work. HACSB has the right to require Contractor to stop or suspend Work pursuant to the "Stop Work" provisions of the Additional Provisions.

ARTICLE 7. No Conflicts. HACSB acknowledges that Contractor has other business and personal interests, separate and apart from the services contemplated by this Agreement, and nothing in this Agreement is intended to preclude Contractor from devoting time and attention to such business and personal interests. HACSB further acknowledges that Contractor has the right to accept other engagements as long as said engagements do not represent a conflict of interest with respect to the Work or the obligations of Contractor to HACSB pursuant to this Agreement. In connection with Contractor's performance of the Work hereunder, Contractor represents that there exists no actual, potential or appearance of conflict arising out of Contractor's business and financial interests.

ARTICLE 8. Limit of Engagement. This Agreement does not and shall not be construed to create any partnership or agency whatsoever. Contractor shall not be deemed to be a partner, joint venture, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility on behalf of, HACSB or corporations affiliated with HACSB, other than as expressly herein provided. HACSB retains Contractor on an independent contractor basis and Contractor is not an employee of HACSB. Any additional personnel performing Work under this Agreement on behalf of Contractor shall not be employees of HACSB and shall at all times be under Contractor's exclusive direction and control.

ARTICLE 9. Responsibilities of HACSB. If information, data, or documentation necessary to facilitate Contractor's performance of the Work is required to be provided by HACSB, HACSB shall provide such information upon request by Contractor. It is Contractor's responsibility to determine if any such information is necessary in order to perform its obligations hereunder and to request such information from HACSB in a sufficient amount of time in order for Contractor to perform the Work hereunder.

ARTICLE 10. Additional Work.

- a. In the event that the parties mutually agree that additional and further work beyond that specified in the Statement of Work ("Additional Work") is required to be performed by Contractor, such Additional Work shall be memorialized in a Work Authorization executed by HACSB and Contractor. The Work Authorization shall include and specifically identify the types of services required to perform as part of the Additional Work, all significant material to be delivered to HACSB, the time schedule for completion of the Additional Work, and the price for such Additional Work.
- b. Nothing herein shall obligate HACSB to utilize Contractor to perform the Additional Work or in any way limit HACSB's rights to utilize third parties to perform or assist in performing the Additional Work. In no event shall Contractor commence performance of the Additional Work until it has received written consent executed by a duly authorized representative of HACSB.
- c. In the event that HACSB provides a Work Authorization for Additional Work, all of the terms and conditions of this Agreement shall apply to the performance of such Additional Work.

ARTICLE 11. Contractor's Obligation to Stop Work. Personnel resources will not be expended (at a cost to HACSB) on task accomplishment in excess of the schedule requirements set forth in "Exhibit A" unless the procedure below is followed:

- a. If, in the performance of the Work, Contractor determines that the Work to be performed under this Agreement cannot be accomplished within the estimated work hours, Contractor will immediately notify HACSB in writing of Contractor's estimate of the work hours which will be required to complete the Work. Upon receipt of such notification, HACSB may:
 - i. Authorize Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld); or
 - ii. Terminate this Agreement; or
 - iii. Alter the scope of the Work in order to define tasks that can be accomplished within the remaining estimated work hours.
- b. HACSB will notify Contractor in writing of its election within seven (7) calendar days after receipt of Contractor's notification. If notice of the election is given to proceed, Contractor may expend the estimated additional work hours or services, as memorialized in a Work Authorization signed by Contractor and HACSB. In the event that HACSB fails to notify Contractor within such seven (7) calendar day period, Contractor shall provide a second notice to HACSB requesting a determination. Contractor shall not proceed with the Work until such time as HACSB has made an election as to how it wishes to proceed, and a Work Authorization has been approved.

ARTICLE 12. Invoicing and Payment for Services. During the execution of each Milestone (as set forth in the Statement of Work) which involves the delivery to HACSB of identified Deliverables (as defined in the Statement of Work), Contractor may submit periodically to HACSB invoices reflecting a pro-rata cost of the Milestones, determined on the basis of the lesser of either:

- a. The number of Deliverables provided to HACSB divided by the total number of Deliverables required to be delivered to HACSB, less a ten percent (10%) withhold, less any amounts previously invoiced; or

- b. The number of work-hours expended by Contractor in the performance of the Work divided by the number of work hours scheduled for the Work, less a ten percent (10%) withhold, less any amounts previously invoiced; provided that the Statement of Work may specify a withhold of more than ten percent (10%).
- c. For those Milestones which do not involve delivery to HACSB of identified Deliverables, but which are of a continuing nature, Contractor may submit invoices reflecting a pro-rata cost of the Milestone, less a ten percent (10%) withhold, less any amount previously invoiced. Actual progress payment amounts for such Milestones must be based on at least equivalent services rendered, and to the extent practicable, will be keyed to clearly identifiable stages of progress as reflected in written reports submitted with the invoices.
- d. Upon completion of a Milestone in accordance with the acceptance criteria set forth herein, the full charge for such Milestone, less amounts previously invoiced to HACSB, may be submitted for payment.
- e. In the event that Additional Work is performed pursuant to a Work Authorization, such Additional Work shall be paid by HACSB according to the same procedure set forth above with respect to the Work, unless a different method for payment is specified in such Work Authorization.
- f. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.
- g. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the Agreement Price, with the balance to be invoiced upon completion of the Agreement, in accordance with the acceptance criteria set forth herein.
- h. No charge for transportation, delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Statement of Work or Work Authorization.
- i. Payments for all any and all invoices or other obligations are satisfied electronically through the Automated Clearing House (ACH) system. The Contractor hereby authorizes the HACSB to initiate payment electronically to any bank account maintained by the contractor wherever located. Contractor shall promptly comply with directions and accurately complete forms provided by HACSB required to process ACH payments.

ARTICLE 13. Return of HACSB Property. All reports, plans, designs, specifications, field data, construction documents, and other documents and instruments, including electronic files, but excluding Contractor's notes, relating to the Work shall be and remain the property of HACSB and shall be turned over to HACSB promptly upon the completion of the Work, or upon the earlier termination of this Agreement. Contractor hereby waives and assigns to HACSB all intellectual property or common law rights Contractor may develop in the Work. Contractor shall not use any trademarks owned by HACSB without HACSB's prior written authorization.

ARTICLE 14. Confidential Information. HACSB agrees to make available to Contractor information that may be needed to perform the Work. Such information may include information HACSB considers to be confidential. For purposes hereof, "Confidential Information" of HACSB means any nonpublic, proprietary information or technology used in HACSB's business, and any materials evidencing the same (specifically, including, without limitation, technical data or know-how relating to development plans, business plans, services, customers, markets, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, marketing and/or financial information). Unless HACSB acknowledges that any such information provided under this Agreement is not Confidential Information, all information provided by HACSB to Contractor shall be considered to be Confidential

Information. Unless approved in advance in writing or compelled to make such disclosure by a government agency, by court order, or by law, Contractor shall not disclose, transfer, distribute or allow access to any of HACSB's Confidential Information to any third parties, except those individuals employed by Contractor and who are specifically authorized by Contractor to perform the Work contemplated in this Agreement.

ARTICLE 15. Indemnity; Hold Harmless. Contractor agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the performance of the Work, the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Contractor shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Contractor shall defend any such suits at the sole cost and expense of Contractor with counsel selected by HACSB. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against HACSB or its officers, employees, and agents in any such suit, action or other legal proceeding.

ARTICLE 16. Compliance with Contract Documents. Contractor shall comply with all of the Contract Documents in connection with the performance of the Work hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control. Contractor shall also comply with all agreements, representations, warranties, covenants, and certifications of Contractor made in connection with the procurement of this Agreement, provided that in the case of a conflict between the foregoing and the Contract Documents and this Agreement, the Contract Documents and this Agreement shall control.

ARTICLE 17. Assignment. Neither the Agreement, nor any part thereof, nor moneys due or to become due there under may be assigned by Contractor without the prior written approval of HACSB. This Agreement shall be binding on the successors and assigns of the parties.

ARTICLE 18. Rights and Remedies of HACSB for Default.

In the event any goods furnished or services provided by Contractor in the performance of the Work should fail to conform to the requirements herein, or to the sample submitted by Contractor, HACSB may reject the same, and it shall become the duty of Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to HACSB, and immediately replace all such rejected items with others conforming to the Agreement.

- a. In addition to any other rights and remedies HACSB may have, HACSB may require Contractor, at Contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Contractor.
- b. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by Contractor, any loss or damage sustained by HACSB in procuring any items which Contractor agreed to supply shall be borne and paid for by Contractor.
- c. HACSB reserves the right to offset the reasonable cost of all damages caused to HACSB against any outstanding invoices or amounts owed to Contractor or to make a claim against Contractor therefore.

ARTICLE 19. Termination. In addition to the rights of Termination for Convenience of HACSB and Termination for Default set forth in the Contract Documents, HACSB may terminate this Agreement if Contractor should file a bankruptcy petition and/or be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency (as referenced in HUD Form 5370-C section 1 page 1). HACSB may serve written notice upon Contractor of its intention to terminate the

Agreement. The notice shall contain the reasons for such intention to terminate the Agreement, and, unless within ten (10) days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days, the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon any surety and Contractor, and any such surety shall have the right to take over and perform Contractor's obligations pursuant to this Agreement; provided, however, that if such surety does not provide HACSB written notice of its intention to take over and perform the Work required under this Agreement within fifteen (15) days after receiving such written notice, or such surety does not commence performance thereof within thirty (30) days after providing such written notice to HACSB, HACSB shall have the right to perform all uncompleted portions of the Work and to prosecute the same to completion by contract or by any other method it deems advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to HACSB for any excess costs occasioned HACSB thereby and, in such event, HACSB may, without liability for doing so, take possession of and utilize in completing the Work, such materials, appliances, and other property belonging to Contractor as may be on the site of the Work and necessary for the performance of the Work.

ARTICLE 20. No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

ARTICLE 21. Modification. This written Agreement may not be later modified except by a further writing signed by HACSB and Contractor and no term of this Agreement may be waived, except by writing signed by the party waiving the benefit of such term. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

ARTICLE 22. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested. ***All notices sent pursuant to this Agreement shall be addressed as follows:***

If to HACSB:

Angie Lardapide, Procurement and Contracts Supervisor
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841
alardapide@hacsb.com

If to Contractor:

Sunny Kim, President
Base Hill, Inc. dba Jan Point
11823 E. Slauson Ave. Suite 3
Santa Fe Springs, CA 90670
sunnykim@janpoint.com

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 23. Complete Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between HACSB and Contractor and of all the terms of this Agreement and cannot be varied, contradicted, nor supplemented by evidence of any prior or contemporaneous oral or written agreements.

ARTICLE 24. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 25. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or of any part hereof.

ARTICLE 26. Interpretation. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is

to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties.

ARTICLE 27. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ARTICLE 28. Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day ("Eight-Hour Law"). Contractor shall forfeit to HACSB as a penalty, \$50.00 for each worker employed in the execution of this Agreement by him, or by any subcontractor under him, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless Contractor or the Work are not subject to the Eight-Hour Law.

ARTICLE 29. Subcontracting. Contractor shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without prior written approval of HACSB. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

ARTICLE 30. Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

ARTICLE 31. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or termination.

ARTICLE 32. No Third Party Beneficiaries. Except as expressly stated herein or in the Contract Documents, there are no intended third party beneficiaries of any right or obligation assumed by the parties.

[END – SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE TO
CONSULTING, SERVICES, AND NON-ROUTINE MAINTENANCE RELATED SERVICES AGREEMENT
(NON-CONSTRUCTION)
PC1212 – JANITORIAL SERVICES

IN WITNESS WHEREOF, HACSB and Contractor have entered into this Agreement as of the Effective

Date: _____

BASE HILL, INC. DBA JAN POINT

By: _____ (Affix seal if a corporation)

Name: Sunny Kim

Its: President

CERTIFICATE OF CORPORATE AUTHORITY

I, _____, certify that I am the _____ of the corporation named as Contractor herein; that _____ who signed this Agreement on behalf of Contractor, was then _____ of said corporation; that said Contract was duly signed for and in behalf of said corporation and its governing body and is within the scope of its corporate powers.

By: _____

Name: _____

Its: _____

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo

Its: Executive Director

Date: _____

Exhibit A – Scope of Work

Contractor shall perform the following services per the terms of this Agreement at the locations and in frequency described in the chart entitled “Service Sites” below in this Exhibit A:

OFFICE AREAS

- Empty all trash receptacles and replace trash liners daily
- Vacuum all carpeted traffic areas daily
- Detail vacuum carpeted areas weekly
- Spot clean carpet of spillage daily
- Dust office furniture and all horizontal surfaces daily including copy machine and filing cabinets
- Spot clean front entrance glass doors daily
- Dust high & low areas. (e.g., pictures, cob webs, window sills, mini blinds, verticals, etc.) weekly
- Completely clean front entrance doors glass/wood etc. weekly
- Dust mop all hard surface floors with treated or electrostatic dust mop daily
- Mop all spills, especially coffee and drink spills daily
- Machine scrub hard surface floors and apply slip retardant floor finish quarterly
- Spot clean all partition glass daily
- Clean and polish all drinking fountains daily
- Clean and sanitize phones daily
- Clean interior windows
- Clean exterior windows and tracks quarterly

LUNCH/KITCHEN ROOM

- Dust mop all hard surface floor daily
- Damp mop entire area including edges and corners daily
- Damp clean and sanitize table tops daily
- Damp clean exterior of all appliances & vending machine (if applicable) daily
- Empty all trash receptacles and replace trash liners daily
- Using a high speed floor machine spray buff all hard surface areas daily
- Clean bottled water dispensers daily
- Machine scrub hard surface floor (except wood floors) weekly
- Strip hard surface floors and recoat with slip retardant floor finish quarterly
- Wipe inside & outside of microwaves daily.
- Wipe down refrigerator exterior daily.
- Complete clean of refrigerator appliance exterior monthly
- Clean outdoor tables (HPO office only) bi-monthly

RESTROOMS

- Refill dispensers, empty trash receptacles, clean and sanitize all restroom fixtures daily
- Wipe all counters, sinks, faucets, clean mirrors, wipe chrome, spot wipe partitions daily
- Sweep and damp mop floors using a germicidal cleaner including edges-corners daily
- Complete wipe down of doors inside and out daily.
- Wash all restroom partitions on both sides weekly
- Dust and clean all return air vents quarterly
- Machine scrub hard surface floor (except tile floors) quarterly

FRONT COURTYARD (if applicable to location)

- Empty trash receptacles and ash trays in front courtyard and patio areas daily. Replace trash liner.

LOBBY

- Dust mop/clean all hard surface floors with recommended cleaning product daily
- Dust with dry clean cloth all office furniture and all horizontal surfaces daily
- Clean and sanitize phones daily

CONFERENCE/COMMUNITY ROOMS

- Vacuum and dust all furniture daily
- Clean and polish conference tables daily
- Empty trash and replace liners daily
- Spot clean carpets as needed (if applicable to location) daily
- Place used cups (all utensils, cups and containers) in sink daily

- Dust mop all hard surface floors with treated or electrostatic dust mop daily
- Machine scrub hard surface floors and apply slip retardant floor finish quarterly (if applicable to location)
- Clean and dust ceiling fans daily (if applicable to location)

JANITORIAL STORAGE/CLOSET ROOM

Maintain daily an orderly arrangement of all janitorial supplies, paper products, and janitorial equipment in storage rooms and/or closets. Wash service sinks. No trash is to be stored overnight in janitorial closets. No wet cloths are to be left in janitorial closet.

ALARM SYSTEM

Contractor is required daily to secure all doors within the premises, and set the alarm each night upon completion of services. At no time is the building to be left unarmed upon leaving for the night.

Contractor is required to sign in in and sign out on the vendor sign in sheet for each office.

SUPPLIES

HACSB to provide toilet paper, paper towels, multi-fold towels, toilet seat covers, window cleaner, furniture polish, hand soap, multipurpose cleaner, 409, trash liners, trash bags, and wastebasket bags.

SERVICE SITES

Proposed Service Sites:	Service Days	Proposed Service Sites:	Service Days
Administrative Office (Central) (Approx. Sq. Ft: 17,800) 715 East Brier Drive San Bernardino, CA 92408	M-F	Housing Programs Office (Approx. Sq. Ft: 19,000) 672 South Waterman Ave San Bernardino, CA 92408	M-F
Proposed Service Sites:	Service Days	Proposed Service Sites:	Service Days
Redlands Affordable Housing <i>(Includes Community Room & Computer Center)</i> (Approx. Sq. Ft: 2697) 803 W Brockton Ave Redlands, CA 92374	MWF	Maplewood Affordable Housing (Approx. Sq. Ft: 1634) 1738 West 9 th Street San Bernardino, CA 92411	MWF
Colton Affordable Housing <i>(Includes Community Room & Computer Center)</i> (Approx. Sq. Ft: 2148) 772 Pine Street Colton, CA 92324	MWF	Maplewood Achievement Center (Approx. Sq. Ft: 4047) 906 Wilson Street San Bernardino, CA 92411	MWF
Chino Affordable Housing (Approx. Sq. Ft: 1200) 13088 Monte Vista Ave Chino, CA 91710	MWF	Upland Affordable Housing <i>(Includes Conference Room/Gymnasium/Computer Center)</i> (Approx. Sq. Ft: 9400) 1200 N Campus Ave Upland, CA 91786	MWF
Victorville HCV Office (Approx. Sq. Ft: 5528) 15465 Seneca Road Victorville, CA 92392	MWF	Barstow Affordable Housing (Approx. Sq. Ft: 2450) 421 South 7 th Street Barstow, CA 92311	MWF
Barstow Digital Learning Center (Approx. Sq Ft: 1310) 932 Lassen Drive Barstow, CA 92311	MWF		
Proposed Service Sites:	Service Days	Proposed Service Sites:	Service Days
Yucaipa Crest <i>(Includes Community Room)</i> (Approx. Sq. Ft: 4047) 12435 6 th Street Yucaipa, CA 92399	2x/week	Yucaipa Terrace <i>(Includes Community Room)</i> (Approx. Sq. Ft: 4047) 12385 6 th Street Yucaipa, CA 92399	2x/week

COVID-19 PANDEMIC

During the current COVID-19 Pandemic, all offices will require cleaning and disinfecting on a daily basis.

KEYS & CODES

Keys and/or codes for each facility will be assigned to the Contractor. Contractor assumes all liability for the safety and security of the keys and codes.

SERVICE HOURS

All routine services shall be provided between the hours of 5:30pm and 2:00am or on weekends or non-vendor holidays as approved or requested by the site contact.

PERFORMANCE

Turnaround time to correct unsatisfactory performance is within **24 hours**

PROJECT COORDINATORS

The HACSB project coordinators for this project are the Property Managers or site designated staff, who can be contacted via telephone numbers, which will be provided to the awarded contractor(s).

The contractor shall provide a Project Coordinator for the duration of the term of this agreement.

The contractor's Project Coordinator shall have a cellular telephone, which number shall be provided to HACSB. The Project Manager shall establish a routine for communications with HACSB to provide a prompt and timely response to any concerns or problems that may arise.

Time and frequency of direct meetings may vary as determined by HACSB. When the contractor or its agents are on the site, the Project Manager shall contact HACSB at least monthly to review overall performance, receive special instructions regarding the scope of work or other pertinent items regarding the contract, and the contractor's performance.

PERFORMANCE STANDARDS BY TASK**CARPET CARE, SURFACE BRIGHTENING**Bonnet Cleaning

Contractor shall remove carpet stains, completely vacuum, shampoo using bonnet equipment and supplies and completely re-vacuum all carpet in the specified areas. Contractor shall shampoo areas, such as corners, which are inaccessible to the equipment with manual scrubbing devices. After shampooing and allowing sufficient drying time, Contractor shall vacuum the carpet following a pattern, which will give the carpet pile a uniform appearance.

Contractor shall vacuum the carpet sufficiently prior to shampooing to remove dry, loose soil from the carpet pile. Contractor shall use a pile brush to raise the carpet pile before and after shampooing, if necessary, to remove embedded soil and grit and raise the carpet pile to allow sufficient penetration or to provide for adequate drying of the carpet.

Host Method

Contractor shall remove carpet stains and completely vacuum carpet prior to using Host method. Host granules shall then be evenly distributed over the carpet surface, and agitated, using the Host carpet-cleaning machine. Carpet fibers shall be agitated both in the direction of the pile and at an angle of 90 degrees from the direction of the pile. Following agitation, all carpet in the specified area shall be re-vacuumed to remove as much of the Host granules as possible, following a pattern, which will give the carpet pile a uniform appearance. Contractor shall vacuum the carpet sufficiently prior to Host application to remove dry, loose soil from the carpet pile. Contractor shall use a pile brush to raise the pile of carpet before and after Host application in order to remove embedded soil and grit from the carpet pile or raise the carpet pile to allow sufficient penetration of the Host granules.

Roto-Wash Method

Contractor shall remove carpet stains, completely vacuum, shampoo using Roto-Wash equipment and supplies and completely re-vacuum all carpet in the specified area, including corners and carpet edges. After shampooing and allowing sufficient drying time, Contractor shall vacuum the carpet following a pattern, which will give the carpet pile a uniform appearance.

Contractor shall vacuum the carpet sufficiently prior to shampooing to remove dry, loose soil from the carpet. Contractor shall use a pile brush to raise the pile of the carpet before and after shampooing, if necessary, in order to remove embedded soil and grit from the carpet pile or raise the carpet pile to allow sufficient penetration or to provide for adequate drying of the carpet.

Carpet Cleaning, Extraction Method

Contractor shall remove carpet stains, completely vacuum, shampoo using water extraction equipment and supplies, and completely re-vacuum all carpet in the specified area. Contractor shall shampoo areas such as corners, which are inaccessible to the equipment with manual scrubbing devices. After shampooing and allowing sufficient drying time, Contractor shall vacuum the carpet following a pattern, which will give the carpet pile a uniform appearance.

Contractor shall vacuum the carpet sufficiently prior to shampooing to remove dry, loose soil from the carpet pile. Contractor shall use pile brush to raise the pile of carpet before and after shampooing if necessary in order to remove embedded soil and grit from the carpet pile or raise the carpet pile to allow sufficient penetration of to provide for adequate drying of the carpet.

Collect Litter

Contractor shall remove unsightly soil and litter. If the litter cannot be removed by hand, Contractor shall use a carpet vacuum on carpeted floors or broom or dust mop and damp mop on non-carpeted floors.

Disinfect Drinking Fountains

Contractor shall use spray bottles of germicidal disinfectant solutions, clean cloths, scrub pads and crème cleanser to remove all obvious soil, streaks, smudges, etc., from the drinking fountains and cabinets; then, disinfect all porcelain and polished metal surfaces including the orifices and drains. After cleaning and disinfecting, the entire drinking fountain shall be free of streaks, stains, spots, smudges, scale and other removable soil.

Clean and Disinfect Fixtures

Contractor shall use spray bottles or pump-up sprayers, to apply germicidal disinfectant solution to all surfaces of washbasins, toilets, urinals, showers and adjacent surfaces. Contractor shall use clean cloths (except inside toilet bowls and urinals where Contractor shall use bowl mops) to remove soil from all surfaces of these fixtures and adjacent surfaces. Contractor shall use cream cleanser and scrub pads to remove soil not removed by the cloths and germicidal disinfectant solution. Contractor shall use dry cloths to dry metal surfaces of faucets, handles, valves, etc. The cloths used in cleaning and disinfecting toilets, urinals and other surfaces contaminated with urine or feces shall be a color readily distinguishable from cloths used on other surfaces and fixtures.

Refill Floor Drains

Contractor shall use a floor drain brush to clean floor drains. Contractor shall use abrasive cleanser and scrub pads to remove corrosion and tarnish. Contractor shall pour a solution of germicidal disinfectant down the floor drain to fill the drain trap and prevent the escape of sewer gas. This will be accomplished each time the floor is mopped.

Clean Entrance Mats

Contractor shall use an upright carpet vacuum, or a wet/dry tank vacuum, or a pile lifter, and a carpet stain removal kit to remove soil, moisture, stains, etc., from entrance matting.

Damp Mop Hard Surface Floors

Contractor shall use detergent solution and mops to remove soil from non-carpet floors and baseboards, which cannot be removed by sweeping, dust mopping or vacuuming. Contractor shall dust mop floors, which are coated with floor finish prior to damp mopping. Contractor shall sweep other floor surfaces prior to damp mopping. Contractor shall damp mop all areas of the floor. After the floor has been damp mopped, it shall have a uniform appearance free of soil, stains, streaks, swirl marks, detergent film or any observable soil which can be removed by damp mopping. In restrooms and locker rooms, Contractor shall use germicidal disinfectant solution instead of detergent solution.

De-scale Toilets and Urinals

Contractor shall use acid-type bowl cleaner and nylon bowl mops to remove scale, scum, mineral deposits, rust stains, etc., from the insides of the toilet bowls and urinals.

Disinfect All Surfaces

Contractor shall use damp cloths, squeegees and germicidal disinfectant solution from a spray bottles or pump-up sprayers to damp wipe and disinfect all surfaces or furniture, fixtures, walls, partitions, doors, etc.

Dust Building Surfaces

Contractor shall use dusting tools, treated dust cloths or vacuum cleaners with dusting attachments to remove all dust, lint, litter, dry soil, etc., from the surfaces of ledges, heater convectors, window sills, fire extinguishers, counter tops, walls, door frames and sills, ceiling mounted fans, fixtures, partitions, rails, blinds and other types of fixtures and surfaces which are not considered to be furniture surfaces or specialty equipment such as test equipment, computers, typewriters, calculators, etc., below 9 feet from the floor surface. Contractor shall dust up to a height of 20

feet from the floor surfaces at the interior and exterior of exterior entry areas and canopies. Contractor shall accomplish dusting by the removal of soil from the area— not by moving it from one surface to another.

Dust Furniture Surfaces

Contractor shall use dusting tools, treated dust cloths or vacuum cleaners with dusting attachments to remove all dust, lint, litter, dry soil, etc., from the surfaces of chairs, telephones, lamps, tables, cabinets, shelves and other types of furniture and surfaces which are not considered to be building surfaces or building fixtures. Papers, typewriters, calculators, computers, staplers and other similar desk items are not to be disturbed. Contractor shall accomplish dusting by the removal of soil from the area—not by moving it from one surface to another.

Dust Mop or Sweep

Contractor shall use a treated dust mop to remove soil and litter from non-carpeted floors. On resilient tile, terrazzo and other smooth finished floor surfaces, Contractor shall use treated dust mops. On rough, unsealed concrete or other floors where dust mopping is not effective. Contractor shall use brooms. Prior to dust mopping the floor surface, Contractor shall use putty knives to remove gum, tar and other substances from the floor. Contractor shall use a dustpan to remove accumulated soil and litter. After the floor has been dust mopped or swept, the floor surface, including corners and abutments, shall be free of dust, litter and debris that can be removed by dust mopping or vacuuming or with a putty knife. Contractor shall vacuum other areas such as corners and hard-to-reach areas. Contractor shall use a vacuum cleaner to remove moisture and dry soil from carpeted type entrance mats.

Contractor shall use carpet stain remover and gum remover to remove carpet stains and gummy soil. Contractor shall clean exterior entrance mats by hosing with water and/or vacuuming.

Empty Trash Receptacles

Contractor shall empty and return to their appropriate location all wastebaskets, cigarette ash receptacles and other trash containers according to the Routine Work Task and Frequencies for each area and building. Contractor shall remove all litter, cans, papers, containers, and other items marked "TRASH".

Contractor shall remove all collected trash to area(s) on the site or within the building as designated by the Property Manager/Site contact in such a manner as to prevent the adjacent area from becoming littered by such trash.

Contractor shall replace all obviously soiled or torn trash receptacle liners. Contractor shall replace the liner in such a manner as to present a neat, uniform appearance.

Contractor shall use disposable cloths and detergent solution or cream cleanser and scrub pads to remove stains and soil from the interior and exterior of trash receptacles.

High Dusting

The Contractor shall remove all dust, spider webs, litter, etc., from all fixtures and surfaces from the top of the floor up to and including the ceilings that are visible from the floor surface below or adjacent floor levels, balconies, stairs, etc. This includes exposed surfaces of lights, grilles, light fixtures, pipes, sprinkler system cables, ledges, walls, ceilings, vents, etc. Contractor shall accomplish high dusting by using treated dust cloths, treated dusting tools and tank vacuums with crevice tools, brush attachments and wall attachments.

Machine Scrub Floors

Contractor shall use electrically powered floor machines with a scrubbing brush or grout cleaning machines and detergent or degreaser solution to remove soil and stains from floor surfaces such as concrete, brick or pavers, grouted tile and other such uneven or rough floors and from baseboards, furniture and partition bases and legs. Contractor shall use a wet/dry tank vacuum to pick up the scrubbing solution and wet mops, bucket and wringers in areas inaccessible to a tank vacuum. Contractor shall rinse the floor with clean water after picking up the scrubbing solution with the tank vacuum. Contractor shall remove all splash marks on baseboards, furniture and other such surfaces.

Refill Dispensers

Contractor shall check and refill each toilet paper dispenser, hand soap dispenser, paper towel dispenser, toilet seat cover dispenser, feminine hygiene product dispenser, etc. Contractor shall place supply dispensers in accordance with the directions of the supplier and dispenser manufacturer. Contractor shall wipe surfaces adjacent to hand soap dispensers to remove spillage and leakage.

Remove Carpet Stains

Contractor shall use carpet stain remover, a dampened utility brush, clean cloths, aerosol gum remover and wet/dry tank vacuums to remove nonpermanent stain from carpeted floors. Contractor shall blot or vacuum and scrape as

much of the stain from the carpet as practical before applying carpet stain remover to the carpet. Contractor shall spray carpet stain remover onto the stain and use a utility brush if required. After the stain has dissolved, Contractor shall blot and rub the stain up in such a manner as to prevent spreading of the stain. After the stain has been removed, Contractor shall blot or vacuum the carpet only.

Recondition Finished Floors

Contractor shall remove soil, scratches and scuff marks and the top layer of floor finish from resilient tile and terrazzo floors and all finish and soil from baseboards and furniture and partition legs and bases. Contractor shall apply a minimum of two additional coats of floor finish. Contractor shall use a single disc floor machine, scrubbing pad, putty knife, abrasive pad, mop, mop bucket and wringer, detergent solution and rust remover to remove all removable marks, heel marks, rust stains, gum and other types of stains and soil. Contractor shall use manual scrubbing devices in areas inaccessible to the floor machine. Contractor shall use wet/dry tank vacuums except in areas where its use is not practical or effective. Contractor shall rinse thoroughly with clean water all floor surfaces to which detergent solution has been applied.

When wet/dry tank vacuums are used, Contractor shall rinse the floor surface at least once after the detergent solution has been picked up with the wet/dry tank vacuum. When a wet/dry vacuum is not used, Contractor shall rinse the floor surface at least twice. After the top layer of floor finish has been removed, Contractor shall use a fine strand rayon mop to apply at least two coats of floor finish. Contractor shall apply no finish within 1" of baseboards and furniture setting directly on the floor surface. After the finish has dried, the reflectance shall be uniform and no streaks, swirls, etc., shall be visible.

Spot Clean Building Surfaces

Contractor shall use clean damp cloths, scrub pads, spray bottles of detergent solution, glass cleaner or cream cleaner to remove smudges, fingerprints, marks, streaks, tape, etc., from the surfaces of ledges, windows, partition glass, windows sills and blinds, fire extinguishers, counter tops, walls, doors, door frames and sills, pictures, partitions, rails and other types of fixtures and surfaces which are not considered to be furniture surfaces or specialty equipment such as test equipment, computers, typewriters, calculators, etc., up to 9 feet from the floor surface.

Contractor shall perform spot cleaning up to a height of 10 feet from the floor surfaces at the interior and exterior of exterior entry areas. Contractor shall use a clean cloth and stainless steel polish to remove smudges, fingerprints, marks, streaks, tape, etc., that glass cleaner cannot remove. Contractor shall remove excess stainless steel polish.

Spot Clean Furniture Surfaces

Contractor shall use clean damp cloths, scrub pads, spray bottles of detergent solution, glass cleaner or crème cleanser to remove smudges, fingerprints, marks, streaks, tape, etc., from the surfaces of chairs, telephones, cleared surfaces of desks, lamps, tables, cabinets, shelves and other types of furniture and surfaces which are not considered to be building surfaces or building fixtures. Typewriters, calculators, papers, computers, staplers and other similar desk items are not to be disturbed.

Spot mop hard surface floors

Contractor shall use detergent solution and mops to remove spots, spills and obvious soil from non-carpeted floors that cannot be removed by vacuuming or dust mopping. After the floor has been spot mopped, it shall have a uniform appearance free of soil, stains, streaks, swirl marks, detergent film or any observable soil, which can be removed by damp mopping. In restrooms,

Contractor shall use germicidal disinfectant solution instead of detergent solution.

Spray Buff

Contractor shall dust mop and damp mop the floor surface in preparation for spray buffing. Contractor shall use single-disc floor machines, buffing pads and spray bottles with spray buffing solution to restore a uniform glass and protective finish to resilient tile or terrazzo floors, which are finished with a floor finish. The spray buff solution shall be a premixed solution formulated as a companion product to the finish already on the floor. Contractor shall dust mop the floor surface after spray buffing. After spray buffing, the entire floor shall have a uniform, glossy appearance, free of scuff marks, heel marks and other stains and shall have a uniform coating of floor finish. Contractor shall remove all spray buff solution from baseboards, furniture, trash receptacles, etc.

Strip and Refinish Floors

Contractor shall completely remove all nonpermanent floor finish from resilient tile or terrazzo floors and from baseboards and furniture and partition legs and bases. Apply a minimum of two coats of floor seal and three coats of floor finish. Contractor shall use single disc floor machines, stripping pads, putty knives, abrasive pads, mops, mop buckets and wringers, floor finish remover and rust remover to remove all removable marks, heel marks, scuff marks, rust stains, gum and other types of stains and soil. Contractor shall use manual scrubbing devices in areas inaccessible to the floor machine. Contractor shall use a wet/dry vacuum to pick up stripping solution except in areas where its use is not practical. Contractor shall rinse thoroughly with clean water all floor surfaces to which floor finish

remover has been applied. When a wet/dry tank vacuum is used, Contractor shall rinse the area at least once after the floor finish remover has been picked up with the wet/dry tank vacuum. When a wet/dry vacuum is not used, Contractor shall rinse the floor at least twice. After the floor finish has been removed, Contractor shall use a fine strand rayon mop to apply at least two coats of floor seal and three coats of floor finish. Contractor shall apply no finish within 1" of baseboards and fixed furniture sitting directly on the floor surface. Contractor shall remove all floor seal, floor finish, stripper and stripping slurry from baseboards, furniture and other such areas. After the finish has dried, the reflectance shall be uniform and no streaks, swirls, etc., shall be visible.

Vacuum Completely

Contractor shall use a carpet vacuum to remove visible and hidden soil and debris from the carpet surface and from within the carpet pile. Contractor shall use a hose and brush or crevice attachment to vacuum areas inaccessible to the carpet vacuum. After completely vacuuming, the carpet shall be free of all visible soil and litter and all soil, which can be removed from the pile carpet.

Vacuum Traffic Lines

Contractor shall use a carpet vacuum to vacuum traffic patterns and lanes of carpeted floors to remove soil and debris from the carpet surface and pile to raise the carpet pile. Contractor shall use a hose and brush or crevice attachment to vacuum areas inaccessible to the carpet vacuum.

Vacuum Visible Soil

Contractor shall use a carpet vacuum to remove visible soil debris from the carpet surface.

Contractor shall use a hose and brush or crevice attachment to vacuum areas inaccessible to the carpet vacuum. After vacuuming, the carpet shall be free of all visible soil and litter.

Use a vacuum cleaner to remove moisture and dry soil from carpeted-type entrance mats. Contractor shall use carpet stain remover and gum remover to remove carpet stains and gummy soil from entrance mats.

Wet Mop Hard Surface Floors

Contractor shall use detergent solution, wet mops, buckets and wringers, deck brushes, corner brushes, swivel pad holders and abrasive pads and putty knives to remove soil from non-carpeted floors which cannot be removed by vacuuming or dust mopping. Germicidal solution shall be used in place of detergent solution in restrooms. Contractor shall apply detergent solution to the entire floor area and allow it to remain on for three to five minutes. Contractor shall use scrub brushes to remove spots and stains not removed by mopping. Contractor shall use scrub brushes to remove spots and stains not removed by mopping. In areas with floor drains, Contractor shall use a wet mop and mop bucket and wringer or wet/dry tank vacuum to pick up the solution and then rinse with clean water twice. Contractor shall wet clean all areas. Contractor shall dust mop floors, which are coated with floor finish prior to damp mopping. Contractor shall vacuum other floor surfaces prior to damp mopping. Contractor shall take care as required to prevent splash and mop marks from being left on baseboards, furniture legs, doors, etc. After the floor has been wet cleaned, it shall have a uniform appearance free of soil, stains, streaks, swirl marks, detergent film or any observable soil that can be removed by damp mopping. In areas where floor finish has not been applied to the floor surface and greasy soil must be removed, Contractor shall use a solution of degreaser.

CHEMICALS

General Requirements

Contractor shall furnish all chemicals necessary to perform the services in accordance with the contract. At a minimum, Contractor shall furnish the chemicals defined in the "LIST OF CHEMICALS".

Contractor shall ascertain the appropriateness of all chemicals for their intended use on a surface or material before any actual use of any chemical on any surface or material regardless of whether or not the chemical is included on the List of Chemicals and regardless of whether or not Property Manager or Site contact has given permission to use said chemical.

Chemical Brands

Contractor shall present the list of chemicals that Contractor proposes to use in the execution of the services for HACSB, to the Property Manager or site contact for approval at the same time Contractor returns the signed contract and the required evidence of insurance.

The Property Manager or site contact shall respond to Contractor concerning approval or denial of the proposed list of chemicals within (10) calendar days of receipt of the List of Chemicals from Contractor. Along with the list; a product brochure, Material Safety Data Sheet (MSDS) and chemical specifications must be attached. The Property Manager or site contact shall have the right to request the contract supervisor to perform an onsite evaluation of the chemical at HACSB facility. Such testing shall be accomplished during the regular performance of the service or at no

additional charge to HACSB. The Property Manager or Site contact shall provide the parameters and methods of such evaluation and testing.

All products used shall cause no interference with the operational activities of HACSB or damage to HACSB facility and is in the best interest of HACSB. The Property Manager or Site contact shall provide the contract supervisor with written permission to use the proposed chemical in the performance of the services. Such permission does not relieve Contractor of any liability or responsibility.

Contractor shall pay for all costs associated with testing and evaluating the proposed chemical and with changing from the approved chemical to the proposed chemical if Contractor proposed the chemical.

Material Safety Data Sheet

The contract supervisor shall provide the Property Manager or Site contact with a copy of the Material Safety Data Sheet (MSDS) for each type and brand of chemical used in the performance of the services and shall maintain a separate file with duplicate copies of the form for each chemical used in the performance of the services at each worksite.

Containers

Contractor shall purchase and issue all chemicals in their original containers.

Labeling

Material that requires precautionary warnings shall have affixed to all containers such labels or markings as are prescribed and approved by law, regulatory agency or this contract. The marking or labeling of materials containing hazardous or toxic material, substances or wastes shall be in accordance with all federal, state and local laws, ordinances, rules and regulations.

All chemical containers shall bear their original manufacturer's label that includes the name and address of the manufacturer, instructions for use and any pertinent warnings and safety instructions. All chemical containers must have the manufacturer's quality control batch number included on cases or containers. Contractor shall develop and implement procedures to insure its employees use chemicals in accordance with the instructions of the chemical manufacturers.

Prohibited Chemicals

No ammonia, laundry bleach, powdered cleanser or any other type of chemical not included on the "LIST OF CHEMICALS" shall be used in the performance of the contract services without the written permission of the Property Manager or Site contact.

Manufacturer's Instructions

Contractor shall follow the instructions of the Chemical Manufacturers in every instance.

Slip Resistance

Contractor shall verify that all floor finishes, seals, spray-buff solutions and other such chemicals applied to non-carpeted floors provide adequate protection against slippery floors. Contractor shall immediately remedy any observed instances of slippery or slick floors.

Germicidal Properties

Contractor shall not use a germicidal disinfectant that does not bear the Environmental Protection Agency Registration Number.

Container Sizes and Types

Contractor shall provide the following chemicals in the type and size containers listed below:

- Acid-type bowl cleaner, 1 qt. squeeze bottle with flip-cap
- Carpet shampoo, 6 gallons or smaller concentrate
- Carpet stain remover, aerosol or 1 gallon
- Cream Cleanser, 1 qt. squeeze bottle with flip-cap
- Concrete seal, 6 gallons or smaller
- Degreaser, 1 gallon concentrate
- Detergent, 1 gallon concentrate
- Floor finish, 6 gallons or smaller
- Floor finish remover, 6 gallons or smaller concentrate
- Floor seal, 6 gallons or smaller
- Germicidal disinfectant, 1 gallon concentrate
- Glass cleaner, 1 gallon, ready to use
- Gum remover, aerosol
- Spray buff solution, 1 gallon or smaller, ready to use

Acceptance: All Work provided by Contractor under this Contract is subject to acceptance by HACSB's Property Manager or Maintenance Manager or his designee. HACSB will apply the criteria set forth in Exhibit 3 – Statement of Work (including timeliness, completeness, technical accuracy and conformance to industry or marketplace standards) to determine acceptance or non-acceptance of the Work.

Non-Acceptance: If the Work is not acceptable, site contacts shall detail the failure to meet the acceptance criteria. Contractor shall have one business day from receipt of notification to correct the failure(s) to conform.

Contractor will re-submit the Work and the site contact or designee shall re-apply the acceptance criteria to determine its acceptance or non-acceptance. Thereafter, the parties shall repeat the process set forth in this Section until Contractor's receipt of HACSB's written acceptance of such corrected Work.

Prior Work. Prior work, performed by Contractor pursuant to HACSB's authorization, but before execution of this Contract, will be considered as having been performed subject to the provisions of this Contract.

Non-Exclusivity. This is a non-exclusive Contract. HACSB reserves the right to perform, or have others perform the Work of this Contract. HACSB reserves the right to bid the Work to others or procure the Work by other means.

Standard of Performance; Warranties

Standard of Performance. Contractor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Contract, and pursuant to the governing rules and regulations of the industry. Contractor understands that HACSB relies on the accuracy, competence, and completeness of Contractor's services.

Warranties

Services Warranty. Contractor warrants and represents that the services rendered and Work performed under this Contract shall be performed in a competent and professional manner with requisite skill and diligence consistent with professional standards for the industry and type of work being performed, and in compliance with all applicable laws, rules and regulations. Contractor further warrants and represents that each of Contractor's employees, subcontractors, and agents assigned to perform the Work shall possess the training, background, and skills reasonably commensurate with the level of performance required. Contractor hereby acknowledges that HACSB relies on the accuracy, competence, and completeness of the services and Work to be performed hereunder by Contractor.

Non-Infringement. Contractor represents and warrants to HACSB that it has and will either own, or be authorized to use for its own and HACSB's benefit, all intellectual property rights used and to be used in connection with providing and/or performing the Work.

All warranties will inure to HACSB, its successors, assigns, customer agencies, and users of the Work provided hereunder.

Unless otherwise specified, the warranties set forth in this Section commence after Work has been approved and accepted by HACSB.

Personnel Requirements

Contractor will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Work. For continuity, Contractor will endeavor to retain the same individuals during the performance of Work.

HACSB reserves the right to disapprove Contractor's personnel for any reason. Upon receipt of such Notice, Contractor will immediately assign replacement personnel, with equivalent or greater experience and skills, who are acceptable to the site contact or designee.

Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Contractor does not promptly furnish replacement personnel acceptable to the site contact, HACSB may terminate this Contract for cause.

No minor under 18 years of age shall work in any HACSB facility without the express written approval of the HACSB Executive Director or designee.

Contractor shall have all employees working in the Facilities fingerprinted within 10 (ten) days from the start of the Contract. Each employee will also have passed a complete background check, a drug test, and must not have any

felony convictions. HACSB must receive verification of clearance for any employee with access and entry into the Facilities PRIOR to the start of work.

Notwithstanding the foregoing, HACSB shall have the right at any time to refuse access to HACSB's premises or systems to any employee, subcontractor or agent of Contractor where HACSB determines, in its sole discretion that such person or entity poses a risk to HACSB, or any person, system, or asset associated with HACSB.

All employees shall be identified while on the premises by picture identification card furnished at Contractor's, and by shirt, blouse or smock indicating the company name or logo in print large enough to be read easily.

Contractor shall be responsible for all uniform costs related to performing the work.

HACSB shall furnish Contractor all necessary keys for locations herein. Contractor shall maintain a file of key assignment cards for each employee, subject to inspection by HACSB. Keys shall be numbered and assigned by number. During working hours, keys shall be in the possession of an employee of Contractor and shall not be left in a door or left out in plain sight. Keys shall not be duplicated without prior written consent of HACSB. Contractor shall pay all costs incurred by HACSB due to the negligent handling of keys by Contractor's employees.

Under no circumstances shall Contractor's employees admit anyone to areas controlled by a key in their possession. All doors and windows shall be closed and locked upon completion of cleaning operations in the area. All areas shall be double-checked at the end of each shift to verify the areas are secured.

Scope of Services – Fee Schedule:

		Yr1 2021-22	Yr2 2022-23	Yr3 2023-24	Yr4 2024-25
	Provide <u>monthly</u> pricing by location- to completely clean per the specifications listed in for :				
1	Central Administrative Office 715 East Brier Drive.; San Bernardino, CA 92408	\$2,664.09	\$2,717.37	\$2,771.72	\$2,827.15
2	Housing Programs Office 672 South Waterman Ave., San Bernardino, CA 92408	\$2,960.10	\$3,019.30	\$3,079.69	\$3,141.28
3	Redlands Affordable Housing (Includes Community Room & Computer Center) 803 W Brockton Ave, Redlands, CA 92374	\$349.83	\$356.83	\$363.97	\$371.25
4	Colton Affordable Housing (Includes Community Room & Computer Center) 772 Pine Street, Colton, CA 92324	\$349.83	\$356.83	\$363.97	\$371.25
5	Chino Affordable Housing 13088 Monte Vista Ave, Chino, CA 91710	\$349.83	\$356.83	\$363.97	\$371.25
6	Victorville HCV Office 15465 Seneca Road, Victorville, CA 92392	\$437.29	\$446.04	\$454.96	\$464.06
7	Maplewood Affordable Housing 1738 West 9 th Street, San Bernardino, CA 92411	\$349.83	\$356.83	\$363.97	\$371.25
8	Maplewood Achievement Center 906 Wilson Street, San Bernardino, CA 92411	\$349.83	\$356.83	\$363.97	\$371.25
9	Upland Affordable Housing (Includes Conference Room/Gymnasium/Computer Center) 1200 N Campus Ave, Upland, CA 91786	\$874.58	\$892.07	\$909.91	\$928.10
10	Barstow Affordable Housing 421 South 7 th Street, Barstow, CA 92311	\$349.83	\$356.83	\$363.97	\$371.25
11	Yucaipa Crest (Includes Community Room) 12435 6 th Street, Yucaipa, CA 92399	\$242.19	\$247.03	\$251.97	\$257.01
12	Yucaipa Terrace (Includes Community Room) 12385 6 th Street, Yucaipa, CA 92399	\$242.19	\$247.03	\$251.97	\$257.01
	Total All Locations	\$114,2233.04	\$116,517.84	\$118,848.48	\$121,225.32

Exhibit B
GENERAL CONDITIONS FOR NON-CONSTRUCTION WORK
(HUD – 5370-C)

Document on Following Page

Exhibit C
Additional General Provisions

Document on Following Page

ADDITIONAL GENERAL PROVISIONS

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
 - a. **Business Entity** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - b. **Contractor** means the Business Entity with whom the Housing Authority of the County of San Bernardino enters into this Agreement. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - c. **Firm Price** means the Agreement requires the delivery of products or services at a specific price, fixed at the time of the Agreement and not subject to any adjustment on the basis of Contractor's cost experience in performing under the terms of the Agreement.
 - d. **HACSB** means the Housing Authority of the County of San Bernardino, its employees and authorized representatives, including without limitation any department, agency, or other unit of HACSB.
 - e. **Non-routine maintenance** means duties or tasks that ordinarily would be performed on a regular basis in the course of upkeep of property, but have become substantial in scope because they have been put off, and involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.
2. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Contractor warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Contractor's violation of this provision.
3. **CONTRACTOR'S POWER AND AUTHORITY:** Contractor warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Contractor agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
4. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
 - a. Contractor must strictly follow Agreement requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. HACSB may permit use of an alternate carrier at no additional cost to HACSB with advance written authorization of HACSB.
 - b. If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by HACSB and a waiver is granted in writing and in advance of shipping.
 - c. On "F.O.B. Shipping Point" transactions, should any shipments under the Agreement be received by HACSB in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of HACSB, shall at Contractor's own expense assist HACSB in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

5. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
6. **DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in the Agreement. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, HACSB shall not be required to make any payment for the excess goods, and may return them to Contractor, at Contractor's expense, or utilize any other rights available to HACSB at law or in equity.
7. **SUBSTITUTIONS:** Substitution of goods may not be tendered, without advance written consent of HACSB. Contractor shall not use any specification in lieu of those contained in the Agreement, without written consent of HACSB.
8. **INSPECTION, ACCEPTANCE AND REJECTION:**
- a. Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to HACSB covering goods and services under this Agreement and will tender to HACSB only those goods that have been inspected and found to conform to the requirements of this Agreement. Contractor will keep records evidencing inspections and their result, and will make these records available to HACSB during performance of the Work and for three years after final payment. Contractor shall permit HACSB to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the Work.
 - b. All goods may be subject to inspection and test by HACSB or its authorized representatives.
 - c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to HACSB. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
 - d. All goods to be delivered hereunder may be subject to final inspection, test and acceptance by HACSB at destination, notwithstanding any payment or inspection at source.
 - e. HACSB shall give written notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. If HACSB does not provide such notice of rejection within thirty (30) days, unless otherwise specified in the Statement of Work, of delivery, such goods and services will be deemed to have been accepted. Acceptance by HACSB will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that HACSB might have at law or by express reservation in this Agreement with respect to any nonconformity.
9. **SAMPLES:**
- a. Samples of items may be required by HACSB for inspection and specification testing and must be furnished free of expense to HACSB. The samples furnished must be identical in all respects to the products bid and/or specified in the Agreement.
 - b. Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.
10. **WARRANTY:** Unless otherwise specified, the warranties contained in this Agreement begin after acceptance has occurred.
- a. Contractor warrants that goods and services furnished hereunder will conform to the requirements of this Agreement (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by HACSB, free from defects in design. HACSB's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.
 - b. All warranties, including special warranties specified elsewhere herein, shall inure to HACSB, its successors, assigns, customer agencies and users of the goods or services.
11. **SAFETY AND ACCIDENT PREVENTION:** In performing the Work under this Agreement on HACSB premises, Contractor shall conform to any specific safety requirements contained in the Agreement or as required by law or regulation. Contractor shall take any additional precautions as HACSB may reasonably

require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Agreement in accordance with the default provisions hereof.

12. **ACCIDENT PREVENTION:** Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions issued by the Industrial Accident Commission of the State of California.
13. **INSURANCE:** Contractor shall not commence Work under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Any policy of insurance required of Contractor under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

The insurance required to be carried by Contractor hereunder shall include:

- a. Compensation Insurance and Employer's Liability Insurance. Contractor shall take out and maintain during the entire term of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor.

In signing this Agreement, Contractor makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Commercial General Liability Insurance. Contractor, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence; HACSB listed as Additional Insured on an attached endorsement. Such coverage shall include, but shall not be limited to, protection against claims arising from, and damage to property resulting from, activities contemplated under this Agreement. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement.

Broad form property damage endorsement must be attached. HACSB is to be named as an additional insured included on an attached endorsement for any contracts of insurance under this paragraph b. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Contractor shall be named as an additional insured with respect to such general liability insurance policy.

- c. Automobile Liability. Contractor, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Contractor shall be named as an additional insured with respect to such automobile liability insurance policy.

- d. Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or:
 - e. Professional Liability: \$1,000,000; per occurrence and aggregate.
 - f. Worker's Compensation. A state approved Workers Compensation and Employers Liability Insurance policy providing benefits as required by law with employer's liability limits no less than One Million and No/100 Dollars (\$1,000,000) per accident or disease, which covers all employees of the contractor and each and every contractor.
- 14. FORCE MAJEURE:** Contractor shall be excused for performing the Work hereunder in the event that Contractor is unable to perform the Work for one of the following reasons:
- a. Acts of God or of the public enemy, and
 - b. Acts of the federal, state or local government in either its sovereign or contractual capacity.
- Such delay shall be for the period of time that Contractor is delayed from performing the Work as a direct result of one of the foregoing reasons. Contractor shall provide HACSB notice within three (3) days of any such force majeure event.
- 15. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- a. Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Contractor, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at Contractor's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Contractor.
 - b. Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Contractor during the Agreement.
- 16. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 17. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 18. TAXES:** HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.
- 19. NEWLY MANUFACTURED GOODS:** All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.
- 20. NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.
- 21. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:**
- a. Contractor shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.
 - b. Contractor may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
 - c. Contractor, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Contractor or the operation of such goods pursuant to a current version of Contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. Contractor shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:

- i. That Contractor shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
- d. Should the goods or software, or the operation thereof, become, or in Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Contractor at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Contractor agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Contractor under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Contractor agrees to take back such goods or software and refund any sums HACSB has paid Contractor.
- e. Contractor shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Contractor; or,
 - ii. The operation of equipment furnished by Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Contractor supplied software.
- f. Contractor certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Contractor to HACSB with respect to infringement of patents, copyrights or trade secrets.

22. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Contractor, require Contractor to stop all, or any part, of the Work called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
 - i. Cancel the Stop Work Order; or
 - ii. Terminate the Work covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Agreement; and

2. Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- b. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - c. HACSB shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this clause.
23. **COVENANT AGAINST GRATUITIES:** Contractor warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
24. **COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Contractor certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Work, Contractors of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Contractor may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Contractor shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.

HACSB shall have the right to audit Contractor, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Contractor agrees to maintain accurate books and records in connection with the Work, and all payments made or received by Contractor pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Contractor shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Contractor in connection with the Work, and shall permit HACSB to interview any such employees, contractors or subcontractors. Contractor agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Work shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 Contractor's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by 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.
25. **CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Contractor agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Contractor's books and records, and interview Contractor's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
26. **EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Contractor certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

27. NONDISCRIMINATION CLAUSE:

- a. During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

28. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

29. DRUG-FREE WORKPLACE CERTIFICATION: Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.

30. RECYCLING: Contractor shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.

31. COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT: For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Contractor certifies that it complies with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

32. CHILD SUPPORT COMPLIANCE ACT: For any contract in excess of \$100,000, Contractor acknowledges in accordance with Public Contract Code Section 7110, that:

- a. Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State of California and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
33. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
34. **ENVIRONMENTAL REGULATIONS:** For agreements in excess of \$100,000, Contractor certifies that it complies with the requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (3 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
35. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
36. **DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Contractor certifies that Contractor is in compliance with Public Contract Code Section 10295.3.

Exhibit D

Work Authorization

Schedule Dates:

Start Date: SEPTEMBER 1, 2021

Completion Date: AUGUST 31, 2025

Total Contract Cost: Per Fee Schedule Located in Exhibit A

.

Schedule Requirements – Statement of Work ("Exhibit A")

General Conditions for Non-construction work ("Exhibit B")

Additional General Provisions ("Exhibit C")

Work Authorization ("Exhibit D")

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

On-call Contracts for Construction Management and Real Estate Development Consulting Services

RECOMMENDATION(S)

1. Approve an appropriation for construction management and real estate development consulting services in amount not to exceed \$450,000 for a three-year period through August 10, 2024.
2. Approve seven contracts for on-call construction management and real estate development consulting services with the following vendors, in the total aggregate not to exceed amount of \$450,000, for a three-year period beginning August 11, 2021, through August 10, 2024, with two single year options to extend through August 10, 2026.
 - a. Partner Engineering and Science, Inc.
 - b. Murow Development Consultants
 - c. Atrium Construction Services
 - d. SeaPointe Group, Inc.
 - e. The Howell Group, Inc.
 - f. Moote Companies, LLC
 - g. IMG Construction Management

(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB is a leading developer and provider of affordable housing in the County of San Bernardino.

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

The appropriation amount for on-call construction management and real estate development related services is not expected to exceed an aggregate amount of \$450,000, \$225,000 per category, and will be funded by the Housing Authority of the County of San Bernardino's (HACSB) Authority-Owned Portfolio/Local Fund budget. The proposed amounts are based on prior expenses for on-call construction management and real estate development related services. Individual consulting contract amounts are included in the budget and will be included in the subsequent fiscal year budget.

- Category 1 - Construction Management: \$225,000
- Category 2 – Pre-Construction and Real Estate Development Consulting: \$225,000

BACKGROUND INFORMATION

Over the next several years, HACSB will continue to rehabilitate and develop properties within the HACSB real estate portfolio as well as acquire land and/or existing multi-family properties to

On-call Contracts for Construction Management and Real Estate Development Consulting Services

August 10, 2021

expand the availability of affordable housing. This work often requires the assistance of construction management and real estate development related services to plan and manage physical improvements on an on-call basis.

In light of a growing pipeline of real estate development projects, as well as recent retirements of key development staff members, HACSB is proposing to create a pool of consultants to ensure timely response to project demands as they occur.

On-call construction management and real estate development consulting services are broken down into two categories:

Category	Services may include, but are not limited to:
Category 1 – Construction Management	<ul style="list-style-type: none">• Review contract design plans as requested for constructability, consistency, and adherence to applicable standards.• Coordinate construction activities with HACSB staff, utilities, and municipalities for the duration of any project.• Visit sites as required during construction.
Category 2 – Pre-Construction and Real Estate Development Consulting Services	<ul style="list-style-type: none">• Assist in the oversight, planning, and securing of public approvals for real estate development.• Coordinates and administers development project activities including general contractor selection and oversight, identifying/managing consultants, securing necessary permits, and project design. Provide services required for management of a design-build process.

On an as needed basis, HACSB will be utilizing the approved pool of seven on-call vendors for services to complete various projects that may arise through the redevelopment, rehabilitation, and/or acquisition of properties for its real estate portfolio. Purchase Orders (PO's) will be issued as Work Authorization for any approved on-call projects as-needed.

PROCUREMENT

The HACSB Development Department solicited and received proposals from qualified Construction Management and Real Estate Development consulting firms. Seven responses received were substantially similar with regard to hourly rates for their professional services, with some specializing in construction management, and others covering a broader range of real estate development related services.

Vendor	Location	Category of Services (reference above)
Partner Engineering and Science, Inc.	Torrance, CA	Category 1 & 2
Murow Development Consultants	Irvine, CA	Category 1 & 2
Atrium Construction Services	Helena, MT	Category 1 & 2

On-call Contracts for Construction Management and Real Estate Development Consulting Services

August 10, 2021

SeaPointe Group, Inc.	Ladera Ranch, CA	Category 2
The Howell Group, Inc.	Corona, CA	Category 1
Moote Companies, LLC	Irvine, CA	Category 1
IMG Construction Management	Irvine, CA	Category 1

Based on the responses for the requested on-call services, staff recommends approval of the seven contracts for on call construction management and real estate development consulting services with Partner Engineering and Science, Inc., Murow Development Consultants, Atrium Construction Services, SeaPointe Group, Inc., The Howell Group, Inc., Moote Companies, LLC, and IMG Construction Management, for a three-year period beginning August 11, 2021, through August 10, 2024, with two single year options to extend through August 10, 2026.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 27, 2020.

