

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

TO BE HELD TELEPHONICALLY
March 8, 2022 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: 859 6150 0189
Password: 205302

This meeting is being held in accordance with the Brown Act as currently in effect and will take place in accordance with Government Code section 54953(e) et seq. (AB 361), which 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. In addition to providing public comments using the above teleconference information, public comments, limited to 250 words or less, may also 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, you may do so during the meeting online or, alternatively, 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 March 8, 2022.
(Page 1)
- 6) Receive the board building presentation for March 8, 2022, an overview on the pension stabilization fund.
(Page 2)
- 7) Receive update from staff on Emergency Housing Vouchers implementation.
(Page 3-4)
- 8) Adopt Resolution No. 136 authorizing the use of remote teleconference meeting procedures by the Board of Commissioners, as authorized by Government Code Section 54953(e) *et seq.*, for the period of March 16, 2022, through April 15, 2022.
(Pages 5-9)
- 9) Adopt Resolution No. 137 approving revisions to the Administrative Plan governing the Housing Authority of the County of San Bernardino's rental assistance programs.
(Pages 10-35)
- 10) 1 – Approve Resolution No. 138 approving the initial funding of the Section 115 Trust administered by Public Agency Retirement Services for the Housing Authority of the County of San Bernardino's unfunded pension liabilities and appointing the Executive Director as the Plan Administrator for the Section 115 Trust program for an initial deposit amount not to exceed \$6.0 million.
- 2 – Authorize and direct the Executive Director to execute and deliver any legal and administrative documents necessary upon consultations with Legal Counsel, to complete the funding of the Section 115 Trust administered by Public Agency Retirement Services.
(Pages 36-39)
- 11) Adopt Resolution No. 139 approving revisions to the Housing Authority of the County of San Bernardino's Employee Personnel Handbook.
(Pages 40-52)
- 12) Adopt Resolution No. 140 approving temporary payment standards for the Moving to Work Housing Choice Voucher and Emergency Housing Voucher programs effective March 9, 2022 through December 1, 2022.
(Pages 53-59)

- 13) 1 – Approve Amendment No. 1 to Contract No. PC1086, retroactive to be effective February 25, 2022, with Contemporary Information Corporation for Tenant Screening Services, increasing the current contract amount by \$293,063 for a total contract amount not to exceed \$833,063 for the last two-year option year through February 24, 2024.
- 2 – Authorize and direct the Executive Director to execute and deliver the contract amendment to Contemporary Information Corporation and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.
(Pages 60-65)
- 14) 1 - Approve a refinance loan agreements and a new loan agreement with Prudential Mortgage Capital Company and/or its affiliates in the overall approximate amount of \$23.2 million.
- 2 – Authorize the Executive Director to enter into loan agreements and loan related documents with Prudential Mortgage Capital Company and/or its affiliates in the approximate amount of \$23.2 million, said agreements and documents to be executed in substantially the form on file with the Board of Commissioners, with such changes therein as may be necessary or as the Executive Director may approve, upon consultation with Legal Counsel, as being in the best interests of the Housing Authority of the County of San Bernardino, such approval to be evidenced conclusively by the execution and delivery thereof.
- 3 – Authorize the Executive Director to execute and deliver such other documents required to be executed pursuant to the loan agreements, upon consultation with Legal Counsel, as being in the best interests of the Housing Authority of the County of San Bernardino, and to deliver such documents in accordance with the loan agreements.
(Pages 66-176)
- 15) 1 – Approve Contract No. PC1261 with Montgomery Plumbing, Inc., A-Advantage Plumbing, and Pro-Craft Construction for on-call plumbing services for a three-year term from March 9, 2022 through March 8, 2025, with an option to extend the term for up to two additional years through March 8, 2027.
- 2 – Approve an appropriation in an amount not to exceed \$1,226,269 for on -call plumbing services through March 8, 2027.
- 3 – Authorize and direct the Executive Director to execute and deliver the contracts to Montgomery Plumbing, Inc., A-Advantage Plumbing and Pro-Craft Construction, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.
(Pages 177-311)
- 16) 1 – Approve the Second Amendment to Amended and Restated Regulatory Agreements and Declaration of Restrictive Covenants for the Adventerra I & II Apartments projects in Fontana, California.
- 2 – Authorize the Executive Director to enter into the Second Amendment to Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants with CF Aventerra I 2014, L.P. for the Aventerra I Apartments, and CF Aventerra II 2014, L.P. for the Aventerra II Apartments, said agreements and documents to be executed in substantially the form on file with the Board of Commissioners, with such changes therein as may be necessary or as the Executive Director may approve, upon

consultation with Legal Counsel, as being in the best interests of the Housing Authority of the County of San Bernardino, such approval to be evidenced conclusively by the execution, delivery and recording thereof.

3 – Authorize the Executive Director to execute and deliver such other documents required to be executed pursuant to the Second Amendment to Amended and Restated Regulatory Agreements and Declaration of Restrictive Covenants, upon consultation with Legal Counsel, as being in the best interests of the Housing Authority of the County of San Bernardino, and to record such documents with the San Bernardino County Recorder's office in accordance with the agreement.
(Pages 312-350)

CONSENT CALENDAR

APPROVAL OF CONSENT ITEMS: # 17 - 19

- 17) Approve the meeting minutes for the Board of Commissioner of the Housing Authority of the County of San Bernardino Regular Meeting held on February 08, 2022.
(Pages 351-356)
- 18) Approve and file Agency-wide Financial Statements through November 2021.
(Pages 357-359)
- 19) Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of December 2021.
(Pages 360-363)
- 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 Cynthia Robinson at (909) 890-5388 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**

March 8, 2022

FROM

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

SUBJECT

Executive Director's Report for March 8, 2022

RECOMMENDATION(S)

Receive the Executive Director's Report for March 8, 2022.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

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

FINANCIAL IMPACT

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 February 23, 2022.

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

March 8, 2022

FROM

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

SUBJECT

Board Building Presentation for March 8, 2022

RECOMMENDATION(S)

Receive the board building presentation for March 8, 2022, an overview on the pension stabilization fund.

(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

Per the U.S. Department of Housing and Urban Development's (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 an overview of the pension stabilization fund.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 23, 2022.

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

March 8, 2022

FROM

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

SUBJECT

Emergency Housing Vouchers Update

RECOMMENDATION(S)

Receive update from staff on Emergency Housing Vouchers implementation.
(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.**

FINANCIAL IMPACT

This item will not result in a financial impact to the Housing Authority of the County of San Bernardino (HACSB) as this is a monthly informational update.

BACKGROUND INFORMATION

On September 14, 2021 (Item No. 8) the Board of Commissioners (Board) awarded a contract to Brilliant Corners for housing navigation services for HACSB's Emergency Housing Voucher (EHV) program in the amount of \$4,323,517. The contract is funded in part by supportive services fees received by HACSB from the U.S. Department of Housing and Urban Development (HUD) and the Emergency Solutions Grant (ESG) funds awarded by the County of San Bernardino. In conjunction with the approval of the contract, the Board requested monthly updates on the performance of the housing navigation process. This item is part of the continuing reports as requested by the Board and as such this report will focus on data and other implementation related items. As the EHV program progresses and Brilliant Corners is further utilized, more information on the performance of the contract will be presented.

The EHV program launched on October 4, 2021 for HACSB to start receiving referrals. We are happy to share that 18 families have been housed. We continue to receive referrals and a waiting list has been administered as to not over obligate the program. A breakdown of the referrals received as of February 24th is as follows:

Coordinated Entry System (CES)	Victim Service Providers (VSP)	Total submission to Date	Referred for Housing Search/Navigation	Housed
516	76	592	195	18

The EHV program is gaining momentum as more families are made eligible and issued a voucher. Brilliant Corners is currently working with almost 200 families and continues to connect voucher holders with available housing units. There are some barriers that have arisen that are worth mentioning such as rents continue to rise and have surpassed existing EHV payment standards, the poor rental and credit history of voucher holders, incentives offered by HACSB are not enough to persuade landlords and the continuing issue of a severe lack of inventory in the rental market. In a separate Board item in today's agenda, HACSB is proposing a temporary increase in payment standards to help increase HACSB's leasing success rate.

Since there are almost 200 families searching with vouchers, HACSB believes utilization within the program will increase substantially in March and future months.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 28, 2022.

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

March 8, 2022

FROM

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

SUBJECT

AB361 Brown Act Remote Meetings During a State of Emergency

RECOMMENDATION(S)

Adopt Resolution No. 136 authorizing the use of remote teleconference meeting procedures by the Board of Commissioners, as authorized by Government Code Section 54953(e) *et seq.*, for the period of March 16, 2022 through April 15, 2022.

(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 is no financial impact associated with this item.

BACKGROUND INFORMATION

On March 4, 2020, amid rising concern surrounding the spread of COVID-19 throughout communities in the state, California Governor Gavin Newsom issued a series of Executive Orders aimed at containing the novel coronavirus including modification of certain requirements created by the Ralph M. Brown Act (Brown Act), the state's local agency public meetings law. The orders waived several requirements, including requirements in the Brown Act requiring the physical presence of members of the legislative body, the clerk or other personnel of the body, or of the public as a condition of participation in or for the purpose of establishing a quorum for a public meeting, of which allowed teleconferencing of the meeting coupled with proper noticing to the public.

On March 10, 2020, the Board of Supervisors of the County of San Bernardino declared the existence of a local emergency in response to the COVID-19 global pandemic of which Government Code section 54953(e) *et seq.* further requires state or local officials have imposed or recommended measures to promote social distancing; or the legislative body of HACSB finds that meeting in person would present imminent risk to the health and safety of attendees.

On October 12, 2021, the Board adopted Resolution No. 125 (Item No. 10) authorizing the use of remote teleconference meeting procedures by the Board of Commissioners, as authorized by Government Code Section 54953(e) *et seq.*, for the initial period of October 12, 2021 through November 11, 2021.

On November 9, 2021, the Board adopted Resolution No. 127 (Item No. 7) re-authorizing the use of remote teleconference meeting procedures by the Board of Commissioners, as authorized by Government Code Section 54953(e) *et seq.*, for the period of November 12, 2021 through December 12, 2021.

On December 14, 2021, the Board adopted Resolution No. 129 (Item No.2) authorizing the use of remote teleconference meeting procedures by the Board of Commissioners, as authorized by Government Code Section 54953(e) *et seq.*, for the period of December 14, 2021 through January 13, 2022.

On January 11, 2022, the Board adopted Resolution No. 132 (Item No. 8) authorizing the use of remote teleconference meeting procedures by the Board of Commissioners, as authorized by Government Code Section 54953(e) *et seq.*, for the period of January 14, 2022 through February 13, 2022.

On February 8, 2022, the Board adopted Resolution No. 134 (Item No. 8) authorizing the use of remote teleconference meeting procedures by the Board of Commissioners, as authorized by Government Code Section 54953(e) *et seq.*, for the period of February 14, 2022 through March 15, 2022.

At this time, due to a variety of factors related to the circumstances of the State of Emergency, including the County of San Bernardino's community transmission metric of "high" per the Centers for Disease Control and Prevention (CDC), the highly contagious Omicron variant, the anticipated number of attendees, the likely inability to socially distance, and due to the unique characteristics of the size and capacity of its meeting location, it is recommended that the HACSB Board of Commissioners meetings continue to be conducted by the remote teleconference meeting requirements as authorized by Government Code section 54953(e), as meeting in person would present an imminent risk to the health or safety of meeting attendees due to the aforementioned reasons.

Approval of this item finds that, as a consequence of the State of Emergency, the HACSB Board of Commissioners (Board) meetings shall be conducted by the remote teleconference meeting requirements as authorized by Government Code section 54953(e) *et seq.* and will allow for observation and participation by the Board Members and the public via Zoom teleconferencing and phone access through April 15, 2022.

In order to be prepared for the transition to full in person meetings in the future, we will continue work on making changes to both meeting rooms to transmit the board meetings to the training room in HACSB's administrative office, which would accommodate any overflow from the board room in order to maintain social distancing within both spaces.

If approved, this authorization will remain valid for an additional 30 days and per Government Code section 54953(e) and will need to be revisited every 30 days thereafter.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 23, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-136

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO ACKNOWLEDGING THE GOVERNOR'S STATE OF EMERGENCY DECLARATION AND AUTHORIZING THE USE OF REMOTE TELECONFERENCE MEETING PROCEDURES BY THE BOARD OF COMMISSIONERS, AS AUTHORIZED BY GOVERNMENT CODE SECTION 54953(E) *ET SEQ.*, FOR THE PERIOD OF MARCH 16, 2022, THROUGH APRIL 15, 2022

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino (Authority) is committed to preserving and nurturing public access, transparency, observation, and participation in meetings of the Board of Commissioners (Board); and

WHEREAS, all meetings of the Board are open and public, as required by the Ralph M. Brown Act, codified in Government Code sections 54950 *et seq.*, so that any member of the public may attend, participate, and observe the Board and conduct its business; and

WHEREAS, the Brown Act, as amended by Assembly Bill 361 (2021), codified in Government Code sections 54953(e) *et seq.*, allows for remote teleconferencing observation and participation in meetings by members of a legislative body and members of the public, without compliance with the requirements of Government Code section 54953(b)(3) regarding teleconferencing, subject to the existence of certain conditions; and

WHEREAS, the initial required condition is that a state of emergency is a declaration of a state of emergency by the Governor pursuant to the California Emergency Services Act at Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state and within the boundaries of the Authority, caused by conditions as described in Government Code section 8558; and

WHEREAS, on March 4, 2020, pursuant to Government Code Section 8625, Governor Newsom declared the existence of a state of emergency for the State of California, in response to the outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on March 10, 2020, the Board of Supervisors of the County of San Bernardino declared the existence of a local emergency in response to the COVID-19 global pandemic; and

WHEREAS, Government Code section 54953(e) *et seq.* further requires that state or local officials have imposed or recommended measures to promote social distancing; or, the legislative body of the Authority finds that meeting in person would present imminent risk to the health and safety of attendees; and

WHEREAS, California Department of Public Health (CDPH) and the federal Centers for Disease Control and Prevention (CDC) caution that the Omicron variant likely will spread more easily than the original SARS-CoV-2 virus, and that even fully vaccinated individuals can spread the virus to others resulting in rapid increases of COVID-19 cases and hospitalizations ([Omicron Variant: What You Need to Know | CDC](#)); and

WHEREAS, San Bernardino County currently has a Community Transmission metric of “high”; and

WHEREAS, the Board hereby acknowledges that such emergency conditions continue to exist in the Authority, such that meeting in person for the meetings of the Board would present imminent risk to the health and safety of attendees as a result of the increased risk of the spread of the COVID-19 virus among those in attendance; and

WHEREAS, the Board hereby finds that due to the ongoing State of Emergency and the public health threat posed by COVID-19, the Board seeks to make findings, as required by Assembly Bill 361, that as a result of the COVID-19 State of Emergency, the highly contagious Omicron variant, the anticipated number of attendees, the likely inability to socially distance, and due to the unique characteristics of the size and capacity of its meeting location, meeting in person would present an imminent risk to the health or safety of meeting attendees; and

WHEREAS, the circumstances of the State of Emergency continue to directly impact the ability of the members of the legislative body and members of the public to meet safely in person at the meeting facilities of the Authority; and

WHEREAS, the Board hereby finds that, as a consequence of the State of Emergency, the Board shall conduct its meetings without compliance with Government Code section 54953(b)(3), and shall instead comply with the remote teleconference meeting requirements as authorized by Government Code section 54953(e) *et seq.*; and

WHEREAS, the Board affirms that it will allow for observation and participation by Board Members and the public via Zoom teleconferencing and phone access in an effort to protect the constitutional and statutory rights of all attendees.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO FINDS, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. The Board hereby recognizes and acknowledges the existence and conditions of the State of Emergency as proclaimed by the Governor.

Section 3. Before the State of Emergency, the Authority met at a facility at which approximately 20 people would regularly attend, and periodically filling the meeting room to capacity and thereby limiting the ability of attendees to socially distance.

Section 4. As a result of the March 4, 2020, State of Emergency, and the highly contagious Omicron variant, meeting in person at the meeting facilities of the Authority would present an imminent risk to the health or safety of attendees due to the unique characteristics of the size and capacity of its meeting location, the anticipated number of attendees, and the likely inability to socially distance. As such, the Board hereby authorizes the continued use of the remote teleconferencing procedures for meetings of the Board, as authorized by Government Code section 54953(e) *et seq.*, for the period of March 16, 2022, through April 15, 2022.

Section 5. The Executive Director is hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act, for all Board meetings.

Section 6. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (i) April 15, 2022, or such time the Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the Board may continue to teleconference without compliance with Government Code section 54953(b)(3), but otherwise as permitted by Government Code section 54953(e) *et seq.*

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)
) ss.
COUNTY OF SAN BERNARDINO)

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, Month Date, 2022.

Secretary

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

March 8, 2022

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. 137 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 reasons for updating the Administrative Plan are to incorporate updates from the recently HUD approved 2022 MTW Annual Plan and add the option to extend the voucher term when the leasing success rate is low. HACSB had previously adopted a series of COVID-19 waivers provided by HUD. One of the adopted waivers permitted HACSB to extend the term of the voucher beyond the time allowed in the Administrative Plan, which is currently at 120 days. The voucher extension waiver was exercised in 2020 during California's stay at home order and again in August of 2021. However, the waiver and voucher extension expired on December 31, 2021. While voucher extensions were being provided under the HUD waiver, 25% of voucher holders leased a unit after 120 days. This indicates that participants need additional time to locate units under the current market conditions. The proposed policy would allow an additional 60 days to be added to the voucher term for a total term of 180 days when the leasing success rate is low and program funding is available to support the voucher.

Revisions to the Administrative Plan Governing the Housing Authority of the County of San Bernardino's Rental Assistance Programs
March 8, 2022

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.

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 February 24, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-137

**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 incorporate new and revised Moving to Work activities and revise the voucher extension policy to improve the leasing success rate as well as 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, March 8, 2022.

Secretary

Summary of Administrative Plan Changes, March 2022

Section	Topic	Change
6.4.7.1	Permanent Hardship Exemptions	Revises the permanent hardship exemption language to clarify that the person experiencing the permanent loss of income must be an elderly or disabled household member and that it must be a complete loss of income. If the member is not disabled or elderly, the family could qualify under a temporary hardship exemption
8.6.2	Extensions	Provides an additional 60-day voucher extension if the leasing success rate is under 50%, subject to available funding
11.5	Payment Standards for the Housing Services Program	Updates the payment standard requirements for manufactured home space rent according to HUD regulations
11.5.1	Payment Standards for the Housing Services Program – Term-Limited Lease Assistance, Streamlined Lease Assistance, and Veterans Affairs Supportive Housing (VASH) Programs	Adds that payment standards will be reviewed at least annually
12.10	Over-income Families	Removes Term-Limited Lease Assistance Program participants from the 80% income requirement as provided in the FY 2022 Moving to Work Annual Plan
14.3.1	Termination of the Contract by the Housing Authority - Term-Limited Lease Assistance Program	Removes Term-Limited Lease Assistance Program participants from the 80% income requirement as provided in the FY 2022 Moving to Work Annual Plan
16.2.2	Additional Termination Reasons	Removes Term-Limited Lease Assistance Program participants from the 80% income requirement as provided in the FY 2022 Moving to Work Annual Plan
17.8.2	Damage Mitigation	Adds an implementation date for the program
20.7.2.3	Project-Based Communities for Special Needs – Permanent Supportive Housing	Adds a new permanent supportive housing community, Las Terrazas
20.10	Local Project-Based Voucher Subsidy for Tax Credit Developments	Clarifies that the hardship exemption under this activity is six months and the hardship rent is 40% of gross monthly income as stated in the Moving to Work Plan
20.18.2	Other Moves	Clarifies that if a PBV contract is not renewed or is terminated, the family will remain under the same rent calculation tier and the family's income will not be updated at the time of the program transfer

family will pay the difference between the amount the Housing Authority will pay under the Streamlined Fixed Lease Assistance Program on behalf of the family and the contract rent.