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (“Agreement”) (PC1238) is made as of the 11th day of August, 2021 (“**Effective Date**”) by and between Partner Engineering and Science, Inc. (“**Consultant**”), a California Corporation and the Housing Authority of the County of San Bernardino, a California public entity (“**HACSB**”).

RECITALS

WHEREAS, HACSB is a public entity in San Bernardino County, State of California, committed to providing affordable and safe public housing for low and moderate income families; and

WHEREAS, Consultant has offered to provide construction management services to HACSB, and HACSB wishes to retain Consultant for the provision of such services.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Consultant and HACSB hereby agree as follows:

ARTICLE 1. Statement of Services. Consultant shall perform all work required in the Scope of Services set forth on Exhibit “A”, attached hereto and incorporated herein by reference (“**Services**”) in accordance with the terms and conditions of this Agreement. In connection with its performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Contract Documents. This Agreement incorporates by reference all of the following documents (“**Contract Documents**”):

1. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Services) (Form HUD 5370), attached hereto as Exhibit “B” and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit “C” and incorporated herein by reference (“**Additional Provisions**”).
3. Services Authorization, attached hereto as Exhibit “D” and incorporated herein by reference.
4. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U. S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws of the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 3. Term; Time of Completion. Consultant shall commence work under this Agreement beginning on or about **August 11, 2021**, and this Agreement shall continue in full force and effect until completion of the Services, which shall be no later than **August 10, 2024**, unless for any reason funds appropriated for the provision of these services are no longer available, or until such time as terminated per the terms of Article 19 of this Agreement. Consultant shall not commence work prior to the date of issuance by HACSB of a work authorization in the form set forth on Exhibit “D”, attached hereto and incorporated herein by reference (“**Work Authorization**”). HACSB shall have the option to extend the engagement for up to an additional two, single-year terms. The option years shall be exercised by written amendments executed by each party with board approval for additional funding on option years if needed. Option years will begin on or about **August 11, 2024** and expire no later than **August 10, 2026**. Following

issuance of a Work Authorization, Consultant shall timely complete the Services in accordance with the schedule requirements specified in Exhibit "A", and within the term of this Agreement.

ARTICLE 4. Agreement Price. HACSB agrees to pay Consultant per the Fee Schedule in Exhibit "A" for Consultant's performance of the Services and compliance with all other obligations under this Agreement ("**Agreement Price**"), subject to the maximum amount authorized to be paid to Consultant per the terms of any Work Authorization. Terms are defined in the Additional Provisions, and includes a guarantee of task completion.

ARTICLE 5. Performance of Services. Consultant warrants that it shall perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in California. Consultant acknowledges that HACSB has the right to review the Services performed by Consultant and may, in its discretion, reject the Services, or any part thereof. In the event HACSB rejects any or all of the Services, at HACSB's election: (a) Consultant shall promptly correct any such deficiencies in the Services, or (b) the deficient Services shall be stricken from this Agreement and Consultant shall not be paid for such portion of the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of Consultant or its subcontractors who is determined by HACSB to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to HACSB, shall be promptly removed from the Services by the Consultant and shall not be re-employed to perform any of the Services under this Agreement.

ARTICLE 6. HACSB's Right to Stop Services. HACSB has the right to require Consultant to stop or suspend Services pursuant to the "Stop Services" provisions of the Additional Provisions.

ARTICLE 7. No Conflicts. HACSB acknowledges that Consultant has other business and personal interests, separate and apart from the services contemplated by this Agreement, and nothing in this Agreement is intended to preclude Consultant from devoting time and attention to such business and personal interests. HACSB further acknowledges that Consultant has the right to accept other engagements as long as said engagements do not represent a conflict of interest with respect to the Services or the obligations of Consultant to HACSB pursuant to this Agreement. In connection with Consultant's performance of the Services hereunder, Consultant represents that there exists no actual, potential or appearance of conflict arising out of Consultant's business and financial interests.

ARTICLE 8. Limit of Engagement. This Agreement does not and shall not be construed to create any partnership or agency whatsoever. Consultant shall not be deemed to be a partner, joint venture, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility on behalf of, HACSB or corporations affiliated with HACSB, other than as expressly herein provided. HACSB retains Consultant on an independent contractor basis and Consultant is not an employee of HACSB. Any additional personnel performing Services under this Agreement on behalf of Consultant shall not be employees of HACSB and shall at all times be under Consultant's exclusive direction and control.

ARTICLE 9. Responsibilities of HACSB. If information, data, or documentation necessary to facilitate Consultant's performance of the Services is required to be provided by HACSB, HACSB shall provide such information upon request by Consultant. It is Consultant's responsibility to determine if any such information is necessary in order to perform its obligations hereunder and to request such information from HACSB in a sufficient amount of time in order for Consultant to perform the Services hereunder.

ARTICLE 10. Additional Services.

- a. In the event that the parties mutually agree that additional and further work beyond that specified in the Statement of Services ("**Additional Services**") is required to be performed by Consultant, such Additional Services shall be memorialized in a Work Authorization executed by HACSB and Consultant. The Work Authorization shall include and specifically identify the types of services required to perform as part of the Additional Services, all significant work product to be delivered to HACSB, the time schedule for completion of the Additional Services, and the price for such Additional Services.
- b. Nothing herein shall obligate HACSB to utilize Consultant to perform the Additional Services or in any way limit HACSB's rights to utilize third parties to perform or assist in performing the Additional Services. In no event shall Consultant commence performance of the Additional Services until it has received written consent executed by a duly authorized representative of HACSB.
- c. In the event that HACSB provides a Work Authorization for Additional Services, all of the terms and conditions of this Agreement shall apply to the performance of such Additional Services.

ARTICLE 11. Consultant's Obligation to Stop Services. Personnel resources will not be expended (at a cost to HACSB) on task accomplishment in excess of the schedule requirements set forth in "Exhibit A" unless the procedure below is followed:

- a. If, in the performance of the Services, Consultant determines that the Services to be performed under this Agreement cannot be accomplished within the estimated work hours, Consultant will immediately notify HACSB in writing of Consultant's estimate of the work hours which will be required to complete the Services. Upon receipt of such notification, HACSB may:
 - i. Authorize Consultant to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld); or
 - ii. Terminate this Agreement; or
 - iii. Alter the scope of the Services in order to define tasks that can be accomplished within the remaining estimated work hours.
- b. HACSB will notify Consultant in writing of its election within seven (7) calendar days after receipt of Consultant's notification. If notice of the election to proceed is given, Consultant may expend the estimated additional work hours or services, as memorialized in a Work Authorization signed by Consultant and HACSB. In the event that HACSB fails to notify Consultant within such seven (7) calendar day period, Consultant shall provide a second notice to HACSB requesting a determination. Consultant shall not proceed with the Services until such time as HACSB has made an election as to how it wishes to proceed, and a Work Authorization has been approved.

ARTICLE 12. Invoicing and Payment for Services.

- a. Consultant shall provide HACSB with invoices detailing the work performed and hours and charges related thereto. In the event that Additional Services are performed pursuant to a Work Authorization, such Additional Services shall be paid by HACSB according to the same procedure set forth above with respect to the Services, unless a different method for payment is specified in such Work Authorization.
- b. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.

- c. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the Agreement Price, with the balance to be invoiced upon completion of the Agreement, in accordance with the acceptance criteria set forth herein.
- d. No charge for transportation, delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Statement of Services or Work Authorization.
- e. Payments for all any and all invoices or other obligations are satisfied electronically through the Automated Clearing House (ACH) system. The Consultant hereby authorizes the HACSB to initiate payment electronically to any bank account maintained by the Consultant wherever located. Consultant shall promptly comply with directions and accurately complete forms provided by HACSB required to process ACH payments.

ARTICLE 13. Return of HACSB Property. All reports, plans, designs, specifications, field data, construction documents, and other documents and instruments, including electronic files, but excluding Consultant's notes, relating to the Services shall be and remain the property of HACSB and shall be turned over to HACSB promptly upon the completion of the Services, or upon the earlier termination of this Agreement. Consultant hereby waives and assigns to HACSB all intellectual property or common law rights Consultant may develop in the Services. Consultant shall not use any trademarks owned by HACSB without HACSB's prior written authorization.

ARTICLE 14. Confidential Information. HACSB agrees to make available to Consultant information that may be needed to perform the Services. Such information may include information HACSB considers to be confidential. For purposes hereof, "**Confidential Information**" of HACSB means any nonpublic, proprietary information or technology used in HACSB's business, and any materials evidencing the same (specifically, including, without limitation, technical data or know-how relating to development plans, business plans, services, customers, markets, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, marketing and/or financial information). Unless HACSB acknowledges that any such information provided under this Agreement is not Confidential Information, all information provided by HACSB to Consultant shall be considered to be Confidential Information. Unless approved in advance in writing or compelled to make such disclosure by a government agency, by court order, or by law, Consultant shall not disclose, transfer, distribute or allow access to any of HACSB's Confidential Information to any third parties, except those individuals employed by Consultant and who are specifically authorized by Consultant to perform the Services contemplated in this Agreement.

ARTICLE 15. Indemnity; Hold Harmless. Consultant agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Consultant's employees and subcontractors included) and damage to property, arising directly or indirectly out of the performance of the Services, the obligations herein undertaken or out of the operations conducted by Consultant, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Consultant shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Consultant shall defend any such suits at the sole cost and expense of Consultant with counsel selected by HACSB. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against HACSB or its officers, employees, and agents in any such suit, action or other legal proceeding.

ARTICLE 16. Compliance with Contract Documents. Consultant shall comply with all of the Contract Documents in connection with the performance of the Services hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control. Consultant shall also comply with all agreements, representations, warranties, covenants, and certifications of Consultant made in connection with the

procurement of this Agreement, provided that in the case of a conflict between the foregoing and the Contract Documents and this Agreement, the Contract Documents and this Agreement shall control.

ARTICLE 17. Assignment. Neither the Agreement, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Consultant without the prior written approval of HACSB. This Agreement shall be binding on the successors and assigns of the parties.

ARTICLE 18. Rights and Remedies of HACSB for Default.

In the event any work product delivered or services provided by Consultant in the performance of the Services should fail to conform to the requirements herein, or to the sample submitted by Consultant, HACSB may reject the same, and it shall become the duty of Consultant to correct the performance of services, without expense to HACSB, and immediately replace all such rejected work product with others conforming to the Agreement.

- a. In addition to any other rights and remedies HACSB may have, HACSB may require Consultant, at Consultant's expense, to send work product via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Consultant.
- b. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by Consultant, any loss or damage sustained by HACSB in procuring any work product or services which Consultant agreed to provide shall be borne and paid for by Consultant.
- c. HACSB reserves the right to offset the reasonable cost of all damages caused to HACSB against any outstanding invoices or amounts owed to Consultant or to make a claim against Consultant therefore.

ARTICLE 19. Termination. In addition to the rights of Termination for Convenience of HACSB and Termination for Default set forth in the Contract Documents, HACSB may terminate this Agreement if Consultant should file a bankruptcy petition and/or be adjudged a bankrupt, or if Consultant should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency (as referenced in HUD Form 5370-C section 1 page 1). HACSB may serve written notice upon Consultant of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement and, unless within ten (10) days after serving such notice such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon Consultant.

ARTICLE 20. No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

ARTICLE 21. Modification. This written Agreement may not be later modified except by a further writing signed by HACSB and Consultant and no term of this Agreement may be waived, except by writing signed by the party waiving the benefit of such term. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

ARTICLE 22. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested. All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardapide, Procurement and Contracts Supervisor
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841
alardapide@hacsb.com

If to Consultant:

Jim Carlson, Technical Director
Partner Engineering and Science, Inc.
2154 Torrance Blvd.
Torrance, CA 90501
jcarlson@partneresi.com

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 23. Complete Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between HACSB and Consultant and of all the terms of this Agreement and cannot be varied, contradicted, nor supplemented by evidence of any prior or contemporaneous oral or written agreements.

ARTICLE 24. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 25. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or of any part hereof.

ARTICLE 26. Interpretation. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties.

ARTICLE 27. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ARTICLE 28. Subcontracting. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of HACSB. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

ARTICLE 29. Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

ARTICLE 30. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or termination.

ARTICLE 31. No Third Party Beneficiaries. Except as expressly stated herein or in the Contract Documents, there are no intended third party beneficiaries of any right or obligation assumed by the parties.

[END – SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE TO
AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
PC1238 – Construction Management Services

IN WITNESS WHEREOF, HACSB and Consultant have entered into this Agreement as of the Effective

Date: _____

Partner Engineering and Science, Inc.

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

CERTIFICATE OF CORPORATE AUTHORITY

I, _____, certify that I am the _____ of the corporation named as Consultant herein; that _____ who signed this Agreement on behalf of Consultant, was then _____ of said corporation; that said Contract was duly signed for and in behalf of said corporation and its governing body and is within the scope of its corporate powers.

By: _____

Name: _____

Its: _____

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo

Its: Executive Director

Date: _____

Exhibit A

Scope of Services

- Evaluate preliminary scope, schedule and design developed by Design Team and verify they were prepared in accordance with the requirements of the contract/County documents and other applicable standards.
- Assist with remaining preliminary due diligence including project document and permitting review as necessary. It is assumed all project documents will be promptly provided upon Partner making a request. Partner will assist the Design Team interface and resolve any permitting issues with the Authority having Jurisdiction.
- Coordinate construction activities for the duration of each on-call project.
- Participate in initial bid walks and perform preliminary site visits to observe and document typical current site conditions and to identify potential issues.
 - Partner will attend pre-construction conferences, progress meetings, site visits, and resident inspection services, as necessary throughout the life cycle of the project(s).
- Review project timeline and schedule updates to ensure milestones are achieved and project remains within scope. Review will not constitute an evaluation of the document's accuracy or adequacy. Review interval will adhere to contract documentation timeline.
 - Upon request, Partner will review payment applications submitted by the Contractor monthly or as available and determine whether the amount requested reflects the progress of the Contractor's work.
- Prepare drawings and estimates for field changes as requested.
 - Upon request, Partner will review any Potential Change Orders and Change Orders submitted by the Contractor and provide recommendations.
- Partner will assist with project closeout
 - Develop and manage punch list of outstanding items near project completion.
 - Compile as-built drawings, manufacturer's operations and maintenance manuals, warranties and guarantees, final unconditional lien releases, and training sign-in sheets produced and furnished by others and bind such documents in an organized manner. It is assumed documents will be promptly provided upon Partner making a request, without the need to research archive files.
 - Facilitate construction hand-over by acquiring certificate of occupancy and warranty documentation.
- Assist in the oversight, planning, and securing of public approvals for real estate development.
- Coordinates and administers development project activities including general contractor selection and oversight, identifying/managing consultants, securing necessary permits, and project design. Provide services required for management of a design-build process.

The term design team is interpreted to refer to the team of Engineers, Architects, and other professional consultants that the vendor will either manage and work with collaboratively. This group may be hired directly by the consultant, or could be contracted directly with HACSB.

Consultant shall secure the permits and perform those activities as will be detailed in a Purchase Order.

Coordinate with HACSB General Counsel on legal issues related to entitlement work when directed by HACSB staff only.

Scope of Services – Fee Schedule:

Position:	Rate/Hour:
Technical Director	\$205.00
Senior Project Manager	\$185.00
Project Manager	\$165.00
Expert Witness:	
Consultation	Above Rate
Standby and Travel	Above Rate + 50%
Deposition and Testimony	Above Rate + 100%

Reimbursable Expenses:

Position:	Fee:
Subconsultants	115% of Cost
Out-Of-Pocket Expenses	115% of Cost

Exhibit B
GENERAL CONDITIONS FOR NON-CONSTRUCTION WORK
(HUD – 5370-C)

Document on Following Page

Exhibit C

Additional General Provisions

1. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Consultant warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Consultant's violation of this provision.
2. **CONTRACTOR'S POWER AND AUTHORITY:** Consultant warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Consultant agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
3. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
4. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
5. **INSURANCE:** Consultant shall not commence Services under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Consultant allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Consultant shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. Any policy of insurance required of Consultant under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

The insurance required to be carried by Consultant hereunder shall include:

- a. Compensation Insurance and Employer's Liability Insurance. Consultant shall take out and maintain during the entire term of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Consultant shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Consultant.

In signing this Agreement, Consultant makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Commercial General Liability Insurance. Consultant, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence; HACSB listed as Additional Insured on an attached endorsement. Such coverage shall include, but shall not be limited to, protection against claims arising from, and damage to property resulting from, activities contemplated under this Agreement. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement.

Broad form property damage endorsement must be attached. HACSB is to be named as an additional insured included on an attached endorsement for any contracts of insurance under this

paragraph b. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Consultant shall be named as an additional insured with respect to such general liability insurance policy.

- c. Automobile Liability. Consultant, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Consultant shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or:
- e. Professional Liability: \$1,000,000; per occurrence and aggregate.
- f. Worker's Compensation. A state approved Workers Compensation and Employers Liability Insurance policy providing benefits as required by law with employer's liability limits no less than One Million and No/100 Dollars (\$1,000,000) per accident or disease, which covers all employees of the contractor and each and every contractor.

6. FORCE MAJEURE: Consultant shall be excused for performing the Services hereunder in the event that Consultant is unable to perform the Services for one of the following reasons:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal, state or local government in either its sovereign or contractual capacity.

Such delay shall be for the period of time that Consultant is delayed from performing the Services as a direct result of one of the foregoing reasons. Consultant shall provide HACSB notice within three (3) days of any such force majeure event.

7. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. Consultant shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Consultant, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at Consultant's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Consultant.
- b. Consultant shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Consultant, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Consultant during the Agreement.

8. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

9. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

10. TAXES: HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.

11. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.

12. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:

- a. Consultant shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.

- b. Consultant may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Consultant, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Consultant or the operation of such goods pursuant to a current version of Consultant supplied operating software infringes a United States patent or copyright or violates a trade secret. Consultant shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Consultant shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
- d. Should the goods or software, or the operation thereof, become, or in Consultant's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Consultant at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Consultant agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Consultant under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Consultant agrees to take back such goods or software and refund any sums HACSB has paid Consultant.
- e. Consultant shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Consultant; or,
 - ii. The operation of equipment furnished by Consultant under the control of any operating software other than, or in addition to, the current version of Consultant-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Consultant supplied software.
- f. Consultant certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Consultant to HACSB with respect to infringement of patents, copyrights or trade secrets.

13. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Consultant, require Consultant to stop all, or any part, of the Services called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Consultant, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
 - i. Cancel the Stop Work Order; or

- ii. Terminate the Services covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Consultant shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to the performance of any part of this Agreement; and
 - 2. Consultant asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - b. If a Stop Work Order is not canceled and the Services covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - c. HACSB shall not be liable to Consultant for loss of profits because of a Stop Work Order issued under this clause.
- 14. COVENANT AGAINST GRATUITIES:** Consultant warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Consultant agreed to supply shall be borne and paid for by Consultant. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 15. COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Consultant certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Services, Consultants of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Consultant may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Consultant shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.
- HACSB shall have the right to audit Consultant, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Consultant agrees to maintain accurate books and records in connection with the Services, and all payments made or received by Consultant pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Consultant shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Consultant in connection with the Services, and shall permit HACSB to interview any such employees, contractors or subcontractors. Consultant agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Services shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 Consultant's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by Consultant and its subcontractors at the site of the Services in a prominent and accessible place where it can be easily seen by the workers.

16. **CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Consultant agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Consultant's books and records, and interview Consultant's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
17. **EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Consultant certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
18. **NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Consultant and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
19. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Consultant swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
20. **DRUG-FREE WORKPLACE CERTIFICATION:** Consultant certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
21. **RECYCLING:** Consultant shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.

22. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Consultant certifies that it complies with Sections 103 and 107 of the Contract Services Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
23. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, Consultant acknowledges in accordance with Public Contract Code Section 7110, that:
- a. Consultant recognizes the importance of child and family support obligations and shall fully comply with all applicable State of California and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Consultant, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** Consultant certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Consultant shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
25. **ENVIRONMENTAL REGULATIONS:** For agreements in excess of \$100,000, Consultant certifies that it complies with the requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (3 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
26. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Consultant certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Consultant further certifies that it will immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
27. **DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Consultant certifies that Consultant is in compliance with Public Contract Code Section 10295.3.

Exhibit D

Work Authorization

Schedule Dates:

Start Date: August 11, 2021

Completion Date: August 10, 2024

Total Contract Cost: Per details provided in any Purchase Order issued by HACSB to Consultant.

Schedule Requirements – Statement of Services (“Exhibit A”)

General Conditions for Non-construction work (“Exhibit B”)

Additional General Provisions (“Exhibit C”)

Services Authorization (“Exhibit D”)

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (“**Agreement**”) (**PC1238**) is made as of the 11th day of August, 2021 (“**Effective Date**”) by and between Murow Development Consultants (“**Consultant**”), a California Corporation and the Housing Authority of the County of San Bernardino, a California public entity (“**HACSB**”).

RECITALS

WHEREAS, HACSB is a public entity in San Bernardino County, State of California, committed to providing affordable and safe public housing for low and moderate income families; and

WHEREAS, Consultant has offered to provide construction management services to HACSB, and HACSB wishes to retain Consultant for the provision of such services.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Consultant and HACSB hereby agree as follows:

ARTICLE 1. Statement of Services. Consultant shall perform all work required in the Scope of Services set forth on Exhibit “A”, attached hereto and incorporated herein by reference (“**Services**”) in accordance with the terms and conditions of this Agreement. In connection with its performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Contract Documents. This Agreement incorporates by reference all of the following documents (“**Contract Documents**”):

1. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Services) (Form HUD 5370), attached hereto as Exhibit “B” and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit “C” and incorporated herein by reference (“**Additional Provisions**”).
3. Services Authorization, attached hereto as Exhibit “D” and incorporated herein by reference.
4. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U. S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws of the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 3. Term; Time of Completion. Consultant shall commence work under this Agreement beginning on or about **August 11, 2021**, and this Agreement shall continue in full force and effect until completion of the Services, which shall be no later than **August 10, 2024**, unless for any reason funds appropriated for the provision of these services are no longer available, or until such time as terminated per the terms of Article 19 of this Agreement. Consultant shall not commence work prior to the date of issuance by HACSB of a work authorization in the form set forth on Exhibit “D”, attached hereto and incorporated herein by reference (“**Work Authorization**”). HACSB shall have the option to extend the engagement for up to an additional two, single-year terms. The option years shall be exercised by written amendments executed by each party with board approval for additional funding on option years if needed. Option years will begin on or about **August 11, 2024** and expire no later than **August 10, 2026**. Following

issuance of a Work Authorization, Consultant shall timely complete the Services in accordance with the schedule requirements specified in Exhibit "A", and within the term of this Agreement.

ARTICLE 4. Agreement Price. HACSB agrees to pay Consultant per the Fee Schedule in Exhibit "A" for Consultant's performance of the Services and compliance with all other obligations under this Agreement ("**Agreement Price**"), subject to the maximum amount authorized to be paid to Consultant per the terms of any Work Authorization. Terms are defined in the Additional Provisions, and includes a guarantee of task completion.

ARTICLE 5. Performance of Services. Consultant warrants that it shall perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in California. Consultant acknowledges that HACSB has the right to review the Services performed by Consultant and may, in its discretion, reject the Services, or any part thereof. In the event HACSB rejects any or all of the Services, at HACSB's election: (a) Consultant shall promptly correct any such deficiencies in the Services, or (b) the deficient Services shall be stricken from this Agreement and Consultant shall not be paid for such portion of the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of Consultant or its subcontractors who is determined by HACSB to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to HACSB, shall be promptly removed from the Services by the Consultant and shall not be re-employed to perform any of the Services under this Agreement.

ARTICLE 6. HACSB's Right to Stop Services. HACSB has the right to require Consultant to stop or suspend Services pursuant to the "Stop Services" provisions of the Additional Provisions.

ARTICLE 7. No Conflicts. HACSB acknowledges that Consultant has other business and personal interests, separate and apart from the services contemplated by this Agreement, and nothing in this Agreement is intended to preclude Consultant from devoting time and attention to such business and personal interests. HACSB further acknowledges that Consultant has the right to accept other engagements as long as said engagements do not represent a conflict of interest with respect to the Services or the obligations of Consultant to HACSB pursuant to this Agreement. In connection with Consultant's performance of the Services hereunder, Consultant represents that there exists no actual, potential or appearance of conflict arising out of Consultant's business and financial interests.

ARTICLE 8. Limit of Engagement. This Agreement does not and shall not be construed to create any partnership or agency whatsoever. Consultant shall not be deemed to be a partner, joint venture, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility on behalf of, HACSB or corporations affiliated with HACSB, other than as expressly herein provided. HACSB retains Consultant on an independent contractor basis and Consultant is not an employee of HACSB. Any additional personnel performing Services under this Agreement on behalf of Consultant shall not be employees of HACSB and shall at all times be under Consultant's exclusive direction and control.

ARTICLE 9. Responsibilities of HACSB. If information, data, or documentation necessary to facilitate Consultant's performance of the Services is required to be provided by HACSB, HACSB shall provide such information upon request by Consultant. It is Consultant's responsibility to determine if any such information is necessary in order to perform its obligations hereunder and to request such information from HACSB in a sufficient amount of time in order for Consultant to perform the Services hereunder.

ARTICLE 10. Additional Services.

- a. In the event that the parties mutually agree that additional and further work beyond that specified in the Statement of Services ("**Additional Services**") is required to be performed by Consultant, such Additional Services shall be memorialized in a Work Authorization executed by HACSB and Consultant. The Work Authorization shall include and specifically identify the types of services required to perform as part of the Additional Services, all significant work product to be delivered to HACSB, the time schedule for completion of the Additional Services, and the price for such Additional Services.
- b. Nothing herein shall obligate HACSB to utilize Consultant to perform the Additional Services or in any way limit HACSB's rights to utilize third parties to perform or assist in performing the Additional Services. In no event shall Consultant commence performance of the Additional Services until it has received written consent executed by a duly authorized representative of HACSB.
- c. In the event that HACSB provides a Work Authorization for Additional Services, all of the terms and conditions of this Agreement shall apply to the performance of such Additional Services.

ARTICLE 11. Consultant's Obligation to Stop Services. Personnel resources will not be expended (at a cost to HACSB) on task accomplishment in excess of the schedule requirements set forth in "Exhibit A" unless the procedure below is followed:

- a. If, in the performance of the Services, Consultant determines that the Services to be performed under this Agreement cannot be accomplished within the estimated work hours, Consultant will immediately notify HACSB in writing of Consultant's estimate of the work hours which will be required to complete the Services. Upon receipt of such notification, HACSB may:
 - i. Authorize Consultant to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld); or
 - ii. Terminate this Agreement; or
 - iii. Alter the scope of the Services in order to define tasks that can be accomplished within the remaining estimated work hours.
- b. HACSB will notify Consultant in writing of its election within seven (7) calendar days after receipt of Consultant's notification. If notice of the election to proceed is given, Consultant may expend the estimated additional work hours or services, as memorialized in a Work Authorization signed by Consultant and HACSB. In the event that HACSB fails to notify Consultant within such seven (7) calendar day period, Consultant shall provide a second notice to HACSB requesting a determination. Consultant shall not proceed with the Services until such time as HACSB has made an election as to how it wishes to proceed, and a Work Authorization has been approved.

ARTICLE 12. Invoicing and Payment for Services.

- a. Consultant shall provide HACSB with invoices detailing the work performed and hours and charges related thereto. In the event that Additional Services are performed pursuant to a Work Authorization, such Additional Services shall be paid by HACSB according to the same procedure set forth above with respect to the Services, unless a different method for payment is specified in such Work Authorization.
- b. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.

- c. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the Agreement Price, with the balance to be invoiced upon completion of the Agreement, in accordance with the acceptance criteria set forth herein.
- d. No charge for transportation, delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Statement of Services or Work Authorization.
- e. Payments for all any and all invoices or other obligations are satisfied electronically through the Automated Clearing House (ACH) system. The Consultant hereby authorizes the HACSB to initiate payment electronically to any bank account maintained by the Consultant wherever located. Consultant shall promptly comply with directions and accurately complete forms provided by HACSB required to process ACH payments.

ARTICLE 13. Return of HACSB Property. All reports, plans, designs, specifications, field data, construction documents, and other documents and instruments, including electronic files, but excluding Consultant's notes, relating to the Services shall be and remain the property of HACSB and shall be turned over to HACSB promptly upon the completion of the Services, or upon the earlier termination of this Agreement. Consultant hereby waives and assigns to HACSB all intellectual property or common law rights Consultant may develop in the Services. Consultant shall not use any trademarks owned by HACSB without HACSB's prior written authorization.

ARTICLE 14. Confidential Information. HACSB agrees to make available to Consultant information that may be needed to perform the Services. Such information may include information HACSB considers to be confidential. For purposes hereof, "**Confidential Information**" of HACSB means any nonpublic, proprietary information or technology used in HACSB's business, and any materials evidencing the same (specifically, including, without limitation, technical data or know-how relating to development plans, business plans, services, customers, markets, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, marketing and/or financial information). Unless HACSB acknowledges that any such information provided under this Agreement is not Confidential Information, all information provided by HACSB to Consultant shall be considered to be Confidential Information. Unless approved in advance in writing or compelled to make such disclosure by a government agency, by court order, or by law, Consultant shall not disclose, transfer, distribute or allow access to any of HACSB's Confidential Information to any third parties, except those individuals employed by Consultant and who are specifically authorized by Consultant to perform the Services contemplated in this Agreement.

ARTICLE 15. Indemnity; Hold Harmless. Consultant agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Consultant's employees and subcontractors included) and damage to property, arising directly or indirectly out of the performance of the Services, the obligations herein undertaken or out of the operations conducted by Consultant, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Consultant shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Consultant shall defend any such suits at the sole cost and expense of Consultant with counsel selected by HACSB. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against HACSB or its officers, employees, and agents in any such suit, action or other legal proceeding.

ARTICLE 16. Compliance with Contract Documents. Consultant shall comply with all of the Contract Documents in connection with the performance of the Services hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control. Consultant shall also comply with all agreements, representations, warranties, covenants, and certifications of Consultant made in connection with the

procurement of this Agreement, provided that in the case of a conflict between the foregoing and the Contract Documents and this Agreement, the Contract Documents and this Agreement shall control.

ARTICLE 17. Assignment. Neither the Agreement, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Consultant without the prior written approval of HACSB. This Agreement shall be binding on the successors and assigns of the parties.

ARTICLE 18. Rights and Remedies of HACSB for Default.

In the event any work product delivered or services provided by Consultant in the performance of the Services should fail to conform to the requirements herein, or to the sample submitted by Consultant, HACSB may reject the same, and it shall become the duty of Consultant to correct the performance of services, without expense to HACSB, and immediately replace all such rejected work product with others conforming to the Agreement.

- a. In addition to any other rights and remedies HACSB may have, HACSB may require Consultant, at Consultant's expense, to send work product via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Consultant.
- b. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by Consultant, any loss or damage sustained by HACSB in procuring any work product or services which Consultant agreed to provide shall be borne and paid for by Consultant.
- c. HACSB reserves the right to offset the reasonable cost of all damages caused to HACSB against any outstanding invoices or amounts owed to Consultant or to make a claim against Consultant therefore.

ARTICLE 19. Termination. In addition to the rights of Termination for Convenience of HACSB and Termination for Default set forth in the Contract Documents, HACSB may terminate this Agreement if Consultant should file a bankruptcy petition and/or be adjudged a bankrupt, or if Consultant should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency (as referenced in HUD Form 5370-C section 1 page 1). HACSB may serve written notice upon Consultant of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement and, unless within ten (10) days after serving such notice such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon Consultant.

ARTICLE 20. No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

ARTICLE 21. Modification. This written Agreement may not be later modified except by a further writing signed by HACSB and Consultant and no term of this Agreement may be waived, except by writing signed by the party waiving the benefit of such term. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

ARTICLE 22. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested. All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardapide, Procurement and Contracts Supervisor
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841
alardapide@hacsb.com

If to Consultant:

Dennis Lorton, Vice President
Murow Development Consultants
1151 Duryea Ave.
Irvine, CA 92614
dlorton@murowdc.com

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 23. Complete Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between HACSB and Consultant and of all the terms of this Agreement and cannot be varied, contradicted, nor supplemented by evidence of any prior or contemporaneous oral or written agreements.

ARTICLE 24. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 25. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or of any part hereof.

ARTICLE 26. Interpretation. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties.

ARTICLE 27. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ARTICLE 28. Subcontracting. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of HACSB. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

ARTICLE 29. Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

ARTICLE 30. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or termination.

ARTICLE 31. No Third Party Beneficiaries. Except as expressly stated herein or in the Contract Documents, there are no intended third party beneficiaries of any right or obligation assumed by the parties.

[END – SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE TO
AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
PC1238 – Construction Management Services

IN WITNESS WHEREOF, HACSB and Consultant have entered into this Agreement as of the Effective

Date: _____

Murow Development Consultants

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

CERTIFICATE OF CORPORATE AUTHORITY

I, _____, certify that I am the _____ of the corporation named as Consultant herein; that _____ who signed this Agreement on behalf of Consultant, was then _____ of said corporation; that said Contract was duly signed for and in behalf of said corporation and its governing body and is within the scope of its corporate powers.

By: _____

Name: _____

Its: _____

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo

Its: Executive Director

Date: _____

Exhibit A

Scope of Services

A. PROFESSIONAL ENGINEERING SERVICES

- On call review of engineering and development documents using blue beam software
- Plan review utilizing District Check lists with oversight by the District engineering and operations departments.
- Engineer to use MSWD standards and specifications.
- Review change orders and make comments to the District.
- Review contract documents for execution completeness including bonds, insurance, signatures.
- Review submittals and shop drawings
- Facilitate as-built plan approval and processing with the district.
- Review RFI's as needed
- Reconcile final contract – project close out.
- Meetings and telecoms with project team as needed.

B. CONSTRUCTION MANAGEMENT SERVICES

- Provide constructability review of all plans and specifications.
- Help to provide construction claim avoidance.
- Develop a cohesive construction schedule based on the project needs.
- Maintain cost accounting records on authorized work performed under contracted unit costs and additional work performed based on actual costs of time (labor) and materials (T&M).
- Develop a reasonable cost control system, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Identify variances between actual and estimated costs and report such variances to owner.
- Attend progress meetings as needed.
- Review engineer's estimate and / or approved budget for the project
- Perform value engineering review on the project plans and specifications.

C. PROJECT ADMINISTRATION OVERSIGHT (PA)

- Coordination of Pre-Construction meeting with all related Agencies, Consultants and Contractor(s).
- Administration of up-front material submittals
- Preparation of templates and necessary documentation
- Meetings and telecoms with project team as needed.
- Coordinate with all applicable agencies and trades
- Develop a cohesive construction schedule including onsite needs.
- Enforce compliance of the existing contract with the specifications of the bid and Greenbook (when applicable).
- Process and obtain Engineer and/or Agency approval of all Requests for Information (RFI)
- Administration of change orders – review for validity, process internally and where appropriate, obtain Agency approval to ensure reimbursable eligibility.
- Administrate monthly invoices – establish quantities, obtain lien releases and review prior to Client processing.
- Meetings and telecoms with project team as needed.
- Work with Agency to establish punch list.
- Facilitate as-built plan approval and processing with EOR and Agency.
- Obtain unconditional final releases and final certified payroll reports.
- Reconcile final contract – project close out.
- Meetings and telecoms with project team as needed.

D. LABOR COMPLIANCE OVERSIGHT (LC)

- Assist in the Reviews and Responses to Requests for Information during Bidding pertaining to Labor Compliance.
- Evaluate submitted Contractor Bids for Past Prevailing Wage Violations
- Conduct Pre-Construction Labor Compliance Meetings and or Orientations with Contractors (as needed):
 - Provide Labor Compliance Monitoring Orientation Materials.
 - Labor Law Compliance Check List(s) to Contractors
 - Collect contractor contact Information.
- Project Set Up with the DIR
 - Set Up Client as Awarding Body
 - Set Up DIR Number for Each Prime Contractor
 - Set Up DIR Number for Each Prevailing Wage Consultant
- Project File Set Up for Labor Compliance Monitoring and Documentation
- Forms Collection, Review and Verifications
 - Department of Apprenticeship Standards (DAS) Form 140
 - Department of Apprenticeship Standards (DAS) Form 142
 - Fringe Benefits Statement (FBS) Form
 - California Apprentice Council Training Fund Contribution (CAC-2)
- Certified Payroll Review
 - Apprentice Oversight
- Reports/Correspondence with Owner
- Address Labor Compliance Inquiries from Contractors
- Assist in the Reporting of Suspected Violations of the Prevailing Wage Law to the Labor Commissioner
- Labor Compliance Closeout Documents
- Collect final affidavits.
- Collect final Certified Payroll Reports
- Collect final month's training fund reports.
- When applicable, assist in the preparation of reimbursement packages.
- When applicable, assist in audit process.

E. ONCALL INSPECTION OVERSIGHT

Provide oversight observation and monitor all construction activities.

- Arrange and conduct Pre-Construction meeting with contractor, owner, applicable public agencies, utility companies, design engineers, subcontractors, etc. as required. Prepare minutes of Pre-Construction meeting for distribution to all attendees.
 - Review construction schedule, including activity sequences and duration, schedule of submittals and delivery schedule of long lead materials and equipment. Review contractor's schedule updates and revisions.
 - Schedule and conduct progress meetings to discuss contract issues, procedures, job progress and problems, change orders, submittals, request for information (RFIs), deficiencies and schedules.
 - Review and evaluate proposed change orders. Review estimates for reasonableness and cost effectiveness and render recommendations to owner.
 - Provide daily field observation during construction to ensure that the work is being completed per the contract documents and plans.
 - Inspect the location, line, and grade of the facilities that are being constructed.
 - Maintain accurate records of quantities, equipment, working days, days worked, and personnel on the project.
 - Maintain accurate records of accidents or claims that are related to the construction.
 - Review and monitor all traffic control and public safety plans for compliance with all laws and regulations.
 - Review all detour, lane closures, temporary access, signing, delineation, and traffic control plans.
 - Enforce water quality best management practices, storm water pollution prevention plans, and water quality plans at all times.
 - Assist District in maintaining good relations with all businesses and residents.
 - Assist District in coordinating services of other consultants (geotechnical, NPDES, deputy inspection, special laboratory testing, etc.) that may be hired or selected for the project.
 - Maintain copies of all permits needed to construct the project.
 - Establish and implement job safety procedures in compliance with CAL-OSHA requirements. Monitor contractor's compliance with established safety program, respond to deficiencies and hazards, and investigate and report on accidents.
 - Track quantities of work completed for progress payment. Develop and implement procedures for review and processing of progress payment applications. Assist owner with review and certification for payment.
-
- Establish procedures and monitor contractor compliance with labor compliance regulations and requirements.
 - Perform quality assurance reviews on a regular basis and recommend changes, as necessary.
 - Evaluate completion of work and recommend when work is ready for final inspection.
 - Conduct final inspection/walk through with agency staff, maintenance/service personnel and project architect/design consultant.
 - Issue preliminary and final punch list, including schedule for punch list completion. Monitor and follow through with contractor until completion of all punch list items.
 - Secure and transmit required guarantees, certifications, affidavits, leases, easement deeds, operating & maintenance manuals, warranties, and other documents as stipulated in contract documents.
 - Review contractor's request for final payment and release of retention.
 - Deliver project construction final documentation to owner.
-
- Assist in the oversight, planning, and securing of public approvals for real estate development.
 - Coordinates and administers development project activities including general contractor selection and oversight, identifying/managing consultants, securing necessary permits, and project design. Provide services required for management of a design-build process.

Consultant shall secure the permits and perform those activities as will be detailed in a Purchase Order.

Coordinate with HACSB General Counsel on legal issues related to entitlement work when directed by HACSB staff only.

Scope of Services – Fee Schedule:

Position:	Rate/Hour:
Professional Engineer (PE)	\$175.00
Certified Project Manager	\$145.00
Construction Manager/Field Inspector	\$135.00
Labor Compliance Officer	\$115.00
Plan Check Staff	\$110.00
Project Administrator	\$110.00

Out-Of-Pocket Expenses. You agree to reimburse Murow Development Consultants for out-of-pocket costs. Such costs include, but are not limited to, travel, overnight mail & reprographics, mileage. Reimbursements will be billed at cost, no mark up.

Exhibit B
GENERAL CONDITIONS FOR NON-CONSTRUCTION WORK
(HUD – 5370-C)

Document on Following Page

Exhibit C

Additional General Provisions

1. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Consultant warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Consultant's violation of this provision.
2. **CONTRACTOR'S POWER AND AUTHORITY:** Consultant warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Consultant agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
3. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
4. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
5. **INSURANCE:** Consultant shall not commence Services under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Consultant allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Consultant shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. Any policy of insurance required of Consultant under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

The insurance required to be carried by Consultant hereunder shall include:

- a. Compensation Insurance and Employer's Liability Insurance. Consultant shall take out and maintain during the entire term of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Consultant shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Consultant.

In signing this Agreement, Consultant makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Commercial General Liability Insurance. Consultant, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence; HACSB listed as Additional Insured on an attached endorsement. Such coverage shall include, but shall not be limited to, protection against claims arising from, and damage to property resulting from, activities contemplated under this Agreement. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement.

Broad form property damage endorsement must be attached. HACSB is to be named as an additional insured included on an attached endorsement for any contracts of insurance under this

paragraph b. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Consultant shall be named as an additional insured with respect to such general liability insurance policy.

- c. Automobile Liability. Consultant, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Consultant shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or:
- e. Professional Liability: \$1,000,000; per occurrence and aggregate.
- f. Worker's Compensation. A state approved Workers Compensation and Employers Liability Insurance policy providing benefits as required by law with employer's liability limits no less than One Million and No/100 Dollars (\$1,000,000) per accident or disease, which covers all employees of the contractor and each and every contractor.

6. FORCE MAJEURE: Consultant shall be excused for performing the Services hereunder in the event that Consultant is unable to perform the Services for one of the following reasons:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal, state or local government in either its sovereign or contractual capacity.

Such delay shall be for the period of time that Consultant is delayed from performing the Services as a direct result of one of the foregoing reasons. Consultant shall provide HACSB notice within three (3) days of any such force majeure event.

7. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. Consultant shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Consultant, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at Consultant's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Consultant.
- b. Consultant shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Consultant, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Consultant during the Agreement.

8. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

9. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

10. TAXES: HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.

11. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.

12. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:

- a. Consultant shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.

- b. Consultant may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Consultant, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Consultant or the operation of such goods pursuant to a current version of Consultant supplied operating software infringes a United States patent or copyright or violates a trade secret. Consultant shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Consultant shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
- d. Should the goods or software, or the operation thereof, become, or in Consultant's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Consultant at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Consultant agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Consultant under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Consultant agrees to take back such goods or software and refund any sums HACSB has paid Consultant.
- e. Consultant shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Consultant; or,
 - ii. The operation of equipment furnished by Consultant under the control of any operating software other than, or in addition to, the current version of Consultant-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Consultant supplied software.
- f. Consultant certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Consultant to HACSB with respect to infringement of patents, copyrights or trade secrets.

13. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Consultant, require Consultant to stop all, or any part, of the Services called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Consultant, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
 - i. Cancel the Stop Work Order; or

- ii. Terminate the Services covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Consultant shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to the performance of any part of this Agreement; and
 - 2. Consultant asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - b. If a Stop Work Order is not canceled and the Services covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - c. HACSB shall not be liable to Consultant for loss of profits because of a Stop Work Order issued under this clause.
- 14. COVENANT AGAINST GRATUITIES:** Consultant warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Consultant agreed to supply shall be borne and paid for by Consultant. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 15. COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Consultant certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Services, Consultants of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Consultant may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Consultant shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.
- HACSB shall have the right to audit Consultant, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Consultant agrees to maintain accurate books and records in connection with the Services, and all payments made or received by Consultant pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Consultant shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Consultant in connection with the Services, and shall permit HACSB to interview any such employees, contractors or subcontractors. Consultant agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Services shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 Consultant's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by Consultant and its subcontractors at the site of the Services in a prominent and accessible place where it can be easily seen by the workers.

16. **CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Consultant agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Consultant's books and records, and interview Consultant's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
17. **EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Consultant certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
18. **NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Consultant and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
19. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Consultant swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
20. **DRUG-FREE WORKPLACE CERTIFICATION:** Consultant certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
21. **RECYCLING:** Consultant shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.

22. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Consultant certifies that it complies with Sections 103 and 107 of the Contract Services Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
23. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, Consultant acknowledges in accordance with Public Contract Code Section 7110, that:
- a. Consultant recognizes the importance of child and family support obligations and shall fully comply with all applicable State of California and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Consultant, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** Consultant certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Consultant shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
25. **ENVIRONMENTAL REGULATIONS:** For agreements in excess of \$100,000, Consultant certifies that it complies with the requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (3 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
26. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Consultant certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Consultant further certifies that it will immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
27. **DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Consultant certifies that Consultant is in compliance with Public Contract Code Section 10295.3.

Exhibit D

Work Authorization

Schedule Dates:

Start Date: August 11, 2021

Completion Date: August 10, 2024

Total Contract Cost: Per details provided in any Purchase Order issued by HACSB to Consultant.

Schedule Requirements – Statement of Services (“Exhibit A”)

General Conditions for Non-construction work (“Exhibit B”)

Additional General Provisions (“Exhibit C”)

Services Authorization (“Exhibit D”)

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (“**Agreement**”) (**PC1238**) is made as of the 11th day of August, 2021 (“**Effective Date**”) by and between Atrium Construction Services (“**Consultant**”), a California Sole Proprietor and the Housing Authority of the County of San Bernardino, a California public entity (“**HACSB**”).

RECITALS

WHEREAS, HACSB is a public entity in San Bernardino County, State of California, committed to providing affordable and safe public housing for low and moderate income families; and

WHEREAS, Consultant has offered to provide construction management services to HACSB, and HACSB wishes to retain Consultant for the provision of such services.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Consultant and HACSB hereby agree as follows:

ARTICLE 1. Statement of Services. Consultant shall perform all work required in the Scope of Services set forth on Exhibit “A”, attached hereto and incorporated herein by reference (“**Services**”) in accordance with the terms and conditions of this Agreement. In connection with its performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Contract Documents. This Agreement incorporates by reference all of the following documents (“**Contract Documents**”):

1. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Services) (Form HUD 5370), attached hereto as Exhibit “B” and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit “C” and incorporated herein by reference (“**Additional Provisions**”).
3. Services Authorization, attached hereto as Exhibit “D” and incorporated herein by reference.
4. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U. S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws of the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 3. Term; Time of Completion. Consultant shall commence work under this Agreement beginning on or about **August 11, 2021**, and this Agreement shall continue in full force and effect until completion of the Services, which shall be no later than **August 10, 2024**, unless for any reason funds appropriated for the provision of these services are no longer available, or until such time as terminated per the terms of Article 19 of this Agreement. Consultant shall not commence work prior to the date of issuance by HACSB of a work authorization in the form set forth on Exhibit “D”, attached hereto and incorporated herein by reference (“**Work Authorization**”). HACSB shall have the option to extend the engagement for up to an additional two, single-year terms. The option years shall be exercised by written amendments executed by each party with board approval for additional funding on option years if needed. Option years will begin on or about **August 11, 2024** and expire no later than **August 10, 2026**. Following

issuance of a Work Authorization, Consultant shall timely complete the Services in accordance with the schedule requirements specified in Exhibit "A", and within the term of this Agreement.

ARTICLE 4. Agreement Price. HACSB agrees to pay Consultant per the Fee Schedule in Exhibit "A" for Consultant's performance of the Services and compliance with all other obligations under this Agreement ("**Agreement Price**"), subject to the maximum amount authorized to be paid to Consultant per the terms of any Work Authorization. Terms are defined in the Additional Provisions, and includes a guarantee of task completion.

ARTICLE 5. Performance of Services. Consultant warrants that it shall perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in California. Consultant acknowledges that HACSB has the right to review the Services performed by Consultant and may, in its discretion, reject the Services, or any part thereof. In the event HACSB rejects any or all of the Services, at HACSB's election: (a) Consultant shall promptly correct any such deficiencies in the Services, or (b) the deficient Services shall be stricken from this Agreement and Consultant shall not be paid for such portion of the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of Consultant or its subcontractors who is determined by HACSB to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to HACSB, shall be promptly removed from the Services by the Consultant and shall not be re-employed to perform any of the Services under this Agreement.

ARTICLE 6. HACSB's Right to Stop Services. HACSB has the right to require Consultant to stop or suspend Services pursuant to the "Stop Services" provisions of the Additional Provisions.

ARTICLE 7. No Conflicts. HACSB acknowledges that Consultant has other business and personal interests, separate and apart from the services contemplated by this Agreement, and nothing in this Agreement is intended to preclude Consultant from devoting time and attention to such business and personal interests. HACSB further acknowledges that Consultant has the right to accept other engagements as long as said engagements do not represent a conflict of interest with respect to the Services or the obligations of Consultant to HACSB pursuant to this Agreement. In connection with Consultant's performance of the Services hereunder, Consultant represents that there exists no actual, potential or appearance of conflict arising out of Consultant's business and financial interests.

ARTICLE 8. Limit of Engagement. This Agreement does not and shall not be construed to create any partnership or agency whatsoever. Consultant shall not be deemed to be a partner, joint venture, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility on behalf of, HACSB or corporations affiliated with HACSB, other than as expressly herein provided. HACSB retains Consultant on an independent contractor basis and Consultant is not an employee of HACSB. Any additional personnel performing Services under this Agreement on behalf of Consultant shall not be employees of HACSB and shall at all times be under Consultant's exclusive direction and control.

ARTICLE 9. Responsibilities of HACSB. If information, data, or documentation necessary to facilitate Consultant's performance of the Services is required to be provided by HACSB, HACSB shall provide such information upon request by Consultant. It is Consultant's responsibility to determine if any such information is necessary in order to perform its obligations hereunder and to request such information from HACSB in a sufficient amount of time in order for Consultant to perform the Services hereunder.

ARTICLE 10. Additional Services.

- a. In the event that the parties mutually agree that additional and further work beyond that specified in the Statement of Services ("**Additional Services**") is required to be performed by Consultant, such Additional Services shall be memorialized in a Work Authorization executed by HACSB and Consultant. The Work Authorization shall include and specifically identify the types of services required to perform as part of the Additional Services, all significant work product to be delivered to HACSB, the time schedule for completion of the Additional Services, and the price for such Additional Services.
- b. Nothing herein shall obligate HACSB to utilize Consultant to perform the Additional Services or in any way limit HACSB's rights to utilize third parties to perform or assist in performing the Additional Services. In no event shall Consultant commence performance of the Additional Services until it has received written consent executed by a duly authorized representative of HACSB.
- c. In the event that HACSB provides a Work Authorization for Additional Services, all of the terms and conditions of this Agreement shall apply to the performance of such Additional Services.

ARTICLE 11. Consultant's Obligation to Stop Services. Personnel resources will not be expended (at a cost to HACSB) on task accomplishment in excess of the schedule requirements set forth in "Exhibit A" unless the procedure below is followed:

- a. If, in the performance of the Services, Consultant determines that the Services to be performed under this Agreement cannot be accomplished within the estimated work hours, Consultant will immediately notify HACSB in writing of Consultant's estimate of the work hours which will be required to complete the Services. Upon receipt of such notification, HACSB may:
 - i. Authorize Consultant to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld); or
 - ii. Terminate this Agreement; or
 - iii. Alter the scope of the Services in order to define tasks that can be accomplished within the remaining estimated work hours.
- b. HACSB will notify Consultant in writing of its election within seven (7) calendar days after receipt of Consultant's notification. If notice of the election to proceed is given, Consultant may expend the estimated additional work hours or services, as memorialized in a Work Authorization signed by Consultant and HACSB. In the event that HACSB fails to notify Consultant within such seven (7) calendar day period, Consultant shall provide a second notice to HACSB requesting a determination. Consultant shall not proceed with the Services until such time as HACSB has made an election as to how it wishes to proceed, and a Work Authorization has been approved.

ARTICLE 12. Invoicing and Payment for Services.

- a. Consultant shall provide HACSB with invoices detailing the work performed and hours and charges related hereto. In the event that Additional Services are performed pursuant to a Work Authorization, such Additional Services shall be paid by HACSB according to the same procedure set forth above with respect to the Services, unless a different method for payment is specified in such Work Authorization.
- b. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.

- c. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the Agreement Price, with the balance to be invoiced upon completion of the Agreement, in accordance with the acceptance criteria set forth herein.
- d. No charge for transportation, delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Statement of Services or Work Authorization.
- e. Payments for all any and all invoices or other obligations are satisfied electronically through the Automated Clearing House (ACH) system. The Consultant hereby authorizes the HACSB to initiate payment electronically to any bank account maintained by the Consultant wherever located. Consultant shall promptly comply with directions and accurately complete forms provided by HACSB required to process ACH payments.

ARTICLE 13. Return of HACSB Property. All reports, plans, designs, specifications, field data, construction documents, and other documents and instruments, including electronic files, but excluding Consultant's notes, relating to the Services shall be and remain the property of HACSB and shall be turned over to HACSB promptly upon the completion of the Services, or upon the earlier termination of this Agreement. Consultant hereby waives and assigns to HACSB all intellectual property or common law rights Consultant may develop in the Services. Consultant shall not use any trademarks owned by HACSB without HACSB's prior written authorization.

ARTICLE 14. Confidential Information. HACSB agrees to make available to Consultant information that may be needed to perform the Services. Such information may include information HACSB considers to be confidential. For purposes hereof, "**Confidential Information**" of HACSB means any nonpublic, proprietary information or technology used in HACSB's business, and any materials evidencing the same (specifically, including, without limitation, technical data or know-how relating to development plans, business plans, services, customers, markets, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, marketing and/or financial information). Unless HACSB acknowledges that any such information provided under this Agreement is not Confidential Information, all information provided by HACSB to Consultant shall be considered to be Confidential Information. Unless approved in advance in writing or compelled to make such disclosure by a government agency, by court order, or by law, Consultant shall not disclose, transfer, distribute or allow access to any of HACSB's Confidential Information to any third parties, except those individuals employed by Consultant and who are specifically authorized by Consultant to perform the Services contemplated in this Agreement.

ARTICLE 15. Indemnity; Hold Harmless. Consultant agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Consultant's employees and subcontractors included) and damage to property, arising directly or indirectly out of the performance of the Services, the obligations herein undertaken or out of the operations conducted by Consultant, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Consultant shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Consultant shall defend any such suits at the sole cost and expense of Consultant with counsel selected by HACSB. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against HACSB or its officers, employees, and agents in any such suit, action or other legal proceeding.

ARTICLE 16. Compliance with Contract Documents. Consultant shall comply with all of the Contract Documents in connection with the performance of the Services hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control. Consultant shall also comply with all agreements, representations, warranties, covenants, and certifications of Consultant made in connection with the

procurement of this Agreement, provided that in the case of a conflict between the foregoing and the Contract Documents and this Agreement, the Contract Documents and this Agreement shall control.

ARTICLE 17. Assignment. Neither the Agreement, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Consultant without the prior written approval of HACSB. This Agreement shall be binding on the successors and assigns of the parties.

ARTICLE 18. Rights and Remedies of HACSB for Default.

In the event any work product delivered or services provided by Consultant in the performance of the Services should fail to conform to the requirements herein, or to the sample submitted by Consultant, HACSB may reject the same, and it shall become the duty of Consultant to correct the performance of services, without expense to HACSB, and immediately replace all such rejected work product with others conforming to the Agreement.

- a. In addition to any other rights and remedies HACSB may have, HACSB may require Consultant, at Consultant's expense, to send work product via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Consultant.
- b. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by Consultant, any loss or damage sustained by HACSB in procuring any work product or services which Consultant agreed to provide shall be borne and paid for by Consultant.
- c. HACSB reserves the right to offset the reasonable cost of all damages caused to HACSB against any outstanding invoices or amounts owed to Consultant or to make a claim against Consultant therefore.

ARTICLE 19. Termination. In addition to the rights of Termination for Convenience of HACSB and Termination for Default set forth in the Contract Documents, HACSB may terminate this Agreement if Consultant should file a bankruptcy petition and/or be adjudged a bankrupt, or if Consultant should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency (as referenced in HUD Form 5370-C section 1 page 1). HACSB may serve written notice upon Consultant of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement and, unless within ten (10) days after serving such notice such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon Consultant.

ARTICLE 20. No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

ARTICLE 21. Modification. This written Agreement may not be later modified except by a further writing signed by HACSB and Consultant and no term of this Agreement may be waived, except by writing signed by the party waiving the benefit of such term. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

ARTICLE 22. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested. All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardapide, Procurement and Contracts Supervisor
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841

If to Consultant:

Judy David, PMP, MBA
Atrium Construction Services
1050 Helena Ave. #3
Helena, MT 59601

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 23. Complete Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between HACSB and Consultant and of all the terms of this Agreement and cannot be varied, contradicted, nor supplemented by evidence of any prior or contemporaneous oral or written agreements.

ARTICLE 24. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 25. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or of any part hereof.

ARTICLE 26. Interpretation. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties.

ARTICLE 27. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ARTICLE 28. Subcontracting. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of HACSB. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

ARTICLE 29. Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

ARTICLE 30. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or termination.

ARTICLE 31. No Third Party Beneficiaries. Except as expressly stated herein or in the Contract Documents, there are no intended third party beneficiaries of any right or obligation assumed by the parties.

[END – SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
PC1238 – Construction Management Services**

IN WITNESS WHEREOF, HACSB and Consultant have entered into this Agreement as of the Effective

Date: _____

Atrium Construction Services

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

CERTIFICATE OF CORPORATE AUTHORITY

I, _____, certify that I am the _____ of the corporation named as Consultant herein; that _____ who signed this Agreement on behalf of Consultant, was then _____ of said corporation; that said Contract was duly signed for and in behalf of said corporation and its governing body and is within the scope of its corporate powers.

By: _____

Name: _____

Its: _____

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo

Its: Executive Director

Date: _____

Exhibit A

Scope of Services

On Call Project Management/Construction Management Services to further the Real Estate Development efforts on behalf of the Housing Authority of the County of San Bernardino.

Leading projects from Project Initiation, Planning, Execution, Monitoring and Controlling through Project Closeout.

Atrium to assist Housing Authority in the oversight, planning and management of various projects, at their discretion. Scope of work includes, but is not limited to the following:

- Engage and coordinate with Housing Authority partners, staff, and vendors to ensure the success of the project.
 - Review design plans for constructability, consistency, and adherence to Housing Authority standards.
 - Assist in obtaining and necessary entitlements and/or permits.
 - Coordinate construction activities with various agencies, utilities, or municipalities.
 - Attend all construction and progress meetings remotely.
 - Review and manage project schedules, as required.
 - Review and assist with project punch list and closeout.
-
- Assist in the oversight, planning, and securing of public approvals for real estate development.
 - Coordinates and administers development project activities including general contractor selection and oversight, identifying/managing consultants, securing necessary permits, and project design. Provide services required for management of a design-build process.

Consultant shall secure the permits and perform those activities as will be detailed in a Purchase Order.

Coordinate with HACSB General Counsel on legal issues related to entitlement work when directed by HACSB staff only.

Scope of Services – Fee Schedule:

Position:	Rate/Hour:
Project Manager	\$120.00

Reimbursable Expenses:

	Fee:
Travel	Cost + 15%

Exhibit B
GENERAL CONDITIONS FOR NON-CONSTRUCTION WORK
(HUD – 5370-C)

Document on Following Page

Exhibit C

Additional General Provisions

1. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Consultant warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Consultant's violation of this provision.
2. **CONTRACTOR'S POWER AND AUTHORITY:** Consultant warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Consultant agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
3. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
4. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
5. **INSURANCE:** Consultant shall not commence Services under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Consultant allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Consultant shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. Any policy of insurance required of Consultant under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

The insurance required to be carried by Consultant hereunder shall include:

- a. Compensation Insurance and Employer's Liability Insurance. Consultant shall take out and maintain during the entire term of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Consultant shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Consultant.

In signing this Agreement, Consultant makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Commercial General Liability Insurance. Consultant, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence; HACSB listed as Additional Insured on an attached endorsement. Such coverage shall include, but shall not be limited to, protection against claims arising from, and damage to property resulting from, activities contemplated under this Agreement. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement.

Broad form property damage endorsement must be attached. HACSB is to be named as an additional insured included on an attached endorsement for any contracts of insurance under this

paragraph b. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Consultant shall be named as an additional insured with respect to such general liability insurance policy.

- c. Automobile Liability. Consultant, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Consultant shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or:
- e. Professional Liability: \$1,000,000; per occurrence and aggregate.
- f. Worker's Compensation. A state approved Workers Compensation and Employers Liability Insurance policy providing benefits as required by law with employer's liability limits no less than One Million and No/100 Dollars (\$1,000,000) per accident or disease, which covers all employees of the contractor and each and every contractor.

6. FORCE MAJEURE: Consultant shall be excused for performing the Services hereunder in the event that Consultant is unable to perform the Services for one of the following reasons:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal, state or local government in either its sovereign or contractual capacity.

Such delay shall be for the period of time that Consultant is delayed from performing the Services as a direct result of one of the foregoing reasons. Consultant shall provide HACSB notice within three (3) days of any such force majeure event.

7. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. Consultant shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Consultant, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at Consultant's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Consultant.
- b. Consultant shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Consultant, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Consultant during the Agreement.

8. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

9. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

10. TAXES: HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.

11. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.

12. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:

- a. Consultant shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.

- b. Consultant may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Consultant, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Consultant or the operation of such goods pursuant to a current version of Consultant supplied operating software infringes a United States patent or copyright or violates a trade secret. Consultant shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Consultant shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
- d. Should the goods or software, or the operation thereof, become, or in Consultant's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Consultant at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Consultant agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Consultant under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Consultant agrees to take back such goods or software and refund any sums HACSB has paid Consultant.
- e. Consultant shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Consultant; or,
 - ii. The operation of equipment furnished by Consultant under the control of any operating software other than, or in addition to, the current version of Consultant-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Consultant supplied software.
- f. Consultant certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Consultant to HACSB with respect to infringement of patents, copyrights or trade secrets.

13. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Consultant, require Consultant to stop all, or any part, of the Services called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Consultant, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
 - i. Cancel the Stop Work Order; or

- ii. Terminate the Services covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Consultant shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to the performance of any part of this Agreement; and
 - 2. Consultant asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - b. If a Stop Work Order is not canceled and the Services covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - c. HACSB shall not be liable to Consultant for loss of profits because of a Stop Work Order issued under this clause.
- 14. COVENANT AGAINST GRATUITIES:** Consultant warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Consultant agreed to supply shall be borne and paid for by Consultant. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 15. COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Consultant certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Services, Consultants of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Consultant may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Consultant shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.
- HACSB shall have the right to audit Consultant, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Consultant agrees to maintain accurate books and records in connection with the Services, and all payments made or received by Consultant pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Consultant shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Consultant in connection with the Services, and shall permit HACSB to interview any such employees, contractors or subcontractors. Consultant agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Services shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 Consultant's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by Consultant and its subcontractors at the site of the Services in a prominent and accessible place where it can be easily seen by the workers.

16. **CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Consultant agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Consultant's books and records, and interview Consultant's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
17. **EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Consultant certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
18. **NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Consultant and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
19. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Consultant swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
20. **DRUG-FREE WORKPLACE CERTIFICATION:** Consultant certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
21. **RECYCLING:** Consultant shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.

22. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Consultant certifies that it complies with Sections 103 and 107 of the Contract Services Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
23. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, Consultant acknowledges in accordance with Public Contract Code Section 7110, that:
- a. Consultant recognizes the importance of child and family support obligations and shall fully comply with all applicable State of California and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Consultant, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** Consultant certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Consultant shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
25. **ENVIRONMENTAL REGULATIONS:** For agreements in excess of \$100,000, Consultant certifies that it complies with the requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (3 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
26. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Consultant certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Consultant further certifies that it will immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
27. **DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Consultant certifies that Consultant is in compliance with Public Contract Code Section 10295.3.

Exhibit D

Work Authorization

Schedule Dates:

Start Date: August 11, 2021

Completion Date: August 10, 2024

Total Contract Cost: Per details provided in any Purchase Order issued by HACSB to Consultant.

Schedule Requirements – Statement of Services (“Exhibit A”)

General Conditions for Non-construction work (“Exhibit B”)

Additional General Provisions (“Exhibit C”)

Services Authorization (“Exhibit D”)

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (“Agreement”) (PC1238) is made as of the 11th day of August, 2021 (“**Effective Date**”) by and between Seapoint Group, Inc. (“**Consultant**”), a California Corporation and the Housing Authority of the County of San Bernardino, a California public entity (“**HACSB**”).

RECITALS

WHEREAS, HACSB is a public entity in San Bernardino County, State of California, committed to providing affordable and safe public housing for low and moderate income families; and

WHEREAS, Consultant has offered to provide construction management services to HACSB, and HACSB wishes to retain Consultant for the provision of such services.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Consultant and HACSB hereby agree as follows:

ARTICLE 1. Statement of Services. Consultant shall perform all work required in the Scope of Services set forth on Exhibit “A”, attached hereto and incorporated herein by reference (“**Services**”) in accordance with the terms and conditions of this Agreement. In connection with its performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Contract Documents. This Agreement incorporates by reference all of the following documents (“**Contract Documents**”):

1. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Services) (Form HUD 5370), attached hereto as Exhibit “B” and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit “C” and incorporated herein by reference (“**Additional Provisions**”).
3. Services Authorization, attached hereto as Exhibit “D” and incorporated herein by reference.
4. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U. S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws of the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 3. Term; Time of Completion. Consultant shall commence work under this Agreement beginning on or about **August 11, 2021**, and this Agreement shall continue in full force and effect until completion of the Services, which shall be no later than **August 10, 2024**, unless for any reason funds appropriated for the provision of these services are no longer available, or until such time as terminated per the terms of Article 19 of this Agreement. Consultant shall not commence work prior to the date of issuance by HACSB of a work authorization in the form set forth on Exhibit “D”, attached hereto and incorporated herein by reference (“**Work Authorization**”). HACSB shall have the option to extend the engagement for up to an additional two, single-year terms. The option years shall be exercised by written amendments executed by each party with board approval for additional funding on option years if needed. Option years will begin on or about **August 11, 2024** and expire no later than **August 10, 2026**. Following

issuance of a Work Authorization, Consultant shall timely complete the Services in accordance with the schedule requirements specified in Exhibit "A", and within the term of this Agreement.

ARTICLE 4. Agreement Price. HACSB agrees to pay Consultant per the Fee Schedule in Exhibit "A" for Consultant's performance of the Services and compliance with all other obligations under this Agreement ("**Agreement Price**"), subject to the maximum amount authorized to be paid to Consultant per the terms of any Work Authorization. Terms are defined in the Additional Provisions, and includes a guarantee of task completion.

ARTICLE 5. Performance of Services. Consultant warrants that it shall perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in California. Consultant acknowledges that HACSB has the right to review the Services performed by Consultant and may, in its discretion, reject the Services, or any part thereof. In the event HACSB rejects any or all of the Services, at HACSB's election: (a) Consultant shall promptly correct any such deficiencies in the Services, or (b) the deficient Services shall be stricken from this Agreement and Consultant shall not be paid for such portion of the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of Consultant or its subcontractors who is determined by HACSB to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to HACSB, shall be promptly removed from the Services by the Consultant and shall not be re-employed to perform any of the Services under this Agreement.

ARTICLE 6. HACSB's Right to Stop Services. HACSB has the right to require Consultant to stop or suspend Services pursuant to the "Stop Services" provisions of the Additional Provisions.

ARTICLE 7. No Conflicts. HACSB acknowledges that Consultant has other business and personal interests, separate and apart from the services contemplated by this Agreement, and nothing in this Agreement is intended to preclude Consultant from devoting time and attention to such business and personal interests. HACSB further acknowledges that Consultant has the right to accept other engagements as long as said engagements do not represent a conflict of interest with respect to the Services or the obligations of Consultant to HACSB pursuant to this Agreement. In connection with Consultant's performance of the Services hereunder, Consultant represents that there exists no actual, potential or appearance of conflict arising out of Consultant's business and financial interests.

ARTICLE 8. Limit of Engagement. This Agreement does not and shall not be construed to create any partnership or agency whatsoever. Consultant shall not be deemed to be a partner, joint venture, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility on behalf of, HACSB or corporations affiliated with HACSB, other than as expressly herein provided. HACSB retains Consultant on an independent contractor basis and Consultant is not an employee of HACSB. Any additional personnel performing Services under this Agreement on behalf of Consultant shall not be employees of HACSB and shall at all times be under Consultant's exclusive direction and control.

ARTICLE 9. Responsibilities of HACSB. If information, data, or documentation necessary to facilitate Consultant's performance of the Services is required to be provided by HACSB, HACSB shall provide such information upon request by Consultant. It is Consultant's responsibility to determine if any such information is necessary in order to perform its obligations hereunder and to request such information from HACSB in a sufficient amount of time in order for Consultant to perform the Services hereunder.

ARTICLE 10. Additional Services.

- a. In the event that the parties mutually agree that additional and further work beyond that specified in the Statement of Services ("**Additional Services**") is required to be performed by Consultant, such Additional Services shall be memorialized in a Work Authorization executed by HACSB and Consultant. The Work Authorization shall include and specifically identify the types of services required to perform as part of the Additional Services, all significant work product to be delivered to HACSB, the time schedule for completion of the Additional Services, and the price for such Additional Services.
- b. Nothing herein shall obligate HACSB to utilize Consultant to perform the Additional Services or in any way limit HACSB's rights to utilize third parties to perform or assist in performing the Additional Services. In no event shall Consultant commence performance of the Additional Services until it has received written consent executed by a duly authorized representative of HACSB.
- c. In the event that HACSB provides a Work Authorization for Additional Services, all of the terms and conditions of this Agreement shall apply to the performance of such Additional Services.

ARTICLE 11. Consultant's Obligation to Stop Services. Personnel resources will not be expended (at a cost to HACSB) on task accomplishment in excess of the schedule requirements set forth in "Exhibit A" unless the procedure below is followed:

- a. If, in the performance of the Services, Consultant determines that the Services to be performed under this Agreement cannot be accomplished within the estimated work hours, Consultant will immediately notify HACSB in writing of Consultant's estimate of the work hours which will be required to complete the Services. Upon receipt of such notification, HACSB may:
 - i. Authorize Consultant to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld); or
 - ii. Terminate this Agreement; or
 - iii. Alter the scope of the Services in order to define tasks that can be accomplished within the remaining estimated work hours.
- b. HACSB will notify Consultant in writing of its election within seven (7) calendar days after receipt of Consultant's notification. If notice of the election to proceed is given, Consultant may expend the estimated additional work hours or services, as memorialized in a Work Authorization signed by Consultant and HACSB. In the event that HACSB fails to notify Consultant within such seven (7) calendar day period, Consultant shall provide a second notice to HACSB requesting a determination. Consultant shall not proceed with the Services until such time as HACSB has made an election as to how it wishes to proceed, and a Work Authorization has been approved.

ARTICLE 12. Invoicing and Payment for Services.

- a. Consultant shall provide HACSB with invoices detailing the work performed and hours and charges related thereto. In the event that Additional Services are performed pursuant to a Work Authorization, such Additional Services shall be paid by HACSB according to the same procedure set forth above with respect to the Services, unless a different method for payment is specified in such Work Authorization.
- b. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.

- c. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the Agreement Price, with the balance to be invoiced upon completion of the Agreement, in accordance with the acceptance criteria set forth herein.
- d. No charge for transportation, delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Statement of Services or Work Authorization.
- e. Payments for all any and all invoices or other obligations are satisfied electronically through the Automated Clearing House (ACH) system. The Consultant hereby authorizes the HACSB to initiate payment electronically to any bank account maintained by the Consultant wherever located. Consultant shall promptly comply with directions and accurately complete forms provided by HACSB required to process ACH payments.

ARTICLE 13. Return of HACSB Property. All reports, plans, designs, specifications, field data, construction documents, and other documents and instruments, including electronic files, but excluding Consultant's notes, relating to the Services shall be and remain the property of HACSB and shall be turned over to HACSB promptly upon the completion of the Services, or upon the earlier termination of this Agreement. Consultant hereby waives and assigns to HACSB all intellectual property or common law rights Consultant may develop in the Services. Consultant shall not use any trademarks owned by HACSB without HACSB's prior written authorization.

ARTICLE 14. Confidential Information. HACSB agrees to make available to Consultant information that may be needed to perform the Services. Such information may include information HACSB considers to be confidential. For purposes hereof, "**Confidential Information**" of HACSB means any nonpublic, proprietary information or technology used in HACSB's business, and any materials evidencing the same (specifically, including, without limitation, technical data or know-how relating to development plans, business plans, services, customers, markets, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, marketing and/or financial information). Unless HACSB acknowledges that any such information provided under this Agreement is not Confidential Information, all information provided by HACSB to Consultant shall be considered to be Confidential Information. Unless approved in advance in writing or compelled to make such disclosure by a government agency, by court order, or by law, Consultant shall not disclose, transfer, distribute or allow access to any of HACSB's Confidential Information to any third parties, except those individuals employed by Consultant and who are specifically authorized by Consultant to perform the Services contemplated in this Agreement.

ARTICLE 15. Indemnity; Hold Harmless. Consultant agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Consultant's employees and subcontractors included) and damage to property, arising directly or indirectly out of the performance of the Services, the obligations herein undertaken or out of the operations conducted by Consultant, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Consultant shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Consultant shall defend any such suits at the sole cost and expense of Consultant with counsel selected by HACSB. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against HACSB or its officers, employees, and agents in any such suit, action or other legal proceeding.

ARTICLE 16. Compliance with Contract Documents. Consultant shall comply with all of the Contract Documents in connection with the performance of the Services hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control. Consultant shall also comply with all agreements, representations, warranties, covenants, and certifications of Consultant made in connection with the

procurement of this Agreement, provided that in the case of a conflict between the foregoing and the Contract Documents and this Agreement, the Contract Documents and this Agreement shall control.

ARTICLE 17. Assignment. Neither the Agreement, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Consultant without the prior written approval of HACSB. This Agreement shall be binding on the successors and assigns of the parties.

ARTICLE 18. Rights and Remedies of HACSB for Default.

In the event any work product delivered or services provided by Consultant in the performance of the Services should fail to conform to the requirements herein, or to the sample submitted by Consultant, HACSB may reject the same, and it shall become the duty of Consultant to correct the performance of services, without expense to HACSB, and immediately replace all such rejected work product with others conforming to the Agreement.

- a. In addition to any other rights and remedies HACSB may have, HACSB may require Consultant, at Consultant's expense, to send work product via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Consultant.
- b. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by Consultant, any loss or damage sustained by HACSB in procuring any work product or services which Consultant agreed to provide shall be borne and paid for by Consultant.
- c. HACSB reserves the right to offset the reasonable cost of all damages caused to HACSB against any outstanding invoices or amounts owed to Consultant or to make a claim against Consultant therefore.

ARTICLE 19. Termination. In addition to the rights of Termination for Convenience of HACSB and Termination for Default set forth in the Contract Documents, HACSB may terminate this Agreement if Consultant should file a bankruptcy petition and/or be adjudged a bankrupt, or if Consultant should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency (as referenced in HUD Form 5370-C section 1 page 1). HACSB may serve written notice upon Consultant of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement and, unless within ten (10) days after serving such notice such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon Consultant.

ARTICLE 20. No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

ARTICLE 21. Modification. This written Agreement may not be later modified except by a further writing signed by HACSB and Consultant and no term of this Agreement may be waived, except by writing signed by the party waiving the benefit of such term. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

ARTICLE 22. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested. All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardapide, Procurement and Contracts Supervisor
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841
alardapide@hacsb.com

If to Consultant:

Scott Kimball,
Seapoint Group, Inc.
dba Seapoint Consulting & Project Management
30 Martino
Ladera Ranch, CA 92694

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 23. Complete Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between HACSB and Consultant and of all the terms of this Agreement and cannot be varied, contradicted, nor supplemented by evidence of any prior or contemporaneous oral or written agreements.

ARTICLE 24. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 25. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or of any part hereof.

ARTICLE 26. Interpretation. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties.

ARTICLE 27. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ARTICLE 28. Subcontracting. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of HACSB. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

ARTICLE 29. Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

ARTICLE 30. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or termination.

ARTICLE 31. No Third Party Beneficiaries. Except as expressly stated herein or in the Contract Documents, there are no intended third party beneficiaries of any right or obligation assumed by the parties.

[END – SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE TO
AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
PC1238 – Construction Management Services

IN WITNESS WHEREOF, HACSB and Consultant have entered into this Agreement as of the Effective

Date: _____

Seapoint Group, Inc.

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

CERTIFICATE OF CORPORATE AUTHORITY

I, _____, certify that I am the _____ of the corporation named as Consultant herein; that _____ who signed this Agreement on behalf of Consultant, was then _____ of said corporation; that said Contract was duly signed for and in behalf of said corporation and its governing body and is within the scope of its corporate powers.

By: _____

Name: _____

Its: _____

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo

Its: Executive Director

Date: _____

Exhibit A
Scope of Services

Scope: Project management duties include but are not limited to:

- Assist in the oversight, planning, and securing of public approvals for real estate development.
- Coordinates and administers development project activities including general contractor selection and oversight, identifying/managing consultants, securing necessary permits, and project design. Provide services required for management of a design-build process.

Consultant shall secure the permits and perform those activities as will be detailed in a Purchase Order.

Coordinate with HACSB General Counsel on legal issues related to entitlement work when directed by HACSB staff only.

Scope of Services – Fee Schedule:

Position:	Rate/Hour:
Project Manger	\$150.00

Reimburseables: IRS mileage rate starting from the SR-91/I-15 interchange.

Exhibit B
GENERAL CONDITIONS FOR NON-CONSTRUCTION WORK
(HUD – 5370-C)

Document on Following Page

Exhibit C

Additional General Provisions

1. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Consultant warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Consultant's violation of this provision.
2. **CONTRACTOR'S POWER AND AUTHORITY:** Consultant warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Consultant agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
3. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
4. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
5. **INSURANCE:** Consultant shall not commence Services under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Consultant allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Consultant shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. Any policy of insurance required of Consultant under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

The insurance required to be carried by Consultant hereunder shall include:

- a. Compensation Insurance and Employer's Liability Insurance. Consultant shall take out and maintain during the entire term of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Consultant shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Consultant.

In signing this Agreement, Consultant makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Commercial General Liability Insurance. Consultant, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence; HACSB listed as Additional Insured on an attached endorsement. Such coverage shall include, but shall not be limited to, protection against claims arising from, and damage to property resulting from, activities contemplated under this Agreement. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement.

Broad form property damage endorsement must be attached. HACSB is to be named as an additional insured included on an attached endorsement for any contracts of insurance under this

paragraph b. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Consultant shall be named as an additional insured with respect to such general liability insurance policy.

- c. Automobile Liability. Consultant, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Consultant shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or:
- e. Professional Liability: \$1,000,000; per occurrence and aggregate.
- f. Worker's Compensation. A state approved Workers Compensation and Employers Liability Insurance policy providing benefits as required by law with employer's liability limits no less than One Million and No/100 Dollars (\$1,000,000) per accident or disease, which covers all employees of the contractor and each and every contractor.

6. FORCE MAJEURE: Consultant shall be excused for performing the Services hereunder in the event that Consultant is unable to perform the Services for one of the following reasons:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal, state or local government in either its sovereign or contractual capacity.

Such delay shall be for the period of time that Consultant is delayed from performing the Services as a direct result of one of the foregoing reasons. Consultant shall provide HACSB notice within three (3) days of any such force majeure event.

7. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. Consultant shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Consultant, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at Consultant's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Consultant.
- b. Consultant shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Consultant, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Consultant during the Agreement.

8. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

9. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

10. TAXES: HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.

11. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.

12. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:

- a. Consultant shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.

- b. Consultant may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Consultant, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Consultant or the operation of such goods pursuant to a current version of Consultant supplied operating software infringes a United States patent or copyright or violates a trade secret. Consultant shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Consultant shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
- d. Should the goods or software, or the operation thereof, become, or in Consultant's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Consultant at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Consultant agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Consultant under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Consultant agrees to take back such goods or software and refund any sums HACSB has paid Consultant.
- e. Consultant shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Consultant; or,
 - ii. The operation of equipment furnished by Consultant under the control of any operating software other than, or in addition to, the current version of Consultant-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Consultant supplied software.
- f. Consultant certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Consultant to HACSB with respect to infringement of patents, copyrights or trade secrets.

13. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Consultant, require Consultant to stop all, or any part, of the Services called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Consultant, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
 - i. Cancel the Stop Work Order; or

- ii. Terminate the Services covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Consultant shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to the performance of any part of this Agreement; and
 - 2. Consultant asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - b. If a Stop Work Order is not canceled and the Services covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - c. HACSB shall not be liable to Consultant for loss of profits because of a Stop Work Order issued under this clause.
- 14. COVENANT AGAINST GRATUITIES:** Consultant warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Consultant agreed to supply shall be borne and paid for by Consultant. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 15. COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Consultant certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Services, Consultants of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Consultant may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Consultant shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.
- HACSB shall have the right to audit Consultant, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Consultant agrees to maintain accurate books and records in connection with the Services, and all payments made or received by Consultant pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Consultant shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Consultant in connection with the Services, and shall permit HACSB to interview any such employees, contractors or subcontractors. Consultant agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Services shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 Consultant's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by Consultant and its subcontractors at the site of the Services in a prominent and accessible place where it can be easily seen by the workers.

16. **CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Consultant agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Consultant's books and records, and interview Consultant's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
17. **EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Consultant certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
18. **NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Consultant and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
19. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Consultant swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
20. **DRUG-FREE WORKPLACE CERTIFICATION:** Consultant certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
21. **RECYCLING:** Consultant shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.

22. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Consultant certifies that it complies with Sections 103 and 107 of the Contract Services Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
23. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, Consultant acknowledges in accordance with Public Contract Code Section 7110, that:
- a. Consultant recognizes the importance of child and family support obligations and shall fully comply with all applicable State of California and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Consultant, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** Consultant certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Consultant shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
25. **ENVIRONMENTAL REGULATIONS:** For agreements in excess of \$100,000, Consultant certifies that it complies with the requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (3 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
26. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Consultant certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Consultant further certifies that it will immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
27. **DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Consultant certifies that Consultant is in compliance with Public Contract Code Section 10295.3.

Exhibit D

Work Authorization

Schedule Dates:

Start Date: August 11, 2021

Completion Date: August 10, 2024

Total Contract Cost: Per details provided in any Purchase Order issued by HACSB to Consultant.

Schedule Requirements – Statement of Services (“Exhibit A”)

General Conditions for Non-construction work (“Exhibit B”)

Additional General Provisions (“Exhibit C”)

Services Authorization (“Exhibit D”)

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (“**Agreement**”) (**PC1238**) is made as of the 11th day of August, 2021 (“**Effective Date**”) by and between Howell Group (“**Consultant**”), a California Corporation and the Housing Authority of the County of San Bernardino, a California public entity (“**HACSB**”).

RECITALS

WHEREAS, HACSB is a public entity in San Bernardino County, State of California, committed to providing affordable and safe public housing for low and moderate income families; and

WHEREAS, Consultant has offered to provide construction management services to HACSB, and HACSB wishes to retain Consultant for the provision of such services.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Consultant and HACSB hereby agree as follows:

ARTICLE 1. Statement of Services. Consultant shall perform all work required in the Scope of Services set forth on Exhibit “A”, attached hereto and incorporated herein by reference (“**Services**”) in accordance with the terms and conditions of this Agreement. In connection with its performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Contract Documents. This Agreement incorporates by reference all of the following documents (“**Contract Documents**”):

1. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Services) (Form HUD 5370), attached hereto as Exhibit “B” and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit “C” and incorporated herein by reference (“**Additional Provisions**”).
3. Services Authorization, attached hereto as Exhibit “D” and incorporated herein by reference.
4. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U. S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws of the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 3. Term; Time of Completion. Consultant shall commence work under this Agreement beginning on or about **August 11, 2021**, and this Agreement shall continue in full force and effect until completion of the Services, which shall be no later than **August 10, 2024**, unless for any reason funds appropriated for the provision of these services are no longer available, or until such time as terminated per the terms of Article 19 of this Agreement. Consultant shall not commence work prior to the date of issuance by HACSB of a work authorization in the form set forth on Exhibit “D”, attached hereto and incorporated herein by reference (“**Work Authorization**”). HACSB shall have the option to extend the engagement for up to an additional two, single-year terms. The option years shall be exercised by written amendments executed by each party with board approval for additional funding on option years if needed. Option years will begin on or about **August 11, 2024** and expire no later than **August 10, 2026**. Following

issuance of a Work Authorization, Consultant shall timely complete the Services in accordance with the schedule requirements specified in Exhibit "A", and within the term of this Agreement.

ARTICLE 4. Agreement Price. HACSB agrees to pay Consultant per the Fee Schedule in Exhibit "A" for Consultant's performance of the Services and compliance with all other obligations under this Agreement ("**Agreement Price**"), subject to the maximum amount authorized to be paid to Consultant per the terms of any Work Authorization. Terms are defined in the Additional Provisions, and includes a guarantee of task completion.

ARTICLE 5. Performance of Services. Consultant warrants that it shall perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in California. Consultant acknowledges that HACSB has the right to review the Services performed by Consultant and may, in its discretion, reject the Services, or any part thereof. In the event HACSB rejects any or all of the Services, at HACSB's election: (a) Consultant shall promptly correct any such deficiencies in the Services, or (b) the deficient Services shall be stricken from this Agreement and Consultant shall not be paid for such portion of the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of Consultant or its subcontractors who is determined by HACSB to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to HACSB, shall be promptly removed from the Services by the Consultant and shall not be re-employed to perform any of the Services under this Agreement.

ARTICLE 6. HACSB's Right to Stop Services. HACSB has the right to require Consultant to stop or suspend Services pursuant to the "Stop Services" provisions of the Additional Provisions.

ARTICLE 7. No Conflicts. HACSB acknowledges that Consultant has other business and personal interests, separate and apart from the services contemplated by this Agreement, and nothing in this Agreement is intended to preclude Consultant from devoting time and attention to such business and personal interests. HACSB further acknowledges that Consultant has the right to accept other engagements as long as said engagements do not represent a conflict of interest with respect to the Services or the obligations of Consultant to HACSB pursuant to this Agreement. In connection with Consultant's performance of the Services hereunder, Consultant represents that there exists no actual, potential or appearance of conflict arising out of Consultant's business and financial interests.

ARTICLE 8. Limit of Engagement. This Agreement does not and shall not be construed to create any partnership or agency whatsoever. Consultant shall not be deemed to be a partner, joint venture, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility on behalf of, HACSB or corporations affiliated with HACSB, other than as expressly herein provided. HACSB retains Consultant on an independent contractor basis and Consultant is not an employee of HACSB. Any additional personnel performing Services under this Agreement on behalf of Consultant shall not be employees of HACSB and shall at all times be under Consultant's exclusive direction and control.

ARTICLE 9. Responsibilities of HACSB. If information, data, or documentation necessary to facilitate Consultant's performance of the Services is required to be provided by HACSB, HACSB shall provide such information upon request by Consultant. It is Consultant's responsibility to determine if any such information is necessary in order to perform its obligations hereunder and to request such information from HACSB in a sufficient amount of time in order for Consultant to perform the Services hereunder.

ARTICLE 10. Additional Services.

- a. In the event that the parties mutually agree that additional and further work beyond that specified in the Statement of Services ("**Additional Services**") is required to be performed by Consultant, such Additional Services shall be memorialized in a Work Authorization executed by HACSB and Consultant. The Work Authorization shall include and specifically identify the types of services required to perform as part of the Additional Services, all significant work product to be delivered to HACSB, the time schedule for completion of the Additional Services, and the price for such Additional Services.
- b. Nothing herein shall obligate HACSB to utilize Consultant to perform the Additional Services or in any way limit HACSB's rights to utilize third parties to perform or assist in performing the Additional Services. In no event shall Consultant commence performance of the Additional Services until it has received written consent executed by a duly authorized representative of HACSB.
- c. In the event that HACSB provides a Work Authorization for Additional Services, all of the terms and conditions of this Agreement shall apply to the performance of such Additional Services.

ARTICLE 11. Consultant's Obligation to Stop Services. Personnel resources will not be expended (at a cost to HACSB) on task accomplishment in excess of the schedule requirements set forth in "Exhibit A" unless the procedure below is followed:

- a. If, in the performance of the Services, Consultant determines that the Services to be performed under this Agreement cannot be accomplished within the estimated work hours, Consultant will immediately notify HACSB in writing of Consultant's estimate of the work hours which will be required to complete the Services. Upon receipt of such notification, HACSB may:
 - i. Authorize Consultant to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld); or
 - ii. Terminate this Agreement; or
 - iii. Alter the scope of the Services in order to define tasks that can be accomplished within the remaining estimated work hours.
- b. HACSB will notify Consultant in writing of its election within seven (7) calendar days after receipt of Consultant's notification. If notice of the election to proceed is given, Consultant may expend the estimated additional work hours or services, as memorialized in a Work Authorization signed by Consultant and HACSB. In the event that HACSB fails to notify Consultant within such seven (7) calendar day period, Consultant shall provide a second notice to HACSB requesting a determination. Consultant shall not proceed with the Services until such time as HACSB has made an election as to how it wishes to proceed, and a Work Authorization has been approved.

ARTICLE 12. Invoicing and Payment for Services.

- a. Consultant shall provide HACSB with invoices detailing the work performed and hours and charges related thereto. In the event that Additional Services are performed pursuant to a Work Authorization, such Additional Services shall be paid by HACSB according to the same procedure set forth above with respect to the Services, unless a different method for payment is specified in such Work Authorization.
- b. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.

- c. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the Agreement Price, with the balance to be invoiced upon completion of the Agreement, in accordance with the acceptance criteria set forth herein.
- d. No charge for transportation, delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Statement of Services or Work Authorization.
- e. Payments for all any and all invoices or other obligations are satisfied electronically through the Automated Clearing House (ACH) system. The Consultant hereby authorizes the HACSB to initiate payment electronically to any bank account maintained by the Consultant wherever located. Consultant shall promptly comply with directions and accurately complete forms provided by HACSB required to process ACH payments.

ARTICLE 13. Return of HACSB Property. All reports, plans, designs, specifications, field data, construction documents, and other documents and instruments, including electronic files, but excluding Consultant's notes, relating to the Services shall be and remain the property of HACSB and shall be turned over to HACSB promptly upon the completion of the Services, or upon the earlier termination of this Agreement. Consultant hereby waives and assigns to HACSB all intellectual property or common law rights Consultant may develop in the Services. Consultant shall not use any trademarks owned by HACSB without HACSB's prior written authorization.

ARTICLE 14. Confidential Information. HACSB agrees to make available to Consultant information that may be needed to perform the Services. Such information may include information HACSB considers to be confidential. For purposes hereof, "**Confidential Information**" of HACSB means any nonpublic, proprietary information or technology used in HACSB's business, and any materials evidencing the same (specifically, including, without limitation, technical data or know-how relating to development plans, business plans, services, customers, markets, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, marketing and/or financial information). Unless HACSB acknowledges that any such information provided under this Agreement is not Confidential Information, all information provided by HACSB to Consultant shall be considered to be Confidential Information. Unless approved in advance in writing or compelled to make such disclosure by a government agency, by court order, or by law, Consultant shall not disclose, transfer, distribute or allow access to any of HACSB's Confidential Information to any third parties, except those individuals employed by Consultant and who are specifically authorized by Consultant to perform the Services contemplated in this Agreement.

ARTICLE 15. Indemnity; Hold Harmless. Consultant agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Consultant's employees and subcontractors included) and damage to property, arising directly or indirectly out of the performance of the Services, the obligations herein undertaken or out of the operations conducted by Consultant, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Consultant shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Consultant shall defend any such suits at the sole cost and expense of Consultant with counsel selected by HACSB. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against HACSB or its officers, employees, and agents in any such suit, action or other legal proceeding.

ARTICLE 16. Compliance with Contract Documents. Consultant shall comply with all of the Contract Documents in connection with the performance of the Services hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control. Consultant shall also comply with all agreements, representations, warranties, covenants, and certifications of Consultant made in connection with the

procurement of this Agreement, provided that in the case of a conflict between the foregoing and the Contract Documents and this Agreement, the Contract Documents and this Agreement shall control.

ARTICLE 17. Assignment. Neither the Agreement, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Consultant without the prior written approval of HACSB. This Agreement shall be binding on the successors and assigns of the parties.

ARTICLE 18. Rights and Remedies of HACSB for Default.

In the event any work product delivered or services provided by Consultant in the performance of the Services should fail to conform to the requirements herein, or to the sample submitted by Consultant, HACSB may reject the same, and it shall become the duty of Consultant to correct the performance of services, without expense to HACSB, and immediately replace all such rejected work product with others conforming to the Agreement.

- a. In addition to any other rights and remedies HACSB may have, HACSB may require Consultant, at Consultant's expense, to send work product via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Consultant.
- b. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by Consultant, any loss or damage sustained by HACSB in procuring any work product or services which Consultant agreed to provide shall be borne and paid for by Consultant.
- c. HACSB reserves the right to offset the reasonable cost of all damages caused to HACSB against any outstanding invoices or amounts owed to Consultant or to make a claim against Consultant therefore.

ARTICLE 19. Termination. In addition to the rights of Termination for Convenience of HACSB and Termination for Default set forth in the Contract Documents, HACSB may terminate this Agreement if Consultant should file a bankruptcy petition and/or be adjudged a bankrupt, or if Consultant should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency (as referenced in HUD Form 5370-C section 1 page 1). HACSB may serve written notice upon Consultant of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement and, unless within ten (10) days after serving such notice such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon Consultant.

ARTICLE 20. No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

ARTICLE 21. Modification. This written Agreement may not be later modified except by a further writing signed by HACSB and Consultant and no term of this Agreement may be waived, except by writing signed by the party waiving the benefit of such term. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

ARTICLE 22. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested. All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardapide, Procurement and Contracts Supervisor
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841

If to Consultant:

Marc A. Howell, Partner
The Howell Group, Inc.
1847 Providence Way
Corona, CA 92880

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 23. Complete Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between HACSB and Consultant and of all the terms of this Agreement and cannot be varied, contradicted, nor supplemented by evidence of any prior or contemporaneous oral or written agreements.

ARTICLE 24. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 25. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or of any part hereof.

ARTICLE 26. Interpretation. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties.

ARTICLE 27. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ARTICLE 28. Subcontracting. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of HACSB. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

ARTICLE 29. Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

ARTICLE 30. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or termination.

ARTICLE 31. No Third Party Beneficiaries. Except as expressly stated herein or in the Contract Documents, there are no intended third party beneficiaries of any right or obligation assumed by the parties.

[END – SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
PC1238 – Construction Management Services**

IN WITNESS WHEREOF, HACSB and Consultant have entered into this Agreement as of the Effective

Date: _____

The Howell Group, Inc.

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

CERTIFICATE OF CORPORATE AUTHORITY

I, _____, certify that I am the _____ of the corporation named as Consultant herein; that _____ who signed this Agreement on behalf of Consultant, was then _____ of said corporation; that said Contract was duly signed for and in behalf of said corporation and its governing body and is within the scope of its corporate powers.

By: _____

Name: _____

Its: _____

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo

Its: Executive Director

Date: _____

Exhibit A

Scope of Services

The following are the services that will generally be required of Consultant for each Project that is assigned to Consultant under this On-Call Contract. The County reserves the right to revise the Scope of Work for specific Projects in the Work Order issued to Consultant for a specific Project.

The Vendor will perform services, provide resources and materials customarily and typically rendered to accomplish all such tasks necessary as assigned including, but not limited to, the following:

- Review contract design plans as requested for constructability, consistency, and adherence to County standards.
- Assist in obtaining any necessary permits as required.
- Coordinate construction activities with other County departments, utilities, and municipalities for the duration of any project.
- Attend pre-construction conferences if required.
- Visit sites as required during the construction period.
- Attend Requested progress meetings.
- Review shop drawings as directed by the Department.
- Review the construction schedule as directed by the Department.
- Prepare drawings and estimates for any required field change as requested.
- Provide resident inspection services if requested.
- Assist Department in project closeout.
- Assist in the oversight, planning, and securing of public approvals for real estate development.
- Coordinates and administers development project activities including general contractor selection and oversight, identifying/managing consultants, securing necessary permits, and project design. Provide services required for management of a design-build process.

Scope of Services – Fee Schedule:

Position:	Rate/Hour:
Partner	\$185.00
Project Executive	\$153.00
PM/SPM	\$134.00
PE/APM	\$79.00
Admin.	\$73.00

Exhibit B
GENERAL CONDITIONS FOR NON-CONSTRUCTION WORK
(HUD – 5370-C)

Document on Following Page

Exhibit C
Additional General Provisions

1. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Consultant warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Consultant's violation of this provision.
2. **CONTRACTOR'S POWER AND AUTHORITY:** Consultant warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Consultant agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
3. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
4. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
5. **INSURANCE:** Consultant shall not commence Services under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Consultant allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Consultant shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. Any policy of insurance required of Consultant under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

The insurance required to be carried by Consultant hereunder shall include:

- a. Compensation Insurance and Employer's Liability Insurance. Consultant shall take out and maintain during the entire term of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Consultant shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Consultant.

In signing this Agreement, Consultant makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Commercial General Liability Insurance. Consultant, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence; HACSB listed as Additional Insured on an attached endorsement. Such coverage shall include, but shall not be limited to, protection against claims arising from, and damage to property resulting from, activities contemplated under this Agreement. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement.

Broad form property damage endorsement must be attached. HACSB is to be named as an additional insured included on an attached endorsement for any contracts of insurance under this

paragraph b. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Consultant shall be named as an additional insured with respect to such general liability insurance policy.

- c. Automobile Liability. Consultant, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Consultant shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or:
- e. Professional Liability: \$1,000,000; per occurrence and aggregate.
- f. Worker's Compensation. A state approved Workers Compensation and Employers Liability Insurance policy providing benefits as required by law with employer's liability limits no less than One Million and No/100 Dollars (\$1,000,000) per accident or disease, which covers all employees of the contractor and each and every contractor.

6. FORCE MAJEURE: Consultant shall be excused for performing the Services hereunder in the event that Consultant is unable to perform the Services for one of the following reasons:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal, state or local government in either its sovereign or contractual capacity.

Such delay shall be for the period of time that Consultant is delayed from performing the Services as a direct result of one of the foregoing reasons. Consultant shall provide HACSB notice within three (3) days of any such force majeure event.

7. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. Consultant shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Consultant, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at Consultant's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Consultant.
- b. Consultant shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Consultant, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Consultant during the Agreement.

8. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

9. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

10. TAXES: HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.

11. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.

12. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:

- a. Consultant shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.

- b. Consultant may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Consultant, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Consultant or the operation of such goods pursuant to a current version of Consultant supplied operating software infringes a United States patent or copyright or violates a trade secret. Consultant shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Consultant shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
- d. Should the goods or software, or the operation thereof, become, or in Consultant's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Consultant at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Consultant agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Consultant under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Consultant agrees to take back such goods or software and refund any sums HACSB has paid Consultant.
- e. Consultant shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Consultant; or,
 - ii. The operation of equipment furnished by Consultant under the control of any operating software other than, or in addition to, the current version of Consultant-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Consultant supplied software.
- f. Consultant certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Consultant to HACSB with respect to infringement of patents, copyrights or trade secrets.

13. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Consultant, require Consultant to stop all, or any part, of the Services called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Consultant, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
 - i. Cancel the Stop Work Order; or

- ii. Terminate the Services covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Consultant shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to the performance of any part of this Agreement; and
 - 2. Consultant asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - b. If a Stop Work Order is not canceled and the Services covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - c. HACSB shall not be liable to Consultant for loss of profits because of a Stop Work Order issued under this clause.
- 14. COVENANT AGAINST GRATUITIES:** Consultant warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Consultant agreed to supply shall be borne and paid for by Consultant. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 15. COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Consultant certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Services, Consultants of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Consultant may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Consultant shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.
- HACSB shall have the right to audit Consultant, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Consultant agrees to maintain accurate books and records in connection with the Services, and all payments made or received by Consultant pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Consultant shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Consultant in connection with the Services, and shall permit HACSB to interview any such employees, contractors or subcontractors. Consultant agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Services shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 Consultant's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by Consultant and its subcontractors at the site of the Services in a prominent and accessible place where it can be easily seen by the workers.

16. **CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Consultant agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Consultant's books and records, and interview Consultant's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
17. **EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Consultant certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
18. **NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Consultant and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
19. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Consultant swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
20. **DRUG-FREE WORKPLACE CERTIFICATION:** Consultant certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
21. **RECYCLING:** Consultant shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.

22. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Consultant certifies that it complies with Sections 103 and 107 of the Contract Services Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
23. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, Consultant acknowledges in accordance with Public Contract Code Section 7110, that:
- a. Consultant recognizes the importance of child and family support obligations and shall fully comply with all applicable State of California and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Consultant, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** Consultant certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Consultant shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
25. **ENVIRONMENTAL REGULATIONS:** For agreements in excess of \$100,000, Consultant certifies that it complies with the requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (3 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
26. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Consultant certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Consultant further certifies that it will immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
27. **DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Consultant certifies that Consultant is in compliance with Public Contract Code Section 10295.3.

Exhibit D

Work Authorization

Schedule Dates:

Start Date: August 11, 2021

Completion Date: August 10, 2024

Total Contract Cost: Per details provided in any Purchase Order issued by HACSB to Consultant.

Schedule Requirements – Statement of Services (“Exhibit A”)

General Conditions for Non-construction work (“Exhibit B”)

Additional General Provisions (“Exhibit C”)

Services Authorization (“Exhibit D”)

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (“**Agreement**”) (**PC1238**) is made as of the 11th day of August, 2021 (“**Effective Date**”) by and between Moote Companies LLC (“**Consultant**”), a California Limited Liabilities Company and the Housing Authority of the County of San Bernardino, a California public entity (“**HACSB**”).

RECITALS

WHEREAS, HACSB is a public entity in San Bernardino County, State of California, committed to providing affordable and safe public housing for low and moderate income families; and

WHEREAS, Consultant has offered to provide construction management services to HACSB, and HACSB wishes to retain Consultant for the provision of such services.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Consultant and HACSB hereby agree as follows:

ARTICLE 1. Statement of Services. Consultant shall perform all work required in the Scope of Services set forth on Exhibit “A”, attached hereto and incorporated herein by reference (“**Services**”) in accordance with the terms and conditions of this Agreement. In connection with its performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Contract Documents. This Agreement incorporates by reference all of the following documents (“**Contract Documents**”):

1. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Services) (Form HUD 5370), attached hereto as Exhibit “B” and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit “C” and incorporated herein by reference (“**Additional Provisions**”).
3. Services Authorization, attached hereto as Exhibit “D” and incorporated herein by reference.
4. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U. S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws of the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 3. Term; Time of Completion. Consultant shall commence work under this Agreement beginning on or about **August 11, 2021**, and this Agreement shall continue in full force and effect until completion of the Services, which shall be no later than **August 10, 2024**, unless for any reason funds appropriated for the provision of these services are no longer available, or until such time as terminated per the terms of Article 19 of this Agreement. Consultant shall not commence work prior to the date of issuance by HACSB of a work authorization in the form set forth on Exhibit “D”, attached hereto and incorporated herein by reference (“**Work Authorization**”). HACSB shall have the option to extend the engagement for up to an additional two, single-year terms. The option years shall be exercised by written amendments executed by each party with board approval for additional funding on option years if needed. Option years will begin on or about **August 11, 2024** and expire no later than **August 10, 2026**. Following

issuance of a Work Authorization, Consultant shall timely complete the Services in accordance with the schedule requirements specified in Exhibit "A", and within the term of this Agreement.

ARTICLE 4. Agreement Price. HACSB agrees to pay Consultant per the Fee Schedule in Exhibit "A" for Consultant's performance of the Services and compliance with all other obligations under this Agreement ("**Agreement Price**"), subject to the maximum amount authorized to be paid to Consultant per the terms of any Work Authorization. Terms are defined in the Additional Provisions, and includes a guarantee of task completion.

ARTICLE 5. Performance of Services. Consultant warrants that it shall perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in California. Consultant acknowledges that HACSB has the right to review the Services performed by Consultant and may, in its discretion, reject the Services, or any part thereof. In the event HACSB rejects any or all of the Services, at HACSB's election: (a) Consultant shall promptly correct any such deficiencies in the Services, or (b) the deficient Services shall be stricken from this Agreement and Consultant shall not be paid for such portion of the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of Consultant or its subcontractors who is determined by HACSB to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to HACSB, shall be promptly removed from the Services by the Consultant and shall not be re-employed to perform any of the Services under this Agreement.

ARTICLE 6. HACSB's Right to Stop Services. HACSB has the right to require Consultant to stop or suspend Services pursuant to the "Stop Services" provisions of the Additional Provisions.

ARTICLE 7. No Conflicts. HACSB acknowledges that Consultant has other business and personal interests, separate and apart from the services contemplated by this Agreement, and nothing in this Agreement is intended to preclude Consultant from devoting time and attention to such business and personal interests. HACSB further acknowledges that Consultant has the right to accept other engagements as long as said engagements do not represent a conflict of interest with respect to the Services or the obligations of Consultant to HACSB pursuant to this Agreement. In connection with Consultant's performance of the Services hereunder, Consultant represents that there exists no actual, potential or appearance of conflict arising out of Consultant's business and financial interests.

ARTICLE 8. Limit of Engagement. This Agreement does not and shall not be construed to create any partnership or agency whatsoever. Consultant shall not be deemed to be a partner, joint venture, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility on behalf of, HACSB or corporations affiliated with HACSB, other than as expressly herein provided. HACSB retains Consultant on an independent contractor basis and Consultant is not an employee of HACSB. Any additional personnel performing Services under this Agreement on behalf of Consultant shall not be employees of HACSB and shall at all times be under Consultant's exclusive direction and control.

ARTICLE 9. Responsibilities of HACSB. If information, data, or documentation necessary to facilitate Consultant's performance of the Services is required to be provided by HACSB, HACSB shall provide such information upon request by Consultant. It is Consultant's responsibility to determine if any such information is necessary in order to perform its obligations hereunder and to request such information from HACSB in a sufficient amount of time in order for Consultant to perform the Services hereunder.

ARTICLE 10. Additional Services.

- a. In the event that the parties mutually agree that additional and further work beyond that specified in the Statement of Services ("**Additional Services**") is required to be performed by Consultant, such Additional Services shall be memorialized in a Work Authorization executed by HACSB and Consultant. The Work Authorization shall include and specifically identify the types of services required to perform as part of the Additional Services, all significant work product to be delivered to HACSB, the time schedule for completion of the Additional Services, and the price for such Additional Services.
- b. Nothing herein shall obligate HACSB to utilize Consultant to perform the Additional Services or in any way limit HACSB's rights to utilize third parties to perform or assist in performing the Additional Services. In no event shall Consultant commence performance of the Additional Services until it has received written consent executed by a duly authorized representative of HACSB.
- c. In the event that HACSB provides a Work Authorization for Additional Services, all of the terms and conditions of this Agreement shall apply to the performance of such Additional Services.

ARTICLE 11. Consultant's Obligation to Stop Services. Personnel resources will not be expended (at a cost to HACSB) on task accomplishment in excess of the schedule requirements set forth in "Exhibit A" unless the procedure below is followed:

- a. If, in the performance of the Services, Consultant determines that the Services to be performed under this Agreement cannot be accomplished within the estimated work hours, Consultant will immediately notify HACSB in writing of Consultant's estimate of the work hours which will be required to complete the Services. Upon receipt of such notification, HACSB may:
 - i. Authorize Consultant to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld); or
 - ii. Terminate this Agreement; or
 - iii. Alter the scope of the Services in order to define tasks that can be accomplished within the remaining estimated work hours.
- b. HACSB will notify Consultant in writing of its election within seven (7) calendar days after receipt of Consultant's notification. If notice of the election to proceed is given, Consultant may expend the estimated additional work hours or services, as memorialized in a Work Authorization signed by Consultant and HACSB. In the event that HACSB fails to notify Consultant within such seven (7) calendar day period, Consultant shall provide a second notice to HACSB requesting a determination. Consultant shall not proceed with the Services until such time as HACSB has made an election as to how it wishes to proceed, and a Work Authorization has been approved.

ARTICLE 12. Invoicing and Payment for Services.

- a. Consultant shall provide HACSB with invoices detailing the work performed and hours and charges related thereto. In the event that Additional Services are performed pursuant to a Work Authorization, such Additional Services shall be paid by HACSB according to the same procedure set forth above with respect to the Services, unless a different method for payment is specified in such Work Authorization.
- b. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.

- c. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the Agreement Price, with the balance to be invoiced upon completion of the Agreement, in accordance with the acceptance criteria set forth herein.
- d. No charge for transportation, delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Statement of Services or Work Authorization.
- e. Payments for all any and all invoices or other obligations are satisfied electronically through the Automated Clearing House (ACH) system. The Consultant hereby authorizes the HACSB to initiate payment electronically to any bank account maintained by the Consultant wherever located. Consultant shall promptly comply with directions and accurately complete forms provided by HACSB required to process ACH payments.

ARTICLE 13. Return of HACSB Property. All reports, plans, designs, specifications, field data, construction documents, and other documents and instruments, including electronic files, but excluding Consultant's notes, relating to the Services shall be and remain the property of HACSB and shall be turned over to HACSB promptly upon the completion of the Services, or upon the earlier termination of this Agreement. Consultant hereby waives and assigns to HACSB all intellectual property or common law rights Consultant may develop in the Services. Consultant shall not use any trademarks owned by HACSB without HACSB's prior written authorization.

ARTICLE 14. Confidential Information. HACSB agrees to make available to Consultant information that may be needed to perform the Services. Such information may include information HACSB considers to be confidential. For purposes hereof, "**Confidential Information**" of HACSB means any nonpublic, proprietary information or technology used in HACSB's business, and any materials evidencing the same (specifically, including, without limitation, technical data or know-how relating to development plans, business plans, services, customers, markets, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, marketing and/or financial information). Unless HACSB acknowledges that any such information provided under this Agreement is not Confidential Information, all information provided by HACSB to Consultant shall be considered to be Confidential Information. Unless approved in advance in writing or compelled to make such disclosure by a government agency, by court order, or by law, Consultant shall not disclose, transfer, distribute or allow access to any of HACSB's Confidential Information to any third parties, except those individuals employed by Consultant and who are specifically authorized by Consultant to perform the Services contemplated in this Agreement.

ARTICLE 15. Indemnity; Hold Harmless. Consultant agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Consultant's employees and subcontractors included) and damage to property, arising directly or indirectly out of the performance of the Services, the obligations herein undertaken or out of the operations conducted by Consultant, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Consultant shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Consultant shall defend any such suits at the sole cost and expense of Consultant with counsel selected by HACSB. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against HACSB or its officers, employees, and agents in any such suit, action or other legal proceeding.

ARTICLE 16. Compliance with Contract Documents. Consultant shall comply with all of the Contract Documents in connection with the performance of the Services hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control. Consultant shall also comply with all agreements, representations, warranties, covenants, and certifications of Consultant made in connection with the

procurement of this Agreement, provided that in the case of a conflict between the foregoing and the Contract Documents and this Agreement, the Contract Documents and this Agreement shall control.

ARTICLE 17. Assignment. Neither the Agreement, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Consultant without the prior written approval of HACSB. This Agreement shall be binding on the successors and assigns of the parties.

ARTICLE 18. Rights and Remedies of HACSB for Default.

In the event any work product delivered or services provided by Consultant in the performance of the Services should fail to conform to the requirements herein, or to the sample submitted by Consultant, HACSB may reject the same, and it shall become the duty of Consultant to correct the performance of services, without expense to HACSB, and immediately replace all such rejected work product with others conforming to the Agreement.

- a. In addition to any other rights and remedies HACSB may have, HACSB may require Consultant, at Consultant's expense, to send work product via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Consultant.
- b. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by Consultant, any loss or damage sustained by HACSB in procuring any work product or services which Consultant agreed to provide shall be borne and paid for by Consultant.
- c. HACSB reserves the right to offset the reasonable cost of all damages caused to HACSB against any outstanding invoices or amounts owed to Consultant or to make a claim against Consultant therefore.

ARTICLE 19. Termination. In addition to the rights of Termination for Convenience of HACSB and Termination for Default set forth in the Contract Documents, HACSB may terminate this Agreement if Consultant should file a bankruptcy petition and/or be adjudged a bankrupt, or if Consultant should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency (as referenced in HUD Form 5370-C section 1 page 1). HACSB may serve written notice upon Consultant of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement and, unless within ten (10) days after serving such notice such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon Consultant.

ARTICLE 20. No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

ARTICLE 21. Modification. This written Agreement may not be later modified except by a further writing signed by HACSB and Consultant and no term of this Agreement may be waived, except by writing signed by the party waiving the benefit of such term. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

ARTICLE 22. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested. All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardapide, Procurement and Contracts Supervisor
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841

If to Consultant:

Eric Nutter
Moote Companies, LLC
60 Corporate Park, Suite 100
Irvine, CA 92606

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 23. Complete Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between HACSB and Consultant and of all the terms of this Agreement and cannot be varied, contradicted, nor supplemented by evidence of any prior or contemporaneous oral or written agreements.

ARTICLE 24. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 25. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or of any part hereof.

ARTICLE 26. Interpretation. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties.

ARTICLE 27. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ARTICLE 28. Subcontracting. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of HACSB. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

ARTICLE 29. Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

ARTICLE 30. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or termination.

ARTICLE 31. No Third Party Beneficiaries. Except as expressly stated herein or in the Contract Documents, there are no intended third party beneficiaries of any right or obligation assumed by the parties.

[END – SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
PC1238 – Construction Management Services**

IN WITNESS WHEREOF, HACSB and Consultant have entered into this Agreement as of the Effective

Date: _____

Moote Companies, LLC

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

CERTIFICATE OF CORPORATE AUTHORITY

I, _____, certify that I am the _____ of the corporation named as Consultant herein; that _____ who signed this Agreement on behalf of Consultant, was then _____ of said corporation; that said Contract was duly signed for and in behalf of said corporation and its governing body and is within the scope of its corporate powers.

By: _____

Name: _____

Its: _____

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo

Its: Executive Director

Date: _____

Exhibit A

Scope of Services

A. Construction Management:

DURING CONSTRUCTION

1. Provide a qualified construction manager to schedule, coordinate and expedite the work of all applicable trades, local public agencies, and utility companies associated with the above referenced scope of work.
 2. Conduct pre-construction conferences with Owner, applicable public agencies, utility companies, design engineers, contractors, etc. as required.
 3. Maintain excellent public relations with all homeowners / business owners adjacent to the project.
 4. Review contract design plans as requested for constructability, consistency, and adherence to County standards.
 5. Verify correct and field approve invoices for monthly progress payments to subcontractors; all job accounting by Owner.
 6. Recommend approval or disapproval of change orders or authorizations for extra work, or deduction of work items.
 7. Maintain daily written job reports and daily telephone communications with Owner; attend required progress meetings.
 8. Assist Owner in obtaining the permits, approval and acceptance by Agencies having jurisdiction over various work elements.
 9. Coordinate the work of the field survey parties.
 10. Coordinate special mitigations that relate to field conditions.
 11. Maintain a "red marked" set of construction prints reflecting field changes (actual "as-built" drawings by contractor), including assistance with project closeout with said "red marked" construction set.
 12. Resolve disputes with contractors regarding interpretation of plans and specifications, progress of work or adequacy of contractor's performance.
-
13. Provide continuous consultation to the Owner and applicable public agencies relative to job problems, construction schedules and costs of the project.
 14. Resident inspection services if requested
 15. Client furnished items: Blueprints, Field Office if required, Temporary Facilities, Project Accounting, Contract Administration, and Internet Service.

*Construction Manager is not responsible for controlling Contractor's construction means or methods.

Scope of Services – Fee Schedule:

Position:	T&M Rate/Hour:
Mid Level Project Manager	\$135.00
Senior Level Project Manager	\$150.00
Senior Level Construction Manager	\$135.00

Exhibit B
GENERAL CONDITIONS FOR NON-CONSTRUCTION WORK
(HUD – 5370-C)

Document on Following Page

Exhibit C

Additional General Provisions

1. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Consultant warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Consultant's violation of this provision.
2. **CONTRACTOR'S POWER AND AUTHORITY:** Consultant warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Consultant agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
3. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
4. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
5. **INSURANCE:** Consultant shall not commence Services under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Consultant allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Consultant shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. Any policy of insurance required of Consultant under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

The insurance required to be carried by Consultant hereunder shall include:

- a. Compensation Insurance and Employer's Liability Insurance. Consultant shall take out and maintain during the entire term of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Consultant shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Consultant.

In signing this Agreement, Consultant makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Commercial General Liability Insurance. Consultant, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence; HACSB listed as Additional Insured on an attached endorsement. Such coverage shall include, but shall not be limited to, protection against claims arising from, and damage to property resulting from, activities contemplated under this Agreement. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement.

Broad form property damage endorsement must be attached. HACSB is to be named as an additional insured included on an attached endorsement for any contracts of insurance under this

paragraph b. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Consultant shall be named as an additional insured with respect to such general liability insurance policy.

- c. Automobile Liability. Consultant, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Consultant shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or:
- e. Professional Liability: \$1,000,000; per occurrence and aggregate.
- f. Worker's Compensation. A state approved Workers Compensation and Employers Liability Insurance policy providing benefits as required by law with employer's liability limits no less than One Million and No/100 Dollars (\$1,000,000) per accident or disease, which covers all employees of the contractor and each and every contractor.

6. FORCE MAJEURE: Consultant shall be excused for performing the Services hereunder in the event that Consultant is unable to perform the Services for one of the following reasons:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal, state or local government in either its sovereign or contractual capacity.

Such delay shall be for the period of time that Consultant is delayed from performing the Services as a direct result of one of the foregoing reasons. Consultant shall provide HACSB notice within three (3) days of any such force majeure event.

7. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. Consultant shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Consultant, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at Consultant's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Consultant.
- b. Consultant shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Consultant, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Consultant during the Agreement.

8. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

9. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

10. TAXES: HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.

11. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.

12. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:

- a. Consultant shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.

- b. Consultant may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Consultant, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Consultant or the operation of such goods pursuant to a current version of Consultant supplied operating software infringes a United States patent or copyright or violates a trade secret. Consultant shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Consultant shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
- d. Should the goods or software, or the operation thereof, become, or in Consultant's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Consultant at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Consultant agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Consultant under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Consultant agrees to take back such goods or software and refund any sums HACSB has paid Consultant.
- e. Consultant shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Consultant; or,
 - ii. The operation of equipment furnished by Consultant under the control of any operating software other than, or in addition to, the current version of Consultant-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Consultant supplied software.
- f. Consultant certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Consultant to HACSB with respect to infringement of patents, copyrights or trade secrets.

13. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Consultant, require Consultant to stop all, or any part, of the Services called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Consultant, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
 - i. Cancel the Stop Work Order; or

- ii. Terminate the Services covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Consultant shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to the performance of any part of this Agreement; and
 - 2. Consultant asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - b. If a Stop Work Order is not canceled and the Services covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - c. HACSB shall not be liable to Consultant for loss of profits because of a Stop Work Order issued under this clause.
14. **COVENANT AGAINST GRATUITIES:** Consultant warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Consultant agreed to supply shall be borne and paid for by Consultant. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
15. **COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Consultant certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Services, Consultants of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Consultant may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Consultant shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.
- HACSB shall have the right to audit Consultant, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Consultant agrees to maintain accurate books and records in connection with the Services, and all payments made or received by Consultant pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Consultant shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Consultant in connection with the Services, and shall permit HACSB to interview any such employees, contractors or subcontractors. Consultant agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Services shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 Consultant's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by Consultant and its subcontractors at the site of the Services in a prominent and accessible place where it can be easily seen by the workers.

16. **CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Consultant agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Consultant's books and records, and interview Consultant's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
17. **EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Consultant certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
18. **NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Consultant and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
19. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Consultant swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
20. **DRUG-FREE WORKPLACE CERTIFICATION:** Consultant certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
21. **RECYCLING:** Consultant shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.

22. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Consultant certifies that it complies with Sections 103 and 107 of the Contract Services Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
23. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, Consultant acknowledges in accordance with Public Contract Code Section 7110, that:
- a. Consultant recognizes the importance of child and family support obligations and shall fully comply with all applicable State of California and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Consultant, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** Consultant certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Consultant shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
25. **ENVIRONMENTAL REGULATIONS:** For agreements in excess of \$100,000, Consultant certifies that it complies with the requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (3 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
26. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Consultant certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Consultant further certifies that it will immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
27. **DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Consultant certifies that Consultant is in compliance with Public Contract Code Section 10295.3.

Exhibit D

Work Authorization

Schedule Dates:

Start Date: August 11, 2021

Completion Date: August 10, 2024

Total Contract Cost: Per details provided in any Purchase Order issued by HACSB to Consultant.

Schedule Requirements – Statement of Services (“Exhibit A”)

General Conditions for Non-construction work (“Exhibit B”)

Additional General Provisions (“Exhibit C”)

Services Authorization (“Exhibit D”)

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (“Agreement”) (PC1238) is made as of the 11th day of August, 2021 (“**Effective Date**”) by and between IMG Construction Management (“**Consultant**”), a California Corporation and the Housing Authority of the County of San Bernardino, a California public entity (“**HACSB**”).

RECITALS

WHEREAS, HACSB is a public entity in San Bernardino County, State of California, committed to providing affordable and safe public housing for low and moderate income families; and

WHEREAS, Consultant has offered to provide construction management services to HACSB, and HACSB wishes to retain Consultant for the provision of such services.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Consultant and HACSB hereby agree as follows:

ARTICLE 1. Statement of Services. Consultant shall perform all work required in the Scope of Services set forth on Exhibit “A”, attached hereto and incorporated herein by reference (“**Services**”) in accordance with the terms and conditions of this Agreement. In connection with its performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Contract Documents. This Agreement incorporates by reference all of the following documents (“**Contract Documents**”):

1. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Services) (Form HUD 5370), attached hereto as Exhibit “B” and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit “C” and incorporated herein by reference (“**Additional Provisions**”).
3. Services Authorization, attached hereto as Exhibit “D” and incorporated herein by reference.
4. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U. S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws of the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 3. Term; Time of Completion. Consultant shall commence work under this Agreement beginning on or about **August 11, 2021**, and this Agreement shall continue in full force and effect until completion of the Services, which shall be no later than **August 10, 2024**, unless for any reason funds appropriated for the provision of these services are no longer available, or until such time as terminated per the terms of Article 19 of this Agreement. Consultant shall not commence work prior to the date of issuance by HACSB of a work authorization in the form set forth on Exhibit “D”, attached hereto and incorporated herein by reference (“**Work Authorization**”). HACSB shall have the option to extend the engagement for up to an additional two, single-year terms. The option years shall be exercised by written amendments executed by each party with board approval for additional funding on option years if needed. Option years will begin on or about **August 11, 2024** and expire no later than **August 10, 2026**. Following

issuance of a Work Authorization, Consultant shall timely complete the Services in accordance with the schedule requirements specified in Exhibit "A", and within the term of this Agreement.

ARTICLE 4. Agreement Price. HACSB agrees to pay Consultant per the Fee Schedule in Exhibit "A" for Consultant's performance of the Services and compliance with all other obligations under this Agreement ("**Agreement Price**"), subject to the maximum amount authorized to be paid to Consultant per the terms of any Work Authorization. Terms are defined in the Additional Provisions, and includes a guarantee of task completion.

ARTICLE 5. Performance of Services. Consultant warrants that it shall perform the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in California. Consultant acknowledges that HACSB has the right to review the Services performed by Consultant and may, in its discretion, reject the Services, or any part thereof. In the event HACSB rejects any or all of the Services, at HACSB's election: (a) Consultant shall promptly correct any such deficiencies in the Services, or (b) the deficient Services shall be stricken from this Agreement and Consultant shall not be paid for such portion of the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Any employee of Consultant or its subcontractors who is determined by HACSB to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to HACSB, shall be promptly removed from the Services by the Consultant and shall not be re-employed to perform any of the Services under this Agreement.

ARTICLE 6. HACSB's Right to Stop Services. HACSB has the right to require Consultant to stop or suspend Services pursuant to the "Stop Services" provisions of the Additional Provisions.

ARTICLE 7. No Conflicts. HACSB acknowledges that Consultant has other business and personal interests, separate and apart from the services contemplated by this Agreement, and nothing in this Agreement is intended to preclude Consultant from devoting time and attention to such business and personal interests. HACSB further acknowledges that Consultant has the right to accept other engagements as long as said engagements do not represent a conflict of interest with respect to the Services or the obligations of Consultant to HACSB pursuant to this Agreement. In connection with Consultant's performance of the Services hereunder, Consultant represents that there exists no actual, potential or appearance of conflict arising out of Consultant's business and financial interests.

ARTICLE 8. Limit of Engagement. This Agreement does not and shall not be construed to create any partnership or agency whatsoever. Consultant shall not be deemed to be a partner, joint venture, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility on behalf of, HACSB or corporations affiliated with HACSB, other than as expressly herein provided. HACSB retains Consultant on an independent contractor basis and Consultant is not an employee of HACSB. Any additional personnel performing Services under this Agreement on behalf of Consultant shall not be employees of HACSB and shall at all times be under Consultant's exclusive direction and control.

ARTICLE 9. Responsibilities of HACSB. If information, data, or documentation necessary to facilitate Consultant's performance of the Services is required to be provided by HACSB, HACSB shall provide such information upon request by Consultant. It is Consultant's responsibility to determine if any such information is necessary in order to perform its obligations hereunder and to request such information from HACSB in a sufficient amount of time in order for Consultant to perform the Services hereunder.

ARTICLE 10. Additional Services.

- a. In the event that the parties mutually agree that additional and further work beyond that specified in the Statement of Services ("**Additional Services**") is required to be performed by Consultant, such Additional Services shall be memorialized in a Work Authorization executed by HACSB and Consultant. The Work Authorization shall include and specifically identify the types of services required to perform as part of the Additional Services, all significant work product to be delivered to HACSB, the time schedule for completion of the Additional Services, and the price for such Additional Services.
- b. Nothing herein shall obligate HACSB to utilize Consultant to perform the Additional Services or in any way limit HACSB's rights to utilize third parties to perform or assist in performing the Additional Services. In no event shall Consultant commence performance of the Additional Services until it has received written consent executed by a duly authorized representative of HACSB.
- c. In the event that HACSB provides a Work Authorization for Additional Services, all of the terms and conditions of this Agreement shall apply to the performance of such Additional Services.

ARTICLE 11. Consultant's Obligation to Stop Services. Personnel resources will not be expended (at a cost to HACSB) on task accomplishment in excess of the schedule requirements set forth in "Exhibit A" unless the procedure below is followed:

- a. If, in the performance of the Services, Consultant determines that the Services to be performed under this Agreement cannot be accomplished within the estimated work hours, Consultant will immediately notify HACSB in writing of Consultant's estimate of the work hours which will be required to complete the Services. Upon receipt of such notification, HACSB may:
 - i. Authorize Consultant to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld); or
 - ii. Terminate this Agreement; or
 - iii. Alter the scope of the Services in order to define tasks that can be accomplished within the remaining estimated work hours.
- b. HACSB will notify Consultant in writing of its election within seven (7) calendar days after receipt of Consultant's notification. If notice of the election to proceed is given, Consultant may expend the estimated additional work hours or services, as memorialized in a Work Authorization signed by Consultant and HACSB. In the event that HACSB fails to notify Consultant within such seven (7) calendar day period, Consultant shall provide a second notice to HACSB requesting a determination. Consultant shall not proceed with the Services until such time as HACSB has made an election as to how it wishes to proceed, and a Work Authorization has been approved.

ARTICLE 12. Invoicing and Payment for Services.

- a. Consultant shall provide HACSB with invoices detailing the work performed and hours and charges related thereto. In the event that Additional Services are performed pursuant to a Work Authorization, such Additional Services shall be paid by HACSB according to the same procedure set forth above with respect to the Services, unless a different method for payment is specified in such Work Authorization.
- b. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.

- c. In the aggregate, invoices reflecting progress payments will not exceed ninety percent (90%) of the Agreement Price, with the balance to be invoiced upon completion of the Agreement, in accordance with the acceptance criteria set forth herein.
- d. No charge for transportation, delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Statement of Services or Work Authorization.
- e. Payments for all any and all invoices or other obligations are satisfied electronically through the Automated Clearing House (ACH) system. The Consultant hereby authorizes the HACSB to initiate payment electronically to any bank account maintained by the Consultant wherever located. Consultant shall promptly comply with directions and accurately complete forms provided by HACSB required to process ACH payments.

ARTICLE 13. Return of HACSB Property. All reports, plans, designs, specifications, field data, construction documents, and other documents and instruments, including electronic files, but excluding Consultant's notes, relating to the Services shall be and remain the property of HACSB and shall be turned over to HACSB promptly upon the completion of the Services, or upon the earlier termination of this Agreement. Consultant hereby waives and assigns to HACSB all intellectual property or common law rights Consultant may develop in the Services. Consultant shall not use any trademarks owned by HACSB without HACSB's prior written authorization.

ARTICLE 14. Confidential Information. HACSB agrees to make available to Consultant information that may be needed to perform the Services. Such information may include information HACSB considers to be confidential. For purposes hereof, "**Confidential Information**" of HACSB means any nonpublic, proprietary information or technology used in HACSB's business, and any materials evidencing the same (specifically, including, without limitation, technical data or know-how relating to development plans, business plans, services, customers, markets, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, marketing and/or financial information). Unless HACSB acknowledges that any such information provided under this Agreement is not Confidential Information, all information provided by HACSB to Consultant shall be considered to be Confidential Information. Unless approved in advance in writing or compelled to make such disclosure by a government agency, by court order, or by law, Consultant shall not disclose, transfer, distribute or allow access to any of HACSB's Confidential Information to any third parties, except those individuals employed by Consultant and who are specifically authorized by Consultant to perform the Services contemplated in this Agreement.

ARTICLE 15. Indemnity; Hold Harmless. Consultant agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Consultant's employees and subcontractors included) and damage to property, arising directly or indirectly out of the performance of the Services, the obligations herein undertaken or out of the operations conducted by Consultant, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Consultant shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Consultant shall defend any such suits at the sole cost and expense of Consultant with counsel selected by HACSB. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against HACSB or its officers, employees, and agents in any such suit, action or other legal proceeding.

ARTICLE 16. Compliance with Contract Documents. Consultant shall comply with all of the Contract Documents in connection with the performance of the Services hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control. Consultant shall also comply with all agreements, representations, warranties, covenants, and certifications of Consultant made in connection with the

procurement of this Agreement, provided that in the case of a conflict between the foregoing and the Contract Documents and this Agreement, the Contract Documents and this Agreement shall control.

ARTICLE 17. Assignment. Neither the Agreement, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Consultant without the prior written approval of HACSB. This Agreement shall be binding on the successors and assigns of the parties.

ARTICLE 18. Rights and Remedies of HACSB for Default.

In the event any work product delivered or services provided by Consultant in the performance of the Services should fail to conform to the requirements herein, or to the sample submitted by Consultant, HACSB may reject the same, and it shall become the duty of Consultant to correct the performance of services, without expense to HACSB, and immediately replace all such rejected work product with others conforming to the Agreement.

- a. In addition to any other rights and remedies HACSB may have, HACSB may require Consultant, at Consultant's expense, to send work product via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Consultant.
- b. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by Consultant, any loss or damage sustained by HACSB in procuring any work product or services which Consultant agreed to provide shall be borne and paid for by Consultant.
- c. HACSB reserves the right to offset the reasonable cost of all damages caused to HACSB against any outstanding invoices or amounts owed to Consultant or to make a claim against Consultant therefore.

ARTICLE 19. Termination. In addition to the rights of Termination for Convenience of HACSB and Termination for Default set forth in the Contract Documents, HACSB may terminate this Agreement if Consultant should file a bankruptcy petition and/or be adjudged a bankrupt, or if Consultant should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency (as referenced in HUD Form 5370-C section 1 page 1). HACSB may serve written notice upon Consultant of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement and, unless within ten (10) days after serving such notice such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon Consultant.

ARTICLE 20. No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

ARTICLE 21. Modification. This written Agreement may not be later modified except by a further writing signed by HACSB and Consultant and no term of this Agreement may be waived, except by writing signed by the party waiving the benefit of such term. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

ARTICLE 22. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested. All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardapide, Procurement and Contracts Supervisor
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841

If to Consultant:

Brett Isaacman, J.D.
IMG Construction Management
19782 MacArthur Blvd., Suite 300
Irvine, CA 92612

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 23. Complete Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between HACSB and Consultant and of all the terms of this Agreement and cannot be varied, contradicted, nor supplemented by evidence of any prior or contemporaneous oral or written agreements.

ARTICLE 24. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 25. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or of any part hereof.

ARTICLE 26. Interpretation. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties.

ARTICLE 27. Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ARTICLE 28. Subcontracting. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of HACSB. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

ARTICLE 29. Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

ARTICLE 30. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or termination.

ARTICLE 31. No Third Party Beneficiaries. Except as expressly stated herein or in the Contract Documents, there are no intended third party beneficiaries of any right or obligation assumed by the parties.

[END – SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO
AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES
PC1238 – Construction Management Services**

IN WITNESS WHEREOF, HACSB and Consultant have entered into this Agreement as of the Effective

Date: _____

IMG Construction Management

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

CERTIFICATE OF CORPORATE AUTHORITY

I, _____, certify that I am the _____ of the corporation named as Consultant herein; that _____ who signed this Agreement on behalf of Consultant, was then _____ of said corporation; that said Contract was duly signed for and in behalf of said corporation and its governing body and is within the scope of its corporate powers.

By: _____

Name: _____

Its: _____

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo

Its: Executive Director

Date: _____

Exhibit A

Scope of Services

Project Management services will generally include the following:

- Assist in the oversight, planning, and securing of public approvals for real estate development.
- Coordinates and administers development project activities including general contractor selection and oversight, identifying/managing consultants, securing necessary permits, and project design. Provide services required for management of a design-build process.

More specifically, services would include:

- Review contract design plans as requested for constructability, consistency, and adherence to County standards.
- assistant obtaining any necessary permits as required.
- Coordinate construction activities with other County departments, utilities, and municipalities for the duration of any project.
- Attend pre-construction conferences if required.
- Visit sites as required during the construction period.
- Attend requested progress meetings.
- Review shop drawings as directed by the Department.
- Review the construction schedule as directed by the Department.
- Prepare drawings and estimates for any required field changes as requested.
- Provide resident inspection services if requested.
- Assist Department in project closeout.

Scope of Services – Fee Schedule:

Position:	Rate/Hour:
Senior Project Manager	\$195.00
Project Manager	\$165.00

COST OF INSURANCE:

IMG will include at 1.5% insurance premium cost to each invoice above any fee quoted above.

Additionally Insured certificates upon request only - cost approx. \$1,000/ea.

Project specific coverages above IMG's standard policy coverage in not included.

REIMBURSABLE EXPENSES

The following expenses will be billed for on a cost plus 15% basis:

- Travel – Airfare, rental car, overnight accommodations, mileage, and toll charges
 - Mileage – .60 cents per mile, plus any toll/fastrak charges.
 - Travel expense to the job site is not included and will be billed as incurred
- City / County / State – Any fees, business licenses, or taxes.
- Printing – internal printing related to client work, 3rd party costs related to prints, plans, and project reprographics.
- Software – Registration, licensing, seat cost related to project management software.
- 3rd Parties, if required to work directly.

Exhibit B
GENERAL CONDITIONS FOR NON-CONSTRUCTION WORK
(HUD – 5370-C)

Document on Following Page

Exhibit C

Additional General Provisions

1. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Consultant warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Consultant's violation of this provision.
2. **CONTRACTOR'S POWER AND AUTHORITY:** Consultant warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Consultant agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
3. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
4. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
5. **INSURANCE:** Consultant shall not commence Services under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Consultant allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Consultant shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. Any policy of insurance required of Consultant under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

The insurance required to be carried by Consultant hereunder shall include:

- a. Compensation Insurance and Employer's Liability Insurance. Consultant shall take out and maintain during the entire term of this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance for all of employees employed at the site of the project and, in case any work is sublet, Consultant shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Consultant.

In signing this Agreement, Consultant makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

- b. Commercial General Liability Insurance. Consultant, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence; HACSB listed as Additional Insured on an attached endorsement. Such coverage shall include, but shall not be limited to, protection against claims arising from, and damage to property resulting from, activities contemplated under this Agreement. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement.

Broad form property damage endorsement must be attached. HACSB is to be named as an additional insured included on an attached endorsement for any contracts of insurance under this

paragraph b. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Consultant shall be named as an additional insured with respect to such general liability insurance policy.

- c. Automobile Liability. Consultant, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Consultant shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. Errors and Omissions Liability: \$1,000,000; combined single limit bodily and property damage liability per occurrence and \$3,000,000 aggregate or:
- e. Professional Liability: \$1,000,000; per occurrence and aggregate.
- f. Worker's Compensation. A state approved Workers Compensation and Employers Liability Insurance policy providing benefits as required by law with employer's liability limits no less than One Million and No/100 Dollars (\$1,000,000) per accident or disease, which covers all employees of the contractor and each and every contractor.

6. FORCE MAJEURE: Consultant shall be excused for performing the Services hereunder in the event that Consultant is unable to perform the Services for one of the following reasons:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal, state or local government in either its sovereign or contractual capacity.

Such delay shall be for the period of time that Consultant is delayed from performing the Services as a direct result of one of the foregoing reasons. Consultant shall provide HACSB notice within three (3) days of any such force majeure event.

7. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. Consultant shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Consultant, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at Consultant's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Consultant.
- b. Consultant shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Consultant, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Consultant during the Agreement.

8. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

9. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

10. TAXES: HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.

11. NEWS RELEASES: Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.

12. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:

- a. Consultant shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.

- b. Consultant may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Consultant, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Consultant or the operation of such goods pursuant to a current version of Consultant supplied operating software infringes a United States patent or copyright or violates a trade secret. Consultant shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Consultant shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
- d. Should the goods or software, or the operation thereof, become, or in Consultant's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Consultant at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Consultant agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Consultant under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Consultant agrees to take back such goods or software and refund any sums HACSB has paid Consultant.
- e. Consultant shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
 - i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Consultant; or,
 - ii. The operation of equipment furnished by Consultant under the control of any operating software other than, or in addition to, the current version of Consultant-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Consultant supplied software.
- f. Consultant certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Consultant to HACSB with respect to infringement of patents, copyrights or trade secrets.

13. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Consultant, require Consultant to stop all, or any part, of the Services called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Consultant, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
 - i. Cancel the Stop Work Order; or

- ii. Terminate the Services covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Consultant shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to the performance of any part of this Agreement; and
 - 2. Consultant asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
 - b. If a Stop Work Order is not canceled and the Services covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
 - c. HACSB shall not be liable to Consultant for loss of profits because of a Stop Work Order issued under this clause.
- 14. COVENANT AGAINST GRATUITIES:** Consultant warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Consultant agreed to supply shall be borne and paid for by Consultant. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 15. COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Consultant certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Services, Consultants of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Consultant may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Consultant shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.
- HACSB shall have the right to audit Consultant, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Consultant agrees to maintain accurate books and records in connection with the Services, and all payments made or received by Consultant pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Consultant shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Consultant in connection with the Services, and shall permit HACSB to interview any such employees, contractors or subcontractors. Consultant agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Services shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. 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 Consultant's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by Consultant and its subcontractors at the site of the Services in a prominent and accessible place where it can be easily seen by the workers.

16. **CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Consultant agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Consultant's books and records, and interview Consultant's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
17. **EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Consultant certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
18. **NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Consultant and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b. Consultant shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
19. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Consultant swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
20. **DRUG-FREE WORKPLACE CERTIFICATION:** Consultant certifies under penalty of perjury under the laws of the State of California that Consultant will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
21. **RECYCLING:** Consultant shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.

22. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Consultant certifies that it complies with Sections 103 and 107 of the Contract Services Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
23. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, Consultant acknowledges in accordance with Public Contract Code Section 7110, that:
- a. Consultant recognizes the importance of child and family support obligations and shall fully comply with all applicable State of California and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Consultant, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
24. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** Consultant certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Consultant shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
25. **ENVIRONMENTAL REGULATIONS:** For agreements in excess of \$100,000, Consultant certifies that it complies with the requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (3 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
26. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Consultant certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Consultant further certifies that it will immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
27. **DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Consultant certifies that Consultant is in compliance with Public Contract Code Section 10295.3.

Exhibit D

Work Authorization

Schedule Dates:

Start Date: August 11, 2021

Completion Date: August 10, 2024

Total Contract Cost: Per details provided in any Purchase Order issued by HACSB to Consultant.

Schedule Requirements – Statement of Services (“Exhibit A”)

General Conditions for Non-construction work (“Exhibit B”)

Additional General Provisions (“Exhibit C”)

Services Authorization (“Exhibit D”)

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Quitclaim Deed with Reservation of Right of Entry (Partial Easement) from Southern California Gas Company to Housing Authority of the County of San Bernardino and Housing Partners I, Inc.

RECOMMENDATION(S)

1. Approve a Quitclaim Deed with Reservation of Right of Entry (Partial Easement) from Southern California Gas Company for the abandonment in place of a 2 inch (and 1 inch) natural gas pipeline (together "Abandoned Pipeline") located within the Right of Way on real property owned by the Housing Authority of the County of San Bernardino and Housing Partners I, Inc., at 131 E. Lugonia Ave in the city of Redlands.
2. Authorize and direct the Executive Director, upon consultation with Legal Counsel, to accept and sign, finalize and record the Quitclaim Deed with Reservation of Right of Entry (Partial Easement) with the County of San Bernardino Recorder and any ancillary documents or exhibits necessary to effectuate the abandonment.

(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB is a leading developer and provider of affordable housing in the County of San Bernardino.

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

Approval of this item will not result in a significant financial impact to the Housing Authority of the County of San Bernardino (HACSB), the cost of recording these easement documents will be waived since HACSB is exempt from County of San Bernardino fees for recording as a public agency.

BACKGROUND INFORMATION

HACSB currently owns and manages over 2,200 units of multi-family housing throughout San Bernardino County. Various utility companies provide services to these properties. Utility company, Southern California Gas, currently holds an easement for a now abandoned gas line that is located on the future phases of the Valencia Grove housing development site. HACSB plans to construct 104 new affordable apartment units and single-family homes at this location. Southern California Gas has agreed to relinquish its easement rights to accommodate the development of this new affordable community. As a result, approval of this item is necessary for Southern California Gas Company to execute a Quitclaim Deed with Reservation of Right of Entry (Partial Easement) at HACSB's real property at 131 E. Lugonia Ave in the city of Redlands. This action will not require any actual physical site work. The Quitclaim Deed, however, is required for HACSB to move forward with this project and to secure required public approvals.

Quitclaim Deed with Reservation of Right of Entry (Partial Easement) from Southern California Gas Company to Housing Authority of the County of San Bernardino and Housing Partners I, Inc.
August 10, 2021

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

Recording requested by and
when recorded mail to:

Southern California Gas Company
8101 Rosemead Blvd., ML SC 722K
Pico Rivera, California 90660-5100
Attn.: Land & Right of Way

A.P.N.:	0167-371-03, 0167-371-04, 0167-372-03, 0167-373-03	Documentary Transfer Tax \$ <u>0</u>
		_____ Computed on full value of property conveyed
Leak Survey Area:	RED 17	_____ Computed on full value less liens and encumbrances remaining at time of sale
		_____ For Southern California Gas Company
R.W.:	21979	

**QUITCLAIM DEED with RESERVATION OF RIGHT OF ENTRY
(PARTIAL)
(EASEMENT)**

SOUTHERN CALIFORNIA GAS COMPANY, a California corporation ("Grantor"), in consideration of the sum of One Dollar (\$1.00), receipt of which is acknowledged, does hereby remise, release and quitclaim to HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, A PUBLIC BODY, CORPORATE AND POLITIC and HOUSING PARTNERS I, INCORPORATED, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION ("Grantee"), a portion of its right, title and interest in that certain real property in the County of San Bernardino, State of California, described as follows:

That portion of that certain Right of Way (R.W. No. 21979) granted to Southern California Gas Company, a California corporation, by Document No. 276, recorded January 27, 1961, in San Bernardino County, State of California, as described in Exhibit "A", attached hereto, and as depicted in Exhibit "B", attached hereto, both as made a part hereof.

Grantor shall be allowed to abandon in place a 2 inch (and 1 inch) natural gas pipeline (together "Abandoned Pipeline") located on Grantee's property within the Right of Way described above. Grantee acknowledges that the Abandoned Pipeline is made of steel and is wrapped with material that contains asbestos which is presently intact and non-friable and, therefore, non-hazardous. Grantee acknowledges that removing or cutting the asbestos-containing pipe wrap using mechanical means, however, may cause the asbestos to become friable and, therefore, hazardous. Consequently, Grantee shall take appropriate caution and actions in compliance with all applicable laws and regulations when removing or cutting all or any portion of the Abandoned Pipeline or its pipe wrap, or when conducting any digging, drilling, excavation, or installation of any underground facility, or any action that may pose a risk of damage to the pipe wrap, including, but not limited to, compliance with the asbestos NESHAP rule, and the use of certified asbestos abatement contractors ("Compliance Requirements").

Grantor disclaims any and all liability for any losses, damages or claims related to the Abandoned Pipeline arising from or related to Grantee's failure to observe any of the Compliance Requirements. Notwithstanding anything herein to the contrary, Grantor hereby reserves a right of entry over the above-

described real property for the purpose of performing inspections and monitoring of the Abandoned Pipeline, together with such other activities as may be reasonably related thereto.

If any portion of the Abandoned Pipeline interferes with Grantee's or its successors' or assigns' use of Grantee's Property or any portion thereof, then upon written request by Grantee, Grantor shall remove that portion of the Abandoned Pipeline, at Grantor's sole cost and expense, and retain the full salvage value of the portion of the Abandoned Pipeline that Grantor removed.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this ____ day of _____, 20__.

GRANTEE: HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, A PUBLIC BODY, CORPORATE AND POLITIC



Signature

GUSTAV JOSLIN

Print Name

DEPUTY DIRECTOR

Title

GRANTEE: HOUSING PARTNERS I, INCORPORATED, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION



Signature

Anthony Perez

Print Name

Executive Director

Title

ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.


STATE OF CALIFORNIA }
COUNTY OF San Bernardino }

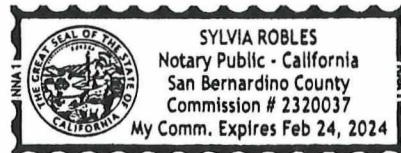
On May 6, 2021 before me, Sylvia Robles, a Notary Public, personally appeared Anthony Perez, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature: 
Commission #: 2320037
Commission Expiration: 2/24/2024



ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

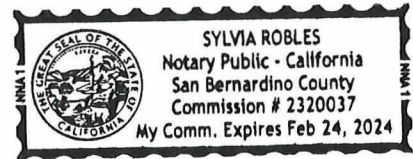
STATE OF CALIFORNIA }
COUNTY OF San Bernardino }

On May 11, 2021 before me, Sylvia Robles, a Notary Public, personally appeared Gus Joslin, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)



Signature: Sylvia Robles
Commission #: 2320037
Commission Expiration: 2/24/2024

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed this ____ day of _____, 20__.

**SOUTHERN CALIFORNIA
GAS COMPANY**

Signature

Artemis Manos
Land & Right of Way Supervisor
Southern California Gas Company

ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF _____ }

On _____, 20__ before me, _____, a Notary Public,
personally appeared Artemis Manos, who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature: _____

Commission #: _____

Commission Expiration: _____



DAVID EVANS
AND ASSOCIATES INC.

TRANSMITTAL

DATE: May 24, 2021

TO: Southern California Gas Company
Right of Way – ATTN: Jared Gauthier
1981 W. Lugonia Avenue
Redlands, CA 92374

FROM: Robert Walker

TELEPHONE NO: 661-284-7447

SUBJECT: Gas Easement Partial Quitclaim

PROJECT: ONYX0000.0001
Tract No. 18762-1, Redlands, CA

VIA: ☐ REGULAR MAIL ☒ OVERNIGHT MAIL ☐ COURIER ☐ EMAIL
☐ OTHER

COPIES	DESCRIPTION
1	Legal description and exhibit map of proposed Gas Company easement quitclaim

☐ AS YOU REQUESTED ☒ FOR YOUR APPROVAL ☐ RETURN REQUESTED ☐ FOR YOUR INFORMATION
☐ RECORDS MANAGEMENT ☒ FOR YOUR USE ☒ FOR YOUR REVIEW ☐ OTHER

COMMENTS

LEGAL DESCRIPTION
Areas to be Quitclaimed**Parcel "A"**

In the City of Redlands, County of San Bernardino, State of California, being a portion of the RIGHT OF WAY granted to SOUTHERN CALIFORNIA GAS COMPANY, described in document recorded January 27, 1961, in Book 5337, Page 173 of Official Records, described as follows:


All of the 44.00-foot wide and 50.00-foot wide strips of land described in said Book 5337, Page 173 of Official Records, together with that portion of the 48.00-foot wide strip of land described therein lying easterly of that certain portion of the westerly line of the Remainder Parcel of Tract No. 18762-1, recorded in Map Book 337, Pages 1 through 3, inclusive, records of said County, shown as having a bearing and distance of N 00°20'32" W, 213.96'.

Except any portion thereof previously quitclaimed by Quitclaim Deed recorded May 28, 2015 as Instrument No. 2015-0218592, Official Records of said County.

Containing 100,893 square feet (2.316 acres), more or less

See Exhibit "B" for a plat depicting the above described land.

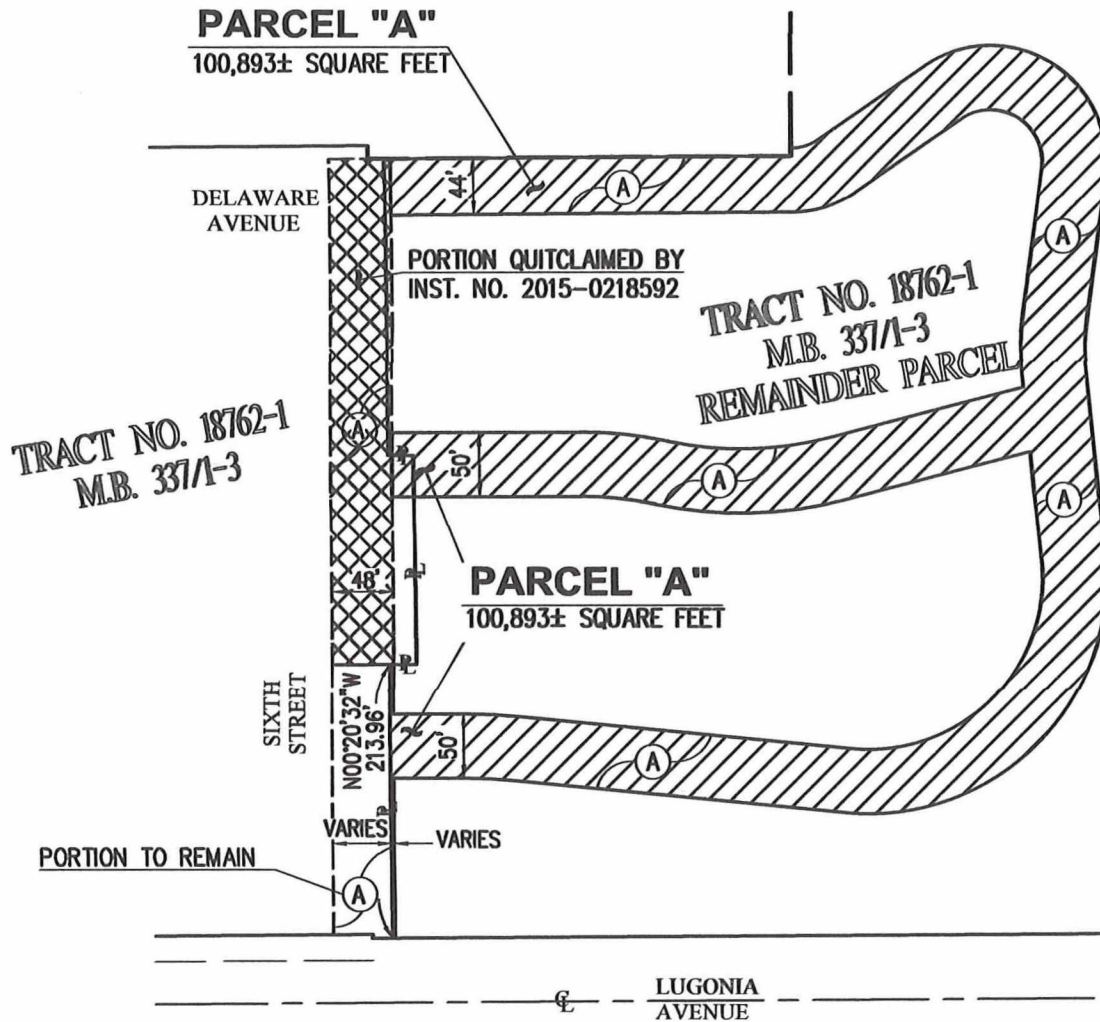
The real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature 
Robert Walker, PLS 7137



Date 05/24/2021

EXHIBIT "B"



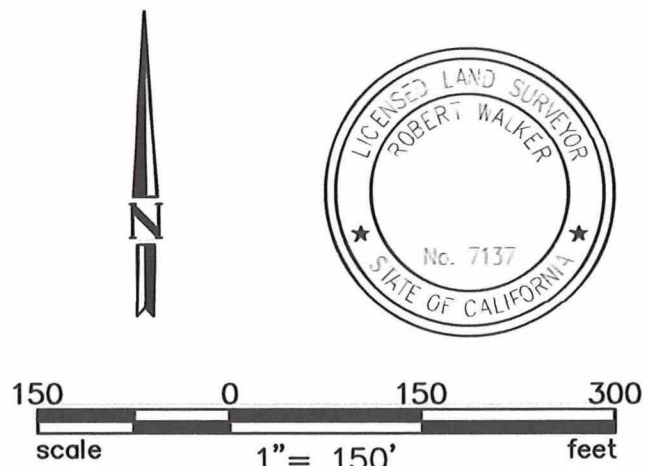
LEGEND

- (A) EXISTING SOUTHERN CALIFORNIA GAS COMPANY EASEMENT PER DOCUMENT RECORDED JANUARY 27, 1961, IN BOOK 5337, PAGE 173 OF OFFICIAL RECORDS.

EASEMENT AREA TO BE QUITCLAIMED



PREVIOUSLY QUITCLAIMED



**DAVID EVANS
AND ASSOCIATES INC.**
25152 SPRINGFIELD COURT, SUITE 350
SANTA CLARITA, CA 91355
Phone: 661-284-7400

Job Number:
ONXY0001
Date:
05/19/2021
Scale: 1"=150'
Sheet 1 of 1

Drawing Name: P:\0\ONXY00000001\0400CAD\EXHIBITS\Gas Company Easement Quitclaim\ONXY0000.0001 Parcel A Gas Company Easement Quitclaim.dwg
Last Opened: May 24, 2021 - 1:56pm by: Rawa

ACCEPTANCE

THIS IS TO CERTIFY, that the interest in real property conveyed by the within instrument to Housing Authority of the County of San Bernardino, a public entity, is hereby accepted by the undersigned officer on behalf of the Housing Authority of the County of San Bernardino, pursuant to authority conferred by Motion at the August 10, 2021, Board of Commissioners meeting of said Housing Authority and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

Maria Razo,
Executive Director

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Recording of Final Tract Map No. 18829 for the Arrowhead Grove Project

RECOMMENDATION(S)

1. Approve recording of the Final Map for Arrowhead Grove, former Waterman Gardens site, Tract # 18829, located in San Bernardino, subject to City of San Bernardino City Council approval:
 - a) Approve, or ratify as necessary, recording and authorize the Executive Director to sign the Final Map.
 - b) Authorize the Executive Director to sign the Subdivision Improvement Agreement.
 - c) Authorize the Executive Director to Negotiate and Execute Agreement(s) as necessary to effectuate the recording of the Final Map for Tract #18829, including but not limited to Performance, Warranty, Maintenance and Monumentation bonds as required by the City of San Bernardino and, upon consultation with legal counsel, to execute any other non-substantive action necessary to complete the recording.
 2. Instruct the Executive Director or her designee to do the following:
 - a) Prepare the Final Map for recording.
 - b) Prepare the Subdivision Improvement Agreement for recording
- (Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

HACSB is a leading developer and provider of affordable housing in the County of San Bernardino.

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

Board approval of this item will have minimal financial impact on the Housing Authority of the County of San Bernardino (HACSB). Recording fees will be nominal and the City of San Bernardino (City) is already in possession of surety (contract security) and/or the obligation to complete certain improvements mentioned in the conditions of approval through deposits made in previous phases. The eventual transfer of the remainder parcel(s) of land at the former Waterman Gardens public housing site will ensure that HACSB is compensated for the land at fair market value (FMV) as documented by current appraisal(s) commissioned by HACSB and approved by the United States Department of Housing and Urban Development (HUD).

BACKGROUND INFORMATION

Arrowhead Grove, formerly known as Waterman Gardens, is HACSB's multi-phase redevelopment of the 39-acre site in the city of San Bernardino, which formerly housed 252 families in the HUD public housing program. The project was entitled by the City in 2014 to support development of 411 new mixed-income housing units as well as commercial and community

facilities in an effort to revitalize one of the city's most distressed neighborhoods. The City approved Tentative Tract Map No. 18829 for the project along with a Conditional Use Permit and entered into a Development Agreement with HACSB to implement the revitalization project.

The first two phases of residential development have now been completed which is comprised of a total of 246 new family apartment units. The individual parcels of land on which the first two phases were built were created by adjusting the site's original four lot lines. This allowed costs associated with infrastructure improvements required by the City upon recording of a new subdivision map for the overall site to be partially deferred, which was necessary to reduce costs to allow the first two residential phases to commence. The master plan for the overall development (Tract Map No. 18829) calls for the overall site to be subdivided into a total of eight parcels, each representing a separate phase of development. Recording final Tract Map No. 18829 will finalize this subdivision and allow further development of the site to continue.

The Conditions of Approval for the overall project requires that HACSB improve infrastructure at the perimeter of the property (streets, sidewalks, drainage, etc.) in order to minimize the impact that the new development will have on the surrounding neighborhood. Typically, as is the case with the first two phases of construction, each phase of construction will bear the cost of the infrastructure improvements attributable to future use of their project. For example, a variety of such improvements to Baseline, Olive, La Junta and Crestview Streets have been completed with the first two phases, including street and sidewalk widening, landscape, street lighting, traffic signals, bus stops, etc. Since the Development entity of the initial two phases has successfully completed this work and also posted bonds that will serve as assurances to the City that the required infrastructure improvements associated with the overall site will be completed, the City is not requiring that any additional bonding be submitted in order to record the final map. The Subdivision Agreement between HACSB and the City memorializes this, facilitates recording of the final map, and allows development to proceed for the remainder parcels.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 27, 2021.

**AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENT IN TRACT NO.
18829**

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2021, by and between the CITY OF SAN BERNARDINO, a Municipal Corporation, hereinafter referred to as "City," and HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body, corporate and politic, hereinafter referred to as "Subdivider." Sometimes the parties hereinafter are referred to individually as a "Party" or collectively as the "Parties."

RECITALS

A. WHEREAS, Subdivider has presented to City for approval a final subdivision map (hereafter called "map") entitled Tract Map 18829; and,

B. WHEREAS, Tract Map 18829 And is attached hereto and incorporated herein as Exhibit A.

C. WHEREAS, the map has been filed with the City for presentation to the City Council (hereinafter called "Council") of the City for its approval, which map is hereby referred to and incorporated herein; and,

D. WHEREAS, Subdivider has requested approval of the map prior to the construction and completion of improvements, including all streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the subdivision (hereinafter called "subdivision") designated in the map, all in accordance with, and as required by, the Plans and Specifications for all or any of said improvements in, appurtenant to, or outside the limits of subdivision, which Plans and Specifications are now on file in the Office of the City Engineer of the City; and,

E. WHEREAS, Council has approved said map and accepted the dedications therein offered, or some thereof, on condition that Subdivider first enter into and execute this Agreement with the City; and,

F. WHEREAS, This Agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Title 19 of the San Bernardino Municipal Code.

G. WHEREAS, Subdivider and City desire to enter into this Agreement for the completion of the work including Grading, Street, Utility, and Storm Drains and the making of the improvements listed above.

NOW THEREFORE, for and in consideration of the approval of the map and of the acceptance of the dedications, or some thereof, therein offered and in order to insure satisfactory performance by Subdivider of Subdivider's obligations under said Subdivision Map Act and said Ordinance, the Parties agree as follows:

1. Performance of Work. Subdivider will do and perform, or cause to be done and performed, at Subdivider's own expense, in a good and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Subdivider will furnish all required materials, all to the satisfaction of the City Engineer of City, the work and improvements within (and/or without) the subdivision to complete the improvements in accordance with the Plans and Specifications on file as hereinbefore specified, or with any changes required or ordered by said Engineer which, in his opinion, are necessary or required to complete the work. The Plans and Specifications are attached hereto and incorporated herein by this reference as Exhibit B.

2. Work: Places and Grades to be Fixed by Engineer. All of said work is to be done at the places, of the materials, in the manner, and at the grades, all as shown upon the Plans and Specifications therefor, heretofore approved by City Engineer and which are now on file in his office, and to the satisfaction of said City Engineer.

3. Work: Time for Commencement and Performance. City hereby fixes the time for the completion of said work to be within 24 months from the date hereof.

4. Time of Essence - Extension. Time is of the essence for this Agreement; provided that, in the event good cause is shown therefor, the City Engineer, in his or her sole and absolute discretion, may extend the time for completion of the improvements hereunder. Any such extension may be granted without notice to the Subdivider's surety, and extensions so granted shall not relieve the surety's liability on the bond to secure the faithful performance of this Agreement. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle Subdivider to an extension.

5. Repairs and Replacements. Subdivider shall replace, or have replaced, or repair, or have repaired, as the case may be, all pipes and monuments shown on the map which have been destroyed or damaged, and Subdivider shall replace, or have replaced, repair, or have repaired, as the case may be, or pay to the owner the entire cost of replacement or repairs, of any and all property damaged or destroyed by reason of any work done hereunder, whether such property be owned by the United States, or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City, or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

a. Default; Notice of Violation; Stop Work Order. If City determines that there is a violation of applicable federal, state or local law, ordinances, regulations or other requirements, or the terms and conditions of this Subdivision Agreement, the City and/or City Engineer may issue a Notice of Violation and Demand for Compliance and/or a Stop Work Order. The City may declare the Subdivider to be in default or violation of this Subdivision Agreement and make written demand upon Subdivider or its surety, or both, to immediately remedy the default or violation. Subdivider shall comply with the Notice of Violation and/or Stop Work Order and shall substantially commence the work required to remedy the default or violation with the time specified in the Notice of Violation. If the default or violation constitutes an immediate threat to

the public health, safety, or welfare, City and/or City Engineer may provide the Notice of Violation verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof.

b. Failure to Remedy Violation; City Action. If the work required to remedy the notices of default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice of Violation, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity at its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense and liability of Subdivider or surety.

6. Utility Deposits - Statement. Subdivider shall file with the City Clerk, prior to the commencement of any work to be performed within the area delineated on the map, a written statement signed by Subdivider, and each public utility corporation involved, to the effect that Subdivider has made all deposits legally required by such public utility corporation for the connection of any and all public utilities to be supplied by such public utility corporation within the Subdivision.

7. Permits: Compliance with Law. Subdivider shall, at Subdivider's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices and pay all fees and taxes required by law. Subdivider shall comply with all provisions of the Subdivision Map Act and Title 19 San Bernardino Municipal Code.

8. Superintendence by Subdivider. Subdivider shall give personal superintendence to the work on said improvement, or have a competent foreman or superintendent, satisfactory to the City Engineer on the work at all times during progress, with authority to act for Subdivider.

9. Inspection by City. Subdivider shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the work and to the shops wherein the work is in preparation.

10. Contract Security. Concurrently with the execution hereof, Subdivider shall furnish to City improvement security as follows:

a. An amount equal to at least one hundred percent (100%) of the total estimated cost of the improvement and acts to be performed as security for the faithful performance of this Agreement;

b. An amount equal to at least fifty percent (50%) of the total estimated cost of the improvements and acts to be performed as security for the payment of all persons performing labor and furnishing materials in connection with this Agreement; and,

c. An amount equal to at least twenty-five percent (25%) of the total estimated cost of the improvements and acts to be performed as security for the guarantee and warranty of the work for a period of one (1) year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished. As a part of the obligation guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing the obligation secured. The type of security furnished shall be in the form of bonds, deposits or letters of credit as provided in Title 19 San Bernardino Municipal Code, and the type shall be at the option of and subject to the approval of the City Engineer and the City Attorney.

11. Subdivider's Insurance. Subdivider shall not commence work under this Agreement until Subdivider shall have obtained all insurance required under this paragraph, and such insurance shall have been approved by City Attorney as to form, amount and carrier, nor shall Subdivider allow any contractor or subcontractor to commence work on his contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

a. Worker's Compensation Insurance/Employer's Liability Insurance. Subdivider shall maintain, during the life of this Agreement, Worker's Compensation Insurance and Employer's Liability Insurance for all Subdivider's employees employed at the site of improvement, and, in case any work is sublet, Subdivider shall require any contractor or subcontractor similarly to provide Worker's Compensation Insurance and Employer's Liability Insurance for all contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Subdivider. In case any class of employees engaged in work under this Agreement at the site of the project is not protected under any Worker's Compensation Law, Subdivider shall provide, and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. Subdivider shall indemnify City for any damage resulting to it from failure of either Subdivider or any contractor or subcontractor to take out or maintain such insurance.

b. Public Liability and Property Damage Insurance. Subdivider shall take out and maintain, during the life of this Agreement, such public liability and property damage insurance as shall insure City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this Agreement from claims for damages for personal injury, (as defined hereunder), including death, as well as from claims for property damage or product liability which may arise from Subdivider's or any contractor's or subcontractor's operations hereunder, whether such operations be by Subdivider or any contractor or subcontractor, or by anyone, including, without limitation, agents, employees or independent contractors, directly or indirectly employed by either Subdivider or any contractor or subcontractor, and the amounts of such insurance shall be as follows:

(1) Public Liability Insurance. In an amount not less than One Million Dollars (\$1,000,000.00) for injuries, including, but not limited to, death, to any one person,

and, subject to the same limit for each person, in an amount not less than One Million Dollars (\$1,000,000.00) on account of any one occurrence; Product Liability Insurance coverage should be part of the Public Liability Insurance;

(2) Property Damage Insurance. In an amount not less than One Million Dollars (\$1,000,000.00) for damage to the property of each person on account of any one occurrence.

In the event that any of the aforesaid insurance policies provided for in this Paragraph 11 insures any entity, person, board or commission other than those mentioned in this paragraph, such policy shall contain a standard form of cross-liability endorsement, insuring on such policy City, its elective and appointive boards, commissions, officers, agents and employees, Subdivider and any contractor or subcontractor performing work covered by this Agreement.

(3) Tail Coverage. Insurance coverage, albeit for public liability or property damage, shall be written, if possible, on an "occurrence" form rather than a "claims made" policy. If the insurance policy is written on a "claims made" policy, then additional coverage, entitled "tail coverage" must be purchased to cover a period of one (1) year from completion of the project. All subcontractors must and shall comply with the same insurance provisions as the contractor(s) and subdivider(s).

(4) Personal Injury - Defined. As used herein, the term "personal injury" shall be defined as a hurt or damage to one's person including, without limitation, damage to health, cuts, bruises, broken limbs and/or bones, or the like, disabilities or impairments, including aggravation of existing injuries, or invasion of personal rights, including libel, slander, criminal conversation, malicious prosecution, false imprisonment or mental suffering.

12. Evidence of Insurance. Subdivider and contractor shall furnish City, concurrently with the execution hereof, with satisfactory evidence of the insurance required, and evidence that City is named and endorsed on the policy as an additional insured. Subdivider and contractor shall also provide City with evidence that each carrier will be required to give City at least ten (10) days prior written notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement. Subdivider and its contractors shall furnish the City with original certificates of insurance affecting coverage required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided or approved by the City. All certificates and endorsements must be received and approved by the City before work pursuant to this Agreement can begin. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

13. Hold Harmless/Indemnification. Subdivider(s)/Developer(s) hereby agree to and shall protect, defend, indemnify and hold the City and its elective and appointive boards, commissions, officers, agents, employees and servants free and harmless from any and all liability losses, damages, claims, liens, demands and cause of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interests, court costs, attorney's/legal fees,

and all other expenses incurred by the City arising in favor on any party, including claims, liens, debts, demands for lost wages or compensation, personal injuries, including employees of the City, death or damages to property (including property of the City) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly, (including from the negligent performance by its officers, employees, agents) from the terms of this Agreement, whether such operations/incidents are caused by contractor, Subdivider or any of contractor/Subdivider's subcontractors, contractors or by any one or more persons directly or indirectly employed by or acting as agent for contractor, Subdivider, or any one of contractor or Subdivider's contractors or subcontractors. Subdivider/Developer shall investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at the sole expense of the Subdivider/Developer even if the claim or claims alleged are groundless, false or fraudulent. Subdivider agrees to, and shall, defend City, its appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations, provided as follows:

a. That City does not, and shall not, waive any rights against Subdivider which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by City, or by deposit with City by Subdivider, or any of the insurance policies described in Paragraph 11 hereof (b) That the aforesaid hold harmless agreement by Subdivider shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied or approved of Plans and/or Specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

This provision is not intended to create any cause of action in favor of any third party against Subdivider/Developer or the City or to enlarge in any way the Subdivider's/Developer's liability but is intended solely to provide for indemnification of the City from liability for damage or injuries to third persons or property arising from Subdivider/Developer's performance hereunder.

14. Title to Improvements. Title to, and ownership of, all improvements constructed hereunder by Subdivider shall vest absolutely in City, upon completion and acceptance of such improvements by City.

15. Repair or Reconstruction of Defective Work. If, within a period of one year after final acceptance of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Subdivider, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement or the Specifications referred to herein, Subdivider shall, without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act promptly or in accordance with this requirement, or should the exigencies of the situation as determined by the City in the exercise of its sole discretion require repair, replacement or reconstruction before the Subdivider can be notified, City may, at its option, make the necessary repairs or replacements or perform the

necessary work, and Subdivider shall pay to the City the actual cost of such repairs plus fifteen percent (15%).

16. Subdivider Not Agent of City. Neither Subdivider nor any of Subdivider's agents or contractors are, or shall be, considered to be agents of City in connection with the performance of Subdivider's obligations under this Agreement.

17. Cost of Engineering and Inspection. Subdivider shall pay to City the costs of all permit fees for all engineering inspections and other services connected with the City in regard to the subdivision. Said fees shall be paid prior to commencing any construction.

18. Breach of Agreement; Performance by Surety or City. In the event of any such notice, Subdivider's surety shall have the duty to take over and complete the work and the improvement herein specified; provided, however, that it the surety, within five days after the serving upon of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within five days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Subdivider as may be on the site of the work and necessary therefor.

19. Notices. All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

- (a) Notices required to be given to City shall be addressed as follows:

City Manager
City Hall
290 North "D" Street
San Bernardino, California 92401

- (b) Notices required to be given to Subdivider shall be addressed as follows:

Click here to enter text.
Click here to enter text.
Click here to enter text.

- (c) Notices required to be given to surety of Subdivider shall be addressed as follows:

Click here to enter text.
Click here to enter text.
Click here to enter text.
Click here to enter text.

Provided that any party or the surety may change such address by notice in writing to the other party, and, thereafter, notices shall be addressed and transmitted to the new address.

20. Successors Bound. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective legal representatives, successors, heirs and assigns.

21. Incorporation of Recitals. The recitals above are true and correct and hereby incorporated herein by this reference.

22. Integration. This Agreement constitutes the final, complete, and exclusive expression of the intent of the Parties.

23. Modifications. This Agreement can only be changed, modified, amended, supplemented, or rescinded in a separate writing signed by both Parties.

24. Waivers. All waivers must be in writing. Failure to insist upon strict performance of any provision, right, duty, or obligation in this Agreement is not a waiver of the right to enforce that provision, right, duty, or obligation, nor any other provision, right, duty, or obligation in the future.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

26. Venue. The venue of any disputes arising out of this Agreement shall be the Superior Court of the State of California for the County of San Bernardino.

27. Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

28. Authority. The persons signing this Agreement hereby warrant that he or she has the authority to bind the Party for which he or she is signing.

29. Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion has never been part of this Agreement.

30. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of the day and year first above written.

ATTEST:

CITY OF SAN BERNARDINO

By: _____
Genoveva Rocha, CMC, City Clerk

By: _____
Robert Field, City Manager
City of San Bernardino

Approved as to form:

SUBDIVIDER:

By: _____
Sonia R. Carvalho, City Attorney

By: _____

By: _____

EXHIBIT “A”
TRACT MAP 18829

EXHIBIT “B”

PLANS AND SPECIFICATIONS

INSTRUCTIONS

If the Subdivider is a corporation, the Agreement must be executed in the corporate name and signed by the President or a Vice-President and the Secretary or Assistant Secretary, and the corporate seal affixed. If the Subdivider is a partnership, it must be signed by all partners. If the subdivider is an individual doing business under a fictitious name, it must be signed by all persons having an interest in the business, and the fictitious name must be signed also. The Agreement must be notarized.

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of _____ }

On _____ before me, _____
(Here insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature

(Notary Public Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

TRACT MAP NO. 18829

BEING A PORTION OF LOTS 11, 12, 13 AND 14, IN BLOCK 42, RANCHO SAN BERNARDINO AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE 2, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

TRANSTECH ENGINEERS

SEPTEMBER 2020

OWNER’S STATEMENT:

WE HEREBY STATE WE ARE ALL AND THE ONLY PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND SUBDIVIDED AS SHOWN ON THIS MAP, AND WE CONSENT TO THE PREPARATION AND RECORDATION OF THIS FINAL MAP.

WE HEREBY DEDICATE TO THE CITY OF SAN BERNARDINO FOR STREET AND PUBLIC UTILITY PURPOSES, BASELINE STREET, WATERMAN AVENUE AND OLIVE AVENUE AS SHOWN ON THIS MAP.

THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

BY: _____

TITLE: _____

BENEFICIARIES:

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS BENEFICIARY UNDER DEEDS OF TRUST RECORDED APRIL 25, 2016 AS INSTRUMENT NO. 2016–0155821, OFFICIAL RECORDS AND RECORDED AUGUST 30, 2018 AS INSTRUMENT NO. 2018–0322465, OFFICIAL RECORDS AND AS AMENDED AND RESTATED DEED OF TRUST RECORDED DECEMBER 11, 2018 INSTRUMENT NO. 2018–0458231, OFFICIAL RECORDS.

BY: _____

PRINT NAME:

TITLE: _____

BANK OF AMERICA, N.A., AS BENEFICIARY UNDER A DEED OF TRUST RECORDED OCTOBER 1, 2019 AS INSTRUMENT NO. 2019–0352089, OFFICIAL RECORDS.

BY: _____

PRINT NAME:

TITLE: _____

THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, A PUBLIC BODY, CORPORATE AND POLITIC, AS BENEFICIARY UNDER DEEDS OF TRUST RECORDED OCTOBER 1, 2019 AS INSTRUMENT NO. 2019–0352091, OFFICIAL RECORDS AND INSTRUMENT NO. 2019–0352092, OFFICIAL RECORDS.

BY: _____

PRINT NAME:

TITLE: _____

THE COUNTY OF SAN BERNARDINO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, AS BENEFICIARY UNDER A DEED OF TRUST RECORDED OCTOBER 1, 2019 AS INSTRUMENT NO. 2019–0352096, OFFICIAL RECORDS.

BY: _____

PRINT NAME:

TITLE: _____

THE CITY OF SAN BERNARDINO, A CALIFORNIA MUNICIPAL CORPORATION, AS BENEFICIARY UNDER DEEDS OF TRUST RECORDED OCTOBER 1, 2019 AS INSTRUMENT NO. 2019–0352101, OFFICIAL RECORDS AND AS INSTRUMENT NO. 2019–0352102, OFFICIAL RECORDS.

BY: _____

PRINT NAME:

TITLE: _____

DIGNITY HEALTH, A CALIFORNIA NON PROFIT PUBLIC BENEFIT CORPORATION, AS BENEFICIARY UNDER A DEED OF TRUST RECORDED OCTOBER 1, 2019 AS INSTRUMENT NO. 2019–0352105, OFFICIAL RECORDS.

BY: _____

PRINT NAME:

TITLE: _____

CITY OF SAN BERNARDINO, AS BENEFICIARY UNDER A LEASEHOLD DEED OF TRUST RECORDED MARCH 21, 2016 AS INSTRUMENT NO.S 2016–0106069, OFFICIAL RECORDS.

BY: _____

PRINT NAME:

TITLE: _____

THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, AS BENEFICIARY UNDER THE LEASEHOLD DEEDS OF TRUST RECORDED MARCH 21, 2016 AS INSTRUMENT NO.S 2016–0106073 AND 2016–0106076, OFFICIAL RECORDS.

BY: _____

PRINT NAME:

TITLE: _____

SIGNATURE OMISSIONS:

PURSUANT TO THE PROVISIONS OF SECTION 66436 (a)(3)(A)(i–viii) OF THE SUBDIVISION MAP ACT, THE SIGNATURES OF THE FOLLOWING HAVE BEEN OMITTED AS THEIR INTERESTS CANNOT RIPEN INTO A FEE.

CITY OF SAN BERNARDINO, HOLDER OF AN EASEMENT FOR STREETS AND HIGHWAYS, RECORDED MARCH 11, 1971 IN BOOK 7624, PAGE 836 OFFICIAL RECORDS. DOES NOT AFFECT.

CITY OF SAN BERNARDINO, HOLDER OF AN EASEMENT FOR PIPELINES, RECORDED APRIL 17, 1915 IN BOOK 572, PAGE 110 OF DEEDS AND RE–RECORDED MAY 20, 1915 IN BOOK 573, PAGE 24 OF DEEDS.