6.4.7 Hardship Exemption Criteria for Streamlined Lease Assistance Programs

HACSB recognizes that under some circumstances, families may experience a hardship that makes it challenging to pay the applicable rent under the Streamlined Lease Assistance Program. Hardship exemption criteria have been developed for all families that see a significant increase in their portion as a direct result of the SLA calculation at initial implementation of the activity or experience certain expenses or losses of income while participating in the program. In order for families to be eligible for a hardship exemption, they must make their request for a hardship exemption in writing and be in compliance with all program rules and regulations. The request for hardship exemption must come no later than 60 days after the most recent change in circumstances. Permanent hardship exemption requests must be received within 60 days or by next recertification whichever is later. Families also must provide all supporting documents regarding their case and all requests for hardship exemptions will be reviewed by the Hardship Review Committee. After the committee has evaluated the family's request, they will determine if the family qualifies for a temporary or permanent hardship exemption. The following sections describe the types of hardship exemptions that may be granted. All non-elderly/non-disabled households approved for a temporary hardship exemption will be required to participate in the Family Empowerment Services case management activities.

6.4.7.1 Permanent Hardship Exemptions

A permanent hardship exemption may be approved for the following reasons:

- the family experiences a death of a household member with income;
- any income-earning member of the assisted family no longer remains in the unit;
- an elderly or disabled household member experiences a permanent and complete loss of income;
- Unforeseen and involuntary permanent loss of income for a family member under the age of 18.

If a permanent hardship exemption has been approved, HACSB will reset the family's previous highest rent share (the "baseline rent") by recalculating the family's income and applying the applicable rent percentage. For example, for families participating in the Streamlined Fixed Lease Assistance for Elderly/Disabled Families program, the new

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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 complete 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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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 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 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 Veteran Affairs Supportive Housing (VASH) and Emergency Housing Voucher Programs

The initial search term for a HUD-VASH and 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 a 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 the Housing Authority has program funding/vouchers available and the leasing success rate is under 50% as measured over the most recent six month period, an additional sixty day extension may be provided if necessary for the family to locate a suitable unit. The Housing Authority may also 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.

8.6.3 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

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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 equal to the family unit size under the subsidy standards.~~

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.³⁸

~~On an annual basis~~ At least annually, the Housing Authority will review the local payment standards. The agency may subsequently increase or decrease the payment standards.

³⁸ 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.

Payment standard increases will generally be applied at the participant's first 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

12.9.3 Streamlined Tiered Lease Assistance Program

If the head of household, spouse or cohead becomes disabled after being issued a Family Obligations Agreement for participation in the Streamlined Tiered Lease Assistance program, the family will be transferred to the Streamlined Fixed Lease Assistance program.

12.9.4 Traditional, Regulatory Assistance for Special Purpose Programs

In the rare circumstance that a participant in a Special Purpose Program is no longer eligible for that program, and continues to be in good standing, the Housing Authority may transfer the participant, where appropriate, into the program the family qualifies for in alignment with Chapter 2 of this Administrative Plan.

12.10 Over-income Families⁴⁴

This component applies only to families participating in the ~~Term-Limited Lease Assistance Program and~~ Streamlined Lease Assistance Program. Elderly/disabled families and current participants of HACSB's Family Self-Sufficiency Program are excluded. The exclusion also applies to Term-Limited Lease Assistance Program participants whose assistance ended on or after April 1, 2022 due to an over-income determination are excluded. If a family's income, at any time, exceeds eighty percent (80%) of the area median income, the family will be given a six (6) month transition period. After the six (6) month transition period, the family will be terminated from the program.

12.10.1 Hardship Exemption for Over-Income Families

If a family in the six (6) month transition period reports a loss of income that results in the family's income falling below the 80% area median income for the family size, the family may qualify for a hardship exemption. To be eligible for a hardship exemption, the family's income must have decreased due to a no fault loss of income or the death of a household member with income. If an exemption is granted, the family will be removed from the six (6) month transition period.

If the family's income increases to exceed 80% of the area median income for the family size after a hardship exemption is granted, the family will be given another six (6) month transition period. The transition period will not be reduced or prorated based upon the duration of any previous transition period(s).

⁴⁴ The FY 2014 MTW Annual Plan included Activity 24: Transition for Over-Income Public Housing/Housing Choice Voucher families. The FY 2022 Moving to Work Annual Plan modified Activity 24 to exempt participants on the Term-Limited Lease Assistance Program.

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This hardship exemption shall apply to any family in the six (6) month transition period, regardless of assistance type (i.e.: ~~Five-Year Lease Assistance~~, Streamlined Fixed or Tiered Lease Assistance, etc.)

The Housing Authority must continue making payments to the owner in accordance with the contract as long as the tenant continues to occupy the unit and the contract is not violated. By accepting the monthly payment from the Housing Authority, the owner certifies that:

- The tenant is still in the unit;
- The rent is reasonable, and;
- The owner is in compliance with the contract.

If an eviction is not due to a serious or repeated violation of the lease, and if the Housing Authority has no other grounds for termination of assistance, the Housing Authority may permit the family to move with continued assistance.

14.3 Termination of the Contract by the Housing Authority [24 CFR 982.404(a), 982.453, 982.454, 982.552(a)(3)]

The term of the contract is the same as the term of the lease. The contract between the owner and the Housing Authority may be terminated by the Housing Authority, or by the owner or tenant by termination of the lease. The contract between the owner and the Housing Authority terminates for the following reasons:

- When the lease between the participant and the owner terminates
- When the Housing Authority terminates program assistance for the family (including the term of participation expiration for Term-Limited Lease Assistance families, Local Disaster Short-Term Rental Assistance Program families, and Family Unification Program families)
- When the owner has breached the contract
- When the family moves from the unit or is absent from the unit for longer than one-hundred and eighty (180) days
- One –hundred and eighty (180) days have passed since the last payment to the owner
- The Annual Contributions Contract (ACC) between the Housing Authority and HUD expires

The Housing Authority may elect to terminate the contract for the following reasons:

1. Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

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2. The unit does not meet occupancy standards due to change in family composition [24 CFR 982.403]
3. The unit does not meet inspection standards [24 CFR 982.404]
4. The family breaks up [HUD Form 52641]
5. Landlord does not meet eligibility criteria

14.3.1 Term-Limited Lease Assistance Program

In addition to the above described reasons, the Housing Authority also may terminate the contract if a participant in the Term-Limited Lease Assistance program has income over 80% of the area median income on or before March 31, 2022 or the family has reached its five year term of participation.

14.3.2 Streamlined Lease Assistance Programs

In addition to the above described reasons, the Housing Authority also may terminate the contract if a participant in the Streamlined Lease Assistance has income over eighty percent (80%) of the area median income.⁴⁶

14.3.3 Contract Termination Terms

No future subsidy payments on behalf of the family will be made by the Housing Authority to the owner after the month in which the contract is terminated. The owner must reimburse the Housing Authority for any subsidies paid by the Housing Authority for any period after the contract termination date. Any amounts owed to the Housing Authority may be collected through any means allowable under federal, state or local laws. For more information, see Chapter 18.

When the Housing Authority terminates the contract under violation of occupancy standards, the Housing Authority will provide the owner and family written notice of termination of the contract, and the contract terminates at the end of the calendar month that follows the calendar month in which the Housing Authority gives such notice to the owner.

When a family moves out of an assisted unit, the Housing Authority may not make any housing assistance payment to the owner for any month after the month the family moves out. The owner may keep the housing assistance payment for the month when the family

⁴⁶ The FY 2014 Moving to Work Annual Plan included Activity 24: Transition for Over-Income Public Housing and Housing Choice Voucher Families. The FY 2022 Moving to Work Annual Plan modified Activity 24 to exempt participants on the Term-Limited Lease Assistance Program for the over-income requirement.

destroyed once the purpose for which it was requested is accomplished. All criminal records will be destroyed no later than thirty (30) calendar days after a final determination is made and the hearing decision has been rendered.

16.2.2 Additional Termination Reasons

The Housing Authority will also terminate assistance to participants for the following reasons:

1. A participant or any household member is currently engaging in illegal use of a drug
2. If the Housing Authority determines that it has reasonable cause to believe that a participant's illegal drug use or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
3. A participant or any member of the household is subject to a lifetime registration required under a state sex offender registration program
4. Any family member violates any family obligation under the program as listed in 24 CFR 982.551 [24 CFR §982.552(c)(1)(i)]
5. Any family member engages in drug-related or violent criminal activity [24 CFR §982.553(a) and §982.551(k)-(l)]
6. Any member of the family has been convicted of perjury or fraud to obtain assistance and/or there is a preponderance of evidence that the fraud actually occurred (i.e., WI 10980(C)(2), Penal Code 118(A) or 487I)
7. Any member of the family has ever engaged in serious lease violations while a resident of federally-assisted housing or within the past five (5) years has been evicted from a federally-assisted housing program [24 CFR §982.552(c)(1)(ii)]
8. If any Housing Authority has ever terminated assistance under the program for any member of the family
9. If any member of the family commits fraud, bribery, Grand Theft Housing, or any other corrupt or criminal act in connection with any federally-assisted housing program
10. The family currently owes rent or other amounts to the Housing Authority or to another housing agency in connection with housing assistance under the Housing Act of 1937 [24 CFR §982.552(c)(1)(v)]
11. The family has not reimbursed the Housing Authority or any housing agency for amounts paid under a contract to an owner for rent, damages to the unit, or other amounts owed by the family under the lease [24 CFR §982.552(c)(1)(vi)]

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12. The family breaches an agreement with any housing agency to pay amounts owed to any housing agency, or amounts paid to an owner by any housing agency [24 CFR §982.552 (c)(1)(vii)]
13. The family has engaged in or threatened abusive or violent behavior toward Housing Authority personnel [24 CFR §982.552 (c)(1)(ix)]
 - a. Abusive or violent behavior includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate, may be considered abusive or violent behavior and may result in termination of assistance
 - b. Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.
 - c. Actual physical abuse or violence will always be cause for termination of assistance.
14. If any member of the family engages in, or has engaged in drug or alcohol abuse that interferes with the health, safety, or peaceful enjoyment of other participants/residents
15. If an assisted family is absent from the unit for more than one-hundred and eighty (180) consecutive calendar days
16. If the family is residing in a unit owned by a relative owner (even if the relative owner is a live-in aide)
17. If the family has an annual income exceeding eighty percent (80%) of the area median income except Term-Limited Lease Assistance Program participants as of April 1, 2022. Families will be given a six (6) month transition period and then will be terminated from the program.⁴⁹
18. If HUD-VASH participant fails to participate in case management services.

16.2.2.1 Term-Limited Lease Assistance Program

In addition to the above described reasons, the Housing Authority may terminate the contract if a participant in the Term-Limited Lease Assistance program has reached its five year term of participation.⁵⁰ There is no appeal to the expiration of assistance; however, the family may request an extension of the assistance as a hardship exemption.

⁴⁹ The FY 2014 Moving to Work Annual Plan included Activity 24: Transition for Over-Income Public Housing/Housing Choice Voucher families. The FY 2022 Moving to Work Annual Plan modified Activity 24 to exempt Term-Limited Lease Assistance Program participants.

⁵⁰ The FY 2012 Moving to Work Annual Plan created Activity 20: Term-Limited Lease Assistance program.

17.8 Landlord Incentives

To encourage landlord participation and support the leasing success of families assisted under the tenant-based Moving to Work (MTW) programs, the Housing Authority may offer the landlord incentives described in this section as funding permits. The MTW landlord incentives apply only to HACSB's MTW Housing Choice Voucher (HCV) programs and may not apply to programs that lack MTW fungability unless noted.⁵⁵

17.8.1 Signing Bonus

Under the Signing Bonus program, HACSB will provide a one-time \$1,000 signing bonus for each new HAP Contract signed for units meeting the following criteria:

- The assisted unit must be located in HACSB's service area
- Voucher holder must be:
 - a new program participant or
 - existing program participant who is new to the rental property

The following properties are not eligible for the signing bonus:

- Tax credit properties
- Units under a project-based voucher (PBV) HAP contract
- HACSB and HACSB affiliate owned units

The following situations do not qualify for a signing bonus:

- An existing program participant is signing a new lease to remain in their current subsidized unit.
- An existing voucher participant is moving from one unit to another in the same apartment complex, such as a tenant moving from upstairs to downstairs.
- A non-HCV tenancy, such as HOPWA or CoC programs.

The Signing Bonus program may be offered under the HUD-VASH and Mainstream programs if these programs have sufficient administrative reserves. The Signing Bonus program is offered under the EHV program using services fee funding and administrative fees.

17.8.2 Damage Mitigation

Under the Damage Mitigation Program, participating landlords may be eligible to apply for reimbursement of tenant-caused damage beyond normal wear and tear, unpaid rent and related court costs. The maximum reimbursement is \$2,500 after the tenant's security deposit is applied. This program is subject to available funding.

⁵⁵ The FY 2022 MTW Annual Plan adds Activity 28: Landlord Incentives including signing bonus, damage mitigation and tenant education.

When an HCV participant moves out, an owner may file a claim under the following circumstances:

- The length of tenancy was less than seven years
- ~~Move-out occurred on or after March 21, 2022~~
- The owner must have collected a security deposit of at least \$500 as indicated on the lease
- Owner must request move-out inspection within five business days following tenant move-out and prior to any repairs (of a non-emergency nature)
- Damage is not covered under the property's insurance policy
- The owner or owner's representative must be present during the move-out inspection
- The owner must demonstrate that a good faith effort has been made to collect charges from the tenant and provide proof of actions taken
- The amount of the tenant's security deposit must be deducted from the claim amount and HACSB will pay the balance of the claim up to \$2,500
- A Damage Reimbursement Claim form must be received by the Housing Authority with receipts and proof of collection attempts within 60 days of HACSB's move-out inspection

Claims will be reviewed and adjusted according to the age of the item that is damaged and the length of the tenancy. HACSB will determine whether damage is beyond normal wear and tear. Deferred and/or routine owner maintenance costs are not covered. Receipts for repairs and supplies are required. The owner may not bill for his/her own labor. The tenant is not required to repay the Housing Authority for damage claims.

17.8.2.1 Emergency Housing Voucher (EHV) Program

Up to \$5,000 per tenancy is offered under the Damage Mitigation program. An owner may make a claim at tenant move-out if the owner collected at least one month's rent as a security deposit. Additionally, the owner may file a claim for an existing tenancy. In the case of an existing tenancy, the damage must exceed the higher of \$500 or the tenant's original security deposit and the landlord must agree to keep the tenant housed or rehouse the tenant within 30 days if the unit is uninhabitable.

that program funds are used in a timely manner. The Housing Authority uses site-based waiting lists at each senior project-based development and regionalized waiting lists for its scattered-site communities. The owner must comply with all requirements outlined in this Administrative Plan. Owner developers awarded project-based units must submit the following plans to the Housing Authority for review and approval prior to execution of an AHAP or HAP Contract:

- Marketing Plan to describe marketing and outreach activities
- Tenant Screening Plan which covers, screening criteria and procedures and requirements when applicants do not meet the criteria.

The Housing Authority staff will conduct all aspects related to tenant eligibility, intake and recertification processes as outlined in the Eligibility chapter of this Administrative Plan.

20.7.1 Project-Based Communities Designated for Elderly Households

Certain project-based communities are designated for families where the head of household, spouse or cohead is sixty-two (62) years of age or older. Families that do not meet this age criteria are not eligible for the senior project-based communities.

20.7.2 Project-Based Communities for Special Needs

Certain project-based communities are designated for special needs and/or homeless populations and provide supportive services. To be eligible for project-based communities designated for families with special needs, families must be homeless and/or need the specific service provided to the supportive housing residents. For these communities, the Housing Authority only accepts referrals to the waiting list from community partners.

20.7.2.1 No Child Left Unsheltered (NCLU)

Three (3) project-based voucher contracts provide forty (40) units designated for eligible unsheltered homeless families with children under the No Child Left Unsheltered (NCLU) program.⁶⁷ Families with children must be unsheltered at time of application, but do not otherwise qualify as chronically homeless under the HUD definition, but who:

- Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 90 days immediately preceding the date of application for homeless assistance; and

⁶⁷ The FY 2014 MTW Plan included Activity 23: No Child Left Unsheltered. In March 2015, the Housing Commission and Board of Governors approved 40 project-based voucher units reserved for this activity.

- Have experienced persistent instability as measured by two moves or more during the six-month period immediately preceding the date of applying for homeless assistance; and
- Can be expected to continue in such status for an extended period of time because of chronic disability, chronic physical health or mental health conditions, substance use disorder, history of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or
- Two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment.

HACSB has partnered with a variety of local community service providers, including the school system, to identify and refer families, particularly those with school-age children, who are unsheltered. Service coordination for NCLU families is provided by the Department of Behavioral Health.

20.7.2.2 Veteran Program

Northgate Village provides 12 PBV units for homeless veterans who do not qualify for Veterans Administration (VA) services. HACSB has partnered with a variety of local veteran organizations to identify and refer eligible homeless veterans. Service coordination is provided by the Department of Behavioral Health.

20.7.2.3 Permanent Supportive Housing

Golden Apartments and Desert Haven provide PBV units with voluntary supportive services to homeless individuals and families. Referrals to the property waitlists are received from the Coordinated Entry System (CES) and the Inland Empire Health Plan (IEHP). The CES referrals must meet the definition of chronically homeless under 24 CFR 578.3 and are prioritized based on the level of acuity. IEHP referrals must be homeless but do not need to meet the chronically homeless definition. Income limits may differ based upon the requirements of other funding sources utilized for the developments.

Ten units at Yucaipa Horizons and two units at Bloomington Phase I are designated for Mental Health Services Act (MHSA) housing program participants. The San Bernardino County Department of Behavioral Health (DBH) refers families qualifying for on-site supportive services to these waitlists.

Twenty (20) units at Bloomington III are designated for persons with disabilities who are homeless or at risk of homelessness. Ten (10) units are reserved for MHSA program

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participants who are referred to the waiting list by DBH. Ten (10) units are reserved for IEHP referrals.

Las Terrazas provides nine (9) units for homeless individuals under 20% AMI. CES is utilized for referrals to the property's waitlist. CES prioritizes referrals in the following order: (1) chronically homeless, (2) currently homeless, and (3) at-risk of chronic homelessness. Supportive services and case management are provided by DBH or a contractor.

20.8 In-Place Families [24 CFR 983.251(b)]⁶⁸

An eligible family residing in a proposed project-based assistance contract unit on the date the proposal is awarded by the Housing Authority is considered an “in-place family.” These families are afforded protection from displacement under the project-based assistance program. This regulatory protection from displacement does not apply to families that are not eligible to participate in the PBA program. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is awarded the in-place family must be referred to the Housing Authority for determination of eligibility.

If the in-place family is in the wrong sized unit the family may not be admitted to the project-based assistance program for occupancy in their original unit. The owner may relocate the family to an appropriately sized project-based unit within the development or place the family on the project-based assistance site-based waiting list for an appropriate sized unit. However, the Housing Authority may allow an exception to this policy and admit a family in the wrong sized unit if the owner agrees to accept a project-based assistance contract rent that does not exceed the Housing Authority subsidy standard approved for the in-place family during the initial term of the lease. After the initial lease term, the Housing Authority will notify the family and the owner of the family's need to move based on occupancy in a wrong-size project-based assistance unit.