CITY OF SAN BERNARDINO, HOLDER OF AN EASEMENT FOR PIPELINES, RECORDED APRIL 23, 1915 IN BOOK 572, PAGE 180 OF DEEDS.

SOUTHERN CALIFORNIA EDISON COMPANY, HOLDER OF AN EASEMENT FOR UTILITIES, RECORDED DECEMBER 31, 1951 AS INSTRUMENT NO. 303 IN BOOK 2874, PAGES 410, OFFICIAL RECORDS.

CITY OF SAN BERNARDINO, HOLDER OF AN EASEMENT FOR DRAINAGE RECORDED APRIL 30, 1954 AS INSTRUMENT NO. 363, IN BOOK 3375, PAGE 249, OFFICIAL RECORDS. DIMENSIONS OF EASEMENT NOT SHOWN IN DOCUMENT.

CITY OF SAN BERNARDINO, HOLDER OF AN EASEMENT FOR STREET AND HIGHWAY AND INCIDENTAL PURPOSES, RECORDED MARCH 22, 1974 AS INSTRUMENT NO. 416, IN BOOK 8393, PAGE 613, OFFICIAL RECORDS.

SOUTHERN CALIFORNIA GAS COMPANY, HOLDER OF AN EASEMENT FOR PUBLIC UTILITIES, RECORDED FEBRUARY 1, 2019 AS INSTRUMENT NO. 2019–0033642, OFFICIAL RECORDS. DIMENSIONS OF EASEMENT NOT SHOWN IN DOCUMENT.

SOUTHERN CALIFORNIA GAS COMPANY, HOLDER OF AN EASEMENT FOR PIPELINES AND INCIDENTAL PURPOSES, RECORDED MAY 24, 1985 AS INSTRUMENT NO. 85–124547, OFFICIAL RECORDS. LOCATION OF EASEMENT NOT SHOWN IN DOCUMENT.

SOUTHERN CALIFORNIA EDISON COMPANY, HOLDER OF AN EASEMENT FOR UTILITIES AND INCIDENTAL PURPOSES, RECORDED NOVEMBER 20, 1986 AS INSTRUMENT NO. 86–348537, OFFICIAL RECORDS. BLANKET IN NATURE.

STEVEN J. TILDY, HOLDER OF AN EASEMENT FOR INGRESS AND EGRESS RECORDED FEBRUARY 28, 2005 AS DOCUMENT NO. 2005–0139627, AND AS DOCUMENT NO. 2005–0139629 BOTH OFFICIAL RECORDS.

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA AND WATERMAN GARDENS PARTNERS 1, L.P. HOLDERS OF EASEMENTS AS CONTAINED IN DOCUMENT ENTITLED "DECLARATION PROVIDING FOR RECIPROCAL EASEMENTS" DATED AS OF APRIL 1, 2016, AND RECORDED APRIL 19, 2016 AS INSTRUMENT NO. 2016–0148598, OFFICIAL RECORDS AND AS AMENDED AND RESTATED DECLARATION PROVIDING FOR RECIPROCAL EASEMENTS RECORDED OCTOBER 1, 2019 AS INSTRUMENT NO. 2019–0352083, OFFICIAL RECORDS. DIMENSIONS OF EASEMENT NOT SHOWN IN DOCUMENT.

SOUTHERN CALIFORNIA EDISON COMPANY, HOLDER OF AN EASEMENT FOR PUBLIC UTILITIES RECORDED OCTOBER 26, 2016 AS INSTRUMENT NO. 2016–0449335, OFFICIAL RECORDS.

SOUTHERN CALIFORNIA EDISON COMPANY, HOLDER OF AN EASEMENT FOR ELECTRICAL SUPPLY SYSTEMS AND COMMUNICATIONS SYSTEMS, RECORDED OCTOBER 26, 2016 AS INSTRUMENT NO. 2016–0449336, OFFICIAL RECORDS.

SEE SHEET 2 FOR CONTINUATION OF SIGNATURE OMISSIONS

BOARD OF SUPERVISOR’S CERTIFICATE:

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$_____ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL TAXES, (STATE, COUNTY, MUNICIPAL OR LOCAL), AND ALL SPECIAL ASSESSMENTS, COLLECTED AS TAXES, WHICH AT THE TIME OF THE FILING OF THIS MAP WITH THE COUNTY OF SAN BERNARDINO ASSESSOR–RECORDER–COUNTY CLERK ARE A LIEN AGAINST SAID PROPERTY, BUT NOT YET PAYABLE AND THAT THE SUBDIVIDER HAS FILED WITH ME A CERTIFICATE BY THE PROPER OFFICER GIVING HIS ESTIMATE OF THE AMOUNT OF SAID TAXES AND SPECIAL ASSESSMENTS, AND SAID BOND IS HEREBY ACCEPTED.

DATE: _____

LYNNA MONELL
CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

BY: _____, DEPUTY

COUNTY AUDITOR’S CERTIFICATE:

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE, AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE REAL PROPERTY SHOWN UPON THIS MAP FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES, SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS, NOT YET PAYABLE, ESTIMATED TO BE \$_____.

DATE: _____

ENSEN MASON
AUDITOR–CONTROLLER/TREASURER/TAX COLLECTOR
COUNTY OF SAN BERNARDINO, CALIFORNIA

BY: _____, DEPUTY

SURVEYOR’S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO IN AUGUST 2020. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN SUCH POSITIONS ON OR BEFORE 12 MONTHS FROM THE DATE OF THE FILING OF THIS MAP, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACE, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

DATE: _____

DAVID B. RAGLAND, L.S. 5173

PRELIMINARY:
FOR EXAMINATION ONLY



CITY ENGINEER’S STATEMENT:

I HEREBY STATE THAT I HAVE EXAMINED THE THIS MAP, AND THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THERETO, AND THAT ALL THE PROVISION OF THE SUBDIVISION MAP ACT AND THE CITY OF SAN BERNARDINO MUNICIPAL CODE HAVE BEEN COMPLIED WITH, AND I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

ALEX QISHTA, CITY ENGINEER
CITY OF SAN BERNARDINO
RCE 66702

BY: _____

GARY L. AKERS
RCE 23713
DESIGNEE

DATED: _____



CITY COUNCIL’S STATEMENT:

I HEREBY CERTIFY THAT THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO, BY RESOLUTION ADOPTED ON THE _____ DAY OF _____, 2021 APPROVED THIS MAP AND ACCEPTED ALL STREETS AND PUBLIC UTILITY EASEMENTS SHOWN ON SAID MAP WITHIN SAID SUBDIVISION AS SHOWN ON THIS MAP.

DATE: _____

JOHN VALDIVIA
MAYOR, CITY OF SAN BERNARDINO

DATE: _____

GEORGEANN HANNA
CITY CLERK, CITY OF SAN BERNARDINO

DEFERRED IMPROVEMENT NOTE:

THE IMPROVEMENTS REQUIRED FOR THIS SUBDIVISION HAVE BEEN DEFERRED AND THE SUBDIVIDER HAS ENTERED INTO AN IMPROVEMENT AGREEMENT WITH THE CITY OF SAN BERNARDINO PURSUANT TO SECTION 19.30.160 OF THE CITY OF SAN BERNARDINO DEVELOPMENT CODE AND SECTION 66462 OF THE SUBDIVISION MAP ACT. THE REQUIRED IMPROVEMENTS WILL BE COMPLETED UPON DEVELOPMENT.

SAN BERNARDINO COUNTY RECORDER’S CERTIFICATE:

THIS MAP HAS BEEN FILED UNDER DOCUMENT NUMBER _____, THIS _____ DAY OF _____, 2021, AT _____ M. IN BOOK _____ OF _____ AT PAGES _____, AT THE REQUEST OF _____, IN THE AMOUNT OF \$_____.

BOB DUTTON
ASSESSOR–RECORDER
COUNTY OF SAN BERNARDINO

BY: _____, DEPUTY

SEE SHEET 2 FOR NOTARY ACKNOWLEDGEMENTS

TRACT MAP NO. 18829

BEING A PORTION OF LOTS 11, 12, 13 AND 14, IN BLOCK 42, RANCHO SAN BERNARDINO AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE 2, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

TRANSTECH ENGINEERS

SEPTEMBER 2020

NOTARY ACKNOWLEDGMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 2021, BEFORE ME, _____,
NOTARY PUBLIC PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING
PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND. NOTARY COMMISSION NO. _____

SIGNATURE: _____ MY COMMISSION EXPIRES: _____

PRINT THE COUNTY OF MY PRINCIPAL
NAME: _____ PLACE OF BUSINESS IS: _____

NOTARY ACKNOWLEDGMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 2021, BEFORE ME, _____,
NOTARY PUBLIC PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING
PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND. NOTARY COMMISSION NO. _____

SIGNATURE: _____ MY COMMISSION EXPIRES: _____

PRINT THE COUNTY OF MY PRINCIPAL
NAME: _____ PLACE OF BUSINESS IS: _____

NOTARY ACKNOWLEDGMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 2021, BEFORE ME, _____,
NOTARY PUBLIC PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING
PARAGRAPH IS TRUE AND CORRECT.

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STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 2021, BEFORE ME, _____,
NOTARY PUBLIC PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING
PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND. NOTARY COMMISSION NO. _____

SIGNATURE: _____ MY COMMISSION EXPIRES: _____

PRINT THE COUNTY OF MY PRINCIPAL
NAME: _____ PLACE OF BUSINESS IS: _____

NOTARY ACKNOWLEDGMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 2021, BEFORE ME, _____,
NOTARY PUBLIC PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

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NAME: _____ PLACE OF BUSINESS IS: _____

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STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 2021, BEFORE ME, _____,
NOTARY PUBLIC PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING
PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND. NOTARY COMMISSION NO. _____

SIGNATURE: _____ MY COMMISSION EXPIRES: _____

PRINT THE COUNTY OF MY PRINCIPAL
NAME: _____ PLACE OF BUSINESS IS: _____

SIGNATURE OMISSIONS: CONTINUED

SOUTHERN CALIFORNIA GAS COMPANY, HOLDER OF AN EASEMENT FOR PIPELINES AND CONDUITS TOGETHER WITH THE REASONABLE RIGHTS OF INGRESS AND EGRESS, RECORDED APRIL 11, 2017 AS INSTRUMENT NO. 2017-0149166, OFFICIAL RECORDS. LOCATION OF EASEMENT NOT SHOWN IN DOCUMENT.

SOUTHERN CALIFORNIA EDISON COMPANY, HOLDER OF AND EASEMENT FOR PUBLIC UTILITIES RECORDED JUNE 19, 2019 AS INSTRUMENT NO. 2019-0201299, OFFICIAL RECORDS.

SOUTHERN CALIFORNIA GAS COMPANY, HOLDER OF AN EASEMENT FOR PIPELINES RECORDED MARCH 15, 2019 AS INSTRUMENT NO. 2019-0080823, OFFICIAL RECORDS. LOCATION OF EASEMENT NOT SHOWN IN DOCUMENT.

SOUTHERN CALIFORNIA EDISON COMPANY, HOLDER OF AN EASEMENT FOR UNDERGROUND ELECTRICAL SUPPLY SYSTEMS AND COMMUNICATIONS SYSTEMS RECORDED FEBRUARY 13, 2020 AS INSTRUMENT NO. 2020-0053960, OFFICIAL RECORDS.

THE CITY OF SAN BERNARDINO, HOLDER OF AN EASEMENT FOR STREETS AND HIGHWAYS RECORDED JULY 26, 2019 AS INSTRUMENT NO. 2019-0252133, OFFICIAL RECORDS.

THE CITY OF SAN BERNARDINO, HOLDER OF AN EASEMENT FOR STREETS AND HIGHWAYS RECORDED JULY 23, 2019 AS INSTRUMENT NO. 2019-0246056, OFFICIAL RECORDS.

SOUTHERN CALIFORNIA EDISON COMPANY, HOLDER OF AN EASEMENT FOR PUBLIC UTILITIES RECORDED FEBRUARY 13, 2020 AS INSTRUMENT NO. 2020-0053959, OFFICIAL RECORDS.

SOUTHERN CALIFORNIA EDISON COMPANY, HOLDER OF AN EASEMENT FOR PUBLIC UTILITIES RECORDED JULY 22, 2020 AS INSTRUMENT NO. 2020-0246963, OFFICIAL RECORDS.

NOTARY ACKNOWLEDGMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 2021, BEFORE ME, _____,
NOTARY PUBLIC PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING
PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND. NOTARY COMMISSION NO. _____

SIGNATURE: _____ MY COMMISSION EXPIRES: _____

PRINT THE COUNTY OF MY PRINCIPAL
NAME: _____ PLACE OF BUSINESS IS: _____

NOTARY ACKNOWLEDGMENT:

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN BERNARDINO)

ON _____, 2021, BEFORE ME, _____,
NOTARY PUBLIC PERSONALLY APPEARED _____,
WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE
SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN
HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE
PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING
PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND. NOTARY COMMISSION NO. _____

SIGNATURE: _____ MY COMMISSION EXPIRES: _____

PRINT THE COUNTY OF MY PRINCIPAL
NAME: _____ PLACE OF BUSINESS IS: _____

SURVEYOR'S NOTES:

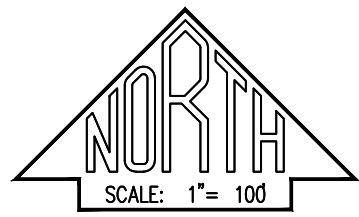
- INDICATES FOUND MONUMENT AS NOTED.
- ⊙ INDICATES FOUND STANDARD WELL MONUMENT.
- INDICATES TO BE SET 3/4" I.P. W/ TAG STAMPED LS 5173.
- (R1) INDICATES RECORD DATA PER PARCEL MAP NO. 14951 RECORDED IN P.M.B. 182, PAGES 85 AND 86.
- (R2) INDICATES RECORD DATA PER RECORD OF SURVEY FILED IN BOOK 27 PAGE 86.
- (R3) INDICATES RECORD DATA PER RECORD OF SURVEY FILED IN BOOK 157 PAGE 92.
- (R4) INDICATES RECORD DATA PER RECORD OF SURVEY FILED IN BOOK 60 PAGE 22.

TRACT MAP NO. 18829

BEING A PORTION OF LOTS 11, 12, 13 AND 14, IN BLOCK 42, RANCHO SAN BERNARDINO AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE 2, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

TRANSTECH ENGINEERS

SEPTEMBER 2020

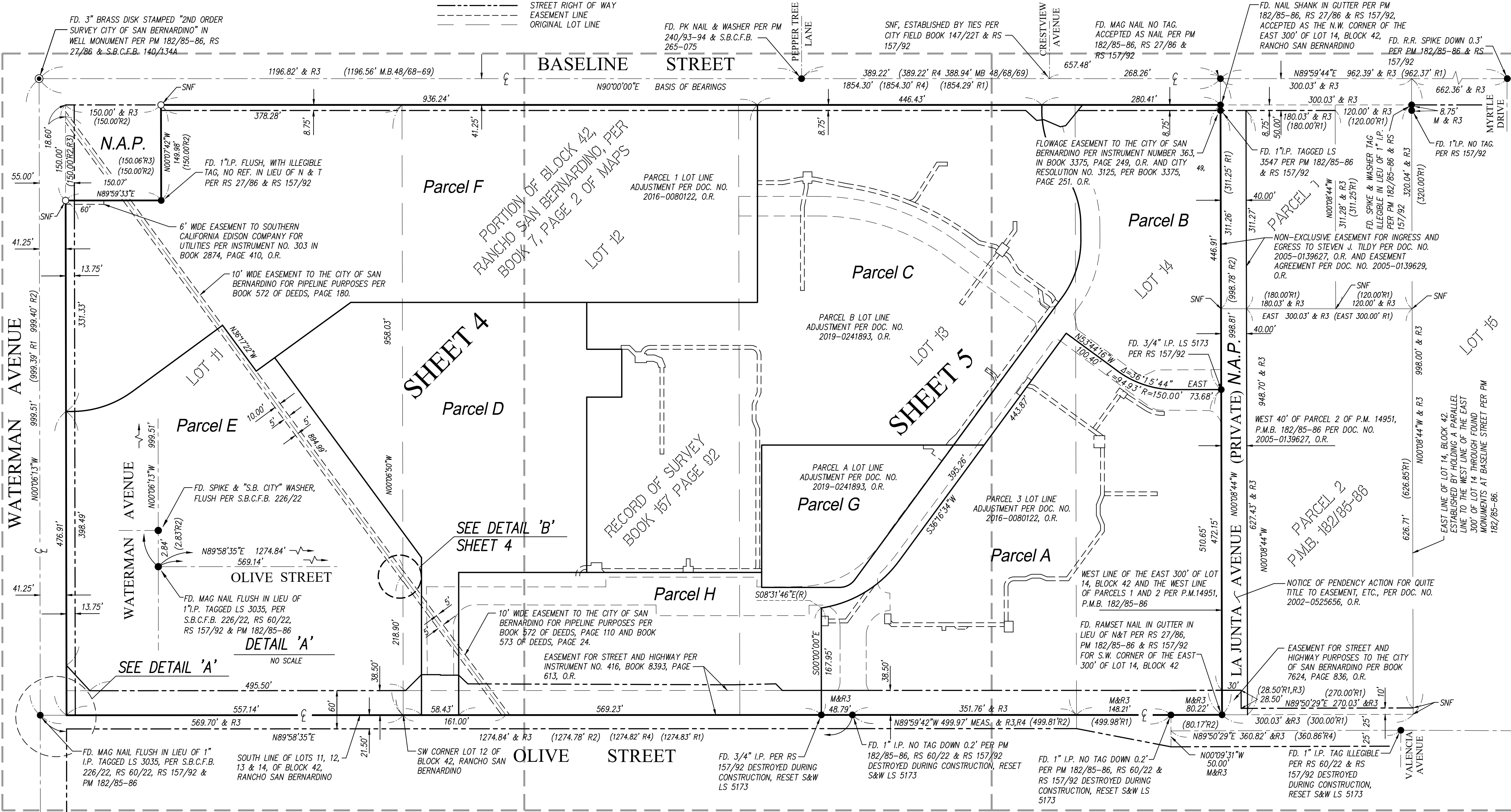


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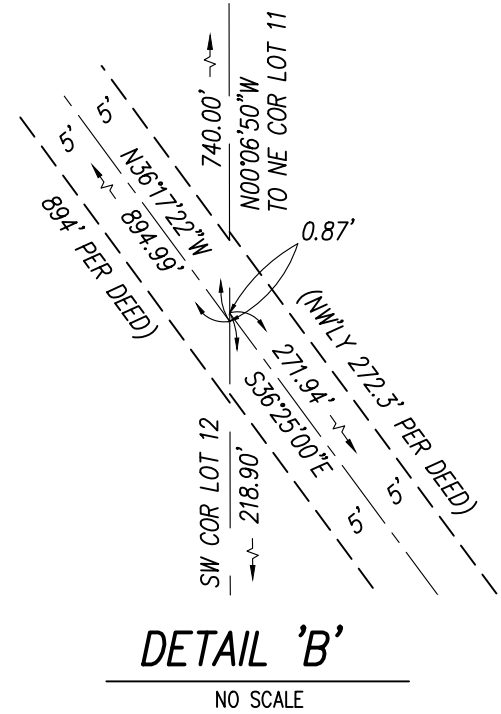
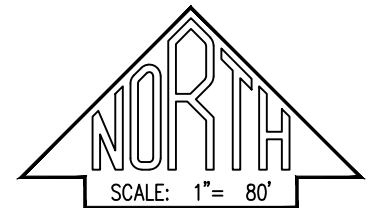
THE CENTERLINE OF BASELINE STREET, EAST OF WATERMAN AVENUE PER PARCEL MAP NO. 14951 FILED IN BOOK 182 OF PARCEL MAPS PAGES 85 AND 86. BEING NORTH 90°00'00" EAST.

LINE TYPE LEGEND:

- TRACT BOUNDARY
- NEW PARCEL LINE
- STREET CENTERLINE
- STREET RIGHT OF WAY
- EASEMENT LINE
- ORIGINAL LOT LINE



TRACT MAP NO. 18829

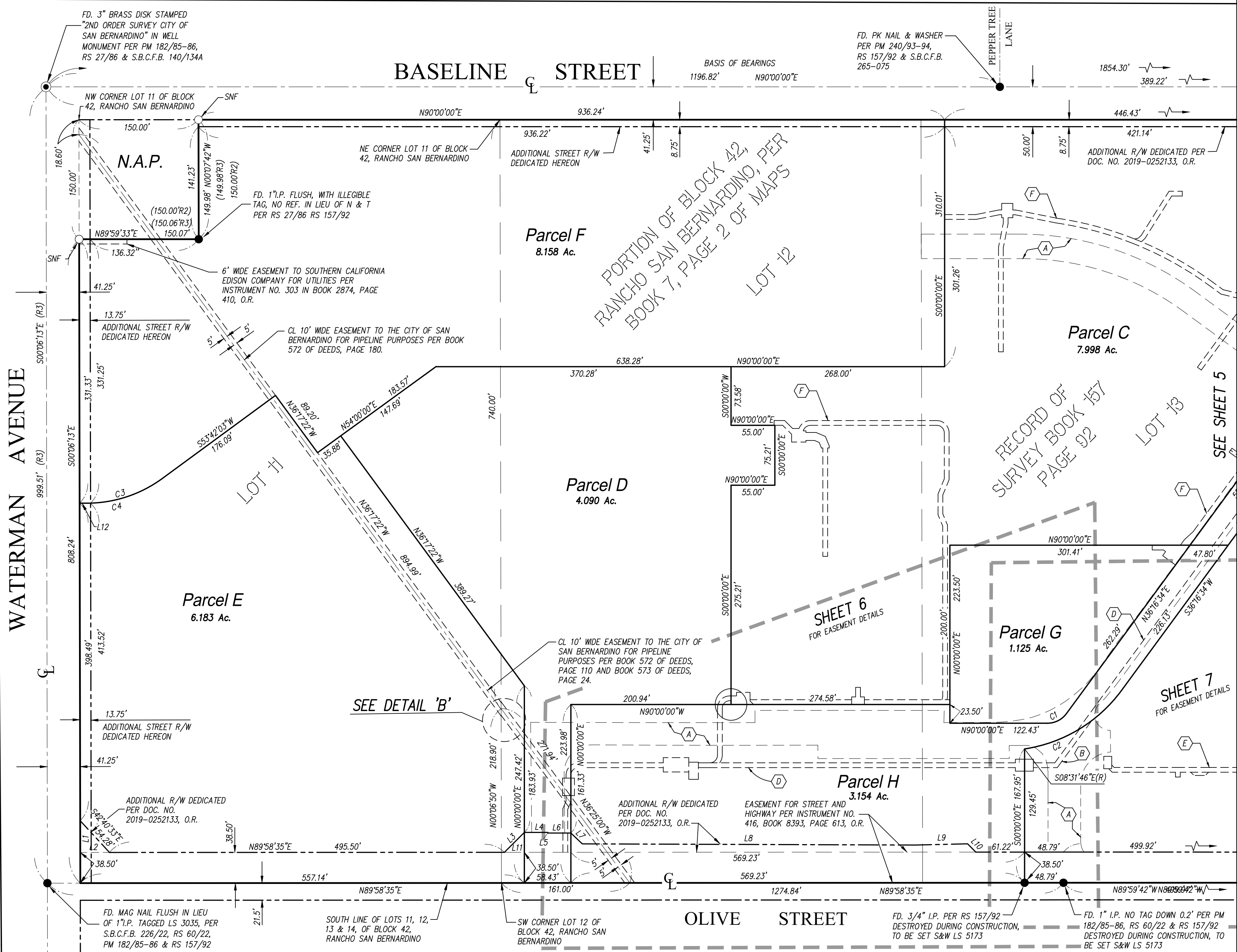


SURVEYOR'S NOTES:

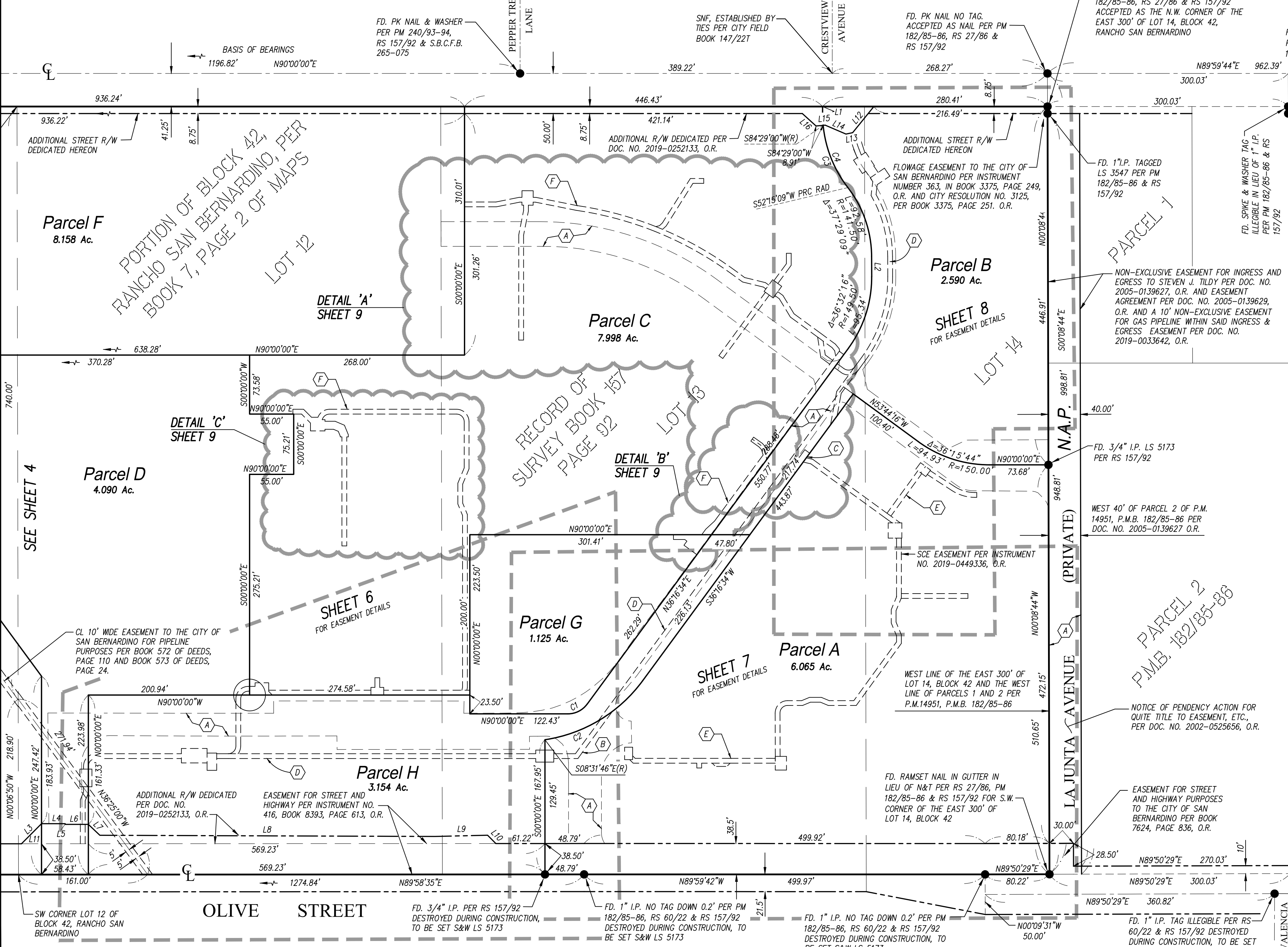
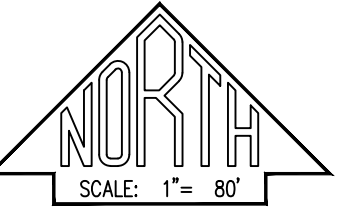
- INDICATES FOUND MONUMENT AS NOTED.
- ⊙ INDICATES FOUND STANDARD WELL MONUMENT.
- INDICATES TO BE SET 3/4" I.P. W/ TAG STAMPED LS 5173.

TO BE SET 3/4" I.P. W/TAG STAMPED LS 5173 AT ALL PARCEL CORNERS

LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L1	39.92'	-	N00°06'13"W
L2	36.72'	-	N89°58'35"E
L3	35.35'	-	N44°59'17"E
L4	29.55'	-	N90°00'00"E
L5	0.82'	-	S00°00'00"E
L6	28.88'	-	N90°00'00"E
L7	19.75'	-	S46°26'24"E
L8	417.80'	-	N89°58'35"E
L9	65.62'	-	N88°40'30"E
L10	14.62'	-	S44°47'56"E
L11	24.99'	-	N89°58'35"E
L12	9.43'	-	N89°53'47"E
C1	27.66'	29.50'	Δ=53°43'26"
C2	145.93'	185.00'	Δ=45°11'40"
C3	96.76'	160.00'	Δ=34°38'58"
C4	101.08'	160.00'	Δ=36°11'44"



TRACT MAP NO. 18829



LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L1	8.97'	-	N00°00'01"W
L2	25.23'	-	N00°15'42"W
L3	35.35'	-	N44°59'17"E
L4	29.55'	-	N90°00'00"E
L5	0.82'	-	S00°00'00"E
L6	28.88'	-	N90°00'00"E
L7	19.75'	-	S46°26'24"E
L8	417.80'	-	N89°58'35"E
L9	65.62'	-	N88°40'30"E
L10	14.62'	-	S44°47'56"E
L11	42.19'	-	N89°58'35"E
L12	41.98'	-	S39°06'07"W
L13	8.50'	-	S78°12'15"W
L14	28.22'	-	N66°47'20"W
L15	11.41'	-	S84°29'00"W
L16	23.12'	-	N47°45'30"W
C1	27.66'	29.50'	Δ=53°43'26"
C2	145.93'	185.00'	Δ=45°11'40"
C3	99.15'	150.50'	Δ=37°44'50"
C4	84.66'	150.50'	Δ=32°13'51"

SURVEYOR'S NOTES:

- INDICATES FOUND MONUMENT AS NOTED.
- ⦿ INDICATES FOUND STANDARD WELL MONUMENT.
- INDICATES TO BE SET 3/4" I.P. W/ TAG STAMPED LS 5173.

EAST LINE OF LOT 14, BLOCK 42, ESTABLISHED BY HOLDING A PARALLEL LINE TO THE WEST LINE OF THE EAST 300' OF LOT 14 THROUGH FOUND MONUMENTS AT BASELINE STREET PER PM 182/85-86.

EASEMENT NOTES:

(A) APPROXIMATE LOCATION OF EASEMENTS AS CONTAINED IN DOCUMENT ENTITLED "DECLARATION PROVIDING FOR RECIPROCAL EASEMENTS" DATED AS OF APRIL 1, 2016, EXECUTED BY THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA AND WATERMAN GARDENS PARTNERS 1, L.P., A CALIFORNIA LIMITED PARTNERSHIP, RECORDED APRIL 19, 2016 AS DOCUMENT NO. 2016-0148598 O.R. AND AS AMENDED BY DOCUMENT RECORDED OCTOBER 1, 2019 AS DOCUMENT NO. 2019-0352083, O.R.

- (B) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2020-0053960, O.R.
- (C) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2016-0449335, O.R.
- (D) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2020-0053959, O.R.
- (E) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2016-0449336, O.R.

TRACT MAP NO. 18829

BEING A PORTION OF LOTS 11, 12, 13 AND 14, IN BLOCK 42, RANCHO SAN BERNARDINO AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE 2, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

TRANSTECH ENGINEERS

SEPTEMBER 2020

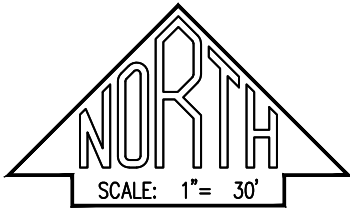
EASEMENT DETAILS

SEE SHEET 9
DETAIL C

- EASEMENT NOTES:**
- (A)** APPROXIMATE LOCATION OF EASEMENTS AS CONTAINED IN DOCUMENT ENTITLED "DECLARATION PROVIDING FOR RECIPROCAL EASEMENTS" DATED AS OF APRIL 1, 2016, EXECUTED BY THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA AND WATERMAN GARDENS PARTNERS 1, L.P., A CALIFORNIA LIMITED PARTNERSHIP, RECORDED APRIL 19, 2016 AS DOCUMENT NO. 2016-0148598 O.R. AND AS AMENDED BY DOCUMENT RECORDED OCTOBER 1, 2019 AS DOCUMENT NO. 2019-0352083, O.R.
 - (B)** SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2020-0053960, O.R.
 - (D)** SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2020-0053959, O.R.
 - (F)** SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2020-0246963, O.R.

LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L1	11.50'	-	N90°00'00"W
L2	14.44'	-	N90°00'00"W
L3	7.00'	-	S00°00'00"W
L4	12.00'	-	N90°00'00"W
L5	7.50'	-	N00°00'00"E
L6	32.00'	-	N90°00'00"W
L7	0.50'	-	S00°00'00"W
L8	3.71'	-	S00°00'00"W
L9	22.00'	-	N90°00'00"W
L10	7.30'	-	S00°00'00"W
L11	10.45'	-	S22°30'00"W
L12	54.11'	-	S00°01'22"E
L13	58.00'	-	N00°00'00"E
L14	0.98'	-	N00°00'00"E
L15	1.40'	-	N90°00'00"E
L16	6.85'	-	N00°00'00"W
C1	19.63'	12.50'	Δ=90°00'00"
C2	19.63'	12.50'	Δ=90°00'00"
C3	19.63'	12.50'	Δ=90°00'00"

LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L17	4.50'	-	S00°00'00"W
L18	17.00'	-	N90°00'00"W
L19	10.79'	-	N00°00'00"W
L20	6.34'	-	N45°00'00"W
L21	28.34'	-	N00°00'00"E
L22	9.50'	-	N00°00'00"W
L23	12.00'	-	N00°00'00"W
L24	5.35'	-	N37°05'53"E
L25	5.35'	-	N12°21'58"E
L26	11.00'	-	N00°00'00"E
L27	28.50'	-	N00°00'00"E
L28	62.28'	-	N36°16'34"E
L29	19.85'	-	N00°00'00"E



Parcel G

Parcel D

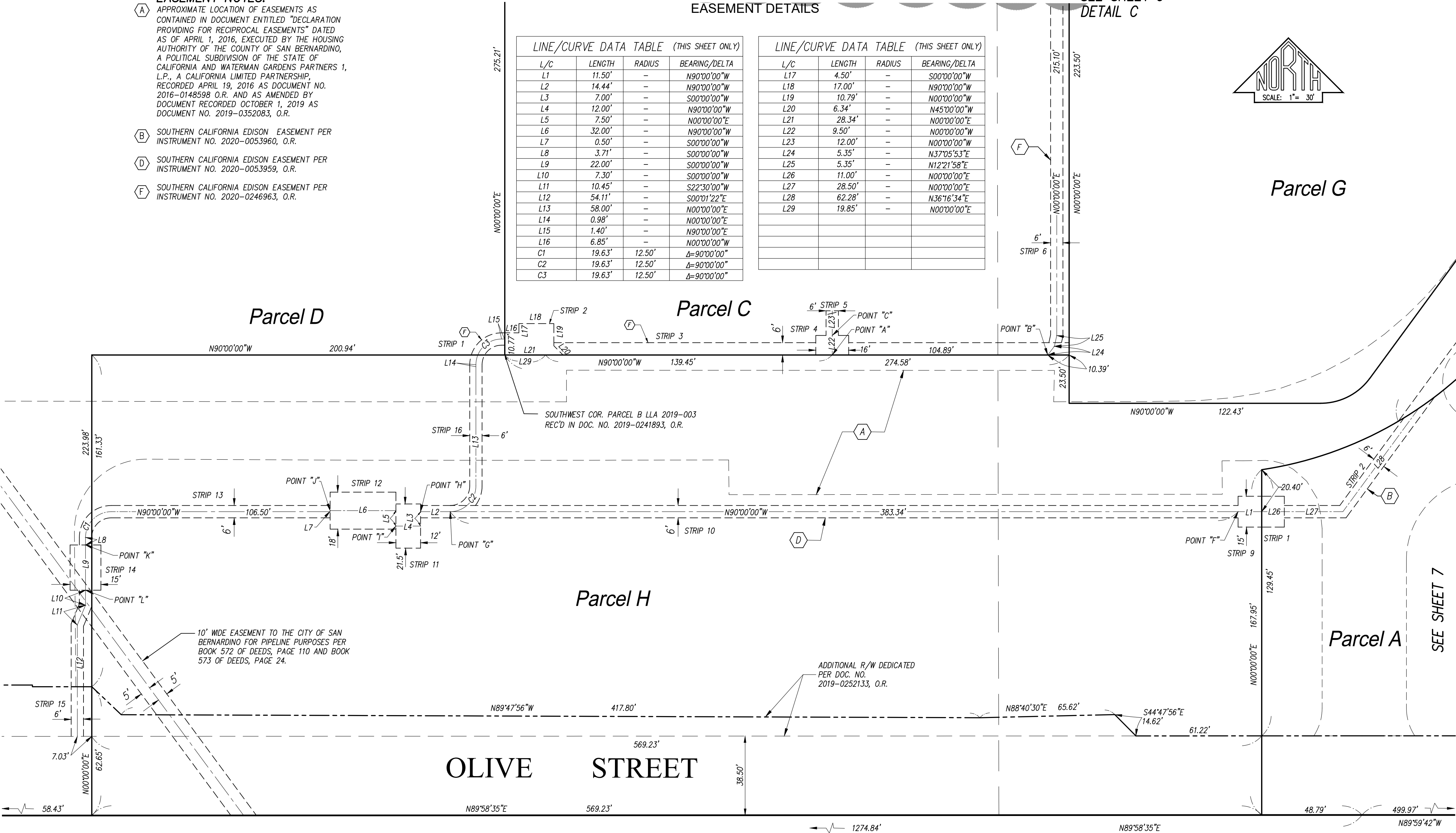
Parcel C

Parcel H

Parcel A

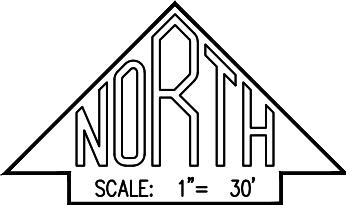
SEE SHEET 7

OLIVE STREET



TRACT MAP NO. 18829

BEING A PORTION OF LOTS 11, 12, 13 AND 14, IN BLOCK 42, RANCHO SAN BERNARDINO AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE 2, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA



LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L1	1.73'	-	S00°00'00"W
L2	17.16'	-	S22°30'00"W
L3	15.55'	-	S00°00'00"W
L4	17.16'	-	S22°30'00"E
L5	9.23'	-	S00°00'00"E
L6	32.80'	-	N90°00'00"W
L7	10.58'	-	N67°30'00"W
L8	13.67'	-	N90°00'00"W
L9	10.58'	-	S67°30'00"W
L10	18.10'	-	N90°00'00"W
L11	54.05'	-	S00°11'43"E
L12	3.94'	-	N90°00'00"E
L13	17.00'	-	S00°00'00"W
L14	3.06'	-	N00°00'00"W
L15	5.40'	-	S00°00'00"W
L16	57.50'	-	N00°00'00"W
L17	37.29'	-	N90°00'00"W
L18	81.12'	-	N90°00'00"W
L19	2.67'	-	N45°00'42"W
L20	7.23'	-	N00°09'48"E
L21	10.00'	-	N89°50'12"W
L22	5.77'	-	S45°00'00"W
L23	11.67'	-	N90°00'00"W
L24	5.77'	-	N45°00'00"W
L25	9.00'	-	S00°00'00"W
C1	19.68'	12.50'	Δ=90°11'43"

SEE SHEET 8
Parcel G

TRANSTECH ENGINEERS

EASEMENT DETAILS

SEPTEMBER 2020

SEE SHEET 8

Parcel A

EASEMENT NOTES:

- (A) APPROXIMATE LOCATION OF EASEMENTS AS CONTAINED IN DOCUMENT ENTITLED "DECLARATION PROVIDING FOR RECIPROCAL EASEMENTS" DATED AS OF APRIL 1, 2016, EXECUTED BY THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA AND WATERMAN GARDENS PARTNERS 1, L.P., A CALIFORNIA LIMITED PARTNERSHIP, RECORDED APRIL 19, 2016 AS DOCUMENT NO. 2016-0148598 O.R. AND AS AMENDED BY DOCUMENT RECORDED OCTOBER 1, 2019 AS DOCUMENT NO. 2019-0352083, O.R.
- (B) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2020-0053960, O.R.
- (D) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2020-0053959, O.R.
- (E) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2016-0449336, O.R.

NOT A PART

LA JUNTA AVENUE

OLIVE STREET

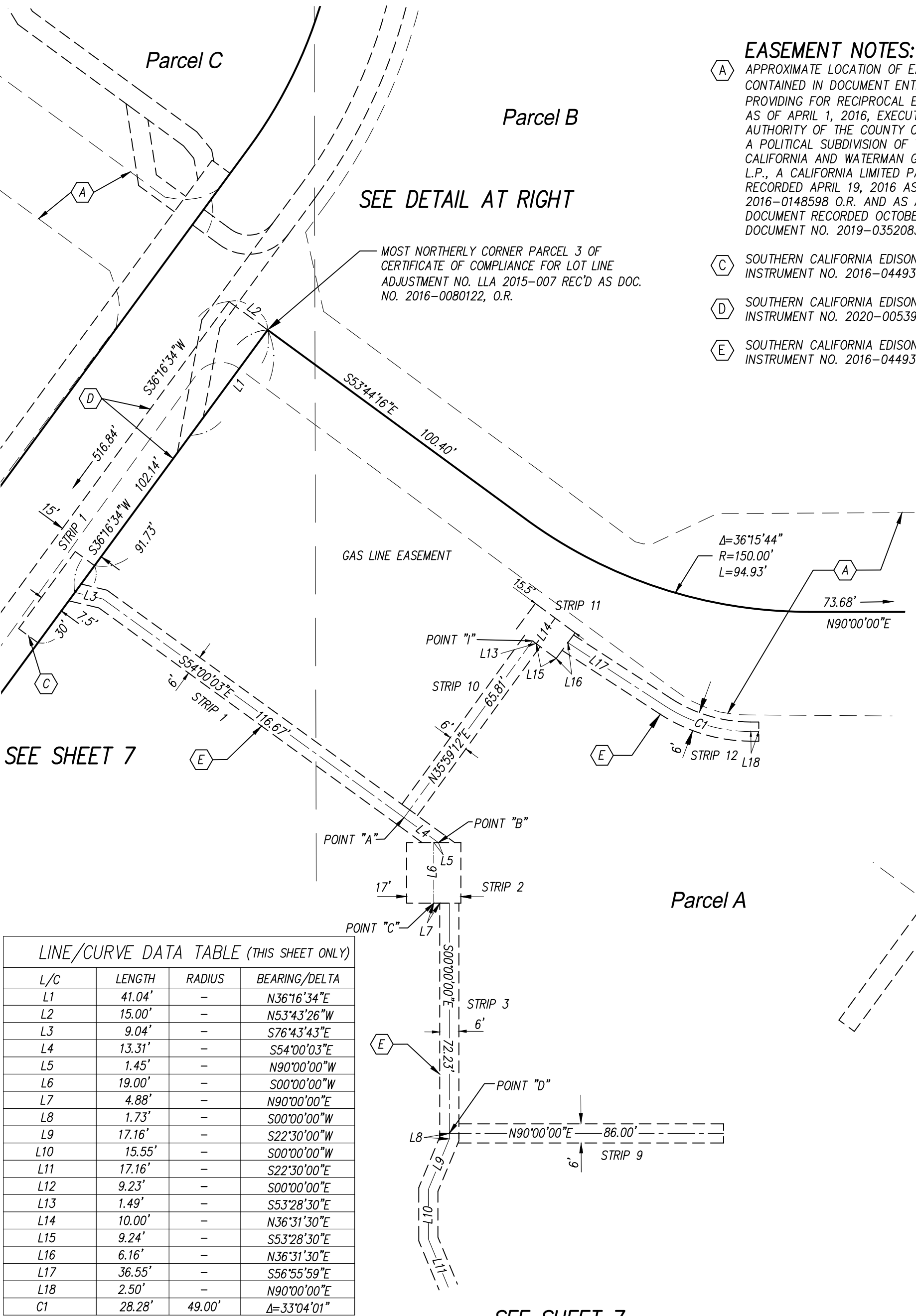
TRACT MAP NO. 18829

BEING A PORTION OF LOTS 11, 12, 13 AND 14, IN BLOCK 42, RANCHO SAN BERNARDINO AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE 2, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

TRANSTECH ENGINEERS

SEPTEMBER 2020

SEE SHEET 9

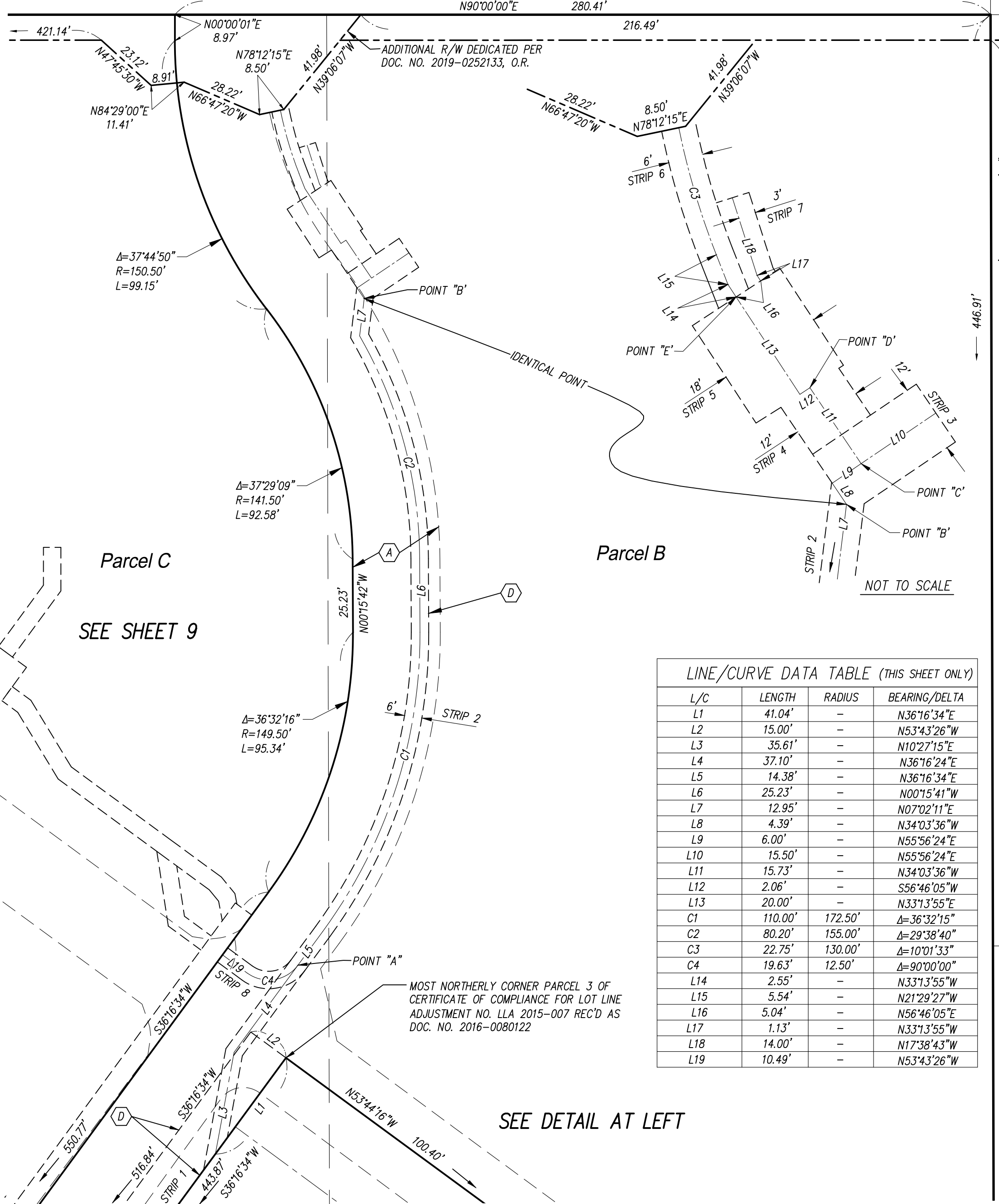


LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L1	41.04'	-	N36°16'34"E
L2	15.00'	-	N53°43'26"W
L3	9.04'	-	S76°43'43"E
L4	13.31'	-	S54°00'03"E
L5	1.45'	-	N90°00'00"W
L6	19.00'	-	S00°00'00"W
L7	4.88'	-	N90°00'00"E
L8	1.73'	-	S00°00'00"W
L9	17.16'	-	S22°30'00"W
L10	15.55'	-	S00°00'00"W
L11	17.16'	-	S22°30'00"E
L12	9.23'	-	S00°00'00"E
L13	1.49'	-	S53°28'30"E
L14	10.00'	-	N36°31'30"E
L15	9.24'	-	S53°28'30"E
L16	6.16'	-	N36°31'30"E
L17	36.55'	-	S56°55'59"E
L18	2.50'	-	N90°00'00"E
C1	28.28'	49.00'	Δ=33°04'01"

EASEMENT NOTES:

- (A) APPROXIMATE LOCATION OF EASEMENTS AS CONTAINED IN DOCUMENT ENTITLED "DECLARATION PROVIDING FOR RECIPROCAL EASEMENTS" DATED AS OF APRIL 1, 2016, EXECUTED BY THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA AND WATERMAN GARDENS PARTNERS 1, L.P., A CALIFORNIA LIMITED PARTNERSHIP, RECORDED APRIL 19, 2016 AS DOCUMENT NO. 2016-0148598 O.R. AND AS AMENDED BY DOCUMENT RECORDED OCTOBER 1, 2019 AS DOCUMENT NO. 2019-0352083, O.R.
- (C) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2016-0449335, O.R.
- (D) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2020-0053959, O.R.
- (E) SOUTHERN CALIFORNIA EDISON EASEMENT PER INSTRUMENT NO. 2016-0449336, O.R.

EASEMENT DETAILS



LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L1	41.04'	-	N36°16'34"E
L2	15.00'	-	N53°43'26"W
L3	35.61'	-	N10°27'15"E
L4	37.10'	-	N36°16'24"E
L5	14.38'	-	N36°16'34"E
L6	25.23'	-	N00°15'41"W
L7	12.95'	-	N07°02'11"E
L8	4.39'	-	N34°03'36"W
L9	6.00'	-	N55°56'24"E
L10	15.50'	-	N55°56'24"E
L11	15.73'	-	N34°03'36"W
L12	2.06'	-	S56°46'05"W
L13	20.00'	-	N33°13'55"E
C1	110.00'	172.50'	Δ=36°32'15"
C2	80.20'	155.00'	Δ=29°38'40"
C3	22.75'	130.00'	Δ=10°01'33"
C4	19.63'	12.50'	Δ=90°00'00"
L14	2.55'	-	N33°13'55"W
L15	5.54'	-	N21°29'27"W
L16	5.04'	-	N56°46'05"E
L17	1.13'	-	N33°13'55"W
L18	14.00'	-	N17°38'43"W
L19	10.49'	-	N53°43'26"W

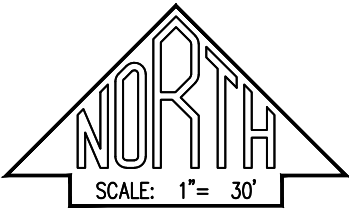
N.A.P. LA JUNTA AVENUE

TRACT MAP NO. 18829

BEING A PORTION OF LOTS 11, 12, 13 AND 14, IN BLOCK 42, RANCHO SAN BERNARDINO AS PER PLAT RECORDED IN BOOK 7 OF MAPS, PAGE 2, RECORDS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

TRANSTECH ENGINEERS

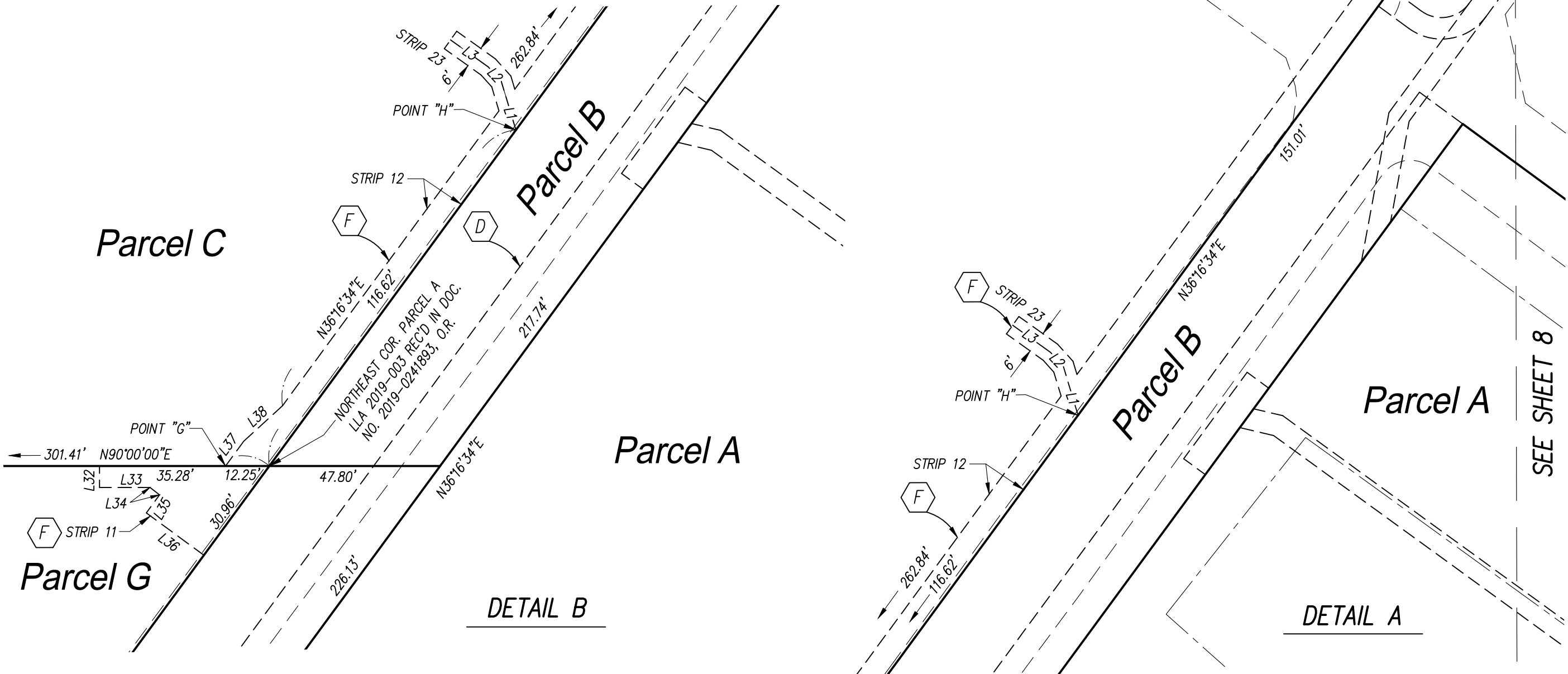
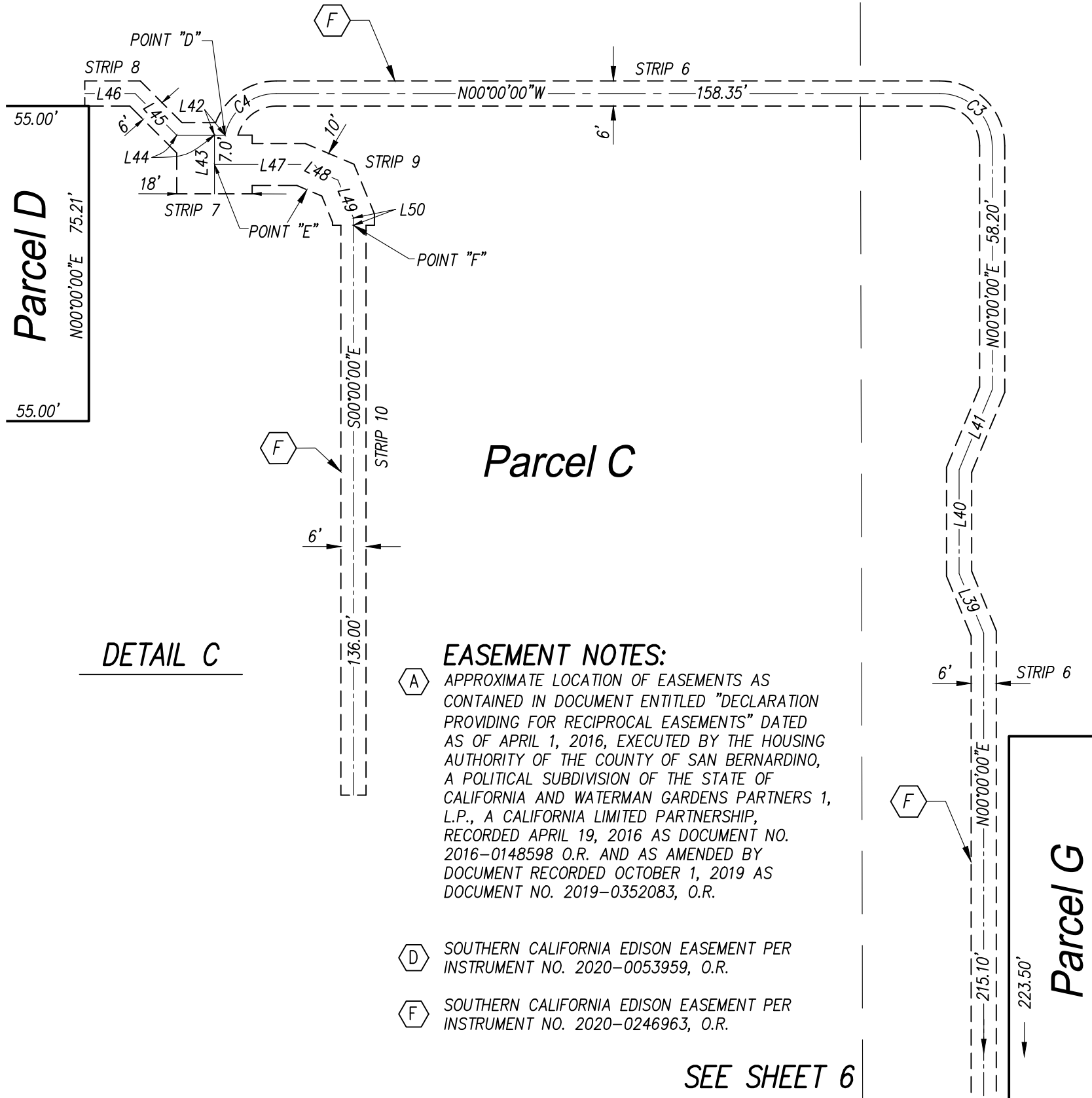
SEPTEMBER 2020



LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L1	14.19'	-	N16°48'12"W
L2	5.43'	-	N41°53'37"E
L3	13.00'	-	N54°26'20"W
L4	14.36'	-	N10°42'37"W
L5	6.19'	-	N39°23'43"W
L6	21.50'	-	N53°44'16"W
L7	42.72'	-	N53°44'16"W
L8	26.78'	-	N31°14'16"W
L9	7.31'	-	N53°44'16"W
L10	2.25'	-	N36°15'44"E
L11	9.00'	-	N53°44'16"W
L12	5.00'	-	N53°44'16"W
L13	2.25'	-	S36°15'44"W
L14	4.49'	-	N53°44'16"W
L15	26.66'	-	N76°14'16"W
L16	3.28'	-	N89°52'22"W
L17	2.24'	-	N00°07'38"E
C1	110.13'	434.20'	Δ=14°31'57"
C2	102.27'	434.20'	Δ=13°29'42"
C3	19.63'	12.50'	Δ=90°00'00"
C4	17.01'	12.50'	Δ=78°14'41"
L31	14.00'	-	N00°00'00"W
L32	6.00'	-	S00°00'00"W
L33	14.12'	-	N00°00'00"E

LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L18	9.00'	-	N89°52'22"W
L19	5.00'	-	N89°52'22"W
L20	2.24'	-	S00°07'38"W
L21	3.05'	-	N89°52'22"W
L22	29.65'	-	S78°45'45"W
L23	39.45'	-	N90°00'00"W
L24	16.14'	-	S00°00'00"E
L25	30.75'	-	S11°15'00"W
L26	6.30'	-	N75°58'28"E
L27	6.30'	-	N46°46'24"E
L28	64.08'	-	N32°10'21"E
L29	15.00'	-	N90°00'00"E
L30	36.18'	-	N36°15'44"E

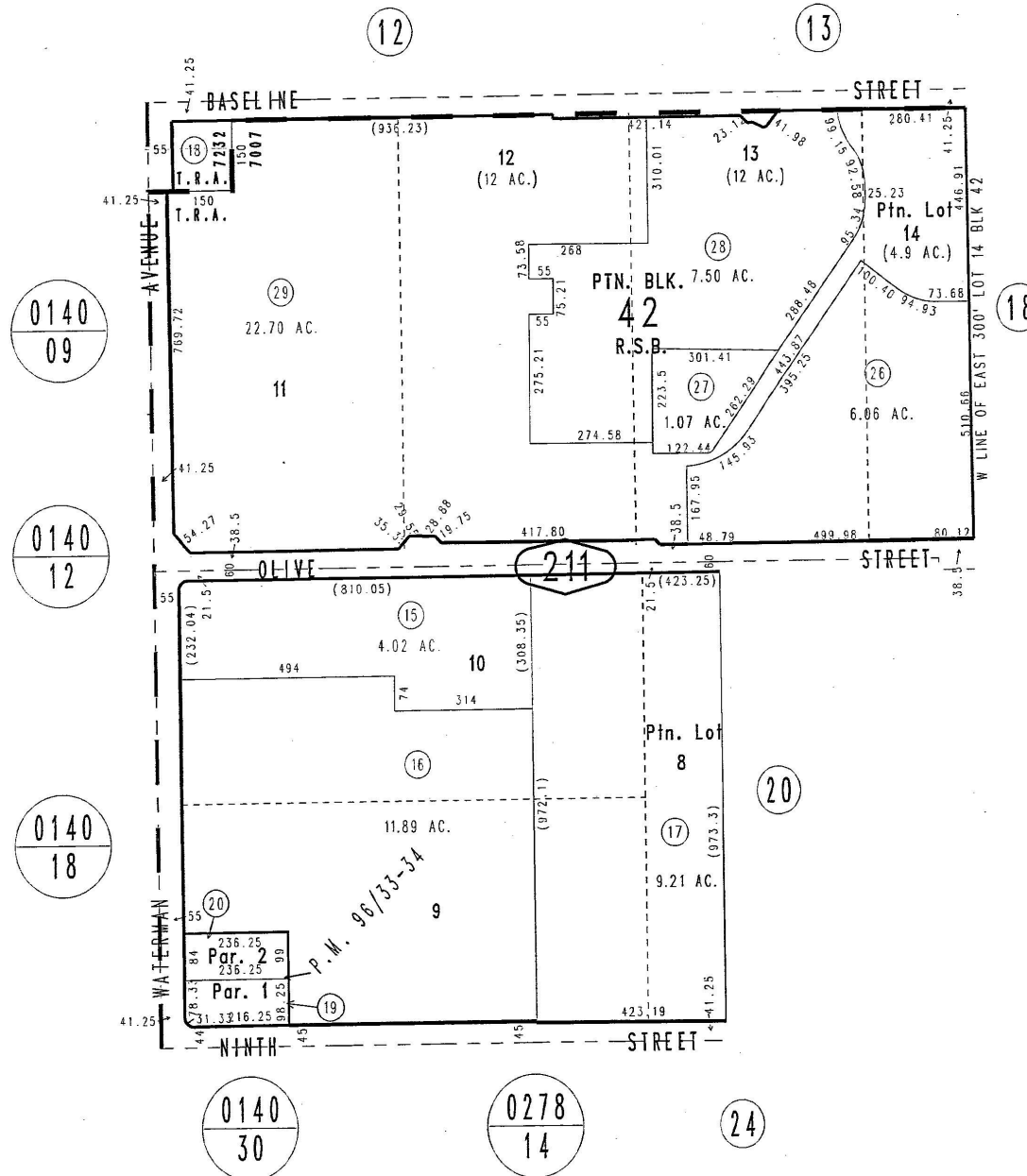
LINE/CURVE DATA TABLE (THIS SHEET ONLY)			
L/C	LENGTH	RADIUS	BEARING/DELTA
L34	3.40'	-	S51°56'19"E
L35	6.25'	-	S36°16'34"W
L36	19.99'	-	S53°43'26"E
L37	8.58'	-	N36°16'34"E
L38	14.74'	-	N47°31'34"E
L39	15.38'	-	N22°30'00"W
L40	24.81'	-	N00°00'00"W
L41	20.66'	-	N22°30'00"E
L42	2.51'	-	N90°00'00"W
L43	14.00'	-	S00°00'00"W
L44	9.00'	-	N90°00'00"W
L45	14.08'	-	N45°00'00"W
L46	12.00'	-	N90°00'00"W
L47	20.67'	-	N00°00'00"E
L48	9.54'	-	S67°03'16"E
L49	9.79'	-	S22°18'34"E
L50	1.72'	-	S00°00'00"W
L51	25.97'	-	S08°44'16"W
L52	19.64'	-	S53°43'26"W
L53	7.00'	-	N53°43'26"W
L54	16.81'	-	N53°44'16"W



THIS MAP IS FOR THE PURPOSE
OF AD VALOREM TAXATION ONLY.