20.9 Public Housing Conversions

20.9.1 Public Housing Dispositions⁶⁹

In place public housing conversion families are continuously assisted applicants since the family is currently receiving assistance under a 1937 Housing Act program. The family is

⁶⁸ The FY 2010 MTW Plan, Amendment 3 included flexibility related to in-place families.

⁶⁹ The FY 2010 MTW Plan, Amendment 3 further clarified the Local Project-Based program and included additional detail on public housing conversions.

Housing Authority of the County of San Bernardino

Housing Services Program Administrative Plan

Revised: ~~January~~ March 2022

5. Employment – job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;
6. Personal Welfare – substance/alcohol abuse treatment and counseling;
7. General health care and services – mental health services; HIV/AIDS related services; behavior assessments
8. Household skills and management – training in homemaking and parenting skills; household management; money management; nutrition; obtaining and retaining government, financial and medical benefits; family counseling;
9. Legal Services
10. Other services – any other services and resources, including case management, or reasonable accommodations for individuals with disabilities, that the HACSB determines to be appropriate in assisting families to achieve economic independence and self-sufficiency.

To qualify as in receipt of supportive services a family must have at least one member receiving at least one qualifying supportive service.

At the family's regularly scheduled recertification, HACSB will review documentation from the service provider or the owner indicating the family's continued compliance with the terms of the supportive services programs. Project owners will also be expected to provide some level of monitoring of the services provided. At HACSB's discretion, HACSB may request additional documentation of compliance with supportive service obligations.

Family Failure to Comply with Supportive Service Requirements: Failure without good cause by a family to complete or comply with its supportive service participation requirements may result in termination of the project-based assistance for that unit and may result in the termination of the lease by the project owner.

20.10 Local Project-Based Voucher Subsidy for Tax Credit Developments

The Housing Authority may use a different tenant rent (TTP) and housing subsidy calculation for certain tax credit developments.⁷² The TTP will be based on the applicable tax credit rent according to the unit size and target Adjusted Monthly Income (AMI) for the unit. The housing subsidy will be a fixed subsidy amount negotiated for each

⁷² The FY 2019 Moving to Work Annual Plan included Activity 27: Local Project-Based Voucher Subsidy for Tax Credit Developments. The activity changes the TTP calculation to create one based upon income bands, applying a flat TTP within each income band instead of basing the calculation of TTP on gross or adjusted income. Additionally, the Housing Authority will modify the housing subsidy calculation to provide a fixed subsidy.

development. The target AMI will differ between developments but could be set at 30%, 50%, 60% AMI and/or other level.

The contract rent cannot exceed 110% of the Fair Market Rent (FMR). Contract rents may be increased on the anniversary date of the contract through an increase to the TCAC-published Tax Credit rents.

Effective November 1, 2021, applicants under this program must meet both minimum and maximum income criteria for the target AMI (income tier) to qualify at admission. The minimum income criteria is used to determine the affordability of the tenant rent portion, which cannot exceed 40% of the family's monthly gross income at admission.⁷³ The maximum income criteria is used to determine eligibility for the target AMI for the available unit. If the applicant's income exceeds the maximum income for the available unit, the applicant will be skipped until a unit within the applicable income tier becomes available. If the applicant's income exceeds the highest target AMI for the PBV units in the development, then the application will be denied.

After admission, a family may qualify for a six month hardship exemption if tenant rent exceeds 40% of the family's monthly income. To be eligible for hardship exemption, the family must:

- Have a rent burden greater than 40% of gross monthly income. Rent burden is calculated as the household's monthly rent portion (the applicable tax credit rent) divided by the household's gross monthly income;
- Request the hardship exemption in writing in accordance with Housing Authority policies; and
- Be in compliance with Housing Authority policies, program rules, and regulations.

A six month hardship exemption may be approved for the following reasons:

- The family experiences a death of a household member with income;
- Any income-earning member of the assisted family no longer remains in the unit;
- An elderly or disabled household experiences a permanent loss of income;
- Unforeseen and involuntary permanent loss of income for a family member under the age of 18;
- Unforeseen involuntary loss of employment;
- Unforeseen loss of income due to major illness as determined by a medical professional; or

⁷³ The 2021 MTW Plan, Activity 27, was modified to include a minimum income requirement.

Housing Authority of the County of San Bernardino

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Revised: ~~January~~ March 2022

- Unforeseen involuntary permanent loss of income for an adult family member who is attending high school.

If approved for a hardship exemption, the family's TTP will be equal to 40% of the family's gross monthly income for six months. Following the six month period, the family will return to the AMI rent tier that applied to the family prior to the hardship.

HACSB will conduct annual reexaminations utilizing the annual TCAC recertification to determine the family's income and income band placement. The TCAC recertification will determine the applicable tax credit rent portion (TTP). HACSB will not perform an independent recertification of the family's income.⁷⁴

20.11 Reasonable Accommodation Program Transfers

In order to afford persons with disabilities an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as those who do not have disabilities, the Housing Authority may use its available funds to relocate a family that is a current participant in the Housing Authority's public housing program, with a disabled head of household or family member, if one of the following has been determined:

- There are no public housing units to accommodate the family's household needs based on occupancy standards
- There are no ADA/504 units available to accommodate the family's needs (i.e., customized wheelchair exceeds normal dimensions, other specialized equipment needs, etc.)
- There are no public housing units/communities that meet a medically necessary restriction or requirement

20.12 Owner Selection of Tenants [24 CFR 983.253(a) and 983.254(a)]

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease.

During the term of the HAP contract, the contract unit leased to the family must be the appropriate size unit for the size of the family, based on Housing Authority's subsidy standards. Exceptions to this policy may be made in accordance with the guidelines described in the "In-Place Families" and "Public Housing Conversion" sections of this

⁷⁴ FY 2021 MTW Plan, Activity 27, modified the recertification policies.

charged by the owner to unassisted tenants. When the tenant moves out of a contract unit, the owner is subject to state and local law regarding disposition of the security deposit. The Housing Authority has no liability of responsibility for payment of any amount owed by the family to the owner.

20.18 Moves [24 CFR 983.259, 983.260, and 983.261]

20.18.1 Wrong Sized Unit

If the Housing Authority determines that a family is occupying a wrong sized unit, based on the Housing Authority's subsidy standards, or a unit with accessibility features the family does not require, and the unit is needed by a family that does require the features, the Housing Authority must promptly notify the family and the owner of this determination, and the Housing Authority must offer the family the opportunity to receive continued housing assistance in another unit through either project-based assistance in the same building or project or tenant-based assistance under the Streamline Fixed Lease Assistance program. If there is no tenant-based funding available, the family can continue to reside in the PBV unit or elect to discontinue assistance and remain on a tenant-based waiting list.

If the Housing Authority offers the family tenant-based assistance, the Housing Authority must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's search indicated on either the Voucher or Family Obligations Agreement.

20.18.2 Other Moves

After two years, a project-based voucher participant (excluding RAD PBV households and certain families receiving on-site supportive services) may request a tenant-based voucher to move.⁷⁶ The move must be approved in accordance with the Housing Authority's Program Moves policy outlined in this Administrative Plan.

For families receiving on-site supportive services at permanent supportive housing developments, the service provider must certify that the family no longer needs the on-site supportive services before HACSB will approve a tenant-based voucher. Should a household be approved to move, households residing in project-based assistance units

⁷⁶ The FY 2020 MTW Plan, Amendment 3, Activity 11: Local Project-Based Voucher Program specifies that the family must remain in a PBV unit for a minimum of 2 years before being eligible to request a tenant-based voucher. Activity 11 also states that HACSB may not provide a tenant-based voucher upon completion of the initial two-year term of assistance for families receiving on-site supportive services.

will have automatic priority, based on funding availability. The family must contact the Housing Authority to request tenant-based assistance prior to providing notice to terminate the lease to the project-based owner. If the family is electing to move to the tenant-based voucher program, the family will be transferred to either the Streamlined Fixed Lease Assistance for Elderly/Disabled or Term-Limited Lease Assistance programs, whichever is appropriate. If the family terminates the assisted lease before the end of the contract term, the family relinquishes the opportunity for continued tenant-based assistance.

If the HAP Contract is not renewed or is terminated, residents will be offered an opportunity to move or remain in the unit with tenant-based assistance under the Streamlined Fixed Lease Assistance program: and the same rent calculation tier. Unless the family's recertification is due at the time of the program transfer, the family's income will not be updated.

20.19 Transfers

20.19.1 Mandatory Transfers

Participants will be required to make a mandatory move either within the project-based assistance community or to another project-based assistance community for the following reasons:

- Locate to another unit if the family becomes overhoused or underhoused in accordance with the Occupancy Standards described in this Administrative Plan.
- Natural disaster or non-tenant caused damage that makes the unit uninhabitable, including failure under the Housing Authority's inspection standards; or
- Change in household composition due to a birth/adoption or court ordered custody that results in the housing unit being overcrowded in accordance with the Housing Authority's subsidy standards.

If no other comparable unit or tenant-based assistance is available, the family will be allowed to remain in their current unit. A comparable unit is defined as a unit that meets the occupancy standards based on the family's current household composition and is generally within (10) miles from their current assisted unit.

20.19.2 Participant Requested Transfers

Participants may request a permissible move transfer to another unit within the project-based assistance community or another project-based assistance community for the following reasons:

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

March 8, 2022

FROM

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

SUBJECT

Section 115 Trust Fund for Unfunded Pension Liabilities

RECOMMENDATION(S)

1. Adopt Resolution No. 138 approving the initial funding of the Section 115 Trust administered by Public Agency Retirement Services for the Housing Authority of the County of San Bernardino's unfunded pension liabilities and appointing the Executive Director as the Plan Administrator for the Section 115 Trust program for an initial deposit amount not to exceed \$6.0 million.
2. Authorize and direct the Executive Director to execute and deliver any legal and administrative documents necessary upon consultations with Legal Counsel, to complete the funding of the Section 115 Trust administered by Public Agency Retirement Services.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

FINANCIAL IMPACT

Approving this Resolution will authorize HACSB to fund the Section 115 trust fund for unfunded pension liabilities with an initial deposit in an amount not to exceed \$6.0 million. This use of funds was included in the FY 2021-2022 budget which was approved by the board on July 14, 2020.

BACKGROUND INFORMATION

Over the last two decades, both experience losses and changes in assumptions have significantly impacted the funded status of the CalPERS pension plans, driving the employer costs to worrisome levels, contributing to pension reform and the current pension crisis. In 2012, the California legislature passed the Public Employees' Pension Reform Act (PEPRA), championed by former Gov. Jerry Brown. PEPRA took effect January 1, 2013, and places limits on the level of pension benefits. While this reform is significant, due to a provision in the California constitution often referred to as the "California Rule," the PEPRA limitation only applies to employees hired after January 1, 2013 and are either new to the pension system or had a break in service in excess of 6 months. Therefore, the impact of PEPRA will not provide employers significant relief for decades to come.

In 2015, the Government Accounting Standards Board (GASB) required implementation of Statement No. 68, Accounting and Financial Reporting for Pensions. GASB 68 requires governmental employers that sponsor Defined Benefit plans, such as California Public Employees' Retirement System (CalPERS), to recognize a net pension liability, (also known as an unfunded pension liability) on their balance sheet. The unfunded pension liability is the difference between HACSB's total pension liability (actuarial accrued liability) and actual plan assets. HACSB's total unfunded pension liability, as of the most recent CalPERS valuation, is just over \$22.7 million. A recent Private Letter Ruling issued by the Internal Revenue Service

(IRS) established that public agencies and municipalities can now create a separate Section 115 Trust to "pre-fund" their CalPERS unfunded pension liability. This provides HACSB with an alternative to sending additional funds directly to CalPERS, an option that has a very modest short-term impact on reducing the annual required contribution due to the additional funds being amortized over a period of 20-30 years. Funds placed in an irrevocable supplemental pension Section 115 Trust would be restricted in use solely for pension obligations.

A Section 115 Trust would offer the following benefits to HACSB:

- Pension Volatility Risk Mitigation – contributions from the trust may be transferred to CalPERS at HACSB's discretion to offset fluctuations in the required annual contributions (a maximum of two years of pension expenses can be drawn from the trust at any point in time).
- Oversight and local control of investment management, risk tolerance, portfolio allocation, and monitoring of investment performance.
- Increased flexibility on use of trust assets (i.e., trust assets may be accessed any time as long as the assets are used to fund HACSB's pension).
- Accumulated funds and investment earnings partially offset Net Pension Liability reportable in the Financial Statements under GASB 68.

On March 10, 2020, the Board of Commissioners (Item No. 11) adopted resolution No. 79 approving the establishment of a Section 115 Trust administered by Public Agency Retirement Services for HACSB's unfunded pension liabilities.

Approval of this item will provide the initial funding for the Section 115 Trust.

PROCUREMENT

There are currently only two independent retirement plan administrators in California authorized to offer Section 115 Trusts, PARS and Public Financial Management Group. Both administrators have received a Private Letter Ruling from the IRS, which assures participants of the tax-exempt status of their investments. Staff evaluated the services offered by each of these administrators as well as their fee structure for administering the trust. PARS is being recommended due to its significantly lower fees to administer the plan and also due to Section 115 Trusts being the core business focus of PARS.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 25, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-138

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO APPROVING THE INITIAL FUNDING OF SECTION 115 TRUST ADMINISTERED BY PUBLIC AGENCY RETIREMENT SERVICES FOR THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO'S UNFUNDED PENSION LIABILITIES

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino (the "Agency") is currently participating in the Public Agencies Post-Retirement Health Care Plan Trust for the pre-funding of its retiree health benefits and other post-employment benefits other than pension benefits ("OPEB"); and

WHEREAS, the Agency desires to set aside funds for the purpose of pre-funding its CalPERS pension obligation that will be held in trust for the exclusive purpose of making future contributions of the Agency's required pension contributions and any employer contributions in excess of such required contributions at the discretion of the Agency; and

WHEREAS, Public Agency Retirement Services (PARS) has made available the Public Agencies Post-Employment Benefits Trust (the "Program") for the purpose of pre-funding both pension obligations and/or OPEB obligations as specified in the Agency's plans and policies; and

WHEREAS, the Agency is eligible to participate in the Program, a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code, as amended, and the Regulations issued thereunder, and is a tax-exempt trust under the relevant statutory provisions of the State of California; and

WHEREAS, the Agency can manage the pre-funding of its pension and OPEB obligations in a single trust under this Program, thereby gaining administrative and cost efficiencies; and

WHEREAS, the Agency's adoption and operation of the Program has no effect on any current or former employee's entitlement to post-employment benefits; and

WHEREAS, the terms and conditions of post-employment benefit entitlement, if any, are governed by contracts separate from and independent of the Program; and

WHEREAS, the Agency's funding of the Program does not, and is not intended to, create any new vested right to any benefit nor strengthen any existing vested right; and

WHEREAS, the Agency reserves the right to make contributions, if any, to the 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 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 funding of a Section 115 Trust administered by Public Agency Retirement Services for HACSB's unfunded pension liabilities in an initial deposit amount of \$6 million.

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)
) ss.
COUNTY OF SAN BERNARDINO)

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

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

March 8, 2022

FROM

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

SUBJECT

Employee Handbook Policy Revisions

RECOMMENDATION(S)

Adopt Resolution No. 139 approving revisions to the Housing Authority of the County of San Bernardino's Employee Personnel Handbook.
(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.**

FINANCIAL IMPACT

Approval of the proposed revisions to the Employee Personnel Handbook (Handbook) may have some financial impact to the Housing Authority of the County of San Bernardino's (HACSB) approved annual budget. The amount of the financial impact may vary based on use of such policy by employees.

BACKGROUND INFORMATION

HACSB conducts a review of policies within the Handbook on a regular basis for changes in HACSB practices and applicable law. As part of the recent review by Human Resources, along with discussions with Teamsters Local 1932, areas of clarification and changes with the COVID-19 pandemic, the following policy changes are being requested.

Policy 4004.1 – COVID-19 Health and Safety – The policy revision is to redefine who is required to test weekly and to include those who are booster-eligible but had not yet been boosted. This change is consistent with the California Department of Public Health guidelines. The proposed policy revision also removes language regarding HACSB's payment for time for COVID-19 testing. The policy was implemented under the Executive Director's emergency authorization effective February 14, 2022 and request retroactive approval of revisions to policy 4004.1, COVID-19 Health and Safety.

5001 Holidays – HACSB would like to recognize the importance of Juneteenth as a recognized Federal Holiday and add this day as a paid Holiday for staff. We would also like to modify the current Columbus Day Holiday currently recognized the second Monday of October to Indigenous People's Day. This change is meant to celebrate and honor Native American's and commemorate their history and culture.

5002 Vacation – With the move to an on-line timecard system in 2020, we have found in practice that allowing staff to request vacation time to the quarter hour is a better timeframe to have in place.

5006 – Sick Leave and Kin Care Benefit - With the move to an on-line timecard system in 2020, we have found in practice that allowing staff to request sick time to the quarter hour is a better timeframe to have in place.

5014 – Paid Family Leave (PFL) – Cleaned up wording in this policy.

Supplemental Policy 5006.4 – CA Covid Supplemental Paid Sick Leave - In February 2022, California Legislature approved Senate Bill 114 (SB114) requiring California employees with more than 25 employees to provide supplemental paid sick leave (SPSL) to employees for specific COVID-19 related reasons. This policy follows these guidelines and would be in effect from January 1, 2022 through September 30, 2022.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 24, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-139

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE
COUNTY OF SAN BERNARDINO APPROVING REVISIONS TO THE HOUSING AUTHORITY OF
THE COUNTY OF SAN BERNARDINO EMPLOYEE POLICY HANDBOOK**

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino (HACSB) Employee Policy Handbook sets forth the terms and conditions of employment for all full-time and part-time employees; and

WHEREAS, the Employee Policy Handbook contains the employment policies and practices of HACSB in effect at the time of publication, and it supersedes all previous policies, rules, procedures and past practices of HACSB, both oral and written; and

WHEREAS, HACSB desires to amend its policies and procedures as they relate to recent emergency personnel operations due to the COVID-19 pandemic, as well as additional revisions for other practices and to comport with applicable law.

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 additions and revisions to the HACSB Employee Policy Handbook, as shown on Exhibit "A" attached hereto.

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)
) ss.
COUNTY OF SAN BERNARDINO)

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

4004.1 COVID-19 Health and Safety

As COVID-19 continues to be a threat in our community, the Agency desires to maintain a healthy workplace for all. In accordance with the Occupational Safety and Health Administration, the Agency has a duty to provide and maintain a workplace that is safe from known hazards. The Agency will be requiring all staff who are not fully vaccinated to complete a weekly COVID-19 test. The weekly COVID-19 testing requirement for all unvaccinated staff will remain in place, until further notice.

Weekly COVID-19 Testing Requirement

All current active staff with the Agency who are not fully vaccinated will be required to complete a COVID-19 test at least once every seven days. For purposes of this policy, “fully vaccinated” means that the staff person:

- (A) has completed two (2) doses of a two-dose vaccine (such as Moderna or Pfizer) or one (1) dose of a single dose vaccine (such as Johnson & Johnson/Janssen) and 14 days have passed since the final dose; and
- (B) has received a booster shot of the vaccine, if eligible for a booster shot. Persons who received a two-dose vaccine are eligible for a booster shot five (5) months after completing their final dose, while persons who received a one-dose vaccine are eligible for a booster shot two (2) months after completing their final dose.

Staff who are not yet eligible for a booster shot will be considered “fully vaccinated” if they meet the requirement under (A) above.

Staff who have fully recovered from COVID-19 and have proof of a positive test within the prior 30 days are exempt from the testing requirement.

Staff who are fully vaccinated but have not uploaded a copy of the completed vaccination status or their booster shot (if applicable) to the HR Paycom system will be considered as unvaccinated for purposes of this testing requirement.

Staff who are on an approved leave of absence and are not on agency property during a seven-day period will not be required to test weekly until they return to work at an agency property.

Weekly COVID-19 Testing Procedures

Employees who are not fully vaccinated must upload documentation of the most recent COVID-19 test result to the Paycom system on a weekly basis. Test results must be received every Monday by 5:00 p.m. The test can be taken anytime within the previous 6 days as long as results are submitted timely each Monday. Results are expected for all non-fully vaccinated staff if they intend or are scheduled to work any day on-site within the next 7 days during the workweek beginning on Monday. Home or store-bought tests that are both self-administered and self-read will not be accepted.

Employees who choose to test during working hours will be allowed to request accrued sick or vacation time available in increments of 15 minutes to cover their time away, up to one hour. During known high testing times, accruals of up to two hours may be granted. Employees who do not have enough sick or vacation time available and choose to test during working hours should submit for unpaid time off. Employees will not be paid regular hours for travel time, mileage or time testing. Hourly, non-exempt employees choosing to test during working hours will be required to clock out and back in when they return to the worksite. Employee should provide 24 hours notice to supervisor of any time needed to test during working hours. Any requests for use of sick or vacation time must be completed with the bi-weekly pay period.

Upon receipt of the weekly COVID-19 testing results, employees will be required to upload a copy of the results showing the employees name, date test was taken, date results were provided, and the result to the Paycom system by 5:00 p.m. every Monday.

Employees who have symptoms will be required to notify their supervisor and/or Human Resources immediately and remain away from the worksite as part of current protocols in place.

The Housing Authority reserves the right to repeal or adjust this requirement at any time due to policy change, or other mandate or law issued by any federal, state or local agency.

5001 Holidays

The following holidays are established as paid holidays for all full-time and part-time Agency employees:

- | | | |
|-----|-----------------------------|---|
| 1. | January 1 | New Years Day |
| 2. | Third Monday of January | Martin Luther King, Jr.'s Birthday |
| 3. | Third Monday of February | President's Day |
| 4. | March 31 | Cesar Chavez Day |
| 5. | Last Monday of May | Memorial Day |
| 6. | <u>June 19</u> | <u>Juneteenth</u> |
| 7. | July 4 | Independence Day |
| 8. | First Monday of September | Labor Day |
| 9. | Second Monday of October | <u>Columbus-Indigenous People's Day</u> |
| 10. | November 11 | Veteran's Day |
| 11. | Fourth Thursday of November | Thanksgiving |
| 12. | Fourth Friday of November | Day after Thanksgiving |
| 13. | December 24 | Day before Christmas |
| 14. | December 25 | Christmas Day |
| 15. | December 31 | Day before New Years Day |

When a holiday falls on a Saturday or Sunday, it is usually observed on the preceding Friday or the following Monday.

Employees on a 9/80 work schedule will observe the preceding work day when a holiday falls on a Friday which would be their day off. Holiday pay is counted as time worked for purposes of overtime calculation.

Eligibility

Full time and part-time employees are eligible for holiday pay from date of hire. Part-time employees will receive holiday pay for all hours normally scheduled for that day of the week. To be eligible for holiday pay, non-exempt employees must also work their regularly scheduled workdays immediately preceding and following the holiday, unless an absence on either day is approved in advance by their supervisor. In the case of illness on the day preceding or following a holiday, a doctor's note may be provided to ensure eligibility for the holiday pay. Employees on a Leave of Absence and temporary employees are not eligible for Holiday pay.

If required to work on a scheduled paid holiday, non-exempt employees will receive regular holiday pay, and in addition be paid straight time for hours worked.

5002 Vacations

The Agency shall provide eligible employees vacation benefits to promote rest and relaxation away from work. All regular and probationary full-time employees are eligible to accrue paid vacation in accordance with the following schedule:

1 st year through 4 th year of continuous employment	80 hours
5 th year through 9 th year of continuous employment	120 hours
10 th year and thereafter	160 hours

Temporary, Contract and Part-time employees are not eligible to accrue paid vacation time.

Annual vacation time is pro-rated through the year (from anniversary date forward) and accrued accordingly each pay period. Vacation time may not be taken prior to accrual.

The Agency encourages employees to take their vacation annually. Therefore, effective October 1, 2007, if any employee's accrued balance exceeds twice their applicable annual accrual, their vacation accrual will stop until previously accrued vacation time is used and their accrued balance drops below twice their annual accrual rate.

Vacation time can be used in no less than ~~1/4~~quarter-hour increments at a minimum and shall be scheduled in a manner that provides adequate coverage of job responsibilities and staffing requirements. The department manager will make final determinations and must approve vacation requests in advance of time off.

Employees who will have an accrued balance of 80 hours or more at the end of the fiscal year may elect, during the final month of the fiscal year, to convert up to 40 hours of the balance over 80 hours into cash if they have taken a minimum of 40 hours vacation during the fiscal year. The conversion payment will be paid to the employee the last pay period of

the fiscal year. The rate at which the hours will be paid is the employee's base rate of pay at the end of the fiscal year. In lieu of cash, the employee may designate a part or all of the value of leave to be contributed to the employees 457(b) deferred compensation plan. Accrued but unused vacation time is paid out at the time of employment termination at the employees' base rate.

Vacation time will stop accruing after 12 calendar weeks of continuous absence. An employee on an approved pregnancy disability leave will stop accruing after 16 weeks. An employee on an approved military caregiver leave will stop accruing after 26 weeks where applicable. (See Policy 5008, 5008A)

If a holiday occurs during a pre-scheduled vacation, the holiday will be paid as holiday pay, and not deducted from the employee's accrued vacation balance.

5006 Sick Leave and Kin Care Benefit

The Agency offers paid sick leave to any employee who, on or after July 1, 2015, works thirty (30) or more days within a year from the commencement of employment. This includes, regular and contract full-time and part-time staff.

Sick leave is generally provided for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member, and for use by a covered employee who is a victim of domestic violence, sexual assault, or stalking. Time off for medical and dental appointments will be treated as sick leave, though employees should try to schedule such appointments outside the work day. Sick leave will not be granted to any employee to permit an extension of the employee's vacation.

Pursuant to California's Paid Sick Leave Law (Labor Code section 245, et seq.) an employee is entitled to use the first three days (or similar hours based on full-time or part-time status) in a 12-month period to care for a family member. For purposes of this leave, family member is defined consistent with Labor Code section 245.5(c), which generally includes a child regardless of age or dependency status (including a foster child, step child, legal ward, and those similarly situated), a parent (including a spouse's parent, guardian, and those similarly situated), a spouse, a registered domestic partner, a grandparent, a grandchild and a sibling.

Pursuant to Labor Code section 233, an employee is also entitled to use one half of his or her accrued and available annual sick leave entitlement to attend to the illness of a child, parent, spouse, or registered domestic partner. For purposes of this leave, "parent" and "child" include biological, foster, adopted, step or legal guardian relationships. A "child" also includes a child of a registered domestic partner or a child to whom the employee stands in loco parentis. This is known as "Kin Care Leave".

To the extent an employee's use of sick leave qualifies as both care for a family member under California's Paid Sick Leave law and Kin Care leave, the leaves will be run concurrently. Similarly, to the extent the care for a family member under California's Paid Sick Leave law or Kin Care Leave qualifies as leave under the Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), the leaves will be run concurrently.

Supervisors shall have the discretion to place employees on sick leave when, in the judgment of the supervisor, the presence of the employee at work would endanger the health and welfare of other employees or where the illness or injury of the employee interferes with the performance of such employee's duties.

The Sick Leave benefit for all regular and contract full-time staff will accrue and be paid within the following guidelines:

- Sick Leave accrual begins on the date of hire at the rate of 12, nine (9) hour days per year, accrued in a pro-rated amount every pay period.
- Unused Sick Leave will carry over from calendar year to calendar year, with no maximum.
- Employees are eligible at hire to use their accrued Sick Leave. Sick Leave will not be paid in advance of accrual.
- Sick Leave will stop accruing after 12 calendar weeks of continuous absence. An employee on an approved pregnancy disability leave will stop accruing after 16 weeks where applicable and an employee on an approved military caregiver leave, stop accruing after 26 weeks where applicable. (See Policy 5008, 5008A).

The Sick Leave benefit for all regular and contract part-time employees will be granted in a lump sum method on an annual basis and paid within the following guidelines:

- Part-time employees hired before July 1, 2015 will receive a lump sum of sick leave effective the first pay period in July 2015 based on employment status as shown below. Every year thereafter on January 1, employees in this category shall receive an annual grant based on current status.

<u>Status</u>	<u>Hours/Week</u>	<u>Hours Granted per Year</u>
Part-time	20-29	30
Part-time	1-19	24

- Employees hired after July 1, 2015 will be granted sick leave the first pay date following their hire date based on employment status as shown on the table. Every year thereafter on January 1, the employee will receive an annual grant based on current status.
- Employees are eligible at hire to use available sick leave.
- The annual grant does not roll over to the next year and is not paid out upon termination of employment.

All sick leave whether accrued or lump sum will follow the following guidelines:

- Sick Leave may be taken in no less than ~~1/2~~quarter hour increments, consistent with the smallest increment the Agency uses for other types of leaves and absences.
- At no time is paid Sick Leave included in overtime calculations.
- Management may request a Physician's written verification of any sick leave taken beyond the first three (3) days taken in a 12-month period. A physician's statement releasing the employee to return to work may be required after 3 days' consecutive absence. A "fitness for duty" assessment may also be required upon return from longer-term leaves of absence, at the expense of the Agency.
- The use of Vacation Time may not be substituted for hours missed under this Sick leave policy should the employee no longer have sick leave remaining. (unless approved through an approved Leave of Absence)
- See Policy 3006 (Punctuality and Attendance) for the rules regarding (1) how and when to notify a supervisor of an absence from work, (2) what absences will be counted against the employee's attendance record, and (3) the consequences of excessive absences.

~~Additionally, from April 1, 2020 through December 31, 2020, eligible employees can take Emergency Paid Sick Leave as defined under the Families First Coronavirus Response Act (FFCRA). For more information on the sick leave available through the FFCRA. See supplemental policy Emergency Paid Sick Leave or contact Human Resources.~~

Sick Leave Benefit at Termination: Employees who have completed 10 years of continuous full-time employment with the Agency, and upon separation due to retirement, death, voluntary termination of employment or disability causing permanent incapacity to work, an employee or the estate of the deceased employee shall be paid 50% of their total accrued or lump sum balance to a maximum of 480 hours. Employee must give a notice of at least two weeks to be eligible for this benefit. Any notice less than two weeks in good faith will require approval from the Executive Director. Such reimbursement shall be at the employee's base rate of pay at the time of separation.

5014 Paid Family Leave (PFL)

Paid Family Leave (PFL) is compensation paid to workers who experience a wage loss when they take time off work to care for a seriously ill family member or bond with a new child. Workers may receive up to ~~six~~eight weeks of benefits that may be paid over a 12-month period. PFL is funded by mandatory employee payroll deductions and administered by the California Employment Development Department (EDD). ~~Effective July 1, 2020, employees may receive up to eight weeks of Paid Leave benefit through the EDD.~~

While on PFL, the Agency shall continue to pay for coverage under the group medical, dental and vision insurance plans for a maximum of 12 weeks on the same terms that existed prior to the leave.

Employees are required to use up to two weeks of previously accrued vacation, and may use accrued but unused sick time during PFL time off. Contact the Human Resources Department for further information.

A Supplemental Policy

5006.4 – CA COVID Supplemental Paid Sick Leave

Consistent with Senate Bill 114 (SB114) the Agency will provide eligible employees with COVID-19 Supplemental Paid Sick Leave (SPSL) if the employee is unable to work or telework due to one of the following reasons:

1. The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace.
2. The covered employee has been advised by a healthcare provider to quarantine, or is experiencing COVID-19 symptoms and seeking a medical diagnosis.
3. Attending an appointment for themselves or a family member to receive a vaccine or booster;
4. The covered employee is experiencing symptoms or caring for a family member experiencing symptoms related to a COVID-19 vaccine or booster preventing the employee from being able to work or telework (subject to limitations) Family member is defined as minor or adult child, parent, spouse, domestic partner, grandparent, grandchild or sibling.
5. The covered employee is caring for a family member who is subject to a quarantine or isolation period due to COVID-19.
6. The covered employee is caring for a child whose school or place of care is closed on the premises for reasons related to COVID-19.

SPSL will be paid at the employee's regular rate of pay. The maximum amount paid to an employee cannot exceed \$511 per day or a total of \$5,110 in the aggregate. An employee may choose to supplement their SPSL pay utilizing the employee's own accrued leave to fully compensate the leave taken. In no event shall the employee's pay during their leave of absence exceed 100% of their full compensation.

Amount of Leave

Full-time

Full-time employees working 40 hours per week may take up to 40 hours of SPSL. Employees using SPSL for reasons related to attending an appointment for, or symptoms or side effects from, a vaccination or booster will be allowed to use up to three working days (27 hours) from the 40 hours provided. Any additional time may be granted, up to 40 hours, with verification from a health care provider of the continued symptoms or side effects due to the vaccine or booster shot.

An additional 40 hours of SPSL may be used if the full-time employee, or a family member for whom the employee is caring for, tests positive for COVID-19. Employees will be required to provide proof of a COVID-19 positive test through a verified lab. At home tests will not be accepted as proof for use of the additional 40 hours.

The total amount of SPSL the full-time employee is entitled to shall not exceed 80 hours during the timeframe of January 1, 2022 – September 30, 2022.

Part-time

Part-time employees with regular weekly schedules may take up to the number of hours that they are normally scheduled to work within a one-week period. Part-time employees with irregular weekly schedules may take up to 7 times the average number of hours worked per day in the six-month period prior to the usage of leave. If the employee has not worked for the Agency for six months, the Agency will calculate the leave entitlement based on the period during which the employee has been employed.

Part-time employees will be provided additional hours, up to one week or as described above, if the employee, or a family member for whom the employee is caring for, tests positive for COVID-19. Employees will be required to provide proof of a COVID-19 positive test through a verified lab. At home tests will not be accepted as proof for use of the additional hours.

Intermittent Leave

The Agency agrees to allow intermittent SPSL for employees who have requested leave to care for their child or if the school or place of care of the child has been closed due to COVID-19 precautions. Intermittent SPSL may also be provided to employees who may be able to work some hours from home as part of an approved telecommuting schedule but need some time to take care of a family member as stated above.

Protected Sick Leave

Any leave approved as SPSL is considered protected leave and the Agency may not discharge, discipline, discriminate, or take any other adverse action against employees who take such leave. An employee who uses SPSL is entitled to reinstatement to their prior position unless the position held by the employee does not exist due to economic conditions or other changes in operating conditions caused by a public health emergency during the period of leave such that the employee would not otherwise have been employed at the time of reinstatement.

Administration of Leave

Employees must notify Human Resources as soon as possible regarding the need for SPSL. Employees will be required to complete a Request for SPSL through Human Resources along with supporting documentation as indicated on the form.

It is understandable that an employee may not know the need for SPSL arises until after the first day of need. As soon as the employee becomes aware, they must notify Human Resources.

An employee may provide notice of the need to use SPSL orally or in writing, or may provide such notice through the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to provide such notice themselves. Notice is recommended directly to Human Resources.

If an employee fails to provide proper notice, the Agency will provide the employee notice of the failure and provide the employee with an opportunity to provide the required documentation, described below, prior to denying the employee's request for leave.

Covered employees are eligible to use SPSL during the dates of January 1, 2022 – September 30, 2022. A covered employee who took leave for one of the COVID-19 related reasons stated above between January 1, 2022 and February 19, 2022, the effective date of SB114, may make an oral or written request to Human Resources for payment using SPSL or adjustment of hours to personal sick time or vacation used. Such payment or adjustment of hours will be made by the following pay period.

Sick Leave upon Separation of Employment

Unused SPSL cannot be cashed out upon termination, resignation, retirement or other separation from employment. Unused SPSL is not eligible for retirement service credit.

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

March 8, 2022

FROM

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

SUBJECT

Temporary Payment Standards for the Moving to Work and Emergency Housing Voucher Programs

RECOMMENDATION(S)

Adopt Resolution No. 140 approving temporary payment standards for the Moving to Work Housing Choice Voucher and Emergency Housing Voucher programs effective March 9, 2022 through December 1, 2022.

(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

Based on analysis of historical trends, the potential increased Housing Assistance Payment (HAP) expense is estimated at \$795,085 per month, or \$9.5 million annually, after two-year implementation. The increased expense will be covered by ongoing HAP funding. Should a shortfall in funding occur, turnover vouchers may need to be frozen to shrink the size of the program in order to decrease the overall program costs.

BACKGROUND INFORMATION

Over the last several years, especially during the COVID-19 pandemic, the leasing success rate for the Housing Choice Voucher (HCV) program has declined, primarily due to the impact of significantly rising market rents and low vacancy rates throughout San Bernardino County. To combat this challenge, the Housing Authority of the County of San Bernardino (HACSB) has implemented several strategies to help increase the leasing success rate, including educating the community through landlord outreach events, implementing a landlord signing bonus of \$1,000, and providing housing navigation services for Emergency Housing Voucher (EHV) program customers (funded by the HUD EHV program and County of San Bernardino Emergency Shelter Grant funds). However, rental prices continue to rise rapidly and exceed our payment standards, which function as the maximum rent for the HCV program. Voucher program participants cannot select a unit for which the rent amount exceeds the payment standard. As a result, an increasing number of units are out of reach for program participants, and many families searching for a unit to lease are unable to do so.

This challenge is not isolated to San Bernardino County. On December 9, 2021, the U.S. Department of Housing and Urban Development (HUD) published Notice PIH 2021-34 inviting housing agencies to apply for expedited waiver authority to address COVID-related challenges, including authorization to increase payment standards. HACSB applied for the waiver

Temporary Payment Standards for the Moving to Work and Emergency Housing Voucher Programs
March 8, 2022

authorization and on January 20, 2022, received approval from HUD. The approved waiver authorizes HACSB to establish temporary payment standards for the Moving to Work (MTW) HCV programs and EHV program up to 120% of HUD published FMR to increase HACSB's leasing rate. The authorization expires December 1, 2022.

If approved, this resolution will allow HACSB to adopt temporary Local Payment Standards (LPS) for the MTW HCV programs and temporary EHV payment standards set at 120% of the HUD FMR or the current LPS/EHV payment standard, whichever is greater. The proposed temporary LPS and EHV payment standards schedules would increase the payment standard for most submarkets and bedroom sizes for the MTW and EHV programs. Eight payment standards would not change. The temporary LPS and EHV payment standards will remain in effect until the waiver authorization expires on December 1, 2022, or until HACSB adopts updated LPS and EHV payment standards, whichever is sooner.

An increase to the LPS and EHV payment standards will establish payment standards more closely aligned to current rent, increasing the number of rental units that fall within the maximum rent standard for the MTW HCV and EHV programs. The proposed change is expected to improve leasing success. However, HUD emphasizes that this is a temporary measure to address the volatility as a direct result of the pandemic (*HUD Notice PIH 2021-34*).