Ptn. Rancho San Bernardino M.B. 7/2

City of San Bernardino 0147 -
Tax Rate Area
7232,7007



REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Ground Lease Agreement, Associated Loan Agreement, and Ancillary Documents to Consummate the Fair Market Value Transfer of Remainder Land at the Former Waterman Gardens Public Housing Site

RECOMMENDATION(S)

1. Adopt Resolution No. 117 to:
 - a. Approve a Ground Lease Agreement between the Housing Authority of the County of San Bernardino and Arrowhead Grove LLC
 - b. Approve a Ground Lease Loan Agreement between the Housing Authority of the County of San Bernardino and Arrowhead Grove LLC in an amount not to exceed the current appraised value of the property and documents ancillary to the Ground Lease Loan Agreement including:
 - i. Promissory Note
 - ii. Deed of Trust
 - iii. Approve documents as required by the United States Department of Housing and Urban Development to complete the transfer of the remainder parcels of the former Waterman Gardens public housing site
2. Authorize the Executive Director of the Housing Authority of the County of San Bernardino, upon consultation with Legal Counsel, to make non-substantive modifications, execute and deliver the Loan Agreement, Ground Lease Agreement, and United States Department of Housing and Urban Development related documents and the ancillary documents necessary to carry out and close the transaction.

(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

HACSB is a leading developer and provider of affordable housing in the County of San Bernardino.

HACSB clients live in safe and desirable homes and communities where they can develop and prosper.

FINANCIAL IMPACT

Approval of this item will have no immediate financial impact on the Housing Authority of the County of San Bernardino (HACSB). Any agreement for the eventual transfer of the remainder parcel(s) of land at the former Waterman Gardens public housing site will ensure that HACSB is compensated at fair market value (FMV) as documented by current appraisal(s) commissioned by HACSB and approved by the United States Department of Housing and Urban Development (HUD).

Ground Lease Agreement, Associated Loan Agreement, and Ancillary Documents to Consummate the Fair Market Value Transfer of Remainder Land at the Former Waterman Gardens Public Housing Site
August 10, 2021

BACKGROUND INFORMATION

Arrowhead Grove, formerly known as Waterman Gardens, is a 1943 Public Housing development in the City of San Bernardino that previously consisted of 252 units. HACSB has been pursuing a vision to revitalize the site by demolishing the 76 year old buildings and developing 411 new residential units and commercial space. 136 new affordable housing units have already been built and occupied in two phases (one offsite, and one on site). The second phase of construction on site, representing 184 new family apartments, is scheduled for completion by August 31st. Approximately two-thirds of these 184 units have already been constructed and are in the process of being occupied. The Arrowhead Grove project represents a broad strategy to stimulate economic and development activity in the surrounding neighborhood through creation of a mixed income, mixed use community. Approval of this item will mark the final step in removing the site from the HUD public housing program and allow development of the remaining land to continue.

On May 11, 2021 the Board of Commissioners (Board) adopted Resolution No. 111, authorizing various acts related to the fair market value transfer of remainder land at the former Waterman Gardens Public Housing site. The Executive Director was directed to negotiate and execute agreement(s) as necessary to effectuate the transfer of the remainder parcels of land pursuant to Rental Assistance Demonstration Restrictive Covenants recorded against the property as mandated by HUD, upon consultation with Legal Counsel. The Resolution stated that the form of long-term ground lease and associated documents would be brought back to the Board for final approval. This action represents completion of that directive.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

HOUSING AUTHORITY RESOLUTION NO. 2021- 117

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AUTHORIZING CERTAIN ACTS AND APPROVING CERTAIN AGREEMENTS RELATING TO THE REMAINDER LAND AT THE ARROWHEAD GROVE REVITALIZATION PROJECT

On Tuesday, August 10, 2021, on motion of Commissioner _____, duly seconded by Commissioner _____ and carried by a vote of _____ to _____, the following resolution is adopted by the Board of Commissioners of the Housing Authority of the County of San Bernardino.

WHEREAS, the Housing Authority of the County of San Bernardino (the "Authority") is a duly formed housing authority of the State of California, and is vested with the responsibilities set forth in Division 24, Part 2, Article 4 (Sections 34310-34334) of the California Health and Safety Code, which includes providing low and moderate income housing within its jurisdiction; and

WHEREAS, The Authority is the owner of the former Waterman Gardens Public Housing site which consists of approximately 39.39 acres at the Southeast corner of Waterman Avenue and Baseline Street in the City of San Bernardino, San Bernardino County (the "Project site"); and

WHEREAS, the Authority has completed development of new affordable rental housing on approximately 15.19 acres of the Project site and desires to continue development of the remaining approximately 24.20 acres (the "Remainder site"); and

WHEREAS, on May 11, 2021 the Board of Commissioners of the Authority adopted Resolution 111, authorizing various acts related to the fair market value ("FMV") transfer of the Remainder site; and

WHEREAS, Resolution 111 further authorized the Authority's affiliate nonprofit, Housing Partners I, Inc. ("HPI"), to be added as the Managing Member of ARROWHEAD GROVE LLC (the "LLC"), a limited liability company formed by the Authority to serve as the entity to which ownership and management responsibility for the Remainder site will be transferred; and

WHEREAS, the Authority will convey a leasehold interest in the Remainder site to the LLC by execution of a long-term ground lease at current appraised FMV to facilitate future development of the Remainder site; and

WHEREAS, the Authority will provide a loan or multiple loans as necessary in an aggregate amount not to exceed the current appraised FMV of the Remainder site to the LLC to facilitate the transfer of the Remainder site; and

WHEREAS, the Authority must obtain approval from the United States Department of Housing and Urban Development ("HUD"), pursuant to the Rental Assistance Demonstration ("RAD") Program to complete the FMV transfer of the Remainder site in order to continue and complete overall development of the Project site.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing Authority of the County of San Bernardino, as follows:

Section 1. The above recitals are true and correct, and the Board of Commissioners of the Housing Authority so finds and determines.

Section 2. The Ground Lease Agreement, in substantially the form on file with the Secretary of the Board is hereby approved. The Executive Director is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the Ground Lease Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as HUD or the Executive Director, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Ground Lease Agreement by the Executive Director.

Section 3. The Ground Lease Loan Agreement, in substantially the form on file with the Secretary of the Board is hereby approved. The Executive Director is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the Ground Lease Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as HUD or the Executive Director, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Ground Lease Agreement by the Executive Director.

Section 4. The documents ancillary to the Ground Lease Loan Agreement, including the Promissory Note and Deed of Trust, in substantially the form on file with the Secretary of the Board is hereby approved. The Executive Director is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the documents ancillary to the Ground Lease Loan Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as HUD or the Executive Director, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the documents ancillary to the Ground Lease Loan Agreement(s) by the Executive Director.

Section 5. The documents ancillary to the HUD approval pursuant to the RAD program, which may include but is not limited to the Releases of Declarations of Trust, the HUD Use Agreement, and HUD Subordination Agreements in the form required by HUD is hereby approved. The Executive Director is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the documents ancillary to the HUD approval in the form which HUD may require or approve, such requirement or approval to be conclusively evidenced by the execution of the ancillary documents by the Executive Director.

Section 6. The Executive Director is further authorized and directed, for and in the name of the Housing Authority, to execute and deliver additional Agreements, including but not limited to Easement Agreements as may be required to establish rights of way and reciprocal use as necessary to facilitate the development of the Project site, with such Easement Agreements as the Executive Director, in consultation with Legal Counsel, may approve, such approval to be conclusively evidenced by the execution of the Easement Agreement by the Executive Director. The Executive Director is further authorized and directed, for and in the name of the Housing Authority, to execute and deliver all Certifications and other documents required by HUD, lenders or local government as may be required to facilitate the development of the Project, with such Certifications and other documents as the Executive Director, in consultation with Legal Counsel, may approve, such approval to be conclusively evidenced by the execution of the Certifications and other documents by the Executive Director.

Section 7. The Executive Director shall deliver to the Secretary of the Board of Commissioners an original of each of the Ground Lease Agreement, Ground Lease Loan Agreement, documents ancillary to the Land Lease and Land Lease Loan Agreements, documents ancillary to the HUD approval, and any other additional Agreements deemed necessary in consultation with Legal Counsel within thirty (30) days of the full execution thereof.

Section 8. The Executive Director shall be authorized to execute any other form or document required by any lender, investor, regulator or other third party involved in the transaction, as long as the Executive Director and Legal Counsel determine that the substance of such document does not materially conflict with the substance and intent of this Resolution.

Section 9. All actions heretofore taken by the officers, employees and agents of the Authority with respect to the Arrowhead Grove Revitalization Project are approved, confirmed and ratified.

Section 10. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board of Commissioners of the Housing Authority of the County of San Bernardino, by the following vote:

AYES: COMMISSIONER:

NOES: COMMISSIONER:

ABSENT: COMMISSIONER:

* * * * *

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO) ss.

I, , Secretary of the Board of Commissioners of the Housing Authority of the County of San Bernardino, hereby certify the foregoing to be a full, true and correct copy of the record of the action taken by the Board of Commissioners, by vote of the members present, as the same appears in the Official Minutes of said Board at its meeting of Tuesday, August 10, 2021.

Secretary

By _____

GROUND LEASE AGREEMENT
(Arrowhead Grove Project)

THIS GROUND LEASE AGREEMENT ("Lease"), dated for reference purposes as of __, 2021, is entered by and between the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body, corporate and politic ("Lessor"), and ARROWHEAD GROVE LLC, a California limited liability company ("Lessee").

RECITALS

A. Lessor owns that certain real property located at _____, San Bernardino, California, more specifically described on Exhibit A attached hereto (the "Property"). The Property is vacant as of the date of this Lease, other than a warehouse use, central shop, maintenance and community garden buildings within the portion of the Property designated for construction of the Envision Center, as shown on Exhibit "_____" attached hereto and the office, classroom and playground improvements on the Head Start Parcel, as such term is defined herein..

B. Lessor desires to lease the Property to Lessee for a period of fifty-five (55) years pursuant to the terms of this Lease.

C. Concurrently with the execution of this Lease, Lessor intends to construct a mixed income housing and commercial and mixed use development on the Property. Housing covenants shall be recorded evidencing the intention to maintain those units designated for affordable income persons as income-restricted units in accordance with United States Department of Housing and Urban Development ("HUD") requirements.

D. Capitalized terms which are referred to and utilized throughout this Lease are defined in Article 1 of this Lease.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants, representations, warranties and agreements set forth in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions.

For the purposes of this Lease, the following defined terms shall have the meanings ascribed to them in this Article 1:

(a) **Acquisition Closing:** The date on which the Memorandum of Lease is recorded against the Property and financing necessary for the construction of the Development is provided to Lessee, and any deeds of trust related to such financing, are recorded against the Development.

(b) Appraisal: That certain appraisal dated as of _____, 2021, prepared by _____, which, among other things, establishes the appraised fair market value of the Leased Premises.

(c) Appraised Value: The fair market value of the Leased Premises established by the Appraisal of \$_____.

(d) Approved Financing: In addition to the Ground Lease Loan, any loans, grants and equity approved by Lessor for the purpose of financing the construction of the Development.

(e) Casualty: As defined in Article 11 of this Lease.

(f) City: City of San Bernardino.

(g) Commencement Date: The date of the Acquisition Closing.

(h) Commercial Buildings: The portion of the Improvements dedicated to commercial uses on the Property to include a community recreational area to be leased to organizations that will serve the residents of the master planned community of the Development and nearby neighborhoods and complimentary retail, office and institutional uses.

(i) Development: The Improvements and Lessee's Estate.

(j) Development Entities. Those separate qualified construction entities contracted with Lessor to develop the Improvements on the Property.

(k) Event of Default: As described in Article 12 of this Lease.

(l) Governmental Authorities: Any applicable federal, state or local governmental or quasi-governmental entities, subdivisions, agencies, authorities or instrumentalities having jurisdiction over the Leased Premises, the Improvements, Lessor or Lessee.

(m) Ground Lease Loan: That certain loan in the amount of the Appraised Value provided by Lessor to Lessee to finance this Lease, evidenced by the Ground Lease Note, a deed of trust, and a Regulatory Agreement.

(n) Ground Lease Note: The promissory note evidencing Lessee's obligation to repay the Ground Lease Loan.

(o) Hazardous Materials or Hazardous Substances: Any oil or any fraction thereof or petroleum products or "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14) or Section 25281(h) or 25316 of the California Health and Safety Code at such time; any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe

Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.), at such time; and any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Leased Premises, but excluding any substances or materials used in the construction, development, maintenance or operation of the Improvements, so long as the same are used in accordance with all applicable laws.

(p) Hazardous Materials Law: All federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Leased Premises or any portion of the Leased Premises.

(q) Head Start Parcel. The portion of the Leased Premises comprising of approximately 3,119 square feet of office and classroom space and approximately 11,881 square feet of land for a playground area leased by Lessor to the County of San Bernardino for the provision of preschool services by Head Start Preschools, which parcel is the subject of a lease agreement entered into on or about July 1, 2019, by and between Lessor, as lessor, and the County of San Bernardino, as lessee for a term expiring on June 30, 2024.

(r) HUD: As defined in Recital C.

(s) Impositions: All taxes including property taxes, assessments, water and sewer charges, charges for public utilities, excises, levies, license and permit fees and other charges that shall or may be assessed, levied or imposed during the Term by any Governmental Authorities upon the Leased Premises or any part of the Leased Premises, including the buildings or improvements now or later located on the Leased Premises; provided, however, that the term "Impositions" shall not include any income tax, capital levy, estate, succession, inheritance, transfer or similar taxes of Lessor, or any franchise tax imposed upon any owner of the fee of the Leased Premises, or any income, profits or revenue tax, assessment or charge imposed upon the rent or other benefit received by Lessor under this Lease by any Governmental Authorities.

(t) Improvements: The Mixed Income Housing, Commercial Buildings and related ancillary facilities, to be constructed on the Leased Premises, the office, classroom and playground improvements on the Head Start Parcel and Warehouse Building and any other improvements to be constructed by Lessee on the Leased Premises and authorized in the zoning designation for the Property during the Term together with any and all replacements or substitutions or modifications to them.

(u) Leased Premises: That certain leasehold interest in the Property, together with all rights, easements, licenses, privileges and appurtenances attaching or in any way belonging to the Property shown on Exhibit "C" and include the Head Start Parcel and Warehouse Building shown thereon.

(v) Lease Year: The initial Lease Year shall begin on the Commencement Date and shall end of _____ 31 of the calendar year in which the Commencement Date occurs. All subsequent Lease Years begin on January 1 and end on December 31.

(w) Legal Requirements: All laws, statutes, codes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities and the appropriate agencies, officers, departments, boards and commissions, whether now or later in force, applicable to Lessor, Lessee, the Leased Premises, the Improvements, or any portion of them, to the extent so applicable.

(x) Lessee's Estate: Lessee's interest in the Leased Premises acquired pursuant to this Lease and any other interest in the Leased Premises later acquired by Lessee.

(y) Lessor's Estate: Lessor's fee estate in the Property.

(z) Management Agent: The Person designated from time to time as "Management Agent" of all or any portion of the Improvements under any management agreement entered into from time to time with Lessee.

(aa) Memorandum of Lease. The memorandum of the Lease to be recorded against the Leased Premises in the form attached hereto as Exhibit B.

(bb) Mixed Income Housing. That portion of the Property dedicated to construction of market rate and affordable housing units. Affordable housing units shall be evidenced by housing covenants to be recorded against the relevant portion of the Property dedicated to such uses confirming the intention to maintain those units designated for affordable income persons as income-restricted units in accordance with HUD requirements.

(cc) Mortgage: Any mortgage, deed of trust, security agreement or collateral assignment executed in connection with Approved Financing for the Development, encumbering Lessee's Estate.

(dd) Mortgagee: The holder, mortgagee, grantee or secured party under any Mortgage and its successors and assigns.

(ee) Net Condemnation Award: The net amounts owed or paid to the Parties or to which either of the Parties may be or become entitled by reason of any Taking or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by the Parties in collecting such award or payment.

(ff) Official Records: The official land records of the County of San Bernardino.

(gg) Operating Agreement: The revised operating agreement dated _____, 2021 between Lessor and Housing Partners I, Inc., a California non-profit public benefit corporation that governs the operation and organization of Lessee as a California limited liability company.

(hh) Option: The purchase option and right of first refusal anticipated to be set forth in a Right of First Refusal and Purchase Option Agreement among Lessor or an affiliate of Lessor, and Lessee, with respect to the Development or portions thereof.

(ii) Party: Lessor or Lessee, as applicable. Lessor and Lessee shall be referred to collectively as the "Parties."

(jj) Person: An individual, partnership, corporation, limited liability company, trust, unincorporated association, or other entity or association.

(kk) Property: That certain tract of real property located in the City, upon which the Development is to be located and which is being leased to Lessee pursuant to this Lease, as described in the attached Exhibit A.

(ll) Regulatory Agreements: Any recorded restrictions related to Approved Financing, and any regulatory or use agreement with HUD, setting forth certain terms and conditions under which the Development will be operated.

(mm)

(nn)

(oo) Rent: As described in Section 4.1 of this Lease.

(pp) Taking: A taking during the Term of all or any part of the Leased Premises and/or the Improvements, or any interest in the Leased Premises and/or the Improvements or right accruing to the Leased Premises and/or the Improvements as a result of the exercise of the right of condemnation or eminent domain materially affecting the Leased Premises or any part of the Leased Premises. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking.

(qq) Tenant(s): Any tenant, sublessee or licensee of Lessee under any Tenant Lease(s).

(rr) Tenant Lease(s): Any lease or license agreement entered into by Lessee with residents of the Mixed Use Housing units, Commercial Buildings or other Improvements developed on the Property.

(ss) Term: The period of time described in Section 2.4 of this Lease.

(tt) Transfer: Any sale, assignment, transfer, conveyance, encumbrance, mortgage, or hypothecation, in any manner or form or any agreement to do any of the foregoing.

(uu) Unit(s): The residential units to be constructed on the Leased Premises.

(vv) Warehouse Building. The portion of the Property within the portion of the Property designated for construction of the Envision Center, as shown on Exhibit “C” attached hereto and improved with a warehouse building to be renovated and converted to office uses, a central shop, maintenance and community garden buildings, which portion of the Property shall be assigned to a qualified community service provider.

Section 1.2 Exhibits. The Exhibits referred to in this Agreement and attached to and incorporated in this Lease are:

- Exhibit A: Legal description of the Property
- Exhibit B: Memorandum of Lease
- Exhibit C: Site Plan
- Exhibit D: HUD Lease Addendum

ARTICLE 2. LEASE OF THE LEASED PREMISES

Section 2.1 Leased Premises. Subject to the terms of this Lease and in consideration of the covenants of payment and performance stipulated in this Lease, beginning on the Commencement Date, Lessor does lease the Leased Premises to Lessee, and in consideration thereof, Lessee does take, hire and lease the Leased Premises from Lessor pursuant to the terms of this Lease. The Leased Premises shall include (i) the Warehouse Building to be assigned pursuant to Section 16.1 to a qualified community service provider within the portion of the Property designated for construction of the Envision Center, as shown on Exhibit “C ” attached hereto; and (ii) the Head Start Parcel. Within thirty (30) days of the Effective Date of this Lease, Lessee shall execute documentation as needed to accept the assignment of the lease agreement from Lessor to Lessee for the Head Start Parcel to effect the inclusion of such Head Start Parcel as part of the Leased Premises and thus subject to this Lease. Lessee shall at all times comply with the provisions of the lease agreement for the Head Start Parcel.

Section 2.2 Possession. Lessor agrees to and shall provide possession of the Leased Premises to Lessee on the Commencement Date, subject to Section 2.3 below.

Section 2.3 Access for Demolition Work and Construction of the Master Development. The Leased Premises contains a cement slab and related improvements, which must be demolished (“Demolition Work”), to prepare the Leased Premises for construction of the Master Development, as defined in Section 3.4. To allow for such Demolition Work, Lessee grants Lessor, its contractors, and related parties and equipment access to the Leased Premises to evaluate the scope of the required Demolition Work, secure bids, prepare for and cause the Demolition Work to be performed by selected contractors as well as to cause the proper disposal of any materials resulting from such Demolition Work pursuant to applicable

law. Thereafter, Lessee grants Lessor, its contractors, and related parties and equipment access to the Leased Premises at all times to survey, analyze, secure bids, prepare for and cause the Leased Premises to be graded and otherwise prepared for and cause the construction of the Master Development on a phased basis to be performed by Development Entities in accordance with the approved subdivision of the Leased Premises, Tract Map No. 18829, and plans as may be approved by the City of San Bernardino; provided that any portion of the Leased Premises may be transferred to one or more Development Entities before commencement of construction in accordance with Section 16.1. Lessee shall further grant the County of San Bernardino, its operator Head Start Preschools, their respective contractors, and related parties access to the Leased Premises to perform any improvements as may be needed to the Head Start Parcel.

Section 2.4 Term. Unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a term ("Term"), commencing on the Commencement Date and expiring on the fifty-fifth (55th) anniversary of the Commencement Date; provided that the Term shall terminate for those portions of the Leased Premises assigned to Development Entities per Section ____ herein.

Section 2.5 Memorandum of Lease. The Parties shall execute and acknowledge the Memorandum of Lease, in the form attached hereto as Exhibit B, which Lessee shall cause to be immediately recorded in the Official Records at Lessee's expense.

Section 2.6 Use. Lessee shall, throughout the Term , continuously use the Development only for the operation, marketing for lease and leasing of the parcels and Mixed Income Housing and Commercial Buildings within the Development, and such other uses as are reasonably and customarily attendant to such uses, subject to the Legal Requirements, and this Lease. Further, Lessee agrees:

(a) not to use, or permit the use of, the Development for any improper, immoral, unlawful or objectionable or offensive purpose, nor shall Lessee cause, maintain or suffer or permit any nuisance in, on or about the Development;

(b) at its sole cost and expense, to comply, and use commercially reasonable efforts to cause all Tenants to comply, in all material respects with all Legal Requirements, all Hazardous Materials Laws, this Lease and all insurance requirements, to the extent applicable, in their use and occupation of the Development;

(c) upon reasonable prior notice from Lessor, to take reasonable action, if necessary, to abate any action by any Tenant that would cause Lessee to violate this Lease; and

(d) subject to the rights of Tenants, to permit Lessor and its agents upon not less than forty-eight (48) hours' prior written notice to inspect the Leased Premises or any part of the Leased Premises at any reasonable time during the Term.

Section 2.7 Non-Discrimination.

(a) Lessee shall not discriminate against, or segregate any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, marital status,

national origin, ancestry, disability, medical condition, age, familial status, or source of income in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Leased Premises nor shall Lessee, or any person claiming under or through Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Tenants, lessees, subtenants, sublessees or vendees of the Leased Premises. Lessee shall otherwise comply with all applicable local, state, and federal laws concerning discrimination. The foregoing covenant shall run with the land.

(b) Lessor shall be entitled to invoke any remedies available at law or in equity to redress any breach of Subsection (a) or to compel compliance therewith by Lessee.

ARTICLE 3. THE IMPROVEMENTS

Section 3.1 Title to Improvements.

(a) Title to Improvements During the Term. As of the Commencement Date, Lessor grants to Lessee, without warranty express or implied, any right, title, or interest that Lessor has or may have in the Improvements now or later located on the Leased Premises which improvements are and shall remain real property, with the exception of the improvements at the Head Start Parcel. Notwithstanding any provision in this Lease to the contrary, the Improvements and all alterations, additions, equipment and fixtures built, made or installed by Lessee in, on, under or to the Leased Premises or Improvements shall be the sole property of Lessee until the expiration of the Term or other termination of this Lease; provided, however, that Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease or as approved in writing by Lessor. It is the intent of the parties hereto that this Lease shall create a constructive notice of severance of the Improvements from the Leased Premises without the necessity of a deed from Lessor after the Improvements have been constructed.

(b) Title to Improvements After the Termination of Lease. Upon the expiration of the Term or other termination of the Lease, the Improvements and all alterations, additions, equipment and fixtures shall be deemed to be and shall automatically become the property of Lessor, without cost or charge to Lessor. Lessor agrees that Lessee, at any time prior to the sixtieth (60th) day after the expiration or other termination of this Lease, may remove from the Leased Premises any and all equipment which Lessee has furnished for maintenance purposes or for the use of the Management Agent, provided that Lessee shall repair any physical damage to the Leased Premises caused by the removal of such equipment and property. Lessee agrees to execute, at the request of Lessor at the end of the Term, a quitclaim deed of the Improvements to Lessor to be recorded at Lessor's option and expense and any other documents that may be reasonably required by Lessor or Lessor's title company to provide Lessor title to the Leased Premises and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by Lessor.

Section 3.2 Construction of the Improvements.

(a) By execution of this Lease, Lessee approves the conceptual layout for the Improvements and Tract Map No. 18829 attached as Exhibit [REDACTED]. Lessee approval shall not be required for any changes to Tract Map No. 18829 or development plans for such Improvements. Nor shall Lessee approval be required for changes approved by the Mortgagees.

(b) Any and all Improvements constructed by or on behalf of Lessor shall be constructed in a good and worker-like manner, in compliance with all applicable Legal Requirements, including, without limitation, the requirements of the Approved Financing and any mitigation measures imposed under environmental reviews conducted under state or federal law.

Section 3.3 No Liens. Lessee shall not have any right, authority or power to bind Lessor, Lessor's Estate or any other interest of Lessor in the Leased Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with any change, alteration or addition to the Improvements or any change, alteration or addition thereto except as set forth in in Section 8.1(a). Lessee shall not have any right to encumber Lessee's Estate without the written consent of Lessor.

Lessee shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Lessee and shall keep the Leased Premises free and clear of all mechanics' and materialmen's liens in connection therewith. If any claim of lien is filed against the Leased Premises or a stop notice is served on Lessor or other third party in connection with any change, alteration or addition to the Improvements, then Lessee shall, within thirty (30) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Lessor a surety bond in sufficient form and amount, or provide Lessor with other assurance reasonably satisfactory to Lessor that the claim of lien or stop notice will be paid or discharged, provided that Lessor provides written notice of such claim of lien or stop notice to Lessee promptly upon receipt by Lessor.

If Lessee fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, Lessor may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Lessee's expense and, Lessee shall pay to Lessor as Additional Rent any such amounts expended by Lessor within thirty (30) days after written notice is received from Lessor of the amount expended. Alternately, Lessor may require Lessee to immediately deposit with Lessor the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. Lessor may use such deposit to satisfy any claim or lien that is adversely determined against Lessee.

Section 3.4 Permits, Licenses and Easements. Lessor shall be responsible for obtaining any and all permits, licenses, easements and other authorizations required by any Governmental Authority with respect to any construction or other work to be performed on the Leased Premises and to grant or cause to be granted all permits, licenses, easements and other governmental authorizations that are necessary or helpful for electric, telephone, gas, cable television, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or

operation of the Improvements. Lessor shall be entitled, without separate payment to Lessee for tap or connection fees, to tap into the existing lines, facilities and systems of applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Leased Premises, provided Lessor remains responsible for payment of such fees as are required by the City.

Lessee agrees to use Lessee's reasonable efforts to assist Lessor to obtain waiver, reduction or deferral, as applicable, of all fees and other charges otherwise payable in connection with obtaining any permits, licenses, easements and other authorizations required by any Governmental Authority with respect to any construction or other work to be performed on the Leased Premises in connection with the Improvements and also agrees to enter into any grants of easements for utilities and related documents, useful or necessary to construct the Improvements.

In connection with the proposed development of the Property and the construction of the Improvements and certain other development and improvements in the vicinity of the Property (collectively, the "Master Development"), Lessor has obtained certain governmental approvals, including but not limited to Final Tract Map No. 18829. Lessee covenants and agrees to not take any action (or permit any such action to be taken) with respect to the construction, development and use of the Master Development that would prohibit or otherwise restrict the construction, development and use of the Improvements on the Property as intended under this Lease.

Section 3.5 Benefits of Improvements During Term. Lessee shall be deemed the sole owner of the Improvements and the sole party entitled to all of the tax attributes of ownership of the Improvements during the Term. Lessor acknowledges and agrees that any and all depreciation, amortization and tax credits for federal or state tax purposes relating to the Improvements located on the Leased Premises and any and all additions to the Leased Premises, substitutions for the Leased Premises, fixtures on the Leased Premises and other property relating to the Leased Premises shall be deducted or credited exclusively to Lessee during the Term and for the tax years during which the Term begins and ends.

Section 3.6. Possessory Interest Taxes. Lessee shall pay prior to delinquency any and all personal property taxes and possessory interest taxes attributable to the Leased Premises. (Lessee is aware that this leasehold will be subject to possessory interest taxes as assessed by the County of San Bernardino.) In the event Lessee fails to timely pay any tax, assessment, fee, penalty or interest, Lessor, at its option, shall have the right to pay such charge and treat such payment as additional rent to be charged to Lessee and paid by Lessee to Lessor within five (5) days after receipt of written notice from Lessor. Lessee shall be solely responsible for the payment of all taxes attributable to its operations, including but not limited to, sales taxes and income taxes.

Section 3.7 Restrictions Applicable to Affordable Housing Units. Lessee shall, at all times throughout the Term, comply with all applicable requirements of the Regulatory Agreements that are then encumbering Lessee's Estate. To the extent applicable, in no event will any action be taken which violates Section 42(h)(6)(E)(ii) of the U.S. Internal Revenue Code of 1986, as amended, regarding prohibitions against evicting, terminating tenancy or increasing rent of tenants for a period of three (3) years after acquisition of a building by foreclosure or deed-in-lieu of foreclosure.

ARTICLE 4.
RENTS

Section 4.1 Ground Rent. Lessee shall pay to Lessor rent in the amount of _____ Dollars (\$_____) ("Rent") which amount reflects the appraised value of the Leased Premises as set forth in the Appraisal. Lessee shall pay Rent through the execution and delivery of the Ground Lease Note on the Commencement Date. Payments on the Ground Lease Note shall be payable annually commencing on _____, and on _____ 1 of each year thereafter through to the end of the Term, from Residual Receipts (as defined in the Ground Lease Note). Payment of Rent shall be deferred until such time as any portion of the Improvements is developed and receive a certificate of occupancy. Construction of the Improvements shall be done on a phase-by-phase basis and, as such, Rent shall be paid on a prorated basis based on the amount of developable area that is the subject of a certificate of occupancy at any given time relative to the entire developable acreage of the Leased Premises

Section 4.2 Additional Rents. In addition to the Rent specified in Section 4.1, any and all of the payments that Lessee is required to make under this Lease to or for the benefit of Lessor shall be deemed to be "Additional Rents." All such Additional Rents shall be payable in accordance with the provisions of the Sections of this Lease specifying the payment of such Additional Rents. The Rent specified in Section 4.1 and Additional Rents payable under this Lease shall be deemed "Rents" reserved by Lessor, and any remedies now or later given to Lessor under the laws of the State of California for collection of the Rents shall exist in favor of Lessor, in addition to any and all other remedies specified in this Lease.

Section 4.3 Payments. All Rents or other sums, if any, due Lessor under this Lease shall be paid by Lessee to Lessor at the address of Lessor set forth in this Lease for notices, or to such other person and/or at such other address as Lessor may direct by written notice to Lessee, without notice or demand, and without abatement, deduction or set off.

ARTICLE 5.
TAXES AND OTHER IMPOSITIONS; UTILITIES

Section 5.1 Payment of Impositions. Lessee shall be obligated, at all times from and after the Commencement Date, prior to delinquency, to pay all Impositions except that if any Imposition that Lessee is obligated to pay in whole or in part is permitted by law to be paid in installments, Lessee may pay or cause to be paid such Imposition (or its proportionate part of such Imposition) in installments prior to delinquency, and that Lessor shall have no obligation to perform or pay any Imposition with respect to the Development. Upon the written request of Lessor, Lessee shall exhibit and deliver to Lessor evidence satisfactory to Lessor of payment of all Impositions. During the first and last years of the Term, all Impositions that shall become payable during each calendar, fiscal, tax or Lease Year, as applicable, shall be ratably adjusted on a per diem basis between Lessor and Lessee in accordance with the respective portions of such calendar, fiscal, tax, assessment or Lease Year during the Term. If any special assessments or taxes are payable in installments, Lessee

shall pay only those installments that are due and for which the delinquency date occurs during the Term for periods occurring during the Term. The parties acknowledge that Lessee intends to apply for an exemption from real property taxes under Section 214(g) of the California Revenue and Taxation Code.

Section 5.2 Contested Taxes and Other Impositions. Lessee, at its sole cost and expense, in its own name or in the name of Lessor, may contest the validity or amount of any Imposition relating to all or any portion of the Leased Premises, in which event the payment of the Imposition may be deferred during the pendency of such contest, if diligently prosecuted.

(a) As may be necessary or desirable, Lessor or Lessee, as applicable, upon the request of the other party, shall use its best reasonable efforts to assist in any such proceeding to contest the validity or amount of any Imposition.

(b) Nothing contained in this Section 5.2, however, shall be construed to allow any such contested Imposition to remain unpaid for a length of time which shall permit the Leased Premises, or any part of the Leased Premises, to be sold by any Governmental Authorities for the non-payment of such Imposition. Lessee shall promptly furnish Lessor copies of all notices, appeals, pleadings, motions and orders in any proceedings commenced with respect to such contested Imposition. During such contest, Lessee shall (by the payment of such disputed taxes, assessments, or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting of Lessor's title, reversion or other interest in or to the Leased Premises and the Improvements.

Section 5.3 Valuation Assessment. If applicable, Lessee, at its expense, may attempt to obtain a lowering of the assessed valuation of the Leased Premises for any year for the purpose of reducing taxes on the Leased Premises. In such event, upon Lessee's request, Lessor shall use its reasonable efforts to assist Lessee in such endeavor.

Section 5.4 Failure to Pay Impositions. If Lessee fails to pay any Impositions before the same become delinquent, or as otherwise required pursuant to Section 5.2, Lessor, at its election, may pay such Impositions (but shall not be obligated to pay same), together with any interest and penalties due on them, and the amount so paid by Lessor shall be repayable to Lessor by Lessee within forty-five (45) days after Lessor's demand therefor.

Section 5.5 Utilities. Lessee shall pay all utilities used, rendered or supplied upon or in connection with the Improvements and the construction, maintenance, and operation of the Improvements including, but not limited to, all charges for gas, electricity, light, heat or power, all telephone and other communications services, all water rents and sewer service charges, and all sanitation fees or charges levied or charged against the Leased Premises during the Term; provided, however, that Lessee shall have no responsibility for the payment of utilities supplied by the respective providers directly to Tenants for such Tenants' use in connection with the occupancy of their respective parcels or units within the Development. Lessor shall have no responsibility for the payment of utility costs.

ARTICLE 6. INSURANCE

Section 6.1 Lessee's Insurance. During the Term, Lessee shall keep and maintain in force, at no cost or expense to Lessor, the following insurance, all of which shall be provided by companies and/or agencies licensed to do business in the State of California:

(a) Leased Premises Insurance. "All risk" insurance covering all risks of physical loss or damage to any of the Improvements (other than the Existing Improvements once demolished), with liability limits of not less than one hundred percent (100%) of the "full replacement value" of the Improvements. Such policies shall be broad form and shall include, but shall not be limited to, coverage for fire, extended coverage, vandalism, malicious mischief and storm. Perils customarily excluded from all risk insurance, e.g., earthquake and flood, may be excluded. The term "full replacement value" shall exclude the cost of excavation, foundations and footings. The amount of such insurance shall be adjusted by reappraisal of the Development by the insurer or its designee not more than once every five (5) years during the Term, if requested in writing by Lessor.

(b) General Liability Insurance. Commercial general liability and automobile liability insurance, covering loss or damage resulting from accidents or occurrences on or about or in connection with the Improvements or any work, matters or things under, or in connection with, or related to this Lease, with personal injury, death and property damage combined single limit liability of not less than One Million Dollars (\$1,000,000) for general liability and One Million Dollars (\$1,000,000) for automobile liability for each accident or occurrence and an aggregate limit of not less than Two Million Dollars (\$2,000,000) for general liability. Coverage under any such comprehensive policy shall be broad form and shall include, but shall not be limited to, operations, contractual, elevators, owner's and contractor's protective, products and completed operations, and the use of all owned, non-owned and hired vehicles.

(c) Workers' Compensation Insurance. In the event Lessee has employees, Lessee shall carry or cause to be carried Workers' Compensation insurance with limits as required by the State of California and Employer's Liability limits of One Million Dollars (\$1,000,000) for bodily injury by accident and One Million Dollars (\$1,000,000) per person and in the annual aggregate for bodily injury by disease covering all persons employed by Lessee in connection with the Improvements and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Lessor or Lessee.

(d) Builders' Risk Insurance. During the course of any alteration, construction or reconstruction of the Improvements, the cost of which exceeds Fifty Thousand Dollars (\$50,000) (escalating at three percent (3%) per year), Lessee shall provide builders' risk insurance for not less than the value of the construction contract, combined single limit for bodily injury or property damage insuring the interests of Lessor, Lessee and any contractors and subcontractors.

Section 6.2 General Requirements.

(a) All policies described in Section 6.1 shall include Lessor and Lessee, together with Mortgagees, as named insureds, as their respective interests may appear.

(b) All policies described in Section 6.1 shall contain (i) the agreement of the insurer to give Lessor and Mortgagees, as applicable, at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by Lessor; (iii) a provision that no act or omission of Lessee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (iv) a waiver by the insurer of all rights of subrogation against Lessor and its authorized parties in connection with any loss or damage insured against; and (v) terms providing that any loss covered by such insurance may be adjusted with Lessor and Lessee, but shall be payable to the holder of a Mortgage, who shall agree to receive and disburse all proceeds of such insurance, subject to the duty of Lessee to repair or restore, as set forth in Sections 11.1 and 11.2.

Section 6.3 Evidence of Insurance. Certificates of insurance for all insurance required to be maintained by Lessee under this Article 6 shall be furnished by Lessee to Lessor on or before the date of this Lease. Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by this Lease at any time.

Section 6.4 Failure to Maintain. If Lessee fails to maintain such insurance, Lessor, at its election, may procure such insurance as may be necessary to comply with the above requirements (but shall not be obligated to procure same), and Lessee agrees to repay to Lessor as Additional Rent the cost of such insurance.

ARTICLE 7.

MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS

Section 7.1 Maintenance of Leased Premises. During the Term, subject to Section 2.3 above, at Lessee's sole cost and expense, Lessee shall keep and maintain the Leased Premises, all Improvements, and all appurtenances, in good and safe order, condition and repair. In addition, all maintenance and repair of the Improvements shall conform and comply with the Legal Requirements affecting the Leased Premises. Lessee shall notify the Management Agent in writing if Lessee discovers or is notified of any water damage to, or mold within, any Unit or common space within the Improvements.

Section 7.2 Alterations to Leased Premises. Following construction of the New Improvements, Lessee may make any additions, alterations or changes (sometimes collectively referred to as "Alterations") in or to the Improvements subject, however, to the following conditions:

(a) No Alterations may be made that are likely to impair the structural soundness of the Improvements;

(b) No Alterations of the Leased Premises may be undertaken which have a cost greater than One Hundred Thousand Dollars (\$100,000), or demolition of any portion thereof, without first presenting to Lessor complete plans and specifications therefor and obtaining Lessor's written consent thereto (which consent shall not unreasonably be withheld so long as, in Lessor's judgment, such Alterations will not violate the Legal Requirements, this Lease, the Regulatory Agreements, or impair the value of the Improvements);

(c) No Alterations may be undertaken until Lessee shall have procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable Governmental Authorities, all required consents of Mortgagees, and the consent of Lessor if required pursuant to subsection (b), above, if applicable. Lessor shall join in the application for such permits or authorizations whenever such action is necessary or helpful and is requested by Lessee, and shall use Lessor's reasonable efforts to obtain such permits or authorizations; and

(d) Any Alterations shall be performed in good and worker-like manner using new materials of the same or better quality as the original Improvements, and in compliance with the Regulatory Agreements, all applicable Legal Requirements and the insurance requirements of this Lease.

Section 7.3 Indemnifications.

(a) Notwithstanding any other provision of this Lease to the contrary, Lessee agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) Lessor, its commissioners, officers, directors, affiliates, agents and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses (collectively "claims"), arising from or relating to Lessee's obligations under this Lease, and the construction or operations of the Improvements, except to the extent caused by the gross negligence or willful misconduct of Lessor, or any of its commissioners, officers, directors, affiliates, agents or employees.

(b) In addition, if any contractor or subcontractor which performed any construction work for Lessee or Lessee's affiliates on the Improvements shall assert any claim against Lessor on account of any damage alleged to have been caused by reason of acts of negligence or willful misconduct of Lessee or Lessee's affiliates, their members, partners, officers, directors, affiliates, agents or employees, or their construction contractors, Lessee shall defend at its own expense any suit based upon such claim; and if any judgment or claim against Lessor shall be allowed, Lessee shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith.

(c) This indemnity shall survive the termination of this Lease.

ARTICLE 8. PERMITTED MORTGAGES

Section 8.1 Right to Encumber.

(a) Lessee's Estate. Lessee shall have the right during the Term to encumber, through a Mortgage pursuant to Approved Financing and the Regulatory Agreements, all of Lessee's right, title and interest in the Leased Premises subject to the provisions of this Lease.

Other than a Mortgage pursuant to Approved Financing, the Regulatory Agreements, and as set forth in Section 3.3, Lessee shall not encumber Lessee's right, title and interest in the Leased Premises in any manner whatsoever.

(b) Lessor's Estate. Lessor's Estate shall not be subject to and Lessor shall have no obligation to consent to any subordination agreement required to secure any financing or Mortgage of Lessee. Lessor agrees not to encumber or convey any interest in Lessor's Estate with any deed to secure debt, mortgage, deed of trust or other instrument in the nature of a mortgage as security for any debt which is not expressly subordinate to Lessee's Estate under this Lease.

Section 8.2 Notice to Mortgagee. During any period in which a Mortgage is in place, Lessor shall give any such Mortgagee of which Lessor has received notice from Lessee a duplicate copy of all notices of default or other notices that Lessor may give to or serve in writing upon Lessee pursuant to the terms of this Lease. The address of the Mortgagee originally designated in the Mortgage may be changed upon written notice delivered to Lessor in the manner specified in Section 17.12 below. Lessor's failure to give any such notice to any such Mortgagee shall not render such notice ineffective, nor shall any such failure constitute an Event of Default hereunder.

Section 8.3 Right of Mortgagee to Cure. Notwithstanding any default by Lessee under this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall have given each Mortgagee written notice of such default and such Mortgagees shall have failed to remedy such default or acquire Lessee's leasehold estate created by this Lease or commence foreclosure or other appropriate proceedings as set forth in, and within the time specified, by this Section.

Any Mortgagee which has an outstanding Mortgage shall have the right, but not the obligation, at any time to pay any or all of the rental due pursuant to the terms of this Lease, and do any other act or thing required of Lessee by the terms of this Lease, to prevent termination of this Lease. Each Mortgagee shall have sixty (60) days after receipt of notice from Lessor describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by Lessee instead of by a Mortgagee.

In addition to the cure period provided in this Section 8.3 above, if the default is such that possession of the Leased Premises may be reasonably necessary to remedy the default, any Mortgagee shall have a reasonable time after the expiration of such sixty (60) day period within which to remedy such default, provided that (i) such Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease within such sixty (60) day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Mortgagee shall have acquired Lessee's leasehold estate hereunder or commenced foreclosure or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

Any default under this Lease which by its nature cannot be remedied by any Mortgagee shall be deemed to be remedied if (i) within sixty (60) days after receiving written notice from Lessor describing the default, or prior thereto, any Mortgagee shall have acquired Lessee's leasehold estate or commenced foreclosure or other appropriate

proceedings, (ii) Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee hereunder which does not require possession of the Leased Premises, and (iv) after gaining possession of the Leased Premises, the Mortgagee shall cure all non-monetary defaults of Lessee hereunder capable of cure by Mortgagee.

If any Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Mortgagee shall not interfere with Lessor's efforts to seek compliance by Lessee with any non-monetary obligation under this Lease.

Section 8.4 Limitation on Liability of Mortgagee. No Mortgagee shall be or become liable to Lessor as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by Lessor and Mortgagee such liability (in which event the Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created by this Lease) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature of a foreclosure or as the result of any other action or remedy provided for by such Mortgage or other instrument or from a conveyance from Lessee pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Lessee under the terms of this Lease.

Section 8.5 Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other Party, or upon request from any Mortgagee or Investor or a permitted assignee or other interested party, Lessor or Lessee will execute, acknowledge and deliver to the other Party or to such Mortgagee or Investor a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Lessor or Lessee, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Lessor, Lessee or any Mortgagee or Investor, as the case may be, in this Lease or by any prospective Mortgagee or Investor or permitted assignee of any Mortgagee or Investor.

Section 8.6 Registration of Mortgages. Lessee shall provide written notice to Lessor of the name and address of each Mortgagee under this Lease.

Section 8.7 New Lease. In the event of the termination of this Lease prior to the natural expiration of the Term of this Lease due to a default of Lessee or operation of law (except by eminent domain), Lessor, upon written request from the holder of a Mortgage, made within sixty (60) days of the Mortgagee receiving notice of termination, shall enter into a new lease with such holder or its designee, as such designee is approved by Lessor in its reasonable discretion, in accordance with and upon the same terms and conditions as set forth herein, for the remainder of the Term. The Mortgagee shall pay all reasonable costs and

expenses of Lessor related to entering into the new lease. Notwithstanding anything stated to the contrary herein, if more than one Mortgagee requests a new lease, the Mortgagee who holds the most senior (in lien priority) Mortgage shall be entitled to enter into the new lease. Simultaneous to the execution and delivery of such new lease, Lessor shall convey title to the Improvements to the new lessee and the Mortgagees shall be entitled to encumber the Improvements and the Leased Premises with Mortgages. Any new lease made pursuant to this Section 8.7 shall be prior to any lien, charge or encumbrance on Lessor's Estate and Lessor's interest in the Improvements, except as previously approved in writing by the Mortgagees.

In the event of the filing of a petition in bankruptcy by Lessee, and Lessee rejects this Lease under the then applicable provisions of the Bankruptcy Code, Lessor shall, upon the request of the holder of a Mortgage, affirm this Lease, and Lessor will enter into a new lease on the same terms and conditions set forth herein with such holder or its designee, as such designee is approved by Lessor in its reasonable discretion, immediately upon Lessee's rejection of this Lease. In the event of the filing of a petition in bankruptcy by Lessor, and Lessor rejects this Lease and Lessee does not affirm it, the holder of the Mortgage will have the authority to affirm this Lease on behalf of Lessee and to keep the Lease in full force and effect.

The terms of this Section 8.7 survive termination of this Lease and Mortgagees prior to such termination shall continue to be considered Mortgagees for purposes of this Section notwithstanding the effect of termination on the Mortgages.

Section 8.8 Consent to Termination of Lease. Lessor shall not voluntarily cancel, terminate or surrender the Lease without the prior written consent of Mortgagees and the Investor which consent shall not be unreasonably withheld or delayed, except in the event of default by Lessee as to which Mortgagees and Investor shall have been provided with written notice and opportunity to cure such default and such Mortgagees and Investor shall have failed to remedy such default as set forth in Section 8.3 above and Section 8.9 below.

Section 8.9 Rights of Investor. The Investor shall have the same notice and cure rights as any Mortgagee for so long as it is a limited partner of Lessee, and any provision requiring the consent or approval of a Mortgagee shall also require the consent or approval of the Investor. The address for any notices to same, as of the date hereof, is provided in Section 17.12 below.

ARTICLE 9. REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 9.1 Representations, Warranties and Covenants of Lessee. As an inducement to Lessor to enter into and to proceed under this Lease, Lessee warrants and represents to Lessor as follows, which warranties, representations and covenants are true and correct as of the Commencement Date:

(a) Lessee has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease;

(b) The entry by Lessee into this Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which Lessee is a party or by which it is bound;

(c) Lessee (i) shall not cause or permit any Hazardous Materials to be placed, held, located or disposed of on, under or at the Development or any part thereof, except in commercially reasonable amounts used in the construction and operation of the Improvements and in accordance with Legal Requirements, and (ii) shall not cause or permit any Hazardous Materials contamination of the Development or any part thereof; provided, however, that Lessee shall not be in violation of this Subsection 9.1(c) or otherwise be liable or obligated hereunder for any of the foregoing occasioned solely by reason of the existence of soils, water or materials already located on the Development as of the Commencement Date; and

(d) At all times during the Term, Lessee or its authorized representative shall use, maintain and operate the Leased Premises and the Improvements thereon in accordance with all Legal Requirements and Regulatory Agreements.

Section 9.2 Hazardous Materials.

(a) Certain Covenants and Agreements. Lessee hereby covenants and agrees that:

(1) Lessee shall not knowingly permit the Development or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Development in violation of any Hazardous Materials Laws;

(2) Lessee shall keep and maintain the Development and each portion thereof in compliance with, and shall not cause or permit the Development or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same Lessee shall immediately advise Lessor in writing of:

(A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Lessee or the Development pursuant to any applicable Hazardous Materials Laws;

(B) any and all claims made or threatened by any third party against Lessee or the Development relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims");

(C) the presence of any Hazardous Materials in, on or under the Development in such quantities which require reporting to a government agency; or

If Lessor reasonably determines that Lessee is not adequately responding to a Hazardous Material Claim or any condition in Sections 9.2(a)(3)(A) or (B), Lessor shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by Lessee.

(4) Without Lessor's prior written consent, which shall not be unreasonably withheld or delayed, Lessee shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 7.3 above, Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) Lessor, its commissioners, officers, agents, successors, assigns and employees (the "Indemnitees") from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(1) The failure of Lessee or any other person or entity on or after the Commencement Date to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development;

(2) Any release or discharge of any Hazardous Materials into, on, under or from the Development, arising on or after the Commencement Date, or the presence in, on, or under the Development of any Hazardous Materials that occurs on the Development after the Commencement Date; or

(3) Any activity or omission of activity carried on or undertaken on the Development, on or after the Commencement Date and whether by Lessee or any employees, agents, contractors or subcontractors of Lessee or any successor in title that is related to Lessee occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials located or present on or under the Development.

The provisions of this section shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect. This indemnity obligation shall not extend to any claim arising from Lessor's negligence or willful misconduct.

(c) No Limitation. Lessee hereby acknowledges and agrees that Lessee's duties, obligations and liabilities under this Lease, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information Lessor may have concerning the Development and/or the presence on the Development of any

Hazardous Materials, whether Lessor obtained such information from Lessee or from its own investigations.

Section 9.3 As-Is Conveyance.

(a) Condition of Leased Premises. This Lease is made "AS IS," with no warranties or representations by Lessor concerning the condition of the Leased Premises or Improvements, including the presence or absence of any Hazardous Materials except as expressly set forth in this Lease. Lessee hereby agrees and acknowledges that except in the event of any fraud, misrepresentation, or withholding of information by Lessor: (i) neither Lessor, nor anyone acting for or on behalf of Lessor, has made any representation, statement, warranty or promise to Lessee concerning the development potential or condition of the Leased Premises or Improvements; (ii) in entering into this Lease, Lessee has not relied on any representation, statement or warranty of Lessor, or anyone acting for or on behalf of Lessor, other than as may expressly be contained in writing in this Lease; (iii) all matters concerning the Leased Premises and Improvements have been or shall be independently verified by Lessee and that Lessee shall purchase or lease the Leased Premises and Existing Improvements on Lessee's own prior examination thereof; and (iv) IN ENTERING INTO THIS LEASE LESSEE IS LEASING THE LEASED PREMISES AND ACQUIRING THE IMPROVEMENTS IN AN "AS IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR.

(b) General Release. Subject to Section 9.3(a) above, Lessee and its owners, employees, agents, assigns and successors agree that upon the Acquisition Closing, Lessee shall be deemed conclusively to have released and discharged Lessor and its agents, employees, trustees, assigns and successors, from any and all damages, losses, demands, claims, debts, liabilities, obligations, causes of action and rights, whether known or unknown, by Lessee regarding the Leased Premises and Improvements, including, but not limited to, the environmental condition of the Leased Premises and Improvements.

(c) Waiver of Civil Code § 1542. Lessee agrees that, with respect to the General Release contained in Section 9.3(b) above, the General Release extends to all matters regarding the Leased Premises and Improvements, whether or not claimed or suspected, to and including the date of execution hereof, and constitutes a waiver of each and all the provisions of the California Civil Code § 1542, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Lessee herein acknowledges that the effect and import of the provisions of Civil Code § 1542 have been explained to it by its own counsel. Lessee understands and acknowledges the significance and the consequence of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, losses or liabilities that it may hereinafter incur from the waiver of these unknown claims.

Section 9.4 Environmental Work. Lessee shall be responsible for performing the work of any investigation and remediation on the Leased Premises which may be required in order to develop the Leased Premises. The determination as to whether any such remediation is needed, and as to the scope and methodology thereof, shall be made by mutual agreement of the governmental agency with responsibility for monitoring such remediation, Lessor and Lessee. Lessee shall notify Lessor promptly upon discovery of any actionable levels of Hazardous Substances, and upon any release thereof, and shall consult with Lessor in order to establish the extent of remediation to be undertaken and the procedures by which remediation thereof shall take place. Lessee shall comply with, and shall cause its agents and contractors to comply with, all laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Substances. The investigation and remediation work shall be carried out in accordance with all applicable laws (including Hazardous Materials Laws) and such other procedures and processes as may be described in this.

ARTICLE 10. EMINENT DOMAIN

Section 10.1 Termination of Lease. Lessor and Lessee agree that, in the event of a Taking such that Lessee, with the consent of all Mortgagees and the Investor, reasonably determines that the Leased Premises cannot continue to be operated, at reasonable cost, for its then-current use, then, subject to the rights and with the prior consent of Mortgagees and the Investor, this Lease shall, at Lessee's sole option, terminate as of the date of the Taking.