Attachments:

- Temporary Moving to Work Payment Standards (values in red represent submarket/bedroom size currently above 120% of the FMR)
- Temporary Emergency Housing Voucher Payment Standards
- Comparison chart of the current Local Payment Standards and the proposed Temporary Moving to Work Payment Standards

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 28, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-140

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO APPROVING TEMPORARY PAYMENT STANDARDS FOR THE MOVING TO WORK HOUSING CHOICE VOUCHER PROGRAM AND EMERGENCY HOUSING VOUCHER PROGRAM EFFECTIVE MARCH 9, 2022 AND SUPERSEDING ALL PRIOR RESOLUTIONS ESTABLISHING SUCH PAYMENT STANDARDS

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino (HACSB) 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, HACSB entered into a Moving to Work (MTW) contract with the United States Department of Housing and Urban Development (HUD) effective March 14, 2008, which governs the regulations of the administration of the Housing Choice Voucher and Public Housing programs; and

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 which are used by housing authorities to develop the payment standards; and

WHEREAS, housing authorities are required to review and update payment standards annually to maintain reasonable rents paid on behalf of clients receiving subsidy; and

WHEREAS, HUD approved the Authority's Local Payment Standards MTW activity which allows the Authority to determine Local Payment Standard amounts by submarket based on the local rental market for the MTW Housing Choice Voucher program which are reviewed annually.

WHEREAS, HUD approved the Authority's expedited waiver for regulation 24 CFR §982.503(b) to allow for the establishment of temporary payment standards from 111% to 120% of the Fair Market Rent (FMR) through December 1, 2022.

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 Temporary Payment Standards for the Moving to Work Housing Choice Voucher program and payment Standards for the Emergency Housing Voucher program effective March 9, 2022 through December 1, 2022, copies of which are attached hereto as Exhibit "A" and incorporated herein by reference.

Section 3. This resolution shall supersede all prior resolutions of the HACSB establishing payment standards covered by this resolution and such prior resolutions shall be of no further force or effect.

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)
) ss.
COUNTY OF SAN BERNARDINO)

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

EXHIBIT "A"

Temporary Payment Standards for the Moving to Work Housing Choice Voucher Program and
Payment Standards for the Emergency Housing Voucher Program
Effective March 9, 2022 through December 1, 2022



Moving to Work (MTW) Payment Standards
FY 2021-2022 - Temporary Waiver Authorization
Effective March 9, 2022 -- Expires December 1, 2022

MTW Payment Standards apply to the following HACSB programs: Term-Limited Lease Assistance program, Streamlined Lease Assistance program, No Child Left Unsheltered program, Family Unification Program, Mainstream programs and Veteran Affairs Supportive Housing (VASH leased on or after January 1, 2021)

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom	6 Bedroom
Submarket 1 - Desert	\$1,274	\$1,442	\$1,811	\$2,478	\$3,050	\$3,507	\$3,964
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	\$1,274	\$1,442	\$1,811	\$2,478	\$3,050	\$3,507	\$3,964
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	\$1,274	\$1,442	\$1,811	\$2,478	\$3,050	\$3,507	\$3,964
May include the following cities: Joshua Tree, Landers, Morongo Valley, Pioneer Town, 29 Palms, Yucca Valley							
Submarket 4 - Mountains	\$1,274	\$1,495	\$1,811	\$2,478	\$3,065	\$3,520	\$3,985
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	\$1,274	\$1,442	\$1,811	\$2,478	\$3,050	\$3,507	\$3,964
May include the following cities: Cedarpines Park, Highland (North), Patton, San Bernardino (North)							
Submarket 6 - San Bernardino South	\$1,274	\$1,442	\$1,811	\$2,478	\$3,050	\$3,507	\$3,964
May include the following cities: Highland (West), San Bernardino (South)							
Submarket 7 - East Valley	\$1,274	\$1,442	\$1,811	\$2,478	\$3,050	\$3,507	\$3,964
May include the following cities: Bryn Mawr, Colton (East), Grand Terrace, Highland (East), Loma Linda, Mentone, Redlands, Yucaipa							
Submarket 8 - West Valley	\$1,375	\$1,630	\$2,000	\$2,600	\$3,050	\$3,507	\$3,964
May include the following cities: Chino, Chino Hills, Fontana (North), Guasti, Montclair, Ontario, Rancho Cucamonga, Upland							
Submarket 9 - Central Valley	\$1,274	\$1,442	\$1,811	\$2,478	\$3,050	\$3,507	\$3,964
May include the following cities: Bloomington, Colton (West), Fontana (South), Muscoy, Rialto							

MTW payment standards are based on the analysis of independent third-party data. The submarkets are based on census tracts; city names are a suggestive guide and may not be used to accurately determine sub market. **Please note that some cities may fall within multiple submarkets.** Please note, the amounts detailed above are the maximum contract rent that may be approved by bedroom size. Your particular unit's final approved contract rent may be lower.

**Housing Authority of the County of San Bernardino
Emergency Housing Voucher Program
Effective March 9, 2022 - Expires December 1, 2022**

Desert Region

0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom	6 Bedroom
\$1,274	\$1,442	\$1,811	\$2,478	\$3,050	\$3,507	\$3,964
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						

Mountain Region

0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom	6 Bedroom
\$1,274	\$1,495	\$1,811	\$2,478	\$3,065	\$3,520	\$3,985
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						

Central Region

0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom	6 Bedroom
\$1,274	\$1,442	\$1,811	\$2,478	\$3,050	\$3,507	\$3,964
Submarket 5 - San Bernardino North						
May include the following cities: Cedarpines 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
\$1,375	\$1,630	\$2,000	\$2,600	\$3,050	\$3,507	\$3,964
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

March 8, 2022

FROM

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

SUBJECT

Contract Amendment with Contemporary Information Corporation for Tenant Screening Services

RECOMMENDATION(S)

1. Approve Amendment No. 1 to Contract No. PC1086, retroactive to be effective February 25, 2022, with Contemporary Information Corporation for Tenant Screening Services, increasing the current contract amount by \$293,063 for a total contract amount not to exceed \$833,063 for the last two-year option year through February 24, 2024.
 2. Authorize and direct the Executive Director to execute and deliver the contract amendment to Contemporary Information Corporation 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.

FINANCIAL IMPACT

This item is not expected to exceed \$293,063 for the remaining two-year option period which is included within the Housing Authority of the County of San Bernardino's (HACSB) approved budget and will be included in the budget for subsequent fiscal years.

BACKGROUND INFORMATION

HACSB requires Tenant Screening Services to determine whether applicants for housing assistance are suitable for residence in HACSB owned and/or managed communities, or participation in the Tenant-Based Voucher program. Occasionally, other HACSB departments require tenant screening services for the homeownership assistance program or to investigate alleged fraudulent activity by housing program participants.

Section 578 of the Quality Housing and Work Responsibility Act (QHWRA) of 1998 and Section 5.903 of 24 CFR Part 5, Access to Criminal Records and Information state how Public Housing Agencies (PHAs) that administer Public Housing and Housing Choice Voucher (HCV) Programs are authorized to obtain and use criminal records to screen applicants. Under these regulations for both Public Housing and HCV programs, housing authorities must adopt certain policies to screen out applicants that have engaged in specific criminal conduct such as violent and serious drug activity, and registered sex offenders; therefore, prohibiting admission to the programs. In compliance with these requirements, HACSB does check all applicants in all programs for any criminal background and related activities.

On February 12, 2019, the San Bernardino County Housing Commission authorized the Executive Director to execute a contract in the amount of \$540,000 for a three-year base term with an option to extend for one additional two-year extension through February 24, 2024.

Contract Amendment with Contemporary Information Corporation for Tenant Screening
Services
March 8, 2022

On January 25, 2022, HACSB sent Contemporary Information Corporation a letter confirming the extension of the term for the first option year of the Agreement, subject to approval by HACSB's Board of Commissioners at its March 2022 meeting of an additional appropriation to cover the funding for such option year.

PROCUREMENT

The Procurement and Contracts Department previously released a Request for Proposal (RFP) PC1086 on November 1, 2018. Outreach efforts included invitations to eight vendors and posting on the agency's website. Four proposals were received in response to this RFP. Proposals were evaluated per the requirements of the RFP in which Contemporary Information Corporation was the most qualified, best priced, and most responsive vendor selected to provide these services to the agency.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 25, 2022.



**HOUSING AUTHORITY OF THE
COUNTY OF SAN BERNARDINO**

**AMENDMENT #1 TO CONTRACT FOR TENANT SCREENING SERVICES
(PC1086)**

BETWEEN

**THE HOUSING AUTHORITY OF THE
COUNTY OF SAN BERNARDINO**

And

CONTEMPORARY INFORMATION CORPORATION (CIC)

This Amendment No. 1 ("First Amendment"), dated February 25, 2022 ("Effective Date"), to Agreement for Tenant Screening Services (PC1086), is entered into by and between the Housing Authority of the County of San Bernardino, a California public body, ("Authority") and Contemporary Information Corporation (CIC) ("Contractor").

RECITALS

WHEREAS, the Authority and Contractor entered into that certain Consulting, Services, and Non-Routine Maintenance Related Services Agreement (Non-Construction), dated February 25, 2019 relating to Tenant Screening Services ("Agreement") with a total price of \$540,000.00;

WHEREAS, on January 25, 2022, the Authority sent Contractor a letter confirming the extension of the term for the second option year of the Agreement, subject to approval by the Authority Board at its March 2022 meeting of an additional appropriation to cover the funding for such option year.

WHEREAS, the Authority and Contractor now wish to enter into this first Amendment to the Agreement to increase the contract by \$293,063 for a total amount not-to-exceed \$833,063.00.

OPERATIVE PROVISIONS

NOW, THEREFORE, the foregoing Recitals being true and correct, and in consideration of the mutual covenants and obligations contained in this First Amendment by the parties and other consideration, the sufficiency of which is hereby expressly acknowledged, the Parties hereto agree as follows:

Section 1. Article 3 of the Agreement is hereby amended to extend the term for an additional two (2) additional years and expiring on February 24, 2024. Except as so

amended, the other provisions of Article 3 shall remain unmodified and in full force and effect.

Section 2. Article 4 of the Agreement, entitled "Price" is hereby amended to increase the compensation payable to Contractor for the provision of the Work for the total not-to-exceed sum as shown in the Total Agreement Cost set forth on Exhibit "A-1. Except as so amended, the other provisions of Article 4 shall remain unmodified and in full force and effect.

Section 3. Continuing Effect of Agreement. Except as amended by this First Agreement, all provisions of the Agreement, as amended, shall remain unchanged and in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by Amendment No. 1.

Section 4. Affirmation of Agreement; Warranty Re Absence of Defaults. Authority and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement, as amended. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than by way of this Amendment No. 1 as provided herein. Each party represents and warrants to the other that the Agreement, as amended by Amendment No. 1, is currently an effective, valid, and binding obligation.

Consultant represents and warrants to Authority that, as of the date of this First Amendment, Authority is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

Authority represents and warrants to Consultant that, as of the date of this First Amendment, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

Section 5. Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this First Amendment.

Section 6. Authorization. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Housing Authority of the County of San Bernardino and Contemporary Information Corporation (CIC)

CONTEMPORARY INFORMATION CORP.

**HOUSING AUTHORITY OF THE COUNTY OF
SAN BERNARDINO**

By:_____

By:_____

Name:_____

Name: Maria Razo or Gus Joslin for Maria Razo

Title:_____

Title: Executive Director

Date:_____

Date:_____

Exhibit A-1

Schedule Dates:

Effective Date: February 25, 2022

Completion Date: February 24, 2024

Total Agreement Cost: Not to exceed \$833,063.00

Original Agreement Amount Not to Exceed	\$540,000.00
Net Change Orders Previously Approved	\$0.00
Net Change Order Previously Approved – Amendment #1	\$293,063.00
Agreement Value as Amended Not to Exceed	\$833,063.00

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

March 8, 2022

FROM

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

SUBJECT

Refinancing of Existing Loan Agreements and authorizing a new Loan Agreement for the Hampton Court property in Redlands with Prudential Mortgage Capital Company and/or Its Affiliates

RECOMMENDATION(S)

1. Approve refinance loan agreements and a new loan agreement with Prudential Mortgage Capital Company and/or its affiliates in the overall approximate amount of \$23.2 million.
2. Authorize the Executive Director to enter into loan agreements and loan related documents with Prudential Mortgage Capital Company and/or its affiliates in the approximate amount of \$23.2 million, said agreements and documents to be executed in substantially the form on file with the Board of Commissioners, with such changes therein as may be necessary or as the Executive Director may approve, upon consultation with Legal Counsel, as being in the best interests of the Housing Authority of the County of San Bernardino, such approval to be evidenced conclusively by the execution and delivery thereof.
3. Authorize the Executive Director to execute and deliver such other documents required to be executed pursuant to the loan agreements, upon consultation with Legal Counsel, as being in the best interests of the Housing Authority of the County of San Bernardino, and to deliver such documents in accordance with the loan agreements.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

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

FINANCIAL IMPACT

Approval of this item will allow for the refinance of the three properties under the original loan agreements and a new loan agreement for the Hampton Court property in Redlands, and in turn will generate excess cash of approximately \$8.93 million. The Housing Authority of the County of San Bernardino (HACSB) in partnership with affiliate nonprofit Housing Partners I, Inc. (HPI) intends to reinvest the proceeds in the Phase 2 affordable housing development (104 units) at Valencia Grove in Redlands. While the existing annual debt service payment is projected to increase by approximately \$305,000 spread across the 3 properties, and Hampton Court will incur a new debt service obligation of approximately \$142,000/year, each of the properties produces consistent income so that the debt service coverage ratio will not fall below 1.20 (with Hampton Court not falling below 1.50)

BACKGROUND INFORMATION

On December 2, 2014, HACSB's Board of Governors (Item No. 59) approved a loan agreement with Prudential Mortgage Capital Company and/or its Affiliates (the PM loan) in the approximate amount of \$16 million. The loan encumbers three properties owned by HACSB, including the 168-

unit Andalusia Apartments in Victorville, the 39-unit Sunset Gardens Apartments in Yucaipa, and the 34-unit Mentone Apartments in Mentone. The existing loan was a Fannie Mae execution, as will be the proposed refinance and new loan(s). As the Board of Commissioners is aware, interest rates in the recent past have been at historic lows and HACSB has taken advantage of this situation by leveraging its real estate assets to generate funding to develop additional affordable housing. The Development Department has been analyzing the portfolio and has determined that it is in the best interest of HACSB to refinance the PM loan before interest rates increase as has been signaled by the Federal Reserve. Similarly, it is also advantageous to place new debt on the Hampton Court property which is currently unencumbered.

The current interest rate of the PM loan is at approximately 4.5 percent. Upon refinance, the interest rate is projected to be approximately 4.0 percent. Such reduction in interest rate provides the opportunity to pull cash out for development purposes as described above. In an effort to be conservative, and so as not to threaten the financial health of the properties being financed, staff applied certain criteria to determine the amount of cash that could be removed comfortably. This included insuring that the Debt Service Coverage Ratio does not fall below 1.20, and that the Loan To Value Ratio does not exceed 50%. Applying such criteria resulted in the proposed “cash-out” of approximately \$8.93 million.

PROCUREMENT

HACSB’s Development Department solicited lenders in January 2022 and refinance proposals were received from Northmarq Capital, Berkadia Commercial Mortgage and Prudential Mortgage Capital Company. Based on the Development Department’s analysis, it was determined that Prudential Mortgage Capital Company, who holds the current loan, proposed terms that are most advantageous to HACSB. Staff therefore recommends approval and selection of Prudential Mortgage Capital Company as the refinance lender.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 24, 2022.

**MULTIFAMILY LOAN AND SECURITY AGREEMENT
(NON-RECOURSE)**

BY AND BETWEEN

[BORROWER]

AND

[LENDER]

DATED AS OF

[DATE]

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MULTIFAMILY LOAN AND SECURITY AGREEMENT (Non-Recourse)

This MULTIFAMILY LOAN AND SECURITY AGREEMENT (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the “**Loan Agreement**”) is made as of the Effective Date (as hereinafter defined) by and between _____, a _____ (“**Borrower**”), and _____, a _____ (“**Lender**”).

RECITALS:

WHEREAS, Borrower desires to obtain the Mortgage Loan (as hereinafter defined) from Lender to be secured by the Mortgaged Property (as hereinafter defined); and

WHEREAS, Lender is willing to make the Mortgage Loan on the terms and conditions contained in this Loan Agreement and in the other Loan Documents (as hereinafter defined);

NOW, THEREFORE, in consideration of the making of the Mortgage Loan by Lender and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the parties hereby covenant, agree, represent, and warrant as follows:

AGREEMENTS:

ARTICLE 1 - DEFINITIONS; SUMMARY OF MORTGAGE LOAN TERMS

Section 1.01 Defined Terms.

Capitalized terms not otherwise defined in the body of this Loan Agreement shall have the meanings set forth in the Definitions Schedule attached as Schedule 1 to this Loan Agreement.

Section 1.02 Schedules, Exhibits, and Attachments Incorporated.

The schedules, exhibits, and any other addenda or attachments are incorporated fully into this Loan Agreement by this reference and each constitutes a substantive part of this Loan Agreement.

ARTICLE 2 - GENERAL MORTGAGE LOAN TERMS

Section 2.01 Mortgage Loan Origination and Security.

(a) Making of Mortgage Loan.

Subject to the terms and conditions of this Loan Agreement and the other Loan Documents, Lender hereby makes the Mortgage Loan to Borrower, and Borrower hereby accepts the Mortgage Loan from Lender. Borrower covenants and agrees that it shall:

(1) pay the Indebtedness, including the Prepayment Premium, if any (whether in connection with any voluntary prepayment or in connection with an acceleration by Lender of the Indebtedness), in accordance with the terms of this Loan Agreement and the other Loan Documents; and

(2) perform, observe, and comply with this Loan Agreement and all other provisions of the other Loan Documents.

(b) Security for Mortgage Loan.

The Mortgage Loan is made pursuant to this Loan Agreement, is evidenced by the Note, and is secured by the Security Instrument, this Loan Agreement, and the other Loan Documents that are expressly stated to be security for the Mortgage Loan.

(c) Protective Advances.

As provided in the Security Instrument, Lender may take such actions or disburse such funds as Lender reasonably deems necessary to perform the obligations of Borrower under this Loan Agreement and the other Loan Documents and to protect Lender's interest in the Mortgaged Property.

Section 2.02 Payments on Mortgage Loan.

(a) Debt Service Payments.

(1) Short Month Interest.

If the date the Mortgage Loan proceeds are disbursed is any day other than the first day of the month, interest for the period beginning on the disbursement date and ending on and including the last day of the month in which the disbursement occurs shall be payable by Borrower on the date the Mortgage Loan proceeds are disbursed. In the event that the disbursement date is not the same as the Effective Date, then:

(A) the disbursement date and the Effective Date must be in the same month, and

(B) the Effective Date shall not be the first day of the month.

(2) Interest Accrual and Computation.

Except as provided in Section 2.02(a)(1), interest shall be paid in arrears. Interest shall accrue as provided in the Schedule of Interest Rate Type Provisions and shall be computed in accordance with the Interest Accrual Method. If the Interest Accrual Method is “Actual/360,” Borrower acknowledges and agrees that the amount allocated to interest for each month will vary depending on the actual number of calendar days during such month.

(3) Monthly Debt Service Payments.

Consecutive monthly debt service installments (comprised of either interest only or principal and interest, depending on the Amortization Type), each in the amount of the applicable Monthly Debt Service Payment, shall be due and payable on the First Payment Date, and on each Payment Date thereafter until the Maturity Date, at which time all Indebtedness shall be due. Any regularly scheduled Monthly Debt Service Payment that is received by Lender before the applicable Payment Date shall be deemed to have been received on such Payment Date solely for the purpose of calculating interest due. All payments made by Borrower under this Loan Agreement shall be made without set-off, counterclaim, or other defense.

(4) Payment at Maturity.

The unpaid principal balance of the Mortgage Loan, any Accrued Interest thereon and all other Indebtedness shall be due and payable on the Maturity Date.

(5) Interest Rate Type.

See the Schedule of Interest Rate Type Provisions for additional provisions, if any, specific to the Interest Rate Type.

(b) Capitalization of Accrued But Unpaid Interest.

Any accrued and unpaid interest on the Mortgage Loan remaining past due for thirty (30) days or more may, at Lender’s election, be added to and become part of the unpaid principal balance of the Mortgage Loan.

(c) Late Charges.

(1) If any Monthly Debt Service Payment due hereunder is not received by Lender within ten (10) days (or fifteen (15) days for any Mortgaged Property located in Mississippi or North Carolina to comply with applicable law) after the applicable Payment Date, or any amount payable under this Loan Agreement (other than the payment due on the Maturity Date for repayment of the Mortgage Loan in full) or any other Loan Document

is not received by Lender within ten (10) days (or fifteen (15) days for any Mortgaged Property located in Mississippi or North Carolina to comply with applicable law) after the date such amount is due, inclusive of the date on which such amount is due, Borrower shall pay to Lender, immediately without demand by Lender, the Late Charge.

The Late Charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 2.02(d).

(2) Borrower acknowledges and agrees that:

(A) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Mortgage Loan;

(B) it is extremely difficult and impractical to determine those additional expenses;

(C) Lender is entitled to be compensated for such additional expenses; and

(D) the Late Charge represents a fair and reasonable estimate, taking into account all circumstances existing on the date hereof, of the additional expenses Lender will incur by reason of any such late payment.

(d) Default Rate.

(1) Default interest shall be paid as follows:

(A) If any amount due in respect of the Mortgage Loan (other than amounts due on the Maturity Date) remains past due for thirty (30) days or more, interest on such unpaid amount(s) shall accrue from the date payment is due at the Default Rate and shall be payable upon demand by Lender.

(B) If any Indebtedness due is not paid in full on the Maturity Date, then interest shall accrue at the Default Rate on all such unpaid amounts from the Maturity Date until fully paid and shall be payable upon demand by Lender.

Absent a demand by Lender, any such amounts shall be payable by Borrower in the same manner as provided for the payment of Monthly Debt Service Payments. To the extent permitted by applicable law, interest shall also accrue at the Default Rate on any judgment obtained by Lender against Borrower in connection with the Mortgage Loan. To the extent Borrower or any other Person is vested with a right of redemption, interest shall continue to accrue at the Default Rate during any redemption period until such time as the Mortgaged Property has been redeemed.

(2) Borrower acknowledges and agrees that:

(A) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Mortgage Loan; and

(B) in connection with any failure to timely pay all amounts due in respect of the Mortgage Loan on the Maturity Date, or during the time that any amount due in respect of the Mortgage Loan is delinquent for more than thirty (30) days:

(i) Lender's risk of nonpayment of the Mortgage Loan will be materially increased;

(ii) Lender's ability to meet its other obligations and to take advantage of other investment opportunities will be adversely impacted;

(iii) Lender will incur additional costs and expenses arising from its loss of the use of the amounts due;

(iv) it is extremely difficult and impractical to determine such additional costs and expenses;

(v) Lender is entitled to be compensated for such additional risks, costs, and expenses; and

(vi) the increase from the Interest Rate to the Default Rate represents a fair and reasonable estimate of the additional risks, costs, and expenses Lender will incur by reason of Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquency on the Mortgage Loan (taking into account all circumstances existing on the Effective Date).

(e) Address for Payments.

All payments due pursuant to the Loan Documents shall be payable at Lender's Payment Address, or such other place and in such manner as may be designated from time to time by written notice to Borrower by Lender.

(f) Application of Payments.

If at any time Lender receives, from Borrower or otherwise, any payment in respect of the Indebtedness that is less than all amounts due and payable at such time, then Lender may apply such payment to amounts then due and payable in any manner and in any order determined by Lender or hold in suspense and not apply such payment at Lender's election. Neither Lender's acceptance of a payment that is less than all amounts then due and payable, nor Lender's

application of, or suspension of the application of, such payment, shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such payment to the Indebtedness, Borrower's obligations under this Loan Agreement and the other Loan Documents shall remain unchanged.

Section 2.03 Lockout/Prepayment.

(a) Prepayment; Prepayment Lockout; Prepayment Premium.

(1) Borrower shall not make a voluntary partial prepayment on the Mortgage Loan at any time during the Loan Term, or a voluntary full prepayment on the Mortgage Loan at any time during any Prepayment Lockout Period. Except as expressly provided in this Loan Agreement (including as provided in the Prepayment Premium Schedule), a Prepayment Premium calculated in accordance with the Prepayment Premium Schedule shall be payable in connection with any prepayment of the Mortgage Loan.

(2) If a Prepayment Lockout Period applies to the Mortgage Loan, and during such Prepayment Lockout Period Lender accelerates the unpaid principal balance of the Mortgage Loan or otherwise applies collateral held by Lender to the repayment of any portion of the unpaid principal balance of the Mortgage Loan, the Prepayment Premium shall be due and payable and equal to the amount obtained by multiplying the percentage indicated (if at all) in the Prepayment Premium Schedule by the amount of principal being prepaid at the time of such acceleration or application.

(b) Voluntary Prepayment in Full.

At any time after the expiration of any Prepayment Lockout Period, Borrower may voluntarily prepay the Mortgage Loan in full on a Permitted Prepayment Date so long as:

(1) Borrower delivers to Lender a Prepayment Notice specifying the Intended Prepayment Date not more than sixty (60) days, but not less than thirty (30) days (if given via U.S. Postal Service) or twenty (20) days (if given via facsimile, e-mail, or overnight courier) prior to such Intended Prepayment Date; and

(2) Borrower pays to Lender an amount equal to the sum of:

(A) the entire unpaid principal balance of the Mortgage Loan; plus

(B) all Accrued Interest (calculated through the last day of the month in which the prepayment occurs); plus

(C) the Prepayment Premium; plus

(D) all other Indebtedness.

In connection with any such voluntary prepayment, Borrower acknowledges and agrees that interest shall always be calculated and paid through the last day of the month in which the prepayment occurs (even if the Permitted Prepayment Date for such month is not the last day of such month, or if Lender approves prepayment on an Intended Prepayment Date that is not a Permitted Prepayment Date). Borrower further acknowledges that Lender is not required to accept a voluntary prepayment of the Mortgage Loan on any day other than a Permitted Prepayment Date. However, if Lender does approve an Intended Prepayment Date that is not a Permitted Prepayment Date and accepts a prepayment on such Intended Prepayment Date, such prepayment shall be deemed to be received on the immediately following Permitted Prepayment Date. If Borrower fails to prepay the Mortgage Loan on the Intended Prepayment Date for any reason (including on any Intended Prepayment Date that is approved by Lender) and such failure either continues for five (5) Business Days, or into the following month, Lender shall have the right to recalculate the payoff amount. If Borrower prepays the Mortgage Loan either in the following month or more than five (5) Business Days after the Intended Prepayment Date that was approved by Lender, Lender shall also have the right to recalculate the payoff amount based upon the amount of such payment and the date such payment was received by Lender. Borrower shall immediately pay to Lender any additional amounts required by any such recalculation.

(c) Acceleration of Mortgage Loan.

Upon acceleration of the Mortgage Loan, Borrower shall pay to Lender:

- (1) the entire unpaid principal balance of the Mortgage Loan;
- (2) all Accrued Interest (calculated through the last day of the month in which the acceleration occurs);
- (3) the Prepayment Premium; and
- (4) all other Indebtedness.

(d) Application of Collateral.

Any application by Lender of any collateral or other security to the repayment of all or any portion of the unpaid principal balance of the Mortgage Loan prior to the Maturity Date in accordance with the Loan Documents shall be deemed to be a prepayment by Borrower. Any such prepayment shall require the payment to Lender by Borrower of the Prepayment Premium calculated on the amount being prepaid in accordance with this Loan Agreement.

(e) Casualty and Condemnation.

Notwithstanding any provision of this Loan Agreement to the contrary, no Prepayment Premium shall be payable with respect to any prepayment occurring as a result of the application of any insurance proceeds or amounts received in connection with a Condemnation Action in accordance with this Loan Agreement.

(f) No Effect on Payment Obligations.

Unless otherwise expressly provided in this Loan Agreement, any prepayment required by any Loan Document of less than the entire unpaid principal balance of the Mortgage Loan shall not extend or postpone the due date of any subsequent Monthly Debt Service Payments, Monthly Replacement Reserve Deposit, or other payment, or change the amount of any such payments or deposits.

(g) Loss Resulting from Prepayment.

In any circumstance in which a Prepayment Premium is due under this Loan Agreement, Borrower acknowledges that:

(1) any prepayment of the unpaid principal balance of the Mortgage Loan, whether voluntary or involuntary, or following the occurrence of an Event of Default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional risk, expense, and frustration or impairment of Lender's ability to meet its commitments to third parties;

(2) it is extremely difficult and impractical to ascertain the extent of such losses, risks, and damages;

(3) the formula for calculating the Prepayment Premium represents a reasonable estimate of the losses, risks, and damages Lender will incur as a result of a prepayment; and

(4) the provisions regarding the Prepayment Premium contained in this Loan Agreement are a material part of the consideration for the Mortgage Loan, and that the terms of the Mortgage Loan are in other respects more favorable to Borrower as a result of Borrower's voluntary agreement to such prepayment provisions.

ARTICLE 3 - PERSONAL LIABILITY

Section 3.01 Non-Recourse Mortgage Loan; Exceptions.

Except as otherwise provided in this Article 3 or in any other Loan Document, none of Borrower, or any director, officer, manager, member, partner, shareholder, trustee, trust beneficiary, or employee of Borrower, shall have personal liability under this Loan Agreement or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of such Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against Guarantor under any Loan Document.

Section 3.02 Personal Liability of Borrower (Exceptions to Non-Recourse Provision).

(a) Personal Liability Based on Lender's Loss.

Borrower shall be personally liable to Lender for the repayment of the portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of, subject to any notice and cure period, if any:

(1) failure to pay as directed by Lender upon demand after an Event of Default (to the extent actually received by Borrower):

(A) all Rents to which Lender is entitled under the Loan Documents; and

(B) the amount of all security deposits then held or thereafter collected by Borrower from tenants and not properly applied pursuant to the applicable Leases;

(2) failure to maintain all insurance policies required by the Loan Documents, except to the extent Lender has the obligation to pay the premiums pursuant to Section 12.03(c);

(3) failure to apply all insurance proceeds received by Borrower or any amounts received by Borrower in connection with a Condemnation Action, as required by the Loan Documents;

(4) failure to comply with any provision of this Loan Agreement or any other Loan Document relating to the delivery of books and records, statements, schedules, and reports;

(5) except to the extent directed otherwise by Lender pursuant to Section 3.02(a)(1), failure to apply Rents to the ordinary and necessary expenses of owning and operating the Mortgaged Property and Debt Service Amounts, as and when each is due and payable, except that Borrower will not be personally liable with respect to Rents that are distributed by Borrower in any calendar year if Borrower has paid all ordinary and necessary expenses of owning and operating the Mortgaged Property and Debt Service Amounts for such calendar year;

(6) waste or abandonment of the Mortgaged Property;

(7) grossly negligent or reckless unintentional material misrepresentation or omission by Borrower, Guarantor, Key Principal, or any officer, director, partner, manager, member, shareholder, or trustee of Borrower, Guarantor, or Key Principal in connection with ongoing financial or other reporting required by the Loan Documents, or any request for action or consent by Lender; or

(8) any claims, actions, suits or proceedings arising from any tenant opportunity to purchase act applicable to and affecting the Mortgaged Property, including costs, attorneys' fees, and expenses incurred in connection with such claims, actions, suits or proceedings.

Notwithstanding the foregoing, Borrower shall not have personal liability under clauses (1), (3), or (5) above to the extent that Borrower lacks the legal right to direct the disbursement of the applicable funds due to an involuntary Bankruptcy Event that occurs without the consent, encouragement, or active participation of Borrower, Guarantor, Key Principal, or any Borrower Affiliate.

(b) Full Personal Liability for Mortgage Loan.

Borrower shall be personally liable to Lender for the repayment of all of the Indebtedness, and the Mortgage Loan shall be fully recourse to Borrower, upon the occurrence of any of the following:

(1) failure by Borrower to comply with the single-asset entity requirements of Section 4.02(d) of this Loan Agreement;

(2) a Transfer (other than a conveyance of the Mortgaged Property at a Foreclosure Event pursuant to the Security Instrument and this Loan Agreement) that is not permitted under this Loan Agreement or any other Loan Document;

(3) the occurrence of any Bankruptcy Event (other than an acknowledgement in writing as described in clause (b) of the definition of "Bankruptcy Event"); provided, however, in the event of an involuntary Bankruptcy Event, Borrower shall only be personally liable if such involuntary Bankruptcy Event occurs with the consent, encouragement, or active participation of Borrower, Guarantor, Key Principal, or any Borrower Affiliate;

(4) fraud, written material misrepresentation, or material omission by Borrower, Guarantor, Key Principal, or any officer, director, partner, manager, member, shareholder, or trustee of Borrower, Guarantor, or Key Principal in connection with any application for or creation of the Indebtedness;

(5) fraud, written intentional material misrepresentation, or intentional material omission by Borrower, Guarantor, Key Principal, or any officer, director, partner, manager, member, shareholder, or trustee of Borrower, Guarantor, or Key Principal in connection with ongoing financial or other reporting required by the Loan Documents, or any request for action or consent by Lender; or

(6) a Division that is not permitted under this Loan Agreement or any other Loan Document.

Section 3.03 Personal Liability for Indemnity Obligations.

Borrower shall be personally and fully liable to Lender for Borrower's indemnity obligations under Section 13.01(e) of this Loan Agreement, the Environmental Indemnity Agreement, and any other express indemnity obligations provided by Borrower under any Loan Document. Borrower's liability for such indemnity obligations shall not be limited by the amount of the Indebtedness, the repayment of the Indebtedness, or otherwise, provided that Borrower's liability for such indemnities shall not include any loss caused by the gross negligence or willful misconduct of Lender as determined by a court of competent jurisdiction pursuant to a final non-appealable court order.

Section 3.04 Lender's Right to Forego Rights Against Mortgaged Property.

To the extent that Borrower has personal liability under this Loan Agreement or any other Loan Document, Lender may exercise its rights against Borrower personally to the fullest extent permitted by applicable law without regard to whether Lender has exercised any rights against the Mortgaged Property, the UCC Collateral, or any other security, or pursued any rights against Guarantor, or pursued any other rights available to Lender under this Loan Agreement, any other Loan Document, or applicable law. For purposes of this Section 3.04 only, the term "Mortgaged Property" shall not include any funds that have been applied by Borrower as required or permitted by this Loan Agreement prior to the occurrence of an Event of Default, or that Borrower was unable to apply as required or permitted by this Loan Agreement because of a Bankruptcy Event. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Article 3, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

ARTICLE 4 - BORROWER STATUS

Section 4.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 4.01 are made as of the Effective Date and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Due Organization and Qualification; Organizational Agreements.

(1) Borrower is validly existing and qualified to transact business, and in good standing in:

(A) the state in which it is formed or organized;

(B) the Property Jurisdiction; and

(C) each other jurisdiction that qualification or good standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to be so qualified or in good standing would

adversely affect Borrower's operation of the Mortgaged Property or the validity, enforceability or the ability of Borrower to perform its obligations under this Loan Agreement or any other Loan Document.

(2) True, correct and complete organizational documents of Borrower, Guarantor and Key Principal have been delivered to Lender prior to the Effective Date. The Ownership Interests Schedule attached hereto as Schedule 8 to this Loan Agreement sets forth:

(A) the direct owners of Borrower and their respective interests;

(B) the indirect owners (and any non-member managers) of Borrower that Control Borrower and their respective interests (excluding any Publicly-Held Corporations or Publicly-Held Trusts); and

(C) the indirect owners of Borrower that hold twenty-five percent (25%) or more of the ownership interests in Borrower and their respective interests (excluding any Publicly-Held Corporations or Publicly-Held Trusts).

(b) Location.

Borrower's General Business Address is Borrower's principal place of business and principal office.

(c) Power and Authority.

Borrower has the requisite power and authority:

(1) to own the Mortgaged Property and to carry on its business as now conducted and as contemplated to be conducted in connection with the performance of its obligations under this Loan Agreement and under the other Loan Documents to which it is a party; and

(2) to execute and deliver this Loan Agreement and the other Loan Documents to which it is a party, and to carry out the transactions contemplated by this Loan Agreement and the other Loan Documents to which it is a party.

(d) Due Authorization.

The execution, delivery, and performance of this Loan Agreement and the other Loan Documents to which it is a party have been duly authorized by all necessary action and proceedings by or on behalf of Borrower, and no further approvals or filings of any kind, including any approval of or filing with any Governmental Authority, are required by or on behalf of Borrower as a condition to the valid execution, delivery, and performance by Borrower of this Loan Agreement or any of the other Loan Documents to which it is a party, except filings required to perfect and

maintain the liens to be granted under the Loan Documents and routine filings to maintain good standing and its existence.

(e) Valid and Binding Obligations.

This Loan Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by Borrower and constitute the legal, valid, and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as such enforceability may be limited by applicable Insolvency Laws or by the exercise of discretion by any court.

(f) Effect of Mortgage Loan on Borrower's Financial Condition.

The Mortgage Loan will not render Borrower Insolvent. Borrower has sufficient working capital, including proceeds from the Mortgage Loan, cash flow from the Mortgaged Property, or other sources, not only to adequately maintain the Mortgaged Property, but also to pay all of Borrower's outstanding debts as they come due, including all Debt Service Amounts, exclusive of Borrower's ability to refinance or pay in full the Mortgage Loan on the Maturity Date. In connection with the execution and delivery of this Loan Agreement and the other Loan Documents (and the delivery to, or for the benefit of, Lender of any collateral contemplated thereunder), and the incurrence by Borrower of the obligations under this Loan Agreement and the other Loan Documents, Borrower did not receive less than reasonably equivalent value in exchange for the incurrence of the obligations of Borrower under this Loan Agreement and the other Loan Documents.

(g) Economic Sanctions, Anti-Money Laundering, and Anti-Corruption.

(1) None of Borrower, Guarantor, or Key Principal, or to Borrower's knowledge, any Person Controlling Borrower, Guarantor, or Key Principal, or any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, is in violation of any applicable civil or criminal laws or regulations, including those requiring internal controls, intended to prohibit, prevent, or regulate money laundering, drug trafficking, terrorism, or corruption, of the United States and the jurisdiction where the Mortgaged Property is located or where the Person resides, is domiciled, or has its principal place of business.

(2) None of Borrower, Guarantor, or Key Principal, or to Borrower's knowledge, any Person Controlling Borrower, Guarantor, or Key Principal, or any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, is a Person:

(A) against whom proceedings are pending for any alleged violation of any laws described in Section 4.01(g)(1);

(B) that has been convicted of any violation of, has been subject to civil penalties or Economic Sanctions pursuant to, or had any of its property seized or forfeited under, any laws described in Section 4.01(g)(1);

(C) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law; or

(D) that is deemed a Sanctioned Person.