Section 10.2 Continuation of Lease and Presumption of Restoration. Lessor and Lessee agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to Section 10.1 above, this Lease shall continue in effect as to the remainder of the Leased Premises, and the Net Condemnation Award will be disbursed in accordance with Section 10.4 below to Lessee and/or to any Mortgagee if the terms of the applicable Mortgage so require, and shall be used so as to make the same a complete, unified and efficient operating unit as nearly as reasonably possible to the condition existing prior to the Taking, subject to any applicable requirements of the Mortgagee.

Section 10.3 Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Leased Premises or of Lessee's interest in this Lease, then the Term shall not be reduced and Lessee shall continue to pay all Rents, Impositions, and other charges required in this Lease, without reduction or abatement at the times specified; provided, however, that Lessee shall not be required to perform such obligations that Lessee is prevented from performing by reason of such temporary Taking.

Section 10.4 Award. After the Acquisition Closing, subject to the rights of Mortgagees, if there is a Taking, whether whole or partial, Lessor and Lessee shall be entitled to pursue and receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration the fact that Lessor's interest in the Leased Premises is limited to the Property as encumbered by this Lease, and a reversionary interest in the Leased Premises upon the expiration of the Term. If the Leased Premises is restored as is contemplated in Section 10.2 above, Lessee shall be entitled to recover the costs and

expenses incurred in such restoration out of any Net Condemnation Award, subject to a Mortgagee's right to elect to have such Net Condemnation Award paid directly to Mortgagee, as set forth in the applicable financing documents for such Mortgage. Thereafter, if the condemning authority does not make separate awards, and the Parties are unable to agree as to the exact amount to be allocated to the respective interests of each Party, then each Party shall select an independent M.A.I. real estate appraiser (an "Appraiser"). Each Appraiser shall separately determine the amount of the balance of the Net Condemnation Award that is to be allocated to the interests of each Party. If the percentage of the balance of the Net Condemnation Award each Appraiser allocates to Lessor (a) are within ten percent (10%) of each other, the two allocations shall be averaged, and such average shall be the final allocation of the Net Condemnation Award, or (b) are not within ten percent (10%) of each other, the two Appraisers shall then select a third Appraiser, who shall independently allocate the Net Condemnation Award between Lessor and Lessee, and the middle of such three allocations shall be the final allocation of the Net Condemnation Award. Notwithstanding anything to the contrary contained herein, any Net Condemnation Award recovered by or allocated to Lessor shall in no event be greater than the value of Lessor's fee interest in the Property and any Net Condemnation Award recovered by or allocated to Lessee or Mortgagee shall in no event be less than the total Net Condemnation Award minus the value of Lessor's fee interest in the Property.

Section 10.5 Joinder. If a Mortgage exists, the Mortgagees, to the extent permitted by law, shall be made a party to any Taking proceeding.

ARTICLE 11. DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction to Leased Premises. Lessee shall give prompt written notice to Lessor after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Leased Premises, the Improvements or any portion of them (a "Casualty"). Subject to Section 11.2 below, and the rights of any Mortgagees, if during the Term the Improvements shall be damaged or destroyed by Casualty, Lessee shall repair or restore the Improvements, so long as Lessee determines, in its sole discretion, that it is feasible to do so and in such event Lessee provides or causes to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration. Upon the occurrence of any such Casualty, Lessee, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty. In the event that Lessee shall determine, subject to the rights and with the consent of the Mortgagees and the Investor, by notice to Lessor given within thirty (30) days after receipt by Lessee of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Leased Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Lessee may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Lessee terminates this Lease pursuant to this Section 11.1 with the consent of all Mortgagees and the Investor, Lessee shall surrender possession of the Leased Premises to Lessor immediately and assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Leased Premises, subject to the prior rights of any Mortgagee.

Section 11.2 Damage or Destruction Near End of Term. If, during the last seven (7) years of the Term, the Improvements shall be damaged by Casualty, then Lessee shall have the option, to be exercised within one hundred twenty (120) days after such Casualty:

(a) to repair or restore the Improvements as provided in this Article 11; or

(b) subject to the rights of Mortgagees, to terminate this Lease by notice to Lessor, which termination shall be deemed to be effective as of the date of the Casualty. If Lessee terminates this Lease pursuant to this Section 11.2, Lessee shall surrender possession of the Leased Premises to Lessor immediately and assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Leased Premises, subject to the prior rights of any Mortgagee therein.

Section 11.3 Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to Sections 11.1 or 11.2 of this Lease, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) first, if a Mortgage is in place to the Mortgagee to the extent of any indebtedness then owed to such Mortgagee; (b) second, the balance, if any, of such insurance proceeds shall be paid to Lessee or, as applicable pursuant to Sections 11.1 and 11.2 above, assigned or paid over to Lessor.

ARTICLE 12. EVENTS OF DEFAULT

Section 12.1 Events of Default. Each of the following shall be an "Event of Default" by Lessee under this Lease:

(a) failure by Lessee to pay any Rent when due or to pay or cause to be paid any Impositions, insurance premiums or other liquidated sums of money stipulated to be paid by Lessee, if such failure shall continue for a period of fifteen (15) days after notice has been given by Lessor to Lessee;

(b) failure by Lessee to perform or observe any of the provisions of this Lease stipulated in this Lease to be observed and performed by Lessee (other than as set forth in subsection (a) above), if such failure shall continue for a period of thirty (30) days after written notice thereof has been given by Lessor to Lessee; provided, however, that if any such failure cannot reasonably be cured within such thirty (30)-day period, then Lessor shall not have the right to terminate this Lease or Lessee's right to possession under this Lease so long as Lessee promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time; provided, however, that such period shall not extend for more than ninety (90) days after the date of Lessor's written notice to Lessee;

(c) the failure of Lessee to cure, within the prescribed time period, any declaration of default by the holder of a Mortgage on Lessee's Estate;

(d) the subjection of any right or interest of Lessee in this Lease to attachment, execution or other levy, or to seizure under legal process, if not released within

sixty (60) days; provided that the foreclosure of any Mortgage shall not be construed as an Event of Default within the meaning of this Subsection 12.1(d);

(e) the appointment of a receiver, not including receivership pursuant to any Mortgage, to take possession of Lessee's Estate or of Lessee's operations on the Leased Premises for any reason, if such receivership is not terminated, dismissed or vacated within ninety (90) days after the appointment of the receiver;

(f) the filing by Lessee of a petition for voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or Federal, now or hereafter in effect;

(g) the filing against Lessee of any involuntary proceedings under such Bankruptcy Code or similar law, if such proceedings have not been vacated or stayed within ninety (90) days of the date of filing;

(h) the appointment of a trustee or receiver for Lessee or for all or the major part of Lessee's property or the Leased Premises, in any involuntary proceeding, not including pursuant to any Mortgage, or taking of jurisdiction by any court over all or the major part of Lessee's property or the Leased Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Lessee, if such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ninety (90) days; or

(i) a general assignment by Lessee for the benefit of creditors or Lessee's admittance in writing of its insolvency or inability to pay its debts generally as they become due or Lessee's consent to the appointment of a receiver or trustee or liquidator for Lessee, all or the major part of its property, or the Leased Premises.

Section 12.2 Rights and Remedies.

(a) At any time after the occurrence of an Event of Default, subject in all respects to the provisions of this Lease with respect to Lessor's rights to cure defaults by Lessee and subject to the rights of any Mortgagees and the Investor as set forth in Article 8, in addition to any other remedies available to Lessor at law or in equity, Lessor may terminate this Lease by giving Lessee written notice thereof (with a copy of such notice to the Mortgagees and to the Investor), setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and Lessee's Estate and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 for the expiration of the Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Leased Premises (including all buildings and other Improvements comprising any part of the Leased Premises) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants; provided that Lessor shall not be entitled to disturb possession of any Tenants or others in possession pursuant to Tenant Leases with Lessee so long as such Tenants or others

are not in default under the Tenant Leases, and attorn to Lessor as their lessor.

(b) Upon the exercise of Lessor's remedies pursuant to this Section 12.2, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request in order to accurately set forth of record the then current status of Lessee's Estate and Lessee's rights under this Lease. Notwithstanding the above, in the enforcement of the remedies set forth in this Section 12.2, Lessor agrees not to seek any personal judgment against or levy on the assets of any partner of Lessee in connection with any such default.

Section 12.3 Default by Lessor.

(a) Events of Default. Lessor shall be in default of this Lease if it fails to perform any provision of this Lease that it is obligated to perform or if any of Lessor's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within thirty (30) days after written notice of the default has been given to Lessor. If the default cannot reasonably be cured within thirty (30) days, Lessor shall not be in default of this Lease if Lessor commences to cure the default within such thirty (30)-day period and diligently and in good faith continues to cure the default until completion.

(b) Right to Cure; Lessee's Remedies. If Lessor shall have failed to cure a default by Lessor after expiration of the applicable time for cure of a particular default, Lessee, at its election, but without obligation (i) may seek specific performance of any obligation of Lessor, after which Lessee shall retain, and may exercise and enforce, any and all rights that Lessee may have against Lessor as a result of such default, (ii) from time to time without releasing Lessor in whole or in part from the obligations to be performed by Lessor under this Lease, may cure the default at Lessor's cost, (iii) may terminate this Lease, and/or (iv) may exercise any other remedy given under this Lease or now or later existing at law or in equity. Any reasonable costs incurred by Lessee in order to cure such a default by Lessor shall be due immediately from Lessor, together with interest, and may be offset against any amounts due from Lessee to Lessor.

Section 12.4 Notices. Notices given by Lessor under Section 12.1 or by Lessee under Section 12.3 shall specify the alleged default and the applicable Lease provisions, and shall demand that Lessee or Lessor, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice.

ARTICLE 13.

QUIET ENJOYMENT AND POSSESSION; INSPECTIONS

Section 13.1 Quiet Enjoyment. Lessor covenants and warrants that Lessee, upon payment of all sums provided in this Lease and upon performance and observance of all of its covenants contained in this Lease, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Leased Premises during the Term, subject only to the provisions of this Lease and all applicable Legal Requirements.

Section 13.2 Lessor's Right of Inspection. Notwithstanding Section 13.1 above, Lessor, in person or through its agents, upon reasonable prior notice to Lessee, shall have the right, subject to the rights of Tenants, to enter upon the Development for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by Lessee with its obligations under this Lease. In addition to the aforementioned inspection rights, Lessee grants a right of access to Lessor, or any of its authorized representatives, with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

ARTICLE 14. VACATION OF LEASED PREMISES

Section 14.1 Surrender of Leased Premises. Lessee covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained in this Lease, Lessee will peaceably and quietly yield and surrender possession of the Leased Premises to Lessor. The foregoing, however, will be subject to the rights of Tenants or others in possession pursuant to Tenant Leases with Lessee, provided that such Tenants are not in default under such Tenant Leases and attorn to Lessor as their lessor. An action of forcible detainer shall lie if Lessee holds over after a demand for possession is made by Lessor.

Section 14.2 No Right to Possession after Termination. Lessee has no right to retain possession of the Development or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over by Lessee (or any successor-in-interest to Lessee) after the expiration or earlier termination of this Lease shall be construed to be a tenancy at sufferance on all of the terms and conditions set forth herein to the extent not inconsistent with a tenancy at sufferance. Acceptance by Lessor of rent or any other sum payable hereunder after such expiration or earlier termination shall not result in an extension or renewal of this Lease. If Lessee fails to surrender the Development upon the expiration or earlier termination of this Lease, Lessee shall indemnify, defend and hold harmless Lessor from and against all loss, damage, cost, liability or expense (including, without limitation, attorneys' fees and expenses) resulting from or relating to such failure to surrender the Development including, without limitation, any claim made by any succeeding lessee.

ARTICLE 15. NON-MERGER

Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth in this Lease, there shall be no merger of either this Lease or Lessee's Estate created under this Lease with the fee estate of the Property or any part of the Property by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Lease, Lessee's Estate created under this Lease or any interest in this Lease or Lessee's Estate (including the Improvements), and (b) the fee estate in the Property or any part of the Property or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Lessor, having an interest in (i) this Lease or Lessee's Estate created under this Lease, and (ii) the fee estate in

the Property or any part of the Property, shall join in a written instrument effecting such merger and shall duly record the same, and shall have obtained the prior written consent of all Mortgagees.

ARTICLE 16. ASSIGNMENTS AND TRANSFERS

Section 16.1 Assignment to Development Entities. Notwithstanding anything to the contrary set forth in any other provision of this Lease, Lessee hereby agrees that the intent of this Lease is to have the undeveloped portions of the Leased Premises assigned to Development Entities on a phased basis and the Warehouse Building to a qualified service provider selected by Lessor. To that end, Lessee shall cooperate and execute all necessary documents to effect the assignment of those portions of the Leased Premises approved by Lessor to be developed by Development Entities. This Lease shall thereafter be amended to exclude such assigned portions of the Leased Premises and Lessee shall cooperate with the Development Entities to allow for construction of Improvements on the portions of the Leased Premises so assigned to such Development Entities. Lessee shall further cooperate and execute all necessary documents to effect the assignment of the Warehouse Building to a qualified service provider selected by Lessor.

Section 16.2 Consent Required. Except as expressly provided herein, Lessee shall not, without the prior written consent of Lessor, assign this Lease or any interest therein ("Transfer"). A Transfer shall be deemed to include any attempt by Lessee to (a) demolish all or any portion of the Leased Premises after construction of the Improvements; (b) make or permit any voluntary or involuntary, total or partial, sale, lease, assignment, conveyance, mortgage, pledge, encumbrance, or other transfer of any or all of the Leased Premises, the Improvements; or (c) transfer, convey or assign (i) any interest of a managing member, general partner, or controlling affiliate or stockholder (any such interest being referred to as a "Controlling Interest") in Lessee or (ii) a Controlling Interest in any entity which has a Controlling Interest in Lessee, or (iii) any other interest in Lessee, or in any partner or member thereof. Any person to whom any Transfer is attempted without the consent of Lessor (if applicable) shall have no claim, right or remedy whatsoever hereunder against Lessor, and Lessor shall have no duty to recognize any person claiming under or through the same.

Section 16.3 Limitations on Consent Requirement. Notwithstanding the foregoing, and subject to the limitations set forth in Section 17.19, the consent of Lessor shall not be required for:

(a) a lease of any Unit at the Leased Premises, subject to Lessor's prior approval of the form of Tenant Lease;

(b) mortgage of Lessee's interest in the Leased Premises and Improvements to any approved Mortgagee, and transfer of the Leased Premises and Improvements to such Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof);

(c) transfers of the Investor's limited partner interest in Lessee that are permitted under Lessee's Partnership Agreement;

(d) the removal of the general partner of Lessee by the Investor for cause following default under the Partnership Agreement, and the subsequent transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation selected by the Investor, provided such replacement general partner is approved by Lessor which approval shall not be unreasonably withheld, conditioned or delayed, and (ii) the Investor or an affiliate thereof, but only for a period not to exceed one hundred-twenty (120) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above;

(e) grants and easements for the establishment, operation, and maintenance of utility services; and

(f) the encumbrance of the Leased Premises with the Regulatory Agreements.

Section 16.4 Subsequent Assignment. In cases where Lessor's consent is required, Lessor's consent to one assignment will not waive the requirement of its consent to any subsequent assignment.

Section 16.5 Request for Consent. If Lessee requests Lessor's consent to a specific assignment, Lessee shall provide to Lessor such information as may reasonably be required by Lessor.

Section 16.6 Grant of Purchase Option to Lessor or Affiliate. Notwithstanding anything to the contrary set forth in any other provision of this Lease, nothing shall prohibit (i) the granting of a purchase option and/or right of first refusal to purchase Lessee's Estate as provided in the Option and/or (ii) the exercise of such Option in accordance with the Option.

ARTICLE 17. MISCELLANEOUS PROVISIONS

Section 17.1 Entire Agreement: Modifications. This Lease supersedes all prior discussions and agreements between the Parties with respect to the leasing of the Leased Premises. This Lease contains the sole and entire understanding between the parties with respect to the leasing of the Leased Premises pursuant to this Lease, and all promises, inducements, offers, solicitations, agreements, representations and warranties made between the Parties, if any, are merged into this Lease. This Lease may be amended by mutual agreement of the Parties provided that any such amendment must be in writing and signed by both Parties.

Section 17.2 Amendments. Lessor shall not unreasonably withhold its consent to any amendments to this Lease that are reasonably requested by a Mortgagee or the Investor; provided, however, Lessor may, in its sole and absolute discretion, refuse to consent to any proposed amendments to the description of the Leased Premises, the Term, Rent or any other amendments which would materially change the rights and/or obligations of Lessor under this Lease.

Section 17.3 Governing Law. This Lease, and the rights and obligations of the

Parties under this Lease, shall be governed by and construed in accordance with the substantive laws of the State of California.

Section 17.4 Binding Effect. This Lease shall inure to the benefit of and be binding upon the Parties, their heirs, successors, administrators, executors and permitted assigns.

Section 17.5 Severability. In the event any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder of this Lease, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part of this Lease, except to the extent the rights and obligations of the parties have been materially altered by such unenforceability.

Section 17.6 Further Assurances. From and after the date of this Lease, Lessor and Lessee, at the request of the other Party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Lease.

Section 17.7 Captions. All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions of this Lease. All references to particular articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Lease.

Section 17.8 Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

Section 17.9 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

Section 17.10 References. All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Lease.

Section 17.11 Rights Cumulative. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred under this Lease shall be cumulative and not restrictive of those provided at law or in equity.

Section 17.12 Notices. All notices, requests, demands, or other communications required or permitted to be given under this Lease shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express, or by hand delivery by a recognized, reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept

or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Party any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

Lessor: Housing Authority of the County of San Bernardino
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

Lessee: Arrowhead Grove LLC
9421 Haven Avenue
Rancho Cucamonga, CA 91730
Attn: President/CFO

With a copy to:

Section 17.13 Counterparts. This lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

Section 17.14 Time of Essence. Time is and shall be of the essence in this Lease.

Section 17.15 Attorneys' Fees. If any collection proceeding (whether or not arising to the level of an action) or if any action is brought by Lessor to recover any Rent or Additional Rent due and unpaid hereunder or to recover possession of the Development, or in the event any action between Lessor and Lessee to enforce or interpret any of the terms of this Lease, including any action or proceeding in a bankruptcy case, the prevailing party shall be entitled to recover costs of suit and expenses including, without limitation, reasonable attorneys' fees, which shall include fees and costs of any appeal.

Section 17.16 Relationship of Parties. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners, joint venturers, nor principal and agent.

Section 17.17 Conflicts with Mortgage. In the event of a default under a Mortgage, such Mortgagee may exercise with respect to the Leased Premises any right, power or remedy under the Mortgage which is not in conflict with the provisions of this Lease.

Section 17.18 HUD Lease Addendum. The HUD Lease Addendum attached to this Lease as Exhibit C is incorporated into this Lease by this reference and shall control in the event of any conflict with the terms of this Lease.

IN WITNESS WHEREOF, this Lease is made and entered into as of Commencement Date.

LESSOR:

HOUSING AUTHORITY OF THE COUNTY
OF SAN BERNARDINO, a public body,
corporate and politic

By: _____
Maria Razo, Executive Director

LESSEE:

ARROWHEAD GROVE LLC., a California Limited
Liability Company

By:

Managing member of Arrowhead Grove LLC

By: _____
Anthony Perez, exec director or Lee
McDougal, Chair _____

EXHIBIT A

PROPERTY

All that certain real property situated in the City of San Bernardino, County of San Bernardino, State of California, described as follows:

EXHIBIT B

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Housing Authority of the County of San Bernardino
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

Mail Tax Statements As Directed Above

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is made as of March __, 2021, by and between Housing Authority of the County of San Bernardino, a public body, corporate and politic, ("Lessor"), and Arrowhead Grove LLC., a California limited liability company ("Lessee") with respect to that certain Ground Lease dated as of _____, 2021 (the "Lease"), between Lessor and Lessee.

Pursuant to the Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor that certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein, (the "Property") and Lessor grants to Lessee, all the improvements constructed or to be constructed on the Property for the term of the Lease which improvements are and shall remain real property. The Lease commences on the date of recordation of this Memorandum, and shall continue from such date until the seventy-fifth (75th) anniversary of the date of recordation of this Memorandum, unless sooner terminated pursuant to the terms of the Lease.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LESSOR:

HOUSING AUTHORITY OF THE COUNTY
OF SAN BERNARDINO, a public body,
corporate and politic

By: _____
Maria Razo, Executive Director

LESSEE:

ARROWHEAD GROVE LLC., a California Limited
Liability Company

By:

By: _____

[SIGNATURES MUST BE NOTARIZED]

EXHIBIT C

SITE PLAN

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

INSTRUCTIONS FOR LEASEHOLD PROJECTS

These instructions and the following Lease Addendum have been prepared for use in connection with mortgage insurance for projects given pursuant to the National Housing Act, as amended, found at 12 U.S.C. § 1701, *et seq.* ("**Act**"), where the mortgaged property is subject to a ground lease. The ground lease term and other provisions must comply with the section of the Act under which the note is endorsed for insurance. The ground lease provisions must not conflict with any Program Obligations¹ promulgated by the U.S. Department of Housing and Urban Development ("**HUD**") with respect to such mortgage insurance. All ground rent amounts must have prior written approval by HUD.

¹ "**Program Obligations**" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Lease Addendum rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site).

These instructions and the following Lease Addendum are based on the presumption that the lease will be a ground lease and all buildings, improvements and fixtures now or hereafter erected will be owned in fee simple by the tenant and be deemed real estate under local law. The term "**Property**" shall be defined in the ground lease as the legally described land except the buildings and improvements now or hereafter located thereon. If the foregoing presumption is not correct the HUD closing attorney must be contacted for further instructions. These instructions and provisions of the following Lease Addendum must be set forth in the body of the ground lease, or the Lease Addendum must be attached to the ground lease and incorporated therein by reference.

LEASE ADDENDUM

Notwithstanding any other provisions of this ground lease, if and so long as this leasehold is subject to a security instrument insured, reinsured, or held by HUD or given to HUD in connection with a resale, or the Property is acquired and held by HUD because of a default under the security instrument, the following provisions of this Lease Addendum shall be in effect:

- a) The tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by a security instrument on this leasehold estate and the Improvements². The tenant is further authorized to execute all documents necessary as determined by HUD and otherwise to comply with Program Obligations for obtaining such an insured loan.
- b) If approved by HUD, the tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property and its interest in the Improvements without the need for approval or consent by any other person or entity.
- c) (i) Insurance policies shall be in an amount, and with such company or companies and in such form, and against such risks and hazards, as shall be approved by lender and HUD.

(ii) The landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the tenant to lender. The landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the

² "**Improvements**" means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the land, including any future replacements and additions.

event of loss with that specifically required to be furnished by the tenant to lender.

- d) (i) If all or any part of the Property or the Improvements or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the tenant's interest in the leasehold estate or damage to the Improvements or the to tenant's interest in the leasehold estate shall be paid to lender or otherwise disposed of as may be provided in the security instrument. Any portion of the award attributable solely to the underlying fee estate (exclusive of any Improvements) shall be paid to the landlord. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the landlord bears to the total value of the Property as established by the amount HUD is to pay, as set forth in paragraph (b) of this Lease Addendum.

(ii) In the event of a negotiated sale of all or a portion of the Property or the Improvements, in lieu of condemnation, the proceeds shall be distributed and annual ground rent reduced as provided in cases of condemnation, but the approval of HUD and lender shall be required as to the amount and division of the payments to be received.

- e) The landlord may terminate the ground lease prior to the expiration day of the full term of this ground lease ("**Expiration Date**") after a tenant default under this ground lease ("**Ground Lease Event of Default**"), but only under the following circumstances and procedures. If any Ground Lease Event of Default shall occur, then and in any such event, the landlord shall at any time thereafter during the continuance of such Ground Lease Event of Default and prior to any cure, give written notice of such default(s) ("**Notice of Default**") to the tenant, lender and HUD, specifying the Ground Lease Event of Default and the methods of cure, or declaring that a Ground Lease Event of Default is incurable. If the Ground Lease Event of Default is a failure to pay money, the landlord shall specify and itemize the amounts of such default. Failure to pay money shall be specified as a separate default and not combined with a non-monetary Ground Lease Event of Default. Within sixty (60) days from the date of giving the Notice of Default to the tenant, the tenant must cure a monetary default by paying the landlord all amounts specified in the Notice of Default and must cure any specified Ground Lease Event of Default that is capable of being cured within such period. During the period of 180 days commencing upon the date Notice of Default was given to lender and HUD, lender or HUD may: (a) cure any Ground Lease Event of Default; and (b) commence foreclosure proceedings or institute other state or federal procedures to enforce lender's or HUD's rights with respect to the leasehold or the tenant Improvements. If the tenant, lender or HUD reasonably undertake to cure any Ground Lease Event of Default during the applicable cure period and diligently pursues such cure, the landlord shall grant such further reasonable time as is necessary to complete such cure. If HUD or lender commences foreclosure or other enforcement action within such 180 days, then its cure period shall be extended during the period of the foreclosure

or other action and for 90 days after the ownership of the tenant's rights under the lease is established in or assigned to HUD or such lender or a purchaser at any foreclosure sale pursuant to such foreclosure or other action. The transfer of the tenant's rights under the lease to lender, HUD or purchaser, pursuant to such foreclosure or other action shall be deemed a termination of any incurable Ground Lease Event of Default and such terminated Ground Lease Event of Default shall not give the landlord any right to terminate the lease. Such purchaser may cure a curable Ground Lease Event of Default within said 90 days. If after the expiration of all of the foregoing cure periods, no cure or termination of an existing Ground Lease Event of Default has been achieved as aforesaid, then and in that event, this lease shall terminate, and, on such date, the term of this lease shall expire and terminate and all rights of the tenant under the lease shall cease and the Improvements, subject to the security instrument and the rights of lender thereunder, shall be and become the property of the landlord. All costs and expenses incurred by or on behalf of the landlord (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any default by the tenant under this ground lease shall constitute additional rent hereunder. The landlord shall have no right to terminate this ground lease except as provided in this paragraph (f).

- f) Upon termination of this ground lease pursuant to paragraph (f) above, the landlord shall immediately seek to obtain possession of the Property and Improvements. Upon acquiring such possession, the landlord shall notify HUD and lender in writing. Lender and HUD shall each have six (6) months from the date of receipt of such notice of acquisition to elect to take, as tenant, a new ground lease on the Property and on the Improvements. Such new ground lease shall have a term equal to the unexpired portion of the term of this ground lease immediately prior to such termination and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this ground lease, including without limitation, the option to purchase set forth under paragraph (b) above, except that lender's or HUD's liability for ground rent shall not extend beyond their occupancy under such ground lease. The landlord shall tender such new ground lease to lender or HUD within thirty (30) days after a request for such ground lease and shall deliver possession of the Property and Improvements immediately upon execution of the new ground lease. Upon executing a new ground lease, lender or HUD shall pay to the landlord any unpaid ground rent due or that would have become due under this ground lease to the date of the execution of the new ground lease, including any taxes which were liens on the Property or the Improvements and which were paid by the landlord, less any net rentals or other income which the landlord may have received on account of the Property and Improvements since the date of default under this ground lease.
- g) The landlord agrees that within ten (10) days after receipt of written request from the tenant, it will join in any and all applications for permits, licenses or other

authorizations required by any Governmental Authority³ in connection with any work which the tenant may do hereunder and will also join in any grants for easements for electric telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the Property or of any Improvements and if, at the expiration of such ten (10) day period, the landlord shall not have joined in any such application, or grants for easements, the tenant shall have the right to execute such application and grants in the name of the landlord, and for that purpose, the landlord hereby irrevocably appoints the tenant as its attorney-in-fact to execute such papers on behalf of the landlord, only to the extent that a public body as landlord may do so within the exercise of its municipal powers and responsibilities.

- h) Nothing in this ground lease shall require the tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the landlord or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the tenant under this ground lease.
- i) All notices, demands and requests which are required to be given by the landlord, the tenant, lender or HUD in connection with this Ground Lease shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

All notices to lender or HUD shall be addressed as follows:

If to Lender:

If to HUD: U.S. Department of Housing and Urban Development
San Francisco Regional Office
1 Sansome Street, 12th Floor
San Francisco, CA 94104

If to Tenant: Arrowhead Grove, LLC
9421 Haven Avenue
Rancho Cucamonga, CA 91730
Attn: President/CFO

If to Landlord: Housing Authority of the County of San Bernardino
715 East Brier Drive
San Bernardino, CA 92408-2841

³ **“Governmental Authority”** means any board, commission, department or body of any municipal, county, state, tribal or federal governmental unit, including any U.S. territorial government, and any public or quasi-public authority, or any subdivision of any of them, that has or acquires jurisdiction over the mortgaged property, including the use, operation or improvement of the mortgaged property.

Attn: Executive Director

- j) This ground lease shall not be modified without the written consent of HUD and lender.
- k) The provisions of this Lease Addendum benefit lender and HUD and are specifically declared to be enforceable against the parties to this lease and all other persons by lender and HUD. In the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum and the provisions of any other part of this ground lease, the provisions of this Lease Addendum shall prevail and control.

Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions.

GROUND LEASE AGREEMENT

Between

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO,
a public body, corporate and politic ("Lessor")

and

ARROWHEAD GROVE, LLP.,
a California limited liability company ("Lessee")

(Arrowhead Grove Apartments)

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REVISED OPERATING AGREEMENT

for

ARROWHEAD GROVE LLC

This Revised Operating Agreement (the "**Agreement**") is entered into as of _____, 2021 (the "**Effective Date**"), by the Housing Authority of the County of San Bernardino, a public body, corporate and politic ("**HACSB**"), and Housing Partners I, Incorporated, a California nonprofit public benefit corporation ("**HPI**" or "**Managing Member**") (each referred to individually as a "**Member**" and collectively as the "**Members**"), with reference to the following facts:

A. HACSB and HPI desire to revise the form of limited liability company known as Arrowhead Grove LLC, a California limited liability company (the "**Company**"), which was established in 2019 under the California Revised Uniform Limited Liability Company Act (the "**Act**") (California Corporations Code Sections 17701.01 *et seq.*).

B. The Members desire to execute this Agreement to form and provide for the governance of the Company and the conduct of its business.

NOW THEREFORE, the Members declare the following to be the Operating Agreement of the Company:

ARTICLE 1: DEFINITIONS

The following capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in California Corporations Code Section 17701.02.

1.1 "Act" means the California Revised Uniform Limited Liability Company Act (California Corporations Code Sections 17701.01-17713.13), including amendments from time to time.

1.2 "Affiliate" of a Member means any Person directly or indirectly controlling, controlled by, or under common control with the Member. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through membership, ownership, by contract or otherwise.

1.3 "Agreement" means this operating agreement, as originally executed and as amended from time to time.

1.4 "Articles of Organization" is defined in California Corporations Code Section 17701.02(b).

1.5 "Bona Fide Offer" is defined in Section 8.3.

1.6 "Capital Account" means, as to any Member, a separate account maintained and adjusted in accordance with Section 3.4.

1.7 "Capital Contribution" means, with respect to any Member, the amount of money, the value of services, and the Fair Market Value of any property (other than money) contributed to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take "subject to" under Internal Revenue Code section 752) in consideration of a Percentage Interest held by such Member. A Capital Contribution shall not be deemed a loan.

1.8 "Capital Event" means a sale or disposition of any of the Company's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to Company property or assets.

1.9 "Code" means the Internal Revenue Code of 1986, as amended, and any successor provision.

1.10 "Company" means Arrowhead Grove LLC, a California limited liability company.

1.11 "Dispute" is defined in Section 10.1

1.12 "Dissociation Event" is defined in Section 8.4.

1.13 "Effective Date" has the meaning as defined in the first paragraph of this Agreement.

1.14 "Encumber" means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.15 "Encumbrance" means, with respect to any Membership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

1.16 "Fair Market Value" means, with respect to any property of the Company, the item's adjusted basis for federal income tax purposes, except as follows:

(a) The Gross Asset Value of any item of property contributed by a Member to the Company shall be the value of such property, as mutually agreed by the contributing Member and the Company; and

(b) The Gross Asset Value of any item of Company property distributed to any Member shall be the value of such item of property on the date of distribution, as mutually agreed by the distributee Member and the Company.

1.17 "Fair Option Price" is defined in Section 8.8.

1.18 "Initial Member" or "Initial Members" means those Persons whose names are set forth in the first sentence of this Agreement. A reference to an "Initial Member" means any of the Initial Members.

1.19 "Involuntary Transfer" means, with respect to any Membership Interest, or any element thereof, any Transfer or Encumbrance, effected by operation of law, under court order, by foreclosure of a security interest, by execution of a judgment or other legal process, or by any means other than at the will of the Members, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors. Involuntary Transfer shall also include the death, incapacity, or dissolution of a Member.

1.20 "Limited Partnership" means future California limited partnerships to be established for the specific purpose of developing portions of the land formerly known as the Waterman Gardens housing site, east of Waterman Avenue between Baseline Road and Olive Street in the City of San Bernardino, California.

1.21 "Losses" see the definition of "Profits and Losses".

1.22 "Managing Member" means Housing Partners I, Incorporated, a California nonprofit public benefit corporation.

1.23 "Meeting" is defined in Section 5.4.

1.24 "Member" means a Person that has become a member of the Company under Section 17704.01 of the Act and has not dissociated under Section 17706.02 of the Act.

1.25 "Membership Interest" means a Member's rights in the Company, including the Member's Transferable Interest, any right to Vote or participate in management, and any right to information concerning the business and affairs of the Company provided by the Act.

1.26 "Notice" means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when sent by certified mail return receipt requested, or for overnight delivery, postage and fees prepaid, in the United States mail; when sent by Federal Express, United Parcel Service, or another reputable commercial delivery service with a delivery receipt, charges prepaid or charged to the sender's account; when personally delivered to the recipient with a delivery receipt; or when delivered to the home or office of a recipient with a delivery receipt in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient. The delivery receipt shall be evidence of receipt of the notice, and notice shall be deemed to have been received on the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the notice was returned as undeliverable.

1.27 "Option Date" is defined in Section 8.6.

1.28 "Percentage Interest" means a fraction, expressed as a percentage, the numerator of which is the total of a Member's Capital Account and the denominator of which is the total of all Capital Accounts of all Members. The Percentage Interests of the Members are set forth on Exhibit B.

1.29 "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

1.30 "Profits and Losses" means, for each fiscal year or other period specified in this Agreement, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code section 703(a).

1.31 "Project" means those certain future real estate developments located on portions of the land formerly known as the Waterman Gardens housing site, east of Waterman Avenue between Baseline Road and Olive Street in the City of San Bernardino, California.

1.32 "Regulations" means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.33 "Selling Member" is defined in Section 8.4.

1.34 "Substituted Member" is defined in Section 8.9.

1.35 "Transfer" means, with respect to a Membership Interest, or any element of a Membership Interest, any assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law, or other disposition of a Membership Interest or any element of such a Membership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.36 "Transferable Interest" means the right, as originally associated with a Person's capacity as a Member, to receive distributions from the Company in accordance with this Agreement, whether or not the Person remains a Member or continues to own any part of the right.

1.37 "Transferee" means a Person to which all or part of a Transferable Interest has been transferred, whether or not the Transferor is a Member.

1.38 "Transferor" means a Person who by means of a Transfer has transferred a Transferable Interest in the Company to a Transferee.

1.39 "Vote" means a written consent or approval, a ballot cast at a Meeting, or consent given by electronic transmission.

ARTICLE 2: ARTICLES OF ORGANIZATION

2.1 The Members will revise the limited liability company under the Act by properly executing and filing the revised Articles of Organization, and executing this Agreement. The rights, duties, and liabilities of the Members are determined pursuant to the Act, the Articles of Organization, and this Agreement. The Articles of Organization are attached as Exhibit A to this Agreement.

2.2 The name of the Company is Arrowhead Grove LLC.

2.3 The principal executive office of the Company is at 715 East Brier Drive, San Bernardino, California 92408, or such other place or places as may be determined by the Members from time to time.

2.4 The initial agent for service of process on the Company is as stated in the Articles of Organization. The Members may from time to time change the Company's agent for service of process.

2.5 The Company is formed for the specific charitable purpose of furthering the tax exempt charitable purposes of its Members and to serve as a limited partner in the Limited Partnership in its ownership and operation of the Project.

2.6 The term of existence of the Company commences on the effective date of filing of the revised Articles of Organization with the California Secretary of State and shall continue until terminated by the provisions of this Agreement or as provided by law.

2.7 The Company is member-managed, and is managed by all Members. HPI will act as the Managing Member of the Company.

ARTICLE 3: CAPITALIZATION

3.1 Each Member shall contribute to the capital of the Company as the Member's Capital Contribution the money, services, and/or property specified in Exhibit B to this Agreement and shall receive the Percentage Interests set forth in Exhibit B. Unless otherwise agreed by the Members under this Agreement, no Member shall be required to make additional Capital Contributions.

3.2 If at any time the Members jointly determine that additional Capital Contributions are necessary or appropriate for the conduct of the Company's business, each Member shall contribute its Percentage Interest of such additional required capital. Except as set forth in this Section, no Member shall be required to make additional Capital Contributions.

3.3 If a Member fails to make a required Capital Contribution within thirty (30) days after the Effective Date, that Member's entire Membership Interest shall terminate, that Member shall be dissociated from the Company, and that Member shall indemnify and hold the Company

and the other Members harmless from any loss, cost, or expense, including reasonable attorney's fees caused by the failure to make such Capital Contribution.

3.4 An individual Capital Account shall be maintained for each Member consisting of that Member's Capital Contribution, (1) increased by that Member's share of Profits, (2) decreased by that Member's share of Losses and Company expenses, and (3) adjusted as required in accordance with applicable provisions of the Code and Regulations.

3.5 A Member shall not be entitled to withdraw any part of the Member's Capital Contribution or to receive any distributions, whether of money or property from the Company except as provided in this Agreement or as the Members may determine.

3.6 No interest shall be paid on funds or property contributed to the capital of the Company or on the balance of a Member's Capital Account.

3.7 Services by any Member to the Company may not be considered to be contributions to the capital of the Company, and loans by any Member of the Company shall not be treated as capital contributions to the Company. Any compensation that the Company pays to a Member for services, and any payment made by the Company to a Member on that Member's loan to the Company, shall not be treated as payment made to that Member acting in his, her, or its capacity as a Member under Code Section 707.

3.8 A Member shall not be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Company except as otherwise provided in the Act or in this Agreement.

3.9 No Member shall have priority over any other Member, with respect to the return of a Capital Contribution, or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.

3.10 The Members may admit to the Company additional members to participate in the profits, losses, available cash flow, and ownership of the assets of the Company on such terms as are determined by all of the Members. Admission of any additional Member requires the written consent of all existing Members. Any additional Members are allocated gain, loss, income, or expense by the method provided in this Agreement.

3.11 In the event that a Member has incurred any indebtedness or obligation before the date of this Agreement that relates to or otherwise affects the Company, neither the Company nor any other Member has any liability or responsibility with respect to the indebtedness or obligation unless the indebtedness or obligation is assumed by the Company pursuant to a written instrument signed by all Members. Furthermore, neither the Company nor any Member is responsible or liable for any indebtedness or obligation that is subsequently incurred by any other Member. In the event that a Member (the "**Liable Member**"), whether before or after the date of this Agreement, incurs (or has incurred) any debt or obligation that neither the Company nor any of the other Members is to have any responsibility or liability for, the **Liable Member**

must indemnify and hold harmless the Company and the other Members from any liability or obligation they may incur in respect of the debt or obligation.

ARTICLE 4: ALLOCATIONS AND DISTRIBUTIONS

4.1 The Profits and Losses of the Company and all items of Company income, gain, loss, deduction, or credit shall be allocated, for Company book purposes and for tax purposes, to a Member in accordance with the Member's Percentage Interest, subject to the provisions of Code Section 704(c).

4.2 If any Member unexpectedly receives any adjustment, allocation, or distribution described in Regulations sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company gross income and gain shall be specially allocated to that Member in an amount and manner sufficient to eliminate any deficit balance in the Member's Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 4.2 shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

4.3 Any unrealized appreciation or unrealized depreciation in the values of Company property distributed in kind to all the Members shall be deemed to be Profits or Losses realized by the Company immediately before the distribution of the property and such Profits or Losses shall be allocated to the Members' Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Members to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3, "unrealized appreciation" or "unrealized depreciation" shall mean the difference between the Fair Market Value of such property and the Company's basis for such property.

4.4 If any Membership Interest, or part thereof, is Transferred during any fiscal year in compliance with the provisions of Article 8, profits, losses, each item thereof, and all other items attributable to such Membership Interest for such fiscal year shall be divided and allocated between the Transferor and the Transferee by taking into account their varying Membership Interests during the period in accordance with Internal Revenue Code Section 706(d), using any convention permitted by law selected by the Members. All distributions on or before the date of such Transfer shall be made to the Transferor, and all distributions thereafter shall be made to the Transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which the assignment occurs. Neither the Company nor the Members shall incur any liability for making allocations and distributions in accordance with the provisions of this Article 4.

4.5 All cash resulting from the normal business operations of the Company and from a Capital Event shall be distributed among the Members in proportion to their Percentage Interests at such times as the Members may agree.

4.6 Except as may be expressly provided by separate promissory note or other agreement between the Members, if the proceeds from a sale or other disposition of a Company asset consist of property other than cash, the value of such property shall be as determined by the Members. Such noncash proceeds shall then be allocated among all the Members in proportion to their Percentage Interests. If such noncash proceeds are subsequently reduced to cash, such cash shall be distributed to each Member in accordance with Section 4.5.

4.7 Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Company, or when any Member's interest is liquidated, all items of income and loss first shall be allocated to the Members' Capital Accounts under this Article 4, and other credits and deductions to the Members' Capital Accounts shall be made before the final distribution is made. The final distribution to the Members shall be made to the Members to the extent of and in proportion to their positive Capital Account balances.

ARTICLE 5: MANAGEMENT

5.1 The Company shall be member-managed. HPI, or a successor selected pursuant to the provisions of this Article 5, shall act as the Managing Member and shall have primary responsibility for the activities specifically enumerated in this Agreement. Either HASBC or HPI shall have the authority to execute documents on behalf of the Company and as the limited partner of the Limited Partnership.

5.2 The appointment of a new managing member requires unanimous written approval of all of the Members.

5.3 Each Member shall designate in writing to the other Members not more than two (2) designated representatives each of whom shall be authorized to act under this Agreement for and on behalf of such Member and may be relied on by the other Members without further inquiry. Any such designated representative may be replaced by the Member by giving Notice to the other Members.

5.4 The Members are not required to hold any meetings, and decisions requiring the unanimous approval of the Members may be reached through one or more informal consultations followed by agreement among the Members, provided that all Members are consulted, or by a written consent signed by each of the Members. In the event that Members wish to hold a formal meeting (a "**Meeting**") for any reason, the following procedures shall apply:

(a) Any Member may call a Meeting of the Members by giving Notice of the time and place of the Meeting at least forty-eight (48) hours prior to the time of the holding of

the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Company.

(b) Attendance of all Members shall constitute a quorum for the transaction of business at any Meeting of the Members.

(c) The transactions of the Members at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present and if, either before or after the Meeting, each Member not present signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

(d) Any action required or permitted to be taken by the Members under this Agreement may be taken without a Meeting if each of the Members consents in writing to such action.

(e) Members may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Members participating in the Meeting can hear one another.

(f) The Managing Member shall keep or cause to be kept with the books and records of the Company full and accurate minutes of all Meetings, Notices, and waivers of Notices of Meetings, and all written consents in lieu of Meetings.

5.5 The Members as such and as managers shall not be entitled to compensation for their services.

5.6 The Company may have a President as selected by the unanimous consent of the Members, who may, but need not be a Member. The Members by unanimous consent may provide for additional officers of the Company and for their election, and may alter the powers, duties, and compensation of the President and of all other officers.

5.7 All assets of the Company, whether real or personal, shall be held in the name of the Company.

5.8 All funds of the Company shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Company, at such locations as shall be determined by the Members. Withdrawal from such accounts shall require the signature of such person or persons as all of the Members may designate.

5.9 Housing Partners I, Incorporated shall act as the Partnership Representative of the Company under Code section 6223(a).

(a) The Partnership Representative shall have the authority, and the Members shall have the obligations, described in the following subsections.

(1) The obligations of each Member or former Member under this

Section 5.9 shall survive the transfer or redemption by a Member of its Membership Interest and the termination of this Agreement or the dissolution of the Company.

(2) The Partnership Representative, in its sole discretion, shall have the right to make on behalf of the Company any and all elections and take any and all actions that are available to be made or taken by the Partnership Representative or the Company (including, if applicable, any election under Code Section 6226(a)). The Members shall take any and all actions requested by the Partnership Representative consistent with any elections made and actions requested by the Partnership Representative, including, without limitation, filing amended tax returns and paying any tax or adjustment due.

(3) No later than 10 business days after the Partnership Representative has knowledge of any audit or proceeding concerning the Company, the Partnership Representative shall notify the Members of the existence of such audit or proceeding. Each Member shall have the right to have a tax advisor of its own choosing participate in, but not direct, the prosecution or defense of such audit or proceeding at such Member's sole expense. The Partnership Representative shall make commercially reasonable efforts to facilitate such tax advisor's participation.

ARTICLE 6: ACCOUNTS AND RECORDS

6.1 Complete books of account of the Company's business, in which each Company transaction shall be fully and accurately entered, shall be kept at the Company's principal executive office and shall be open to inspection by any Member or the Member's authorized representatives on reasonable Notice during normal business hours. The costs of such inspection and copying shall be borne by the Member.

6.2 Financial books and records of the Company shall be kept on the accrual method of accounting, which shall be the method of accounting followed by the Company for federal income tax purposes. A balance sheet and income statement of the Company shall be prepared promptly following the close of each fiscal year in a manner appropriate to and adequate for the Company's business and for carrying out the provisions of this Agreement. The fiscal year of the Company shall be January 1 through December 31.

6.3 At all times during the term of existence of the Company, and beyond that term if all of the Members deem it necessary, the Managing Member shall keep or cause to be kept the books of account referred to in Section 6.2, and the following:

(a) A current list of the full name and last known business or residence address of each Member, together with the Capital Contribution and the share in Profits and Losses of each Member;

(b) A copy of the Articles of Organization, and any amendments thereto;

(c) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six (6) most recent taxable years;

- (d) Executed counterparts of this Agreement, as amended;
- (e) Any powers of attorney under which the Articles of Organization or any amendments thereto were executed;
- (f) Financial statements and audits of the Company for the six (6) most recent fiscal years; and
- (g) The books and records of the Company as they relate to the Company's internal affairs for the current and past six (6) fiscal years.

If the Managing Member deems that any of the foregoing items shall be kept beyond the term of existence of the Company, the repository of said items shall be as designated by the Managing Member.

6.4 Within ninety (90) days after the end of each taxable year of the Company the Company shall send to each of the Members all information necessary for the Members to complete their federal and state income tax or information returns, and a copy of the Company's federal, state, and local income tax or information returns for such year.

ARTICLE 7: MEMBERS AND VOTING

7.1 There shall be only one class of membership and no Member shall have any rights or preferences in addition to or different from those possessed by any other Member. Each Member shall Vote in proportion to the Member's Percentage Interest as of the governing record date, determined in accordance with Section 7.2. The following actions shall require the unanimous consent of the Members:

- (a) the sale, lease, exchange, or other disposal of all, or substantially all, of the Company's property, with or without the goodwill, outside the ordinary course of the limited liability company's activities;
- (b) the acquisition of any real or personal property;
- (c) the approval of a merger or conversion under Article 10 of the Act (commencing with Section 17710.01);
- (d) any act outside the ordinary course of the Company's activities;
- (e) the Transfer of a Membership Interest and the admission of the Transferee as a Member of the Company;
- (f) a decision to continue the business of the Company after an event described in Article 9;

- (g) any amendment of the Articles of Organization or this Agreement;
- (h) compromise of the obligation of a Member to make a Capital Contribution;
- (i) any act that would make it impossible to carry on the ordinary business of the Company;
- (j) any confession of a judgment against the Company;
- (k) the dissolution of the Company;
- (l) the disposition of all or a substantial part of the Company's assets including the Company's interest in the Limited Partnership;
- (m) the incurring of any debt not in the ordinary course of business;
- (n) a change in the nature of the principal business of the Company;
- (o) the incurring of any contracted obligation or the making of any capital expenditures with a total cost of more than Twenty Thousand Dollars (\$20,000); and
- (p) the filing of a petition in bankruptcy or the entering into of an arrangement among creditors.

7.2 The record date for determining the Members entitled to Notice of any Meeting, to Vote, to receive any distribution, or to exercise any right in respect of any other lawful action, shall be the date set by the Managing Member, provided that such record date shall not be more than sixty (60), nor less than ten (10) days before the date of the Meeting, nor more than sixty (60) days before any other action.

In the absence of any action setting a record date, the record date shall be determined in accordance with California Corporations Code section 17704.07(p).

7.3 At all Meetings of the Members, a Member may Vote in person or by proxy. Such proxy shall be filed with any Member before or at the time of the Meeting, and may be filed by facsimile transmission to a Member at the principal executive office of the Company or such other address as may be given by the Managing Member to the Members for such purposes.

ARTICLE 8: TRANSFERS OF MEMBERSHIP INTERESTS

8.1 A Member may voluntarily dissociate from the Company at any time by giving Notice of Dissociation to all of the Members at least ninety (90) calendar days before the effective date of dissociation. Dissociation shall not release a Member from any obligations and liabilities under this Agreement accrued or incurred before the effective date of dissociation. A dissociated Member shall divest the Member's entire Membership Interest before the effective date of dissociation in accordance with and subject to the provisions of this Article 8.

8.2 Except as expressly provided in this Agreement, a Member shall not Transfer any part of the Member's Membership Interest in the Company, whether now owned or later acquired, unless (a) the other Members unanimously approve the Transferee's admission to the Company as a Member upon such Transfer and (b) the Membership Interest to be transferred, when added to the total of all other Membership Interests transferred in the preceding 12 months, will not cause the termination of the Company under the Code. No Member may Encumber or permit or suffer any Encumbrance of all or any part of the Member's Membership Interest in the Company unless such Encumbrance has been approved in writing by all Members. Such approval may be granted or withheld in the Members' sole discretion. Any Transfer or Encumbrance of a Membership Interest without such approval shall be void.

8.3 If a Member wishes to transfer any or all of the Member's Membership Interest in the Company pursuant to a Bona Fide Offer (as defined below), the Member shall give Notice to the other Member at least ninety (90) days in advance of the proposed sale or Transfer, indicating the terms of the Bona Fide Offer and the identity of the offeror. The Company and the other Members shall have the option to purchase the Membership Interest proposed to be transferred at the price and on the terms provided in this Agreement. If the price for the Membership Interest is other than cash, the fair value in dollars of the price shall be as established in good faith by the Company. For purposes of this Agreement, "**Bona Fide Offer**" means an offer in writing setting forth all relevant terms and conditions of purchase from an offeror who is ready, willing, and able to consummate the purchase and who is not an Affiliate of the selling Member. For thirty (30) days after the Notice is given, the Company shall have the right to purchase the Membership Interest offered, on the terms stated in the Notice, for the lesser of (a) the price stated in the Notice (or the price plus the dollar value of noncash consideration, as the case may be) and (b) the price determined under the appraisal procedures set forth in Section 8.8.

If the Company does not exercise the right to purchase all of the Membership Interest, then, with respect to the portion of the Membership Interest that the Company does not elect to purchase, that right shall be given to the other Members for an additional sixty (60)-day period, beginning on the day that the Company's right to purchase expires. Each of the other Members shall have the right to purchase, on the same terms, a part of the interest of the offering Member in the proportion that the Member's Percentage Interest bears to the total Percentage Interests of all of the Members who choose to participate in the purchase; provided, however, that the Company and the participating Members may not, in the aggregate, purchase less than the entire interest to be sold by the offering Member.

If the Company and the other Members do not exercise their rights to purchase all of the Membership Interest, the offering Member may, within ninety (90) days from the date the Notice is given and on the terms and conditions stated in the Notice, sell or exchange that Membership Interest to the offeror named in the Notice. Unless the requirements of Section 8.2 are met, the offeror under this Section shall become a Transferee, and shall be entitled to receive only the share of Profits or other compensation by way of income and the return of Capital Contribution to which the Transferor would have been entitled.

8.4 On the happening of any of the following events ("**Dissociation Events**") with respect to a Member, the Company and the other Members shall have the option to purchase the Membership Interest in the Company of such Member ("**Selling Member**") at the price and on the terms provided in Section 8.8 of this Agreement:

- (a) The winding up and dissolution of an entity Member.
- (b) The failure of a Member to make the Member's Capital Contribution pursuant to the provisions of Article 3 of this Agreement.
- (c) The occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.
- (d) The Company has Notice of the Member's express will to withdraw as a member.
- (e) The Member is expelled as a member pursuant to this Agreement.
- (f) The Member is expelled as a member by the unanimous consent of the other Members because any of the following applies:
 - (1) It is unlawful to carry on the Company's activities with the Member as a member.
 - (2) There has been a Transfer of all of the Member's Transferable Interest in the Company, other than either of the following: (1) a transfer for security purposes; or (2) a charging order in effect under Section 17705.03 that has not been foreclosed.
 - (3) The Member is a corporation and, within ninety (90) days after the Company notifies the Member that it will be expelled as a member because the Member has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation and the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated.
 - (4) The Member is a limited liability company or partnership that has been dissolved and whose business is being wound up.
- (g) On application by the Company, the Member is expelled as a member by judicial order because the Member has done any of the following:
 - (1) Engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the Company's activities.
 - (2) Willfully or persistently committed, or is willfully and persistently committing, a material breach of this Agreement or the Member's duties or obligations under Section 17704.09 of the Act.

(3) Engaged, or is engaging, in conduct relating to the Company's activities that makes it not reasonably practicable to carry on the activities with the Member as a member.

(h) The Member becomes a debtor in bankruptcy.

(i) The Company participates in a merger under Article 10 of the Act (commencing with Section 17710.01), and either of the following applies:

(1) The Company is not the surviving entity.

(2) Otherwise as a result of the merger, the Member ceases to be a member.

(j) The Company terminates.

Each Member agrees to promptly give Notice of a Dissociation Event to the other Members.

8.5 When a person is dissociated as a member of the Company all of the following apply:

(a) The Member's right to participate as a member in the management and conduct of the Company's activities terminates.

(b) The Member's fiduciary duties as a member end with regard to matters arising and events occurring after the Member's dissociation.

(c) Subject to Section 17705.04 and Article 10 of the Act (commencing with Section 17710.01), any Transferable Interest owned by the Member immediately before dissociation in the Member's capacity as a member is owned by the Member solely as a Transferee.

(d) A Member's dissociation as a member of the Company does not of itself discharge the Member from any debt, obligation, or other liability to the Company or the other Members that the Member incurred while a member.

8.6 On the receipt of Notice by a Member as contemplated by Sections 8.1, 8.3, and 8.4, and on receipt of Notice of any Dissociation Event as determined in good faith by the Member (the date of such receipt is hereinafter referred to as the "**Option Date**"), the Member shall promptly cause a Notice of the occurrence of such a Dissociation Event to be sent to all other Members, and the Company shall have the option, for a period ending ninety (90) calendar days following the determination of the purchase price as provided in Section 8.8, to purchase the Membership Interest in the Company to which the option relates, at the price and on the terms set forth in Section 8.8 of this Agreement, and the other Members, pro rata in accordance with their prior Membership Interests in the Company, shall then have the option, for a period of thirty (30) days thereafter, to purchase the Membership Interest in the Company not purchased

by the Company, on the same terms and conditions as apply to the Company. If all other Members do not elect to purchase the entire remaining Membership Interest in the Company, then the Members electing to purchase shall have the right, pro rata in accordance with their prior Membership Interest in the Company, to purchase the additional Membership Interest in the Company available for purchase. The Transferee of the Membership Interest in the Company that is not purchased shall hold such Membership Interest in the Company subject to all of the provisions of this Agreement.

8.7 Neither the Member whose interest is subject to purchase under this Article, nor such Member's Affiliate, shall participate in any Vote or discussion of any matter pertaining to the disposition of the Member's Membership Interest in the Company under this Agreement.

8.8 The purchase price of the Membership Interest that is the subject of an option under Section 8.6 shall be the "Fair Option Price" of the interest as determined under this Section 8.8. "Fair Option Price" means the cash price that a willing buyer would pay to a willing seller when neither is acting under compulsion and when both have reasonable knowledge of the relevant facts on the Option Date. Each of the selling and purchasing parties shall use his, her, or its best efforts to mutually agree upon the Fair Option Price. If the parties are unable to so agree within thirty (30) days of the Option Date, the selling party shall appoint, within sixty (60) days of the Option Date, one appraiser, and the purchasing party shall appoint within sixty (60) days of the Option Date, one appraiser. The two appraisers shall within a period of twenty (20) additional days, agree upon and appoint an additional appraiser. The three appraisers shall, within sixty (60) days after the appointment of the third appraiser, determine the Fair Option Price of the Membership Interest in writing and submit their report to all the parties.

The Fair Option Price shall be determined by disregarding the appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations, and the arithmetic mean of the remaining two appraisers' valuations shall be the Fair Option Price. Each purchasing party shall pay for the services of the appraiser selected by it, plus one half of the fee charged by the third appraiser, and one half of all other costs relating to the determination of Fair Option Price. The Fair Option Price as so determined shall be payable in cash.

8.9 Except as expressly permitted under Section 8.2, a prospective transferee (other than an existing Member) of a Membership Interest may be admitted as a Member with respect to such Membership Interest ("**Substituted Member**") only (a) on the unanimous written consent of the other Members in favor of the prospective transferee's admission as a Member, and (b) on such prospective transferee executing a counterpart of this Agreement as a party hereto. Any prospective transferee of a Membership Interest shall be deemed a Transferee, and, therefore, the owner of only a Transferable Interest until such prospective transferee has been admitted as a Substituted Member. Except as otherwise permitted in the Act, any such Transferee shall be entitled only to receive allocations and distributions under this Agreement with respect to such Membership Interest and shall have no right to Vote or exercise any rights of a Member until such Transferee has been admitted as a Substituted Member. Until the Transferee becomes a Substituted Member, the Transferor will continue to be a Member and to have the power to exercise any rights and powers of a Member under this Agreement, including

the right to Vote in proportion to the Percentage Interest that the Transferor would have had in the event that the Transfer had not been made.

8.10 Any person admitted to the Company as a Substituted Member shall be subject to all the provisions of this Agreement that apply to the Member from whom the Membership Interest was transferred, provided, however, that the transferring Member shall not be released from liabilities as a Member solely as a result of the Transfer, both with respect to obligations to the Company and to third parties, incurred prior to the assignment.

8.11 The initial sale of Membership Interests in the Company to the Initial Members has not been qualified or registered under the securities laws of any state, including California, or registered under the Securities Act of 1933, in reliance upon exemptions from the registration provisions of those laws. Notwithstanding any other provision of this Agreement, Membership Interests may not be Transferred unless registered or qualified under applicable state and federal securities law unless, in the opinion of legal counsel satisfactory to the Company, such qualification or registration is not required. The Member who desires to transfer a Membership Interest shall be responsible for all legal fees incurred in connection with said opinion.