(3) Borrower, Guarantor, and Key Principal are in compliance with all applicable Economic Sanctions laws and regulations.

(h) Borrower Single Asset Status.

Borrower:

(1) does not own or lease any real property, personal property, or assets other than the Mortgaged Property;

(2) does not own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Mortgaged Property;

(3) has no material financial obligation under or secured by any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, or other agreement or instrument to which Borrower is a party, or by which Borrower is otherwise bound, or to which the Mortgaged Property is subject or by which it is otherwise encumbered, other than:

(A) unsecured trade payables incurred in the ordinary course of the operation of the Mortgaged Property (exclusive of amounts for rehabilitation, restoration, repairs, or replacements of the Mortgaged Property) that (i) are not evidenced by a promissory note, (ii) are payable within sixty (60) days of the date incurred, and (iii) as of the Effective Date, do not exceed, in the aggregate, four percent (4%) of the original principal balance of the Mortgage Loan;

(B) if the Security Instrument grants a lien on a leasehold estate, Borrower's obligations as lessee under the ground lease creating such leasehold estate;

(C) obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents; and

(D) obligations under the Permitted Encumbrances;

(4) has maintained its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person (unless Borrower's assets have been included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

(5) has not commingled its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

(6) has been adequately capitalized in light of its contemplated business operations;

(7) has not assumed, guaranteed, or pledged its assets to secure the liabilities or obligations of any other Person (except in connection with the Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement or similar instrument), or held out its credit as being available to satisfy the obligations of any other Person;

(8) has not made loans or advances to any other Person;

(9) has not entered into, and is not a party to, any transaction with any Borrower Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Borrower Affiliate than would be obtained in a comparable arm's length transaction with an unrelated third party; and

(10) has not sought and has no plans to Divide at any time during the Loan Term.

(i) No Bankruptcies or Judgments.

None of Borrower, Guarantor, or Key Principal, or to Borrower's knowledge, any Person Controlling Borrower, Guarantor, or Key Principal, or any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, is currently:

(1) the subject of or a party to any completed or pending bankruptcy, reorganization, including any receivership or other insolvency proceeding;

(2) preparing or intending to be the subject of a Bankruptcy Event;

(3) the subject of any judgment unsatisfied of record or docketed in any court;

or

(4) Insolvent.

(j) No Actions or Litigation.

(1) Other than residential eviction actions in the ordinary course of business, there are no claims, actions, suits, or proceedings at law or in equity by or before any Governmental Authority now pending against or, to Borrower's knowledge, threatened against or affecting Borrower or the Mortgaged Property not otherwise covered by insurance (except claims, actions, suits, or proceedings regarding fair housing, anti-discrimination, equal opportunity, or any tenant opportunity to purchase act applicable to and affecting the Mortgaged Property, which shall always be disclosed); and

(2) there are no claims, actions, suits, or proceedings at law or in equity by or before any Governmental Authority now pending or, to Borrower's knowledge, threatened against or affecting Guarantor or Key Principal, which claims, actions, suits, or proceedings, if adversely determined (individually or in the aggregate) reasonably would be expected to materially adversely affect the financial condition or business of Borrower, Guarantor, or Key Principal or the condition, operation, or ownership of the Mortgaged Property (except claims, actions, suits, or proceedings regarding fair housing, anti-discrimination, or equal opportunity, which shall always be deemed material).

(k) Payment of Taxes, Assessments, and Other Charges.

Borrower confirms that:

(1) it has filed all federal, state, county, and municipal tax returns and reports required to have been filed by Borrower;

(2) it has paid, before any fine, penalty interest, lien, or costs may be added thereto, all taxes, governmental charges, and assessments due and payable with respect to such returns and reports;

(3) there is no controversy or objection pending, or to the knowledge of Borrower, threatened in respect of any tax returns of Borrower; and

(4) it has made adequate reserves on its books and records for all taxes that have accrued but which are not yet due and payable.

(l) Not a Foreign Person.

Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

(m) ERISA.

Borrower represents and warrants that:

- (1) Borrower is not an Employee Benefit Plan;
- (2) no asset of Borrower constitutes “plan assets” (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation Section 2510.3-101) of an Employee Benefit Plan;
- (3) no asset of Borrower is subject to any laws of any Governmental Authority governing the assets of an Employee Benefit Plan; and
- (4) neither Borrower nor any ERISA Affiliate is subject to any obligation or liability with respect to any ERISA Plan.

(n) Default Under Other Obligations.

(1) The execution, delivery, and performance of the obligations imposed on Borrower under this Loan Agreement and the Loan Documents to which it is a party will not cause Borrower to be in default under the provisions of any agreement, judgment, or order to which Borrower is a party or by which Borrower is bound.

(2) None of Borrower, Guarantor, or Key Principal is in default under any obligation to Lender.

(o) Prohibited Person.

None of Borrower, Guarantor, or Key Principal is a Prohibited Person. To Borrower’s knowledge, none of the following is a Prohibited Person:

- (1) Any Person Controlling Borrower, Guarantor, or Key Principal; or
- (2) Any Person Controlled by and having a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal.

(p) No Contravention.

None of the (1) execution and delivery of this Loan Agreement and the other Loan Documents to which Borrower is a party, (2) fulfillment of or compliance with the terms and conditions of this Loan Agreement and the other Loan Documents to which Borrower is a party, or (3) performance of the obligations of Borrower under this Loan Agreement and the other Loan Documents does or will conflict with or result in any breach or violation of, or constitute a default under, any of the terms, conditions, or provisions of Borrower’s organizational documents, or any indenture, existing agreement, or other instrument to which Borrower is a party or to which Borrower, the Mortgaged Property, or other assets of Borrower are subject.

(q) Lockbox Arrangement.

Borrower is not party to any type of lockbox agreement or similar cash management arrangement that has not been approved by Lender in writing, and no direct or indirect owner of Borrower is party to any type of lockbox agreement or similar cash management arrangement with respect to Rents or other income from the Mortgaged Property that has not been approved by Lender in writing.

Section 4.02 Covenants.

(a) Maintenance of Existence; Organizational Documents.

Borrower shall maintain its existence, its entity status, franchises, rights, and privileges under the laws of the state of its formation or organization (as applicable). Borrower shall continue to be duly qualified and in good standing to transact business in each jurisdiction in which qualification or standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to do so would adversely affect Borrower's operation of the Mortgaged Property or the validity, enforceability, or the ability of Borrower to perform its obligations under this Loan Agreement or any other Loan Document. Neither Borrower nor any partner, member, manager, officer, or director of Borrower shall:

- (1) make or allow any material change to the organizational documents or organizational structure of Borrower, including changes relating to the Control of Borrower, or
- (2) file any action, complaint, petition, or other claim to:
 - (A) divide, partition, or otherwise compel the sale of the Mortgaged Property, or
 - (B) otherwise change the Control of Borrower.

(b) Economic Sanctions, Anti-Money Laundering, and Anti-Corruption.

- (1) Borrower, Guarantor, Key Principal, and any Person Controlling Borrower, Guarantor, or Key Principal, or any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal shall remain in compliance with any applicable civil or criminal laws or regulations (including those requiring internal controls) intended to prohibit, prevent, or regulate money laundering, drug trafficking, terrorism, or corruption, of the United States and the jurisdiction where the Mortgaged Property is located or where the Person resides, is domiciled, or has its principal place of business.
- (2) At no time shall Borrower, Guarantor, or Key Principal, or any Person Controlling Borrower, Guarantor, or Key Principal, or any Person Controlled by Borrower,

Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, be a Person:

(A) against whom proceedings are pending for any alleged violation of any laws described in Section 4.02(b)(1);

(B) that has been convicted of any violation of, has been subject to civil penalties or Economic Sanctions pursuant to, or had any of its property seized or forfeited under, any laws described in Section 4.02(b)(1);

(C) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law; or

(D) that is deemed a Sanctioned Person.

(3) Borrower, Guarantor, and Key Principal shall at all times remain in compliance with any applicable Economic Sanctions laws and regulations.

(c) Payment of Taxes, Assessments, and Other Charges.

Borrower shall file all federal, state, county, and municipal tax returns and reports required to be filed by Borrower and shall pay, before any fine, penalty interest, or cost may be added thereto, all taxes payable with respect to such returns and reports.

(d) Borrower Single Asset Status.

Until the Indebtedness is fully paid, Borrower:

(1) shall not acquire or lease any real property, personal property, or assets other than the Mortgaged Property;

(2) shall not acquire, own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Mortgaged Property;

(3) shall not commingle its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

(4) shall maintain its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person (unless Borrower's assets are

included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

(5) shall have no material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, other agreement or instrument to which Borrower is a party or by which Borrower is otherwise bound, or to which the Mortgaged Property is subject or by which it is otherwise encumbered, other than:

(A) unsecured trade payables incurred in the ordinary course of the operation of the Mortgaged Property (exclusive of amounts (i) to be paid out of the Replacement Reserve Account or Repairs Escrow Account, or (ii) for rehabilitation, restoration, repairs, or replacements of the Mortgaged Property or otherwise approved by Lender) so long as such trade payables **(1)** are not evidenced by a promissory note, **(2)** are payable within sixty (60) days of the date incurred, and **(3)** as of any date, do not exceed, in the aggregate, two percent (2%) of the original principal balance of the Mortgage Loan; provided, however, that otherwise compliant outstanding trade payables may exceed two percent (2%) up to an aggregate amount of four percent (4%) of the original principal balance of the Mortgage Loan for a period (beginning on or after the Effective Date) not to exceed ninety (90) consecutive days;

(B) if the Security Instrument grants a lien on a leasehold estate, Borrower's obligations as lessee under the ground lease creating such leasehold estate;

(C) obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents; and

(D) obligations under the Permitted Encumbrances;

(6) shall not assume, guaranty, or pledge its assets to secure the liabilities or obligations of any other Person (except in connection with the Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement or similar instrument) or hold out its credit as being available to satisfy the obligations of any other Person;

(7) shall not make loans or advances to any other Person;

(8) shall not enter into, or become a party to, any transaction with any Borrower Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Borrower Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party; or

(9) shall not Divide.

(e) ERISA.

Borrower covenants that:

(1) no asset of Borrower shall constitute “plan assets” (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation Section 2510.3-101) of an Employee Benefit Plan;

(2) no asset of Borrower shall be subject to the laws of any Governmental Authority governing the assets of an Employee Benefit Plan; and

(3) neither Borrower nor any ERISA Affiliate shall incur any obligation or liability with respect to any ERISA Plan.

(f) Notice of Litigation or Insolvency.

Borrower shall give immediate written notice to Lender of any claims, actions, suits, or proceedings at law or in equity (including any insolvency, bankruptcy, or receivership proceeding) by or before any Governmental Authority pending or, to Borrower’s knowledge, threatened against or affecting Borrower, Guarantor, Key Principal, or the Mortgaged Property, which claims, actions, suits, or proceedings, if adversely determined reasonably would be expected to materially adversely affect the financial condition or business of Borrower, Guarantor, or Key Principal, or the condition, operation, or ownership of the Mortgaged Property (including any claims, actions, suits, or proceedings regarding fair housing, anti-discrimination, equal opportunity, or any tenant opportunity to purchase act applicable to and affecting the Mortgaged Property, which shall always be deemed material).

(g) Payment of Costs, Fees, and Expenses.

In addition to the payments specified in this Loan Agreement, Borrower shall pay, on demand, all of Lender’s out-of-pocket fees, costs, charges, or expenses (including the reasonable fees and expenses of attorneys, accountants, and other experts) incurred by Lender in connection with:

(1) any amendment to, or consent, or waiver required under, this Loan Agreement or any of the Loan Documents (whether or not any such amendment, consent, or waiver is entered into);

(2) defending or participating in any litigation arising from actions by third parties and brought against or involving Lender with respect to:

(A) the Mortgaged Property;

(B) any event, act, condition, or circumstance in connection with the Mortgaged Property; or

(C) the relationship between or among Lender, Borrower, Key Principal, and Guarantor in connection with this Loan Agreement or any of the transactions contemplated by this Loan Agreement;

(3) the administration or enforcement of, or preservation of rights or remedies under, this Loan Agreement or any other Loan Documents including or in connection with any litigation or appeals, any Foreclosure Event or other disposition of any collateral granted pursuant to the Loan Documents; and

(4) any Bankruptcy Event or Guarantor Bankruptcy Event.

(h) Restrictions on Distributions.

No distributions or dividends of any nature with respect to Rents or other income from the Mortgaged Property shall be made to any Person having a direct ownership interest in Borrower if an Event of Default has occurred and is continuing.

(i) Lockbox Arrangement.

Borrower shall not enter into any type of lockbox agreement or similar cash management arrangement that has not been approved by Lender in writing, and no direct or indirect owner of Borrower shall enter into any type of lockbox agreement or similar cash management arrangement with respect to Rents or other income from the Mortgaged Property that has not been approved by Lender in writing. Lender's approval of any such cash management arrangement may be conditioned upon requiring Borrower to enter into a lockbox agreement or similar cash management arrangement with Lender in form and substance acceptable to Lender with regard to Rents and other income from the Mortgaged Property.

ARTICLE 5 - THE MORTGAGE LOAN

Section 5.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 5.01 are made as of the Effective Date and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Receipt and Review of Loan Documents.

Borrower has received and reviewed this Loan Agreement and all of the other Loan Documents.

(b) No Default.

No default exists under any of the Loan Documents.

(c) No Defenses.

The Loan Documents are not currently subject to any right of rescission, set-off, counterclaim, or defense by either Borrower or Guarantor, including the defense of usury, and neither Borrower nor Guarantor has asserted any right of rescission, set-off, counterclaim, or defense with respect thereto.

(d) Loan Document Taxes.

All mortgage, mortgage recording, stamp, intangible, or any other similar taxes required to be paid by any Person under applicable law currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection, or enforcement of any of the Loan Documents, including the Security Instrument, have been paid or will be paid in the ordinary course of the closing of the Mortgage Loan.

Section 5.02 Covenants.

(a) Ratification of Covenants; Estoppels; Certifications.

Borrower shall:

(1) promptly notify Lender in writing upon any violation of any covenant set forth in any Loan Document of which Borrower has notice or knowledge; provided, however, any such written notice by Borrower to Lender shall not relieve Borrower of, or result in a waiver of, any obligation under this Loan Agreement or any other Loan Document; and

(2) within ten (10) days after a request from Lender, provide a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement:

(A) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications);

(B) the unpaid principal balance of the Mortgage Loan;

(C) the date to which interest on the Mortgage Loan has been paid;

(D) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Loan Agreement or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail);

(E) whether or not there are then-existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and

(F) any additional facts reasonably requested in writing by Lender.

(b) Further Assurances.

(1) Other Documents As Lender May Require.

Within ten (10) days after request by Lender, Borrower shall, subject to Section 5.02(d) below, execute, acknowledge, deliver, and, if necessary, file or record, at its cost and expense, all further acts, deeds, conveyances, assignments, financing statements, transfers, documents, agreements, assurances, and such other instruments as Lender may reasonably require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Loan Agreement and the other Loan Documents.

(2) Corrective Actions.

Within ten (10) days after request by Lender, Borrower shall provide, or cause to be provided, to Lender, at Borrower's cost and expense, such further documentation or information reasonably deemed necessary or appropriate by Lender in the exercise of its rights under the related commitment letter between Borrower and Lender or to correct patent mistakes in the Loan Documents, the Title Policy, or the funding of the Mortgage Loan.

(3) Compliance with Investor Requirements.

Without limiting the generality of subsections (1) and (2) above, Borrower shall, subject to Section 5.02(d) below, take all reasonable actions necessary to comply with the requirements of Lender to enable Lender to sell any MBS backed by the Mortgage Loan or create or maintain the expected federal income tax treatment of any MBS trust that directly or indirectly holds the Mortgage Loan and issues MBS as a Fixed Investment Trust or REMIC, as the case may be, within the meaning of the Treasury Regulations.

(c) Sale of Mortgage Loan.

Borrower shall, subject to Section 5.02(d) below:

(1) comply with the reasonable requirements of Lender or any Investor of the Mortgage Loan or provide, or cause to be provided, to Lender or any Investor of the Mortgage Loan within ten (10) days after the request, at Borrower's cost and expense, such further documentation or information as Lender or Investor may reasonably require, in order to:

(A) enable Lender to sell the Mortgage Loan or participation interests therein to such Investor;

(B) enable Lender to obtain a refund of any commitment fee from any such Investor;

(C) enable any such Investor to further sell or securitize the Mortgage Loan; or

(D) create or maintain the expected federal income tax treatment of any MBS trust that directly or indirectly holds the Mortgage Loan and issues MBS as a Fixed Investment Trust or REMIC, as the case may be, within the meaning of the Treasury Regulations;

(2) ratify and affirm in writing the representations and warranties set forth in any Loan Document as of such date specified by Lender modified as necessary to reflect changes that have occurred subsequent to the Effective Date;

(3) confirm that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Loan Agreement or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); and

(4) execute and deliver to Lender and/or any Investor such other documentation, including any amendments, corrections, deletions, or additions to this Loan Agreement or other Loan Document(s) as is reasonably required by Lender or such Investor.

(d) Limitations on Further Acts of Borrower.

Nothing in Section 5.02(b) and Section 5.02(c) shall require Borrower to do any further act that has the effect of:

(1) changing the economic terms of the Mortgage Loan set forth in the related commitment letter between Borrower and Lender;

(2) imposing on Borrower or Guarantor greater personal liability under the Loan Documents than that set forth in the related commitment letter between Borrower and Lender; or

(3) materially changing the rights and obligations of Borrower or Guarantor under the commitment letter.

(e) Financing Statements; Record Searches.

(1) Borrower shall pay all costs and expenses associated with:

(A) any filing or recording of any financing statements, including all continuation statements, termination statements, and amendments or any other filings related to security interests in or liens on collateral; and

(B) any record searches for financing statements that Lender may require.

(2) Borrower hereby authorizes Lender to file any financing statements, continuation statements, termination statements, and amendments (including an “all assets” or “all personal property” collateral description or words of similar import) in form and substance as Lender may require in order to protect and preserve Lender’s lien priority and security interest in the Mortgaged Property (and to the extent Lender has filed any such financing statements, continuation statements, or amendments prior to the Effective Date, such filings by Lender are hereby authorized and ratified by Borrower).

(f) Loan Document Taxes.

Borrower shall pay, on demand, any transfer taxes, documentary taxes, assessments, or charges made by any Governmental Authority in connection with the execution, delivery, recordation, filing, registration, perfection, or enforcement of any of the Loan Documents or the Mortgage Loan.

ARTICLE 6 - PROPERTY USE, PRESERVATION, AND MAINTENANCE

Section 6.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 6.01 are made as of the Effective Date and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Compliance with Law; Permits and Licenses.

(1) To Borrower’s knowledge, all improvements to the Land and the use of the Mortgaged Property comply with all applicable laws, ordinances, statutes, rules, and regulations, including all applicable statutes, rules, and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing (including all applicable source of income laws, ordinances, statutes, rules and regulations), and rent control, and Borrower has no knowledge of any action or proceeding (or threatened action or proceeding) regarding noncompliance or nonconformity with any of the foregoing.

(2) To Borrower’s knowledge, there is no evidence of any illegal activities on the Mortgaged Property.