ARTICLE 9: DISSOLUTION AND WINDING UP

9.1 The Company shall be dissolved on the first to occur of the following events:

- (a) The decision of all Members to dissolve the Company.
- (b) The death, incapacity, withdrawal, bankruptcy or corporate dissolution of a Member; provided, however, that the remaining Members may, by the Vote of all of the Members within ninety (90) days of the happening of that event, elect to continue the Company, in which case the Company shall not dissolve. If the remaining Members fail to so Vote, the remaining Members shall wind up the Company.
- (c) The passage of ninety (90) consecutive days during which the Company has no members.
- (d) The sale or other disposition of substantially all of the Company's assets.
- (e) Entry of a decree of judicial dissolution pursuant to California Corporations Code section 17707.03.

9.2 On the dissolution of the Company, the Company shall engage in no further business other than that necessary to wind up the business and affairs of the Company. The remaining Members shall wind up the affairs of the Company and shall give written notice of the commencement of winding up by mail to all known creditors and claimants against the Company whose addresses appear in the records of the Company. After paying or adequately providing for the payment of all known debts of the Company (except debts owing to the Members) the remaining assets of the Company shall be distributed or applied in the following order of priority:

(a) To pay the expenses of liquidation.

(b) To repay outstanding loans made to the Company from the Members. If there are insufficient funds to pay such loans in full, each member shall be repaid in the ratio that the member's respective loan, together with interest accrued and unpaid thereon, bears to the total of repayment, and shall first be credited to accrued and unpaid interest due and the remainder shall be credited to principal.

(c) To repay each Member's investment. Each Member shall look solely to the assets of the Company for the return of the Member's investment, and if the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the investment of any Member, such Member shall have no recourse against any other Members for indemnification, contribution, or reimbursement.

ARTICLE 10: DISPUTE RESOLUTION

10.1 In the event that the Members, in good faith, fail to agree with respect to any matter which requires the consent or approval of both Members under this Agreement or fail to agree on an interpretation of the terms of this Agreement (a "**Dispute**"), the matter shall be submitted to non-binding mediation. To initiate the mediation process, the Members shall prepare a list of mediators and attempt to agree on one of the mediators on the list. If the Members cannot reach agreement on one of the mediators on the list within ten (10) days, each shall nominate one mediator, and the two nominees shall jointly choose a mediator. The Members shall meet with the mediator on at least three occasions within a thirty (30)-day period in an attempt to resolve the Dispute. In the event the Members are unable to resolve the Dispute within thirty (30) days after the mediator is named, the process shall be deemed unsuccessful, subject to the ability of the Members to extend the mediation period by mutual agreement. If the mediation is unsuccessful, then the Members may pursue arbitration as set forth in Section 10.2 below.

10.2 If mediation is unsuccessful in resolving a Dispute any such Dispute shall be settled by arbitration in accordance with the rules of the American Arbitration Association. After unsuccessful mediation, arbitration shall be the exclusive dispute resolution process in the State of California, but arbitration shall be a nonexclusive process elsewhere. Any Member may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the Dispute to be resolved by arbitration. Arbitration shall be conducted in San Bernardino, California. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the Dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered on any such decision in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 11: FIDUCIARY DUTIES

11.1 The fiduciary duties that the Members owe to the Company and the other Members of the Company are the duties of loyalty and care.

(a) The Members' duty of loyalty to the Company and the other Members is the following:

(1) To account to the Company and hold as trustee for it any property, profit, or benefit derived by the Members in the conduct and winding up of the activities of the Company or derived from a use by the Members of Company property, including the appropriation of a limited liability company opportunity.

(2) To refrain from dealing with the Company in the conduct or winding up of the activities of the Company as or on behalf of a party having an interest adverse to the Company.

(b) The Members' duty of care to the Company and the other Members in the conduct and winding up of the activities of the Company is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(c) The Members' do not violate a duty or obligation under this Agreement merely because a Member's conduct furthers its own interest.

11.2 All Members shall discharge the duties to the Company and the other Members under this Agreement and exercise any rights consistent with the obligation of good faith and fair dealing.

ARTICLE 12: INDEMNIFICATION

12.1 The Company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a Member in the course of the Member's activities on behalf of the Company, if, in making the payment or incurring the debt, obligation, or other liability, the Member complied with the duties stated in Article 11.

ARTICLE 13: GENERAL PROVISIONS

13.1 This Agreement constitutes the whole and entire agreement with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all the Members. This Agreement replaces and supersedes all prior written and oral agreements by and among the Members or any of them.

13.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.3 This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

13.4 This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

13.5 Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

13.6 The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties.

13.7 Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Members in the carrying on of their own respective businesses or activities. The Members and their Affiliates may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the Company's and that might be in direct or indirect competition with the Company. Neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Members shall not be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken by the Company. The Members shall have the right to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the Company. The Members acknowledge that the Members and their Affiliates own and/or manage other businesses, including businesses that may compete with the Company and for the Members' time. The Members hereby waive any and all rights and claims which they may otherwise have against the Members and their Affiliates as a result of any of such activities.

13.8 Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Member, in the Member's capacity as such, the agent of any other Member.

13.9 Each Member represents and warrants to the other Members that the Member has the capacity and authority to enter into this Agreement.

13.10 The article, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

13.11 This Agreement may be altered, amended, or repealed only by a writing signed by all of the Members.

13.12 Time is of the essence of every provision of this Agreement that specifies a time for performance.

13.13 This Agreement is made solely for the benefit of the Members and the Members' permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

13.14 The Members intend the Company to be a limited liability company under the Act. No Member shall take any action inconsistent with the express intent of the parties to this Agreement.

**SIGNATURE PAGE OF OPERATING AGREEMENT FOR
WATERMAN AFFORDABLE 3 LLC**

IN WITNESS WHEREOF, the Members has executed or caused to be executed this Agreement on the day and year first above written.

MEMBERS:

HOUSING AUTHORITY OF THE COUNTY OF SAN
BERNARDINO, a public body, corporate and politic,
its managing member

By: _____

Name: _____

Title: _____

HOUSING PARTNERS I, INCORPORATED,
a California nonprofit public benefit corporation,
its member


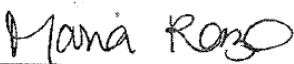
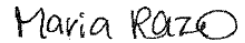
By: _____

Name: _____

Title: _____

EXHIBIT A

ARTICLES OF ORGANIZATION (**TO BE REVISED AND RE_FILED**)

	Secretary of State Articles of Organization Limited Liability Company (LLC)	LLC-1	<div style="font-size: 24pt; font-weight: bold;">202001510086</div> <div style="text-align: center;">FILED <i>Dyy</i> Secretary of State State of California DEC 30 2019 <i>BP</i></div>
IMPORTANT — Read instructions before completing this form.			
Filing Fee — \$70.00			
Copy Fees — First page \$1.00; each attachment page \$0.50; Certification Fee — \$5.00			
Note: LLCs may have to pay minimum \$800 tax to the California Franchise Tax Board each year. For more information, go to https://www.ftb.ca.gov .			
This Space For Office Use Only			
1. Limited Liability Company Name (See Instructions — Must contain an LLC identifier such as LLC or L.L.C. "LLC" will be added, if not included.) Arrowhead Grove LLC			
2. Business Addresses			
a. Initial Street Address of Designated Office in California - Do not enter a P.O. Box		City (no abbreviations)	State Zip Code
715 East Brier Drive		San Bernardino	CA 92408
b. Initial Mailing Address of LLC, if different than Item 2a		City (no abbreviations)	State Zip Code
3. Service of Process (Must provide either Individual OR Corporation.)			
INDIVIDUAL — Complete Items 3a and 3b only. Must include agent's full name and California street address.			
a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
Maria		Razo	
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box	City (no abbreviations)		State Zip Code
715 East Brier Drive	San Bernardino		CA 92408
CORPORATION — Complete Item 3c. Only include the name of the registered agent Corporation.			
c. California Registered Corporate Agent's Name (if agent is a corporation) — Do not complete Item 3a or 3b			
4. Management (Select only one box)			
The LLC will be managed by:			
<input type="checkbox"/> One Manager <input type="checkbox"/> More than One Manager <input checked="" type="checkbox"/> All LLC Member(s)			
5. Purpose Statement (Do not alter Purpose Statement)			
The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.			
6. By signing, I affirm under penalty of perjury that the information herein is true and correct and that I am authorized by California law to sign.			
Additional signatures set forth on attached pages, if any, are incorporated herein by reference and made part of this Form LLC-1. (All attachments should be 8 1/2 x 11, one-sided, legible and clearly marked as an attachment to this Form LLC-1.)			
			
Organizer sign here		Print your name here	



I hereby certify that the foregoing transcript of _____ page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

JAN 23 2020

Date: _____

Alex Padilla

ALEX PADILLA, Secretary of State

EXHIBIT B

MEMBERS

<u>Name and Address</u>	<u>Initial Contribution</u>	<u>Percentage Interest</u>
HOUSING PARTNERS I, INCORPORATED 715 East Brier Drive San Bernardino, California 92408	\$51	51%
HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO 715 East Brier Drive San Bernardino, California 92408	\$49	49%

OPERATING AGREEMENT

OF

Arrowhead Grove LLC

_____, 2021

PROMISSORY NOTE
(Ground Lease Loan)
(Arrowhead Grove Apartments)

\$

San Bernardino, California

_____,
2021

FOR VALUE RECEIVED, the undersigned ARROWHEAD GROVE LLC, a California limited liability company ("Borrower") hereby promises to pay to the order of the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body corporate and politic organized under the laws of California ("Holder"), the principal amount of _____ Dollars (\$_____) plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to repay Holder the principal amount of _____ Dollars (\$_____) with interest for the funds loaned to Borrower by Holder (the "Loan") to finance the long term lease of certain real property located at _____ in the City of San Bernardino (the "Property"), improved with a Warehouse Building, and office, classroom and playground improvements upon the Head Start Parcel, and upon which Borrower intends to construct Mixed-Income Housing and Commercial Buildings, as such capitalized terms are defined in the Ground Lease, and related ancillary improvements (the "Improvements"). The Property and the Improvements are collectively referred to as the "Development". Concurrently herewith Borrower as lessee and Holder as Lessor are entering into a Ground Lease Agreement with a term of fifty-five (55) years (the "Ground Lease"). All capitalized terms used but not defined in this Note have the meanings set forth in the Ground Lease.

2. Interest.

(a) Subject to the provisions of Subsection (b) below, the outstanding principal balance of this Note bears interest from the date of this Note until full repayment of the principal balance of the Loan at _____% which is the Applicable Federal Rate applicable to long-term loans with annual compounding, as calculated in accordance with Internal Revenue Code Section 1274(d) as of the date of this Note.

(b) If a Default occurs (defined in Section 9 below), interest on the principal balance will begin to accrue, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured or waived by Holder, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

3. Loan Documents. This Note is secured by a Deed of Trust, Fixture Filing, Assignment of Rents and Security Agreement (the "Deed of Trust"), of even date herewith, wherein Borrower is the Trustor and Holder is the Beneficiary, covering Borrower's leasehold interest in the Property and fee interest in the Improvements, to be recorded in the Official Records of San Bernardino County (the "Official Records"). The terms of the Deed of Trust are hereby incorporated into this Note and made a part hereof. The Loan shall also be evidenced by

a Regulatory Agreement and Declaration of Restrictive Covenants to be approved by and between Borrower and Holder, to be recorded against the Property in the Official Records (the "Regulatory Agreement"). This Note, the Deed of Trust, and the Regulatory Agreement are collectively referred to as the "Loan Documents".

4. Term and Repayment Requirements.

(a) Term. The term of this Note (the "Term"), commences with the date of this Note and expires fifty-five (55) years after the date a final certificate of occupancy, or equivalent document is issued by the City of San Bernardino to certify that the Development may be legally occupied (the "Completion Date"), provided, however, if a record of the Completion Date cannot be located or established, the Loan is due and payable on the fifty-seventh (57th) anniversary of the date of this Note.

(b) Annual Payments. Commencing on _____, 2021, and on _____ 1 of each year thereafter for the Term, Borrower shall make repayments of the outstanding principal and accrued interest on the Loan in an amount equal to the sum of (i) the Authority Prorata Percentage of Lenders' Share of Residual Receipts, and (ii) the Authority Portion of Residual Receipts (each, an "Annual Payment"). Holder shall apply all Annual Payments as follows: (1) first, to accrued interest, and (2) second, to principal.

(c) Payment in Full. All principal and accrued interest on the Loan is due and payable upon the earlier to occur of: (i) the date of any Default, (ii) the expiration of the Term and, (iii) any sale, transfer, assignment, or conveyance of the Development except as provided in the Ground Lease.

(d) Right to Prepay. Borrower may prepay the Loan at any time without premium or penalty. However, the Regulatory Agreement will remain in effect for the entire term of the Regulatory Agreement, regardless of any prepayment.

(e) Special Definitions. The following definitions shall apply for purposes of this Section 4 and Section 5:

(i) "Annual Operating Expenses" with respect to a particular calendar year, means the following costs reasonably and actually incurred for operation and maintenance of the Development: (1) property taxes and assessments imposed on the Development; (2) debt service and associated fees currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on Approved Financing; (3) bond monitoring fee, issuer fees, trustee's fees and other fees and cost payable to a trustee and/or issuer in connection with tax-exempt bonds issued as part of Approved Financing; (4) property management fees and reimbursements (including deferred payments of previously approved property management fees), on-site property management office expenses, and salaries of property management and maintenance personnel payable to a property manager approved by the Holder pursuant to the Regulatory Agreement, not to exceed amounts that are standard in the industry and pursuant to a management contract approved by the Holder pursuant to the Regulatory Agreement; (5) fees payable to a service provider for the provision of on-site social services for tenants; (6) premiums for property damage and liability insurance; (7) utility

services not paid for directly by tenants, including water, sewer, and trash collection; (8) maintenance and repair; (9) any annual license or certificate of occupancy fees required for operation of the Development; (10) security services; (11) advertising and marketing; (12) cash deposited into reserves for capital replacements of the Development in an amount required in connection with the permanent debt or equity financing for the Development; (13) cash deposited into an operating reserve in an amount required in connection with the permanent debt or equity financing; (14) partnership management fees, incentive management fees, and investor services fees payable to any partner of Borrower in the amount set forth in Borrower's Partnership Agreement; (15) fees for accounting, audit, and legal services incurred by Borrower's general partner in the management of the Development, not to exceed amounts that are standard in the industry; (16) payment of any previously unpaid portion of developer fee; (17) extraordinary operating costs specifically approved by the Holder; and (18) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved by the Holder and not listed above. Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, any withdrawal from a reserve account, and any capital cost associated with the Development as determined by the accountant for Borrower.

(ii) "Authority" means the Housing Authority of the County of San Bernardino.

(iii) "Authority Development Loan" means the loan from the Authority to Borrower in the approximate amount of _____ Dollars (\$_____).

(iv) "Authority Portion of Residual Receipts" means twenty-four percent (24%) of Residual Receipts.

(v) "Authority Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Loan by the sum of the Loan, the Authority Development Loan, and the City Loan, to the extent of the amount of such funds disbursed to Borrower.

"

(vi) "Gross Revenue" with respect to a particular calendar year, means all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. "Gross Revenue" shall include, but not be limited to: (1) all rents, fees and charges paid by tenants; (2) Section 8 payments or other rental subsidy payments received for the dwelling units; (3) deposits forfeited by tenants; (4) all cancellation fees; (5) price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income; (6) net proceeds from vending and laundry room machines; (7) proceeds of business interruption or similar insurance not paid to lenders of Approved Financing with liens senior to the Deed of Trust; (8) subject to the rights of senior lenders of the Development, the proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds); and (9) condemnation awards for a taking of part or all of the Development for a temporary period. "Gross Revenue" does not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

(vii) "Lenders' Share" means Twenty-Five Percent (25%).

(viii) "Residual Receipts" with respect to a particular calendar year, means the amount by which Gross Revenue exceeds Annual Operating Expenses.

5. Reports and Accounting of Residual Receipts. In connection with the Annual Payment, Borrower shall furnish to Holder:

(a) An itemized statement of Residual Receipts for the relevant period. The first statement of Residual Receipts will cover the period that begins on _____ and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

(b) A statement from the independent public accountant that audited the Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lenders' Share of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses;

(c) An annual budget for the operation of the Development beginning with _____; and

(d) Any additional documentation reasonably required by Holder to substantiate Borrower's calculation of Lenders' Share of Residual Receipts.

The receipt by Holder of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the Authority of any Loan repayment for any period does not bind Holder as to the correctness of such statement or payment. Holder may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 13.2 of the Ground Lease.

6. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of Holder, except as provided in Article 16 of the Ground Lease, concurrent with a transfer of the Ground Lease.

7. Nonrecourse. The Loan is nonrecourse to the Borrower. Neither Borrower, nor any partner of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of Holder with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust.

8. Terms of Payment.

(a) Borrower shall make all payments due under this Note in currency of the United States of America to Holder at 715 East Brier Drive, San Bernardino, CA 92408-2841, Attn: Executive Director, or to such other place as Holder may from time to time designate.

(b) All payments on this Note are without expense to Holder.

Borrower shall pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(c) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Borrower under this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest that exceeds the amount that Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate will automatically be deducted from the principal balance owing on this Note, so that in no event is Borrower obligated under the terms of this Note to pay any interest that would exceed the lawful rate.

9. Event of Default; Acceleration.

(a) Any of the following constitutes an event of default under this Note (each, a "Default"):

(i) Any failure to pay, in full, any payment required under this Note when due;

(ii) Other than the failure addressed above in subsection (i), failure of Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Note, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from Holder to Borrower or, if the failure cannot be cured within thirty (30) days, Borrower shall not be in default so long as Borrower is diligently undertaking to cure such failure and such cure is commenced within thirty (30) days of such failure;

(iii) The occurrence of any event of default under Regulatory Agreement or Deed of Trust, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by Borrower to Holder pursuant to the Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of a Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust will, at the option of Holder, become immediately due and payable without further demand.

Holder's failure to exercise the remedy set forth in Subsection 9(a) above or any other remedy provided by law upon the occurrence of a Default does not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Default. The acceptance by Holder of any payment that is less than the total of all amounts due and payable at the time of such payment does not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

10. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note must not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note are absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

11. Miscellaneous Provisions.

(a) All notices to Holder or Borrower are to be given in the manner and at the addresses set forth in the Ground Lease, or to such addresses as Holder and Borrower may therein designate.

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note is governed by the laws of the State of California.

(d) The times for the performance of any obligations hereunder are to be strictly construed, time being of the essence.

(e) The Loan Documents, of which this Note is a part, contain the entire agreement between the parties as to the Loan. This Note may not be modified except upon the written consent of the parties.

(signature continues on following page)

IN WITNESS WHEREOF, Borrower is executing this Promissory Note as of the day and year first above written.

ARROWHEAD GROVE LLC., a California limited liability company

By: _____

By: _____

By: _____

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Housing Authority of the County of San Bernardino
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

No fee for recording pursuant to
Government Code Section 27383

LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT, AND FIXTURE FILING
(Authority Ground Lease Loan)
(Arrowhead Grove Apartments)

THIS LEASEHOLD DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made as of March
____, 2016, by and among ARROWHEAD GROVE LLC., a California limited liability company
("Trustor"), Fidelity National Title Company ("Trustee"), and the HOUSING AUTHORITY OF
THE COUNTY OF SAN BERNARDINO, a public body corporate and politic organized under
the laws of California ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein
recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby
irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF
SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions
hereinafter set forth, Trustor's leasehold interest in the property located in the County of San
Bernardino, State of California, that is described in the attached Exhibit A, incorporated herein
by this reference, as created pursuant to the Ground Lease defined below (the "Property").

TOGETHER WITH all interest, estates or other claims, both in law and in equity which
Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith
or as a means of access thereto, including (without limiting the generality of the foregoing) all
tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and
description now or hereafter erected thereon, and all property of Trustor now or hereafter affixed
to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to
said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter
acquired, in and to any land lying within the right-of-way of any street, open or proposed,

adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or will be, attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (together, the "Secured Obligations");

A. Payment to Beneficiary of all sums at any time owing under or in connection with (i) the Note (defined in Section 1.5 below) until paid in full or cancelled, and (ii) any other amounts owing under the Loan Documents (defined in Section 1.4 below). Principal and other payments are due and payable as provided in the Note or other Loan Documents, as applicable.

The Note and all its terms are incorporated herein by reference, and this conveyance secures any and all extensions thereof, however evidenced;

B. Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein;

C. Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents; and

D. All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR
COVENANTS AND AGREES:

ARTICLE 1 DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms have the following meanings in this Deed of Trust:

Section 1.1 The term "Default Rate" means the lesser of the maximum rate permitted by law and ten percent (10%) per annum.

Section 1.2 The term "Ground Lease" means that certain Ground Lease Agreement dated _____, 2021, entered into between Trustor as Lessee and Beneficiary as Lessor for the lease of the Property by Trustor.

Section 1.3 The term "Loan" means the loan made by Beneficiary to Trustor in the amount of _____ (\$_____).

Section 1.4 The term "Loan Documents" means this Deed of Trust, the Note, and the Regulatory Agreement, and any other agreements, debt, loan or security instruments between Trustor and Beneficiary relating to the Loan.

Section 1.5 The term "Note" means the promissory note evidencing the Loan of even date herewith, executed by Trustor in favor of Beneficiary, as it may be amended or restated, the payment of which is secured by this Deed of Trust. The terms and provisions of the Note are incorporated herein by reference.

Section 1.6 The term "Principal" means the amounts required to be paid under the Note.

Section 1.7 The term "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants to be entered into by and between Beneficiary and Trustor and recorded against the Property.

ARTICLE 2 MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment and performance of the Secured Obligations, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary has no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security or any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary exercises its rights as agent of Trustor only in the event that Trustor fails to take, or fails to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary specifies upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained requires Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of San Bernardino County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien or otherwise provide assurances to Beneficiary as provided in the Loan Agreement.

Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except

those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law, and as approved, in writing, by Beneficiary.

Section 2.3 Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable, subject to the rights of senior lenders that are approved by the Beneficiary pursuant to the Loan Agreement. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach has occurred and is continuing, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to, rents then due and unpaid, and all such rents will immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor contains a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, other than as security to senior lenders, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenants that, so long as the Secured Obligations are outstanding, Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon any default by Trustor under any of the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver will be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents are to be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver is to have access to the books and records used in the operation and maintenance of the Property and will be liable to account only for those rents actually received. Beneficiary is not liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes will become part of the Secured Obligations pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts are payable by Trustor to Beneficiary upon notice from Beneficiary to Trustor requesting payment thereof and will bear interest from the date of disbursement at the rate stated in Section 3.3.

If the Beneficiary or the receiver enters upon and takes and maintains control of the Property, neither that act nor any application of rents as provided herein will cure or waive any default under this Deed of Trust or invalidate any other right or remedy available to Beneficiary under applicable law or under this Deed of Trust. This assignment of rents of the Property will terminate at such time as this Deed of Trust ceases to secure the Secured Obligations.

ARTICLE 3 TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company that are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor is

not required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof is promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges can be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 may not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies. Beneficiary acknowledges that Trustor has the right to claim a "welfare exemption" to the payment of ad valorem taxes on the Property under California Revenue and Taxation Code Section 214(g).

In the event that Trustor fails to pay any of the items required by this Section to be paid by Trustor, Beneficiary may (but is under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, will become part of the Secured Obligations secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid, all Secured Obligations secured hereunder have been fulfilled, and this Deed of Trust has been reconveyed.

All such insurance policies and coverages are to be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, are to be delivered to the Beneficiary upon demand therefor at any time prior to Trustor's satisfaction of the Secured Obligations.

Section 3.3 Advances.

In the event the Trustor fails to maintain the full insurance coverage required by this Deed of Trust or fails to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but is under no obligation to) (i) take out the required policies of insurance and pay the premiums on the same, and (ii) make any repairs or replacements that are necessary and provide for payment thereof. All amounts so advanced by the Beneficiary will become part of the Secured Obligations (together with interest as set forth below) and will be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, will bear interest from the date of the advance at the Default Rate.

ARTICLE 4 DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

Subject to the rights of senior lenders, all judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) the taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property (collectively, the "Funds") are hereby assigned to and are to be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part to any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary determines at its sole option. The Beneficiary is entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof will not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender. The Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor (taking into account the Funds) has sufficient funds to rebuild the improvements in substantially the form that existed prior to the casualty or condemnation.

ARTICLE 5 AGREEMENTS AFFECTING THE PROPERTY; FURTHER ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of a Default (as defined in Section 7.1) hereunder, and if the Beneficiary employs attorneys or incurs other expenses for the collection of amounts due hereunder or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary. Any such amounts paid by the Beneficiary will be added to the Secured Obligations, and will bear interest from the date such expenses are incurred at the Default Rate.

Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust is deemed to be fixtures and part of the real property and this Deed of Trust constitutes a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust constitutes a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor shall perform all acts that the Beneficiary reasonably requests so as to enable the Beneficiary to maintain a valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it deems appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, may inspect the Security, without payment of charges or fees.

Section 5.8 Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there will be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor will the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants run with the land.

ARTICLE 6 HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be customarily used in construction or operation of a multi-family residential development.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) Trustor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be classified as "border-zone property" (as defined in California Health and Safety Code Section 25117.4) under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Materials Law.

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Trustor. Trustor shall indemnify and hold harmless Beneficiary and its boardmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial

or enforcement actions of any kind issued by any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties).

Without Beneficiary's prior written consent, which shall not be unreasonably withheld, Trustor shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgement, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or

threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the Default Rate until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following shall constitute defaults (each a "Default") following the expiration of any applicable notice and cure periods: (1) failure to make any payment to be paid by Trustor under the Loan Documents; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents; (3) failure to observe or perform any of Trustor's covenants, agreement or obligations under the Ground Lease; or (4) failure to make any payment or observe or perform any of Trustor's other covenants, agreements, or obligations under any other debt instrument or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein.

Section 7.2 Acceleration of Maturity.

If a Default has occurred and is continuing, then at the option of the Beneficiary, the amount of any payment related to the Default and all unpaid Secured Obligations are immediately due and payable, and no omission on the part of the Beneficiary to exercise such option when entitled to do so may be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If a Default has occurred and is continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Property and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security will not cure or waive any Default or Notice of Sale (as defined in Section 7.3(c), below) hereunder or invalidate any act done in response to such Default or pursuant to such Notice of Sale, and, notwithstanding the continuance in possession of the Security, Beneficiary will be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of a Default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Sale"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of San Bernardino County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing the Secured Obligations.

Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall deliver to the Trustee the Notice of Sale and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which will be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of the Notice of Sale from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as is then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after the lapse of that amount of time as is then required by law and after recordation of such Notice of Sale as required by law, sell the Security, at the time and place of sale set forth in the Notice of Sale, whether as a whole or in separate lots or parcels or items, as Trustee deems expedient and in such order as it determines, unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts will be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other Secured Obligations owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver.

If a Default occurs and is continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, may apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers will have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and will continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy will be cumulative and concurrent and will be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Default will exhaust or impair any such right, power or remedy, and may not be construed to be a waiver of any such Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's express or implied consent to breach, or waiver of, any obligation of the Trustor hereunder will not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare a Default, irrespective of how long such failure continues, will not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment or performance of any Secured Obligation, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission will not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor will any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Default then made or of any subsequent Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary, will the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

The Beneficiary has the power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, will be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount that becomes due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8
MISCELLANEOUS

Section 8.1 Amendments.

This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and all obligations under the Loan Documents have been performed in full, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

If at any time after the execution of this Deed of Trust it becomes necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication must be in writing and is to be served

personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and (1) if intended for Beneficiary is to be addressed to:

Housing Authority of the County of San Bernardino
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

and (2) if intended for Trustor is to be addressed to:

Arrowhead Grove LLC
9421 Haven Avenue
Rancho Cucamonga, CA 91730
Attn: President/CFO

Any notice, demand or communication will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

Section 8.4 Successors and Joint Trustors.

Where an obligation created herein is binding upon Trustor, the obligation also applies to and binds any transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an obligation of the Trustor and a transferee, such obligation will be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor will be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity will not affect the balance of the terms and provisions hereof, which terms and provisions will remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, will be considered to have been first paid or applied to the full payment of that portion of the debt that is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust is governed by the laws of the State of California.

Section 8.8 Gender and Number.

In this Deed of Trust the singular includes the plural and the masculine includes the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage also refers to a deed of trust and any reference to a deed of trust also refers to a mortgage.

Section 8.10 Actions.

Trustor shall appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter will be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution is to be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, will be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of a pending sale under this Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee is a party unless brought by Trustee.

Section 8.14 Tax Credit Provisions.

Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, and to the extent applicable, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Security encumbered by this Deed of Trust, the following rule contained in 26 U.S.C. Section 42(h)(6)(E)(ii), as amended, applies:

For a period of three (3) years from the date of Foreclosure, with respect to an existing tenant of any low-income unit, (i) such tenant may not be subject to eviction or termination of their tenancy (other than for good cause), (ii) nor may such tenant's gross rent with respect to such unit be increased, except as otherwise permitted under Section 42 of the Internal Revenue Code.

(signature continues on following page)

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

ARROWHEAD GROVE LLC, a California limited liability company

By_____

By:_____

EXHIBIT A

LEGAL DESCRIPTION

The land is situated in the State of California, San Bernardino County, and is described as follows:

**REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD
OF ACTION**

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Regular Meeting Minutes for Meeting Held on July 13, 2021

RECOMMENDATION(S)

Approve the meeting minutes for the Board of Commissioners of the Housing Authority of the County of San Bernardino Regular Meeting held on July 13, 2021.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB communication is open, honest and consistent.

FINANCIAL IMPACT

Approval of this item will not result in a financial impact to the Housing Authority of the County of San Bernardino (HACSB) as there are no financial impacts associated with this item.

BACKGROUND INFORMATION

The HACSB Board of Commissioners (Board) Regular Meeting took place on July 13, 2021 and attached are the comprehensive minutes for review and approval by the Board.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 27, 2021.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF
THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO
July 13, 2021**

The Board of Commissioners of the Housing Authority of the County of San Bernardino met in a regular meeting via teleconference and videoconference (Zoom at call-in number (669) 900-6833, Meeting ID 880 9897 4854, Password 102047) at 3:00 p.m. on July 13, 2021.

The meeting was called to order, and upon roll call, the following were present:

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Absent was:

Commissioner Cooper

Also in attendance were: Maria Razo, Executive Director; Gus Joslin, Deputy Executive Director; Rishad Mitha, Director of Operations; Jennifer Dawson, Director of Human Resources; Nicole Beydler, Director of Policy and Public Relations; Renee Kangas, Management Analyst; Kristin Maithonis, Assistant Director of Housing Services; Perlle Liu, Asset Management Analyst; Evan Miles, Project Manager; Angie Lardapide, Procurement and Contracts Supervisor; Rebecca Murillo, Special Programs Manager; Tony Bonilla, Management Analyst; Ronald Kennedy, Management Analyst and Claudia Hurtado, Executive Assistant.

Also present, Fred Galante, Legal Counsel to the Housing Authority.

The Chairman called for additions or deletions to the July 13, 2021, agenda.

Executive Director Maria Razo informed the Board of Commissioners of a revision to board agenda number 8, Acceptance of Emergency Housing Vouchers and related funding and expenditures. The word “Urban” needs to be added to recommendation number 1) Accept Emergency Housing Vouchers awarded by the United States Department of Housing and Urban Development.

The Chairman provided an opportunity for members of the public to address the Board of Commissioners. Secretary of the Board declared there were no public comments submitted.

The Executive Director’s Report was requested.

Executive Director Razo gave the Executive Director’s Report.

Commissioner MacDuff asked if the Board will have a site tour of Desert Haven soon? Executive Director Maria Razo stated the Board will be scheduled a site tour soon. Commissioner MacDuff provided a follow up question and inquired about what Valley Star is. Director of Operations, Rishad Mitha answered the question by stating that Valley Star is a supportive services partner for Desert Haven, contracted by Department of Behavioral Health to

provide case management services. Commissioner MacDuff also asked what the process is for verifying hardships that are related to COVID-19. Assistant Director of Housing Services, Kristin Maithonis answered by stating it is on a case-by-case basis. For example, if the participant presents a hardship due to loss of employment, a verification is requested from the participant's former employment. If the case is related to development or the Affordable Housing side, the only document requested is a declaration. Rishad Mitha added, HACSB initiated 140 applications via the Client portal. Unfortunately, in many cases, the family does not finalize the application due to not being able to provide the required documentation to qualify for the hardship. He also explained that we won't know the full impact of this until the end of the moratorium. Commissioner MacDuff asked, regarding Phase 3 in the re-opening plan, face to face now permitted, about clarification to whether masks are required to be worn. Director of Human Resources, Jennifer Dawson, stated as of right now our employees and any visitors that come to the office are required to wear masks. She went on to say that we are in the middle of making updates as provided by Cal/OSHA.

Discussion calendar item number 5 to, 1) Adopt Resolution No. 113, a) Approving the Housing Authority of the County of San Bernardino's Annual Moving to Work Plan for Fiscal Year 2021-2022, and, b) Approving the Annual Moving to Work Plan Certification of Compliance to the United States Department of Housing and Urban Development, was requested.

Director of Policy and Public Relations Nicole Beydler explained the item.

Commissioner Muñoz moved to approve discussion calendar item number 5 to, 1) Adopt Resolution No. 113, a) Approving the Housing Authority of the County of San Bernardino's Annual Moving to Work Plan for Fiscal Year 2021-2022, and b) Approving the Annual Moving to Work Plan Certification of Compliance to the United States Department of Housing and Urban Development, which motion was duly seconded by Commissioner Miller, and upon roll call the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Nays

Discussion calendar item number 6, to 1) Adopt Resolution No. 112 to approve and adopt, a) The Fiscal Year 2021-22 Consolidated Annual Budget including operating transfers in/out, b) The Fiscal Year 2021-22 Public Annual Budget including operating transfers in/out, c) Any changes to the Consolidated Annual Budget or the Public Housing Annual Budget that the Board of Commissioners may direct, was requested.

Executive Director Maria Razo explained the item.

Commissioner Tarango moved to approve the discussion calendar item number 6, to 1) Adopt Resolution No. 112 to approve and adopt, a) The Fiscal Year 2021-22 Consolidated Annual Budget including operating transfers in/out, b) The Fiscal Year 2021-22 Public Annual Budget including operating transfers in/out, c) Any changes to the Consolidated Annual Budget or the Public Housing Annual Budget that the Board of Commissioners may direct, which motion was duly seconded by Commissioner MacDuff, and upon roll call the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Nays

Commissioner Johnson asked regarding the sustainability of the reduction in the administrative fees. What is the conversation had with HUD in regards to the cut in the administrative fee? Executive Director, Maria Razo, answered the question by stating, HUD is aware of the problem, and continues to work on educating Congress who provides the funding for these programs.

Approval of the discussion calendar item number 7 to, 1) Adopt Resolution No. 114 approving revisions to the Housing Authority of the County of San Bernardino's Employee Personnel Handbook, 2) Implement policy revision to the Housing Authority of the County of San Bernardino Employee Personnel Handbook subject to meet and confer with union, was requested.

Director of Human Resources Jennifer Dawson explained the item.

Commissioner Tarango moved to approve the discussion calendar item number 7 to, 1) Adopt Resolution No. 114 approving revisions to the Housing Authority of the County of San Bernardino's Employee Personnel Handbook, 2) Implement policy revision to the Housing Authority of the County of San Bernardino Employee Personnel Handbook subject to meet and confer with union, which motion was duly seconded by Commissioner MacDuff, and upon roll call, the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Nays

Approval of the discussion calendar item number 8 to, 1) Accept Emergency Housing Vouchers awarded by the United States Department of Housing and Urban Development, 2) Authorize the

acceptance of housing assistance and administrative funding awarded for Emergency Housing Vouchers. Authorize expenditures to administer Emergency Housing Vouchers up to awarded amounts, 3) Authorize and direct the Executive Director to execute and deliver any related documents, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, was requested.

Director of Operations Rishad Mitha explained the item.

Commissioner MacDuff moved to approve the discussion calendar item number 8) to, 1) Accept Emergency Housing Vouchers awarded by the United States Department of Housing and Urban Development, 2) Authorize the acceptance of housing assistance and administrative funding awarded for Emergency Housing Vouchers. Authorize expenditures to administer Emergency Housing Vouchers up to awarded amounts, 3) Authorize and direct the Executive Director to execute and deliver any related documents, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, which motion was duly seconded by Commissioner Muñoz, and upon roll call the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Nays

Approval of the discussion calendar item number 9 to 1) Award a construction contract, effective July 14, 2021, to Resource Environmental, Inc. for demolition and erosion control services for the revitalization project at Valencia Grove Phase II, in the city of Redlands in an amount not to exceed \$461,000, 2) Authorize and direct the Executive Director to execute and deliver the contract to Resource Environmental, Inc., and, upon consultation with Legal Counsel, to approve any non-financial revisions necessary to complete the transaction, was requested.

Deputy Executive Director Gus Joslin explained the item.

Commissioner MacDuff moved to approve the discussion calendar item number 9 to 1) Award a construction contract, effective July 14, 2021, to Resource Environmental, Inc. for demolition and erosion control services for the revitalization project at Valencia Grove Phase II, in the city of Redlands in an amount not to exceed \$461,000, 2) Authorize and direct the Executive Director to execute and deliver the contract to Resource Environmental, Inc., and, upon consultation with Legal Counsel, to approve any non-financial revisions necessary to complete the transaction, was requested, which motion was duly seconded by Commissioner Miller, and upon roll call the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller

Nays

Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Commissioner MacDuff asked if the trees located in the Valencia Grove property still on the property. Deputy Executive Director answered the question by stating, most of the trees are gone.

Approval of the discussion calendar item number 10 to 1) Award case management services contract to Nan McKay and Associates, Inc., in an amount not to exceed \$175,000, for a term of six months beginning on or around August 2021 with options to extend the contract four single-year extensions through January 2026, 2) Implement contract for case management services subject to meet and confer with union, 3) Authorize and direct the Executive Director to execute and deliver any related documents, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, was requested.

Director of Operations Rishad Mitha explained the item.

Commissioner Miller moved to approve the discussion calendar item number 10 to 1) Award case management services contract to Nan McKay and Associates, Inc., in an amount not to exceed \$175,000, for a term of six months beginning on or around August 2021 with options to extend the contract four single-year extensions through January 2026, 2) Implement contract for case management services subject to meet and confer with union, 3) Authorize and direct the Executive Director to execute and deliver any related documents, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, which motion was duly seconded by Commissioner Tarango, and upon roll call the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Nays

Commissioner MacDuff asked regarding the four 1-year extensions as to whether we foresee continuing this model if it is successful? Rishad Mitha answered by stating it was due to an estimated number of files awarded to the vendor to work on that is dependent on the amount Housing Services program staff out on temporary leave and that the need might be greater now but may be less as staff come back from leave. Commissioner MacDuff asked if the employee leaves COVID-19 related. Director of Human Resources answered the question by stating, most of the employee leave are not COVID-19 related. Legal Counsel, Fred Galante added by stating any extension to the contract need will be presented to the Board for consideration. Maria Razo added by stating it is also contingent on a calendar year basis of availability of funding but we do have CARES Administration funds that go through December 31, 2021, that the Housing Authority will be able to use. Commissioner Johnson asked in regard to the files needed to be

reviewed, will the EHV files also be reviewed by the vendor. Rishad Mitha answered the question by stating the vendor will primarily assist with the tasks the employee would typically do while the employee is out on leave. Commissioner Johnson requested clarification on the longevity of the EHV being two years. Rishad Mitha clarified by stating the EHV is a program that is authorized for a 9-year period which will be until September 2030 the initial funding is for 2-year period, December 2022. The Housing Authority cannot issue vouchers after December 2023.

Approval of consent calendar item number 11 to 1) Approve seven non-financial Memorandums of Understanding with the County of San Bernardino's Department of Behavioral Health for the Continuum of Care grants, which Memorandums of Understanding address the provision of in-kind case management services to participants in the following seven separate programs:

- a. Project Gateway program
- b. Laurelbrook Estates program
- c. Cornerstone program
- d. Whispering Pines program
- e. New Horizon program
- f. Lantern Woods program
- g. Stepping Stones program

2) Authorize and direct the Executive Director to execute and deliver Memorandum of Understanding for each Continuum of Care grant to the County of San Bernardino, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, 3) Authorize and direct the Executive Director to execute and deliver annual renewals of the Memorandum of Understanding for each Continuum of Care grant upon grant renewal to the County of San Bernardino, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, was requested.

Executive Director Maria Razo explained the item.

Commissioner MacDuff moved to approve discussion calendar item number 11 to 1) Approve seven non-financial Memorandums of Understanding with the County of San Bernardino's Department of Behavioral Health for the Continuum of Care grants, which Memorandums of Understanding address the provision of in-kind case management services to participants in the following seven separate programs:

- a. Project Gateway program
- b. Laurelbrook Estates program
- c. Cornerstone program
- d. Whispering Pines program
- e. New Horizon program
- f. Lantern Woods program
- g. Stepping Stones program

2) Authorize and direct the Executive Director to execute and deliver Memorandum of Understanding for each Continuum of Care grant to the County of San Bernardino, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, 3) Authorize and direct the Executive Director to execute and deliver annual renewals of the Memorandum of Understanding for each Continuum of Care grant upon grant renewal to the County of San Bernardino, and upon consultation with Legal Counsel, to approve

any non-substantive revisions necessary to complete the transaction, which motion was duly seconded by Commissioner Miller, and upon roll call the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Nays

Commissioner MacDuff asked in regard to page 246, it lists the County interim rate, why are they interim rates? Maria Razo added by stating, although these are in-kind services DBH is providing, there has to be a value attached to those services of which then overall expenses are provided to HUD.

Approval of discussion calendar item number 12 to 1) Approve Memorandum of Understanding between the Housing Authority of the County of San Bernardino and the Interagency Council on Homelessness acting as the representative body for the Continuum of Care, 2) Authorize and direct the Executive Director to execute and deliver the Memorandum of Understanding and any related documents, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, was requested.

Director of Operations Rishad Mitha explained the item.

Commissioner Miller moved to approve the discussion calendar item number 12 to 1) Approve Memorandum of Understanding between the Housing Authority of the County of San Bernardino and the Interagency Council on Homelessness acting as the representative body for the Continuum of Care, 2) Authorize and direct the Executive Director to execute and deliver the Memorandum of Understanding and any related documents, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, which motion was duly seconded by Commissioner MacDuff, and upon roll call the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Nays

Commissioner MacDuff asked who are the Victim Service Providers? Rishad Mitha answered by stating 2, they are primarily non-profits that help domestic violence individuals that need to be relocated. Rishad Mitha also mentioned there will be a Memorandum of Understanding that will be specifically Victim Service Providers to be presented to the Board soon, which will include an estimate of 12 agencies across the County.

Approval of the consent calendar agenda items numbers 13 -16, to:

13) 1) Approve a formal denial of claim received by Housing Authority of the County of San Bernardino from the law office of Albert J. Gopin for the claim of his client, a minor, 2) Authorize and direct the Executive Director to issue a denial of claim letter in a form approved in consultation with Legal Counsel.

14) Approve the meeting minutes for the Board of Commissioners of the Housing Authority of the County of San Bernardino Regular Meeting held on June 8, 2021.

15) Approve and file Agency-wide Financial Statements through March 2021.

16) Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month ending in April 2021, was requested.

Commissioner MacDuff motioned to pull consent calendar item number 13 to 1) Approve a formal denial of claim received by Housing Authority of the County of San Bernardino from the law office of Albert J. Gopin for the claim of his client, a minor, 2) Authorize and direct the Executive Director to issue a denial of claim letter in a form approved in consultation with Legal Counsel, to discuss the item.

Commissioner MacDuff moved to approve consent calendar agenda items numbers 14 -16, to:

14) Approve the meeting minutes for the Board of Commissioners of the Housing Authority of the County of San Bernardino Regular Meeting held on June 8, 2021.

15) Approve and file Agency-wide Financial Statements through March 2021.

16) Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month ending in April 2021, which motion was duly seconded by Commissioner Miller, and upon roll call the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Nays

Discussion of consent calendar item number 13 to 1) Approve a formal denial of claim received by Housing Authority of the County of San Bernardino from the law office of Albert J. Gopin for the claim of his client, a minor, 2) Authorize and direct the Executive Director to issue a denial of claim letter in a form approved in consultation with Legal Counsel, was requested.

Commissioner MacDuff asked if the Board was able to know the extent of the denial of claim. Legal Counsel, Fred Galante answered the question by stating that due to the case being public record, the case can be summarized to the Board. Moving forward with Commissioner MacDuff's request Fred Galante provided general background of the denial of claim case. Commissioner MacDuff asked if the next step will provide the denial of claim to the Board as a Closed Session meeting. Legal Counsel Fred Galante provided information as to what the Board can expect in a closed session.

Commissioner MacDuff moved to approve consent calendar item number 13 to 1) Approve a formal denial of claim received by Housing Authority of the County of San Bernardino from the law office of Albert J. Gopin for the claim of his client, a minor, 2) Authorize and direct the Executive Director to issue a denial of claim letter in a form approved in consultation with Legal Counsel, which motion was duly seconded by Commissioner Miller, and upon roll call the Ayes and Nays were as follows:

Ayes

Commissioner Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Muñoz
Commissioner Pinedo
Commissioner Tarango

Nays

Chairman provided an opportunity for individual Board member comments. Commissioner MacDuff provided fun fact she first heard of the Rental Assistance via KVC Radio public announcement and are trying to let the public know. Commissioner Johnson thanked and appreciates the HACSB team for their work.

There being no other business, Commissioner Tarango moved for the regular meeting of Tuesday, July 13, 2021, to be adjourned, which motion was duly seconded by Commissioner Miller. There being no objection to the call for adjournment, the meeting was adjourned by unanimous consent at 4:15 p.m.

Tim Johnson, Chair

Beau Cooper, Vice Chair

Cassie MacDuff

Sylvia Miller

Jessie Muñoz

Bobby Tarango

Dr. Ciriaco “Cid” Pinedo

Attest:

Secretary

REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Agency-wide Financial Statements through April 2021

RECOMMENDATION(S)

Approve and file Agency-wide Financial Statements through April 2021.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

We have a healthy organization marked by financial stability and a culture of respect, empowerment, and passion for the mission.

FINANCIAL IMPACT

The Housing Authority of the County of San Bernardino's (HACSB) year-to-date agency-wide net income through April 2021 for Federal Fiscal Year (FFY) 2020-21 is \$5,364,697. The net income is currently greater than the anticipated \$229,845 net loss, with a variance of \$5.6 million, primarily due to physical needs assessment work and capital projects that were budgeted, but not completed in the amount of \$5.2 million (reflected in the extraordinary maintenance expenses line and the grant expense item). There were also lower than anticipated costs in administrative and maintenance expenses mainly due to pending computer equipment and software purchases, lower maintenance, and contract costs due to deferred internal maintenance as a result of the pandemic and several vacant positions. Depreciation expense is not budgeted and amounted to \$3.4 million through April 2021.

Financial Summary	FY 2021 YTD
Revenues	\$93,561,754
Expenses	\$84,824,360
Operating Gain	\$ 8,737,394
Operating Transfers/Non-Operating Items	\$ 3,372,394
Net Income/(Loss)	\$ 5,364,697

BACKGROUND INFORMATION

HACSB administers multiple housing programs and is the largest provider of affordable housing in the County of San Bernardino. The FFY 2020-21 budget and financial operations continue to support the vision and mission of HACSB and are in line with its Strategic Plan and Moving to Work Annual Plans. Overall, HACSB has demonstrated fiscal stability even through the challenges presented by the pandemic. FFY 2020-21 is expected to be another challenging year as the effects of the pandemic continue to impact the agency's operations and finances.

Funding notifications for the 2021 calendar year were received from HUD in late March, which included an unexpected inflation factor of 8%. We are currently working on analyzing the impact

of the 2021 funding numbers in comparison to current costs and will continue to do so. In the 2020 calendar year, we experienced large cost increases, and an insufficient inflation factor increase, which resulted in decreasing the overall size of the MTW Housing Choice Voucher program through attrition. Based on current analysis, we expect that we will be able to serve approximately 400 additional families through the MTW Housing Choice Voucher tenant-based program, which currently has a waiting list of 20,000+ families. We are also working through the launch of the new Emergency Housing Voucher (EHV) program. A budget revision will be brought to the board within the next few months to incorporate related income and expenses into the agencywide budget.

Following is a recap of the COVID related challenges mentioned above, as well as other financial items to highlight.

- COVID-19 pandemic related:
 - Continued increases in housing assistance payment costs in the Housing Choice Voucher Program *related to families income decreasing and total contract rent increasing*, which causes a corresponding increase on the portion that the agency pays the landlord on behalf of the program participating family.
 - Increases in agency costs (i.e. Office modifications, cleaning costs, paid leave, technology, etc.).
 - Rental income losses related to the eviction moratorium in the Authority Owned portfolio.
 - Inconsistent staffing levels due to childcare and health issues.
- Physical needs improvements: The need to continue to address the physical needs assessment identified repairs within the Authority Owned Portfolio. Maintenance of aging properties is extremely costly, but it is needed to preserve our affordable housing developments. Some of this work has been deferred to account for rental income losses resulting from the pandemic as well as due to staffing capacity challenges.
- Benefit increases: Increases to employer paid medical, dental and pension benefits.

Despite these challenges, we continue to focus on maintaining the agency's fiscal stability, customer service, innovation, enhancing partnerships that will assist our staff and families, and a continued passion for our agency's mission.

Based on HUD's guidance to routinely present key information to HACSB's Board of Commissioners, HACSB is presenting the financial statements on a monthly basis.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

HACSB Budget Comparison

Period = Oct 2020-Apr 2021

	YTD Actual	YTD Budget	Variance	% Var	Annual
INCOME					
TENANT INCOME					
Total Rental Income	15,566,651	14,393,297	1,173,353	8.15	24,674,224
Total Other Tenant Income	245,787	350,242	-104,455	-29.82	600,191
NET TENANT INCOME	15,812,438	14,743,539	1,068,898	7.25	25,274,415
GRANT INCOME					
TOTAL GRANT INCOME	73,749,688	75,958,815	-2,209,127	-2.91	130,215,112
OTHER INCOME					
TOTAL OTHER INCOME	3,999,629	3,648,552	351,077	9.62	5,541,077
TOTAL INCOME	93,561,754	94,350,906	-789,152	-0.84	161,030,604
EXPENSES					
GRANT EXPENSES					
TOTAL GRANT EXPENSES	3,762,328	8,048,419	4,286,091	53.25	13,797,290
ADMINISTRATIVE					
Total Administrative Salaries	7,340,733	8,594,256	1,253,523	14.59	14,734,032
Total Legal Expense	152,477	162,206	9,729	6.00	277,685
Total Other Admin Expenses	3,265,689	3,261,064	-4,625	-0.14	5,685,778
Total Miscellaneous Admin Expenses	1,087,930	1,675,795	587,865	35.08	2,428,595
TOTAL ADMINISTRATIVE EXPENSES	11,846,829	13,693,321	1,846,492	13.48	23,126,090
TENANT SERVICES					
TOTAL TENANT SERVICES EXPENSES	163,521	302,812	139,291	46.00	519,252
UTILITIES					
TOTAL UTILITY EXPENSES	2,001,458	2,230,187	228,729	10.26	3,825,949
MAINTENANCE AND OPERATIONS					
Total General Maint Expense	1,556,596	1,479,987	-76,609	-5.18	2,535,690
Total Materials	465,356	592,386	127,030	21.44	1,015,965
Total Contract Costs	1,513,853	2,570,442	1,056,589	41.11	4,401,221
TOTAL MAINTENANCE EXPENSES	3,535,804	4,642,815	1,107,011	23.84	7,952,877
GENERAL EXPENSES					
TOTAL GENERAL EXPENSES	574,419	684,909	110,490	16.13	1,141,404
EXTRAORDINARY MAINTENANCE EXPENSES					
TOTAL EXTRAORDINARY MAINTENANCE EXPENSES	2,682,816	2,971,201	288,385	9.71	5,468,747
HOUSING ASSISTANCE PAYMENTS					
TOTAL HOUSING ASSISTANCE PAYMENTS	59,390,072	61,117,403	1,727,331	2.83	104,772,691
FINANCING EXPENSE					
TOTAL FINANCING EXPENSES	867,112	889,684	22,572	2.54	1,525,172
TOTAL OPERATING EXPENSES	84,824,360	94,580,751	9,756,391	10.32	162,129,472
OPERATING NET INCOME	8,737,394	-229,845	8,967,239	3,901.43	-1,098,868
NET OPERATING TRANSFER IN/OUT	0	0	0	N/A	0
NON-OPERATING ITEMS					
TOTAL NON-OPERATING ITEMS	3,372,697	0	-3,372,697	N/A	0
NET INCOME	5,364,697	-229,845	5,594,542	2,434.05	-1,098,868

**REPORT/RECOMMENDATION TO THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AND RECORD
OF ACTION**

August 10, 2021

FROM

MARIA RAZO, Executive Director, Housing Authority of the County of San Bernardino

SUBJECT

Vacated Tenant Accounts for the Authority Owned Portfolio to be Written Off as Collection Loss for the Month of May 2021

RECOMMENDATION(S)

Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of May 2021.

(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB communication is open, honest and consistent.

HACSB has secured the resources needed for accomplishing its mission.

FINANCIAL IMPACT

The accounts receivable loss for the month ending May 31, 2021, is \$12,241.51. The Housing Authority of the County of San Bernardino (HACSB) projects and anticipates collection losses in its annual budget. The monthly losses as detailed below are in line with the budgeted losses and historical trends.

BACKGROUND INFORMATION

On a monthly basis, HACSB records vacated tenant accounts for the Authority Owned Portfolio for the purpose of being written off to collection losses. Authority Owned Portfolio units are owned by HACSB and were either acquired or developed through a variety of partnerships with local governments and/or HACSB's non-profit affiliate Housing Partners I, Inc., and also include public housing developments converted through the United States Department of Housing and Urban Development's (HUD) Rental Assistance Demonstration (RAD) program.

Despite HACSB's efforts to collect the debts listed in the attached reports, it has been determined that such debts are uncollectible. However, collection efforts will continue with HACSB's contracted collection agency. As part of HACSB's standard property management business practices, Board of Commissioners approval is requested to write off these accounts as accounts receivable losses to the Authority Owned Portfolio. Losses during this time period are primarily for voluntary move outs and skips. The total write off for the month of May 2021 is \$12,241.51 as delineated in the following table. Due to collections on past due amounts, a net credit amount is reflected. Attached is a worksheet that itemizes the individual accounts.

SUMMARY BY PROPERTY MANAGEMENT		
PROPERTY	NO. VACATED	TOTAL
207 – Barstow	1	-
401 – Wall Avenue	1	\$2,834.00

Vacated Tenant Accounts for the Authority Owned Portfolio to be Written Off as Collection Loss
for the Month of May 2021
August 10, 2021

SUMMARY BY PROPERTY MANAGEMENT		
PROPERTY	NO. VACATED	TOTAL
407 – Sunset Pointe	2	\$6,083.84
408 – Sunrise Vista	3	\$3,831.39
425a – Sequoia	0	-
426 – Sunnyside	0	-
434d – Third	1	\$335.00
Concessions Write Off		-
TOTAL RENT WRITE OFF	8	\$13,084.23
Miscellaneous Charges		\$736.02
Maintenance Charges		\$3,166.26
Legal Charges		-
Security Deposits Applied		(\$4,745.00)
NET TOTAL WRITE OFF		\$12,241.51

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 22, 2021.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End: 05/31/21

Item #	Last Name	First Name	ID No.	REASON	MONTHLY RENT	UNPAID RENT (*)	CONC. REVERSAL	UNPAID MISC (*)	MAINT. FEES	LEGAL FEES	TOTAL OWED	LESS DEPOSIT	NET DUE
207 - Barstow													
1	E.	L.		V	\$ 355.00	\$0.00		11.02	1,427.00	-	\$1,438.02	800.00	\$638.02
2													
3													
4													
TOTALS:						-	-	11.02	1,427.00	-	1,438.02	800.00	638.02

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
1	30 Day Notice	N/A	N/A	N/A	N/A	N/A		N/A	N/A	05/31/21
2										
3										
4										

401- Wall Avenue													
1	K.	S.		V	750.00	2,834.00			893.00		3,727.00	400.00	3,327.00
							-			-			-
TOTALS:						2,834.00	-	-	893.00	-	3,727.00	400.00	3,327.00

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
1	30 Day Notice	03/24/21								04/24/21

407 - Sunset Pointe													
2	S.	S.							(1,054.92)		(1,054.92)		(1,054.92)
3	B.	S.							(226.80)		(226.80)		(226.80)
4	W.	T.		S	725.00	3,961.00		725.00	560.00		5,246.00	300.00	4,946.00
5	H.	D.		V	825.00	2,122.84	-		660.00		2,782.84	1,345.00	1,437.84
TOTALS:						6,083.84	-	725.00	(61.72)	-	6,747.12	1,645.00	5,102.12

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
2	Collection on bad debt									
3	Collection on bad debt									
4	Skip									05/17/21
5	60 Day Notice	02/18/21								04/30/21

*Reasons: E=Eviction S=Skip V=Voluntary T=Terminated Tenancy **Unpaid Misc. D=Deceased Stipulated agreements for rent, maintenance charges, late charges, etc.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End: 05/31/21

Item #	Last Name	First Name	ID No.	REASON	MONTHLY RENT	UNPAID RENT (*)	CONC. REVERSAL	UNPAID MISC (*)	MAINT. FEES	LEGAL FEES	TOTAL OWED	LESS DEPOSIT	NET DUE
408 - Sunrise Vista													
6	A.	E.							(156.68)		(156.68)		(156.68)
7	D.	M.							(128.00)		(128.00)		(128.00)
8	H.	T.		V	725.00	725.00			264.54		989.54	500.00	489.54
9	P.	D.		V	825.00	3,106.39			945.00		4,051.39	500.00	3,551.39
10	G.	L.		V	825.00	-	-		621.00	-	621.00	400.00	221.00
TOTALS:						3,831.39	-	-	1,545.86	-	5,377.25	1,400.00	3,977.25

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
6	Collection on bad debt									
7	Payment on bad debt									
8	30 Day Notice	03/31/21								04/30/21
9	30 Day Notice	03/31/21								05/20/21
10	30 Day Notice	03/31/21								04/30/21

425a - Sequoia													
11	R.	D.							(363.28)		(363.28)		(363.28)
											-		-
TOTALS:						-	-	-	(363.28)	-	(363.28)	-	(363.28)

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
11	Payment on bad debt									

426 - Sunnyside													
12	L.	A.							(594.60)		(594.60)		(594.60)
											-		-
TOTALS:						-	-	-	(594.60)	-	(594.60)	-	(594.60)

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
12	Collection on bad debt									

*Reasons: E=Eviction S=Skip V=Voluntary T=Terminated Tenancy **Unpaid Misc. D=Deceased Stipulated agreements for rent, maintenance charges, late charges, etc.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End: 05/31/21

Item #	Last Name	First Name	ID No.	REASON	MONTHLY RENT	UNPAID RENT (*)	CONC. REVERSAL	UNPAID MISC (*)	MAINT. FEES	LEGAL FEES	TOTAL OWED	LESS DEPOSIT	NET DUE
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434d - Third													
13	S.	J.		V	1,295.00	335.00			320.00		655.00	500.00	155.00
											-		-
TOTALS:						335.00	-	-	320.00	-	655.00	500.00	155.00

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
13	30 Day Notice	03/31/21								04/30/21

ALL PROPERTY TOTALS:						13,084.23	-	736.02	3,166.26	-	16,986.51	4,745.00	12,241.51
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Submitted by: _____ Date: _____ Reviewed by: _____ Date: _____

*Reasons: E=Eviction S=Skip V=Voluntary T=Terminated Tenancy **Unpaid Misc.: D=Deceased Stipulated agreements for rent, maintenance charges, late charges, etc.