(3) To Borrower's knowledge, no permits or approvals from any Governmental Authority, other than those previously obtained and furnished to Lender, are necessary for the commencement and completion of the Repairs or Replacements, as applicable, other than those permits or approvals which will be timely obtained in the ordinary course of business.

(4) All required permits, licenses, and certificates to comply with all zoning and land use statutes, laws, ordinances, rules, and regulations, and all applicable health, fire, safety, and building codes, and for the lawful use and operation of the Mortgaged Property, including certificates of occupancy, apartment licenses, or the equivalent, have been obtained and are in full force and effect.

(5) No portion of the Mortgaged Property has been purchased with the proceeds of any illegal activity.

(6) All required rights, permissions, consents, and express irrevocable waivers from each tenant necessary to comply with all applicable privacy laws, to provide such tenant's personal data (including similar terms under applicable law) to Lender, sufficient to permit Lender to lawfully use and process such personal data for the purposes of servicing, enforcement, evaluation, reporting, auditing, loan selling or purchasing, securitization, compliance and risk analysis and assessments, and any other purpose identified in the Lender's privacy notice have been obtained and are in full force and effect.

(b) Property Characteristics.

(1) The Mortgaged Property contains at least:

(A) the Property Square Footage;

(B) the Total Parking Spaces; and

(C) the Total Residential Units.

(2) No part of the Land is included or assessed under or as part of another tax lot or parcel, and no part of any other property is included or assessed under or as part of the tax lot or parcels for the Land.

(c) Property Ownership.

Borrower is sole owner or ground lessee of the Mortgaged Property.

(d) Condition of the Mortgaged Property.

(1) Borrower has not made any claims, and to Borrower's knowledge, no claims have been made, against any contractor, engineer, architect, or other party with respect to

the construction or condition of the Mortgaged Property or the existence of any structural or other material defect therein; and

(2) neither the Land nor the Improvements have sustained any damage other than damage which has been fully repaired, or is fully insured and is being repaired in the ordinary course of business.

(e) Personal Property.

Borrower owns (or, to the extent disclosed on the Exceptions to Representations and Warranties Schedule, leases) all of the Personal Property and all of the Personalty (as defined in the UCC) that is material to and is used in connection with the management, ownership, and operation of the Mortgaged Property.

Section 6.02 Covenants.

(a) Use of Property.

From and after the Effective Date, Borrower shall not, unless required by applicable law or Governmental Authority:

- (1) change the use of all or any part of the Mortgaged Property;
- (2) convert any individual dwelling units or common areas to commercial use, or convert any common area or commercial use to individual dwelling units;
- (3) initiate or acquiesce in a change in the zoning classification of the Land;
- (4) establish any condominium or cooperative regime with respect to the Mortgaged Property;
- (5) subdivide the Land; or
- (6) suffer, permit, or initiate the joint assessment of any Mortgaged Property with any other real property constituting a tax lot separate from such Mortgaged Property which could cause the part of the Land to be included or assessed under or as part of another tax lot or parcel, or any part of any other property to be included or assessed under or as part of the tax lot or parcels for the Land.

(b) Property Maintenance.

Borrower shall:

- (1) pay the expenses of operating, managing, maintaining, and repairing the Mortgaged Property (including insurance premiums, utilities, Repairs, and Replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added;

(2) keep the Mortgaged Property in good repair and marketable condition (ordinary wear and tear excepted) (including the replacement of Personalty and Fixtures with items of equal or better function and quality) and subject to Section 9.03(b)(3) and Section 10.03(d) restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition or condition immediately prior to the damage (if improved after the Effective Date), whether or not any insurance proceeds received upon an event of loss or any amounts received in connection with a Condemnation Action are available to cover any costs of such restoration or repair;

(3) commence all Required Repairs, Additional Lender Repairs, and Additional Lender Replacements as follows:

(A) with respect to any Required Repairs, promptly following the Effective Date (subject to Force Majeure, if applicable), in accordance with the timelines set forth on the Required Repair Schedule, or if no timelines are provided, as soon as practical following the Effective Date;

(B) with respect to Additional Lender Repairs, in the event that Lender determines that Additional Lender Repairs are necessary from time to time or pursuant to Section 6.03(c), promptly following Lender's written notice of such Additional Lender Repairs (subject to Force Majeure, if applicable), commence any such Additional Lender Repairs in accordance with Lender's timelines, or if no timelines are provided, as soon as practical; and

(C) with respect to Additional Lender Replacements, in the event that Lender determines that Additional Lender Replacements are necessary from time to time or pursuant to Section 6.03(c), promptly following Lender's written notice of such Additional Lender Replacements (subject to Force Majeure, if applicable), commence any such Additional Lender Replacements in accordance with Lender's timelines, or if no timelines are provided, as soon as practical;

(4) make, construct, install, diligently perform, and complete all Replacements, Repairs, Restoration, and any other work permitted under the Loan Documents:

(A) in a good and workmanlike manner as soon as practicable following the commencement thereof, free and clear of any Liens, including mechanics' or materialmen's liens and encumbrances (except Permitted Encumbrances and mechanics' or materialmen's liens which attach automatically under the laws of any Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Borrower is not delinquent in the payment for any such work or materials);

(B) in accordance with all applicable laws, ordinances, rules, and regulations of any Governmental Authority, including applicable building codes, special use permits, and environmental regulations;

(C) in accordance with all applicable insurance and bonding requirements; and

(D) within all timeframes required by Lender, and Borrower acknowledges that it shall be an Event of Default if Borrower abandons or ceases work on any Repair at any time prior to the completion of the Repairs for a period of longer than twenty (20) days (except when Force Majeure exists and Borrower is diligently pursuing the reinstitution of such work, provided, however, any such abandonment or cessation shall not in any event allow the Repair to be completed after the Completion Period, subject to Force Majeure);

(5) subject to the terms of Section 6.03(a), provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing;

(6) give written notice to Lender of, and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security for the Mortgage Loan, or Lender's rights under this Loan Agreement; and

(7) upon Lender's written request, submit to Lender any contracts or work orders described in Section 13.02(b).

(c) Property Preservation.

Borrower shall:

(1) not commit waste or abandon or (ordinary wear and tear excepted) permit impairment or deterioration of the Mortgaged Property;

(2) not (or otherwise permit any other Person to) demolish, make any change in the unit mix, otherwise alter the Mortgaged Property or any part of the Mortgaged Property, or remove any Personalty or Fixtures from the Mortgaged Property, except for: (A) alterations required in connection with Repairs, Replacements, or Restoration; or (B) the replacement of tangible Personalty or Fixtures, provided (i) such Personalty or Fixtures are replaced with items of equal or better function and quality, and (ii) such replacement does not result in any disruption in occupancy (other than in connection with the routine re-leasing of units);

(3) not engage in or knowingly permit, and shall take appropriate measures to prevent and abate or cease and desist, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in

forfeiture of the Land or otherwise materially impair the lien created by the Security Instrument or Lender's interest in the Mortgaged Property;

(4) not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage required by this Loan Agreement; or

(5) not subject the Mortgaged Property to any voluntary, elective, or non-compulsory tax lien or assessment (or opt in to any voluntary, elective, or non-compulsory special tax district or similar regime).

(d) Property Inspections.

Borrower shall:

(1) permit Lender, its agents, representatives, and designees to enter upon and inspect the Mortgaged Property (including in connection with any Replacement, Repair, or Restoration, or to conduct any Environmental Inspection pursuant to the Environmental Indemnity Agreement), and shall cooperate and provide access to all areas of the Mortgaged Property (subject to the rights of tenants under the Leases):

(A) during normal business hours;

(B) at such other reasonable time upon reasonable notice of not less than one (1) Business Day;

(C) at any time when exigent circumstances exist; or

(D) at any time after an Event of Default has occurred and is continuing;
and

(2) pay for reasonable costs or expenses incurred by Lender or its agents in connection with any such inspections.

(e) Compliance with Laws.

Borrower shall:

(1) comply with all laws, ordinances, statutes, rules, and regulations of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, statutes, rules and regulations, and covenants pertaining to construction of improvements on the Land, fair housing (including all applicable source of income laws, ordinances, statutes, rules and regulations), and requirements for equal opportunity, anti-discrimination, and Leases;

(2) procure and maintain all required permits, licenses, charters, registrations, and certificates necessary to comply with all zoning and land use statutes, laws, ordinances,

rules and regulations, and all applicable health, fire, safety, and building codes and for the lawful use and operation of the Mortgaged Property, including certificates of occupancy, apartment licenses, or the equivalent;

(3) comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits;

(4) at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 6.02(e);

(5) promptly after receipt or notification thereof, provide Lender copies of any building code or zoning violation from any Governmental Authority with respect to the Mortgaged Property;

(6) cooperate fully with Lender with respect to any proceedings before any court, board, or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings; and

(7) procure and maintain all required rights, permissions, consents, and express irrevocable waivers from each tenant necessary to comply with all applicable privacy laws, to provide such tenant's personal data (including similar terms under applicable law) to Lender, sufficient to permit Lender to lawfully use and process such personal data for the purposes of servicing, enforcement, evaluation, reporting, auditing, loan selling or purchasing, securitization, compliance and risk analysis and assessments, and any other purpose identified in the Lender's privacy policy as amended from time to time.

Section 6.03 Mortgage Loan Administration Matters Regarding the Property.

(a) Property Management.

From and after the Effective Date, each property manager and each property management agreement must be approved by Lender. If, in connection with the making of the Mortgage Loan, or at any later date, Lender waives in writing the requirement that Borrower enter into a written contract for management of the Mortgaged Property, and Borrower later elects to enter into a written contract or change the management of the Mortgaged Property, such new property manager or the property management agreement must be approved by Lender. As a condition to any approval by Lender, Lender may require that Borrower and such new property manager enter into a collateral assignment of the property management agreement on a form approved by Lender.

(b) Subordination of Fees to Affiliated Property Managers.

Any property manager that is a Borrower Affiliate to whom fees are payable for the management of the Mortgaged Property must enter into an assignment of management agreement

or other agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require.

(c) Property Condition Assessment.

If, in connection with any inspection of the Mortgaged Property, Lender determines that the condition of the Mortgaged Property has deteriorated (ordinary wear and tear excepted) since the Effective Date, Lender may obtain, at Borrower's expense, a property condition assessment of the Mortgaged Property. Lender's right to obtain a property condition assessment pursuant to this Section 6.03(c) shall be in addition to any other rights available to Lender under this Loan Agreement in connection with any such deterioration. Any such inspection or property condition assessment may result in Lender requiring Additional Lender Repairs or Additional Lender Replacements as further described in Section 13.02(a)(9)(B).

ARTICLE 7 - LEASES AND RENTS

Section 7.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 7.01 are made as of the Effective Date and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Prior Assignment of Rents.

Borrower has not executed any:

(1) prior assignment of Rents (other than an assignment of Rents securing prior indebtedness that has been paid off and discharged or will be paid off and discharged with the proceeds of the Mortgage Loan); or

(2) instrument which would prevent Lender from exercising its rights under this Loan Agreement, the Security Instrument, or any other Loan Document.

(b) Prepaid Rents.

Borrower has not accepted, and does not expect to receive prepayment of, any Rents for more than two (2) months prior to the due dates of such Rents.

Section 7.02 Covenants.

(a) Leases.

Borrower shall:

(1) comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits;

(2) surrender possession of the Mortgaged Property, including all Leases and all security deposits and prepaid Rents, immediately upon appointment of a receiver or Lender's entry upon and taking of possession and control of the Mortgaged Property, as applicable;

(3) require that all Residential Leases have initial terms of not less than six (6) months and not more than twenty-four (24) months (however, if customary in the applicable market for properties comparable to the Mortgaged Property, Residential Leases with terms of less than six (6) months (but in no case less than one (1) month) may be permitted with Lender's prior written consent), provided however, Short-Term Rentals (regardless of the duration of the term) shall not be permitted unless otherwise expressly approved by Lender in writing; and

(4) promptly provide Lender a copy of any non-Residential Lease at the time such Lease is executed (subject to Lender's consent rights for Material Commercial Leases in Section 7.02(b)) and, upon Lender's written request, promptly provide Lender a copy of any Residential Lease then in effect.

(b) Commercial Leases.

(1) With respect to Material Commercial Leases, Borrower shall not:

(A) enter into any Material Commercial Lease except with the prior written consent of Lender; or

(B) modify the terms of, extend, or terminate any Material Commercial Lease (including any Material Commercial Lease in existence on the Effective Date) without the prior written consent of Lender.

(2) With respect to any non-Material Commercial Lease, Borrower shall not:

(A) enter into any non-Material Commercial Lease that materially alters the use and type of operation of the premises subject to the Lease in effect as of the Effective Date or reduces the number or size of residential units at the Mortgaged Property; or

(B) modify the terms of any non-Material Commercial Lease (including any non-Material Commercial Lease in existence on the Effective Date) in any way that materially alters the use and type of operation of the premises subject to such non-Material Commercial Lease in effect as of the Effective Date, reduces the number or size of residential units at the Mortgaged Property, or results in such non-Material Commercial Lease being deemed a Material Commercial Lease.

(3) With respect to any Material Commercial Lease or non-Material Commercial Lease, Borrower shall cause the applicable tenant to provide within ten (10) days after a request by Borrower, a certificate of estoppel, or if not provided by tenant within such ten (10) day period, Borrower shall provide such certificate of estoppel, certifying:

(A) that such Material Commercial Lease or non-Material Commercial Lease is unmodified and in full force and effect (or if there have been modifications, that such Material Commercial Lease or non-Material Commercial Lease is in full force and effect as modified and stating the modifications);

(B) the term of the Lease including any extensions thereto;

(C) the dates to which the Rent and any other charges hereunder have been paid by tenant;

(D) the amount of any security deposit delivered to Borrower as landlord;

(E) whether or not Borrower is in default (or whether any event or condition exists which, with the passage of time, would constitute an event of default) under such Lease;

(F) the address to which notices to tenant should be sent; and

(G) any other information as may be reasonably required by Lender.

(c) Payment of Rents.

Borrower shall:

(1) pay to Lender upon demand all Rents after an Event of Default has occurred and is continuing;

(2) cooperate with Lender's efforts in connection with the assignment of Rents set forth in the Security Instrument; and

(3) not accept Rent under any Lease (whether a Residential Lease or a non-Residential Lease) for more than two (2) months in advance.

(d) Assignment of Rents.

Borrower shall not:

(1) perform any acts or execute any instrument that would prevent Lender from exercising its rights under the assignment of Rents granted in the Security Instrument or in any other Loan Document; or

(2) interfere with Lender's collection of such Rents.

(e) Further Assignments of Leases and Rents.

Borrower shall execute and deliver any further assignments of Leases and Rents as Lender may reasonably require.

(f) Options to Purchase by Tenants.

No Lease (whether a Residential Lease or a non-Residential Lease) shall contain an option to purchase, right of first refusal to purchase or right of first offer to purchase, except as required by applicable law.

Section 7.03 Mortgage Loan Administration Regarding Leases and Rents.

(a) Material Commercial Lease Requirements.

Each Material Commercial Lease, including any renewal or extension of any Material Commercial Lease in existence as of the Effective Date, shall provide, directly or pursuant to a subordination, non-disturbance and attornment agreement approved by Lender, that:

(1) the tenant shall, upon written notice from Lender after the occurrence of an Event of Default, pay all Rents payable under such Lease to Lender;

(2) such Lease and all rights of the tenant thereunder are expressly subordinate to the lien of the Security Instrument;

(3) the tenant shall attorn to Lender and any purchaser at a Foreclosure Event (such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a Foreclosure Event or by Lender in any manner);

(4) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a Foreclosure Event may from time to time request; and

(5) such Lease shall not terminate as a result of a Foreclosure Event unless Lender or any other purchaser at such Foreclosure Event affirmatively elects to terminate such Lease pursuant to the terms of the subordination, non-disturbance and attornment agreement.

(b) Residential Lease Form.

All Residential Leases entered into from and after the Effective Date shall be on forms substantially in the form approved by Lender.

ARTICLE 8 - BOOKS AND RECORDS; FINANCIAL REPORTING

Section 8.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 8.01 are made as of the Effective Date and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Financial Information.

All financial statements and data, including statements of cash flow and income and operating expenses, that have been delivered to Lender in respect of the Mortgaged Property:

- (1) are true, complete, and correct in all material respects; and
- (2) accurately represent the financial condition of the Mortgaged Property as of such date.

(b) No Change in Facts or Circumstances.

All information in the Loan Application and in all financial statements, rent rolls, reports, certificates, and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

Section 8.02 Covenants.

(a) Obligation to Maintain Accurate Books and Records.

Borrower shall keep and maintain at all times at the Mortgaged Property or the property management agent's offices or Borrower's General Business Address and, upon Lender's written request, shall make available to Lender:

- (1) complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property; and
- (2) copies of all written contracts, Leases, and other instruments that affect Borrower or the Mortgaged Property.

(b) Items to Furnish to Lender.

Borrower shall furnish to Lender the following, which shall be deemed certified by Borrower, as true, complete, and accurate, in all material respects as of the time of delivery and binding upon Borrower (or Guarantor, as applicable) and in such form and with such detail as Lender reasonably requires:

(1) within forty-five (45) days after the end of each first, second, and third calendar quarter, a statement of income and expenses for Borrower on a year-to-date basis as of the end of each calendar quarter;

(2) within one hundred twenty (120) days after the end of each calendar year:

(A) for any Borrower that is an entity, a statement of income and expenses and a statement of cash flows for such calendar year;

(B) for any Borrower that is an individual or a trust established for estate-planning purposes, a personal financial statement for such calendar year;

(C) when requested in writing by Lender, balance sheet(s) showing all assets and liabilities of Borrower and a statement of all contingent liabilities as of the end of such calendar year;

(D) if an energy consumption metric for the Mortgaged Property is required to be reported to any Governmental Authority, the Fannie Mae Energy Performance Metrics report, as generated by ENERGY STAR® Portfolio Manager, for the Mortgaged Property for such calendar year, which report must include the ENERGY STAR score, the Source Energy Use Intensity (EUI), the month and year ending period for such ENERGY STAR score and such Source Energy Use Intensity, and the ENERGY STAR Portfolio Manager Property Identification Number; provided that, if the Governmental Authority does not require the use of ENERGY STAR Portfolio Manager for the reporting of the energy consumption metric and Borrower does not use ENERGY STAR Portfolio Manager, then Borrower shall furnish to Lender the Source Energy Use Intensity for the Mortgaged Property for such calendar year;

(E) a written certification ratifying and affirming that:

(i) Borrower has taken no action in violation of Section 4.02(d) regarding its single asset status;

(ii) Borrower has received no notice of any building code violation, or if Borrower has received such notice, evidence of remediation;

(iii) Borrower has made no application for rezoning or received any notice that the Mortgaged Property has been or is being rezoned; and

(iv) Borrower has taken no action and has no knowledge of any action that would violate the provisions of Section 11.02(b)(1)(F) regarding liens encumbering the Mortgaged Property;

(F) an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification

numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;

(G) written confirmation of:

(i) any changes occurring since the Effective Date (or that no such changes have occurred since the Effective Date) in (1) the direct owners of Borrower, (2) the indirect owners (and any non-member managers) of Borrower that Control Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts), or (3) the indirect owners of Borrower that hold twenty-five percent (25%) or more of the ownership interests in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts), and their respective interests;

(ii) the names of all officers and directors of (1) any Borrower which is a corporation, (2) any corporation which is a general partner of any Borrower which is a partnership, or (3) any corporation which is the managing member or non-member manager of any Borrower which is a limited liability company; and

(iii) the names of all managers who are not members of (1) any Borrower which is a limited liability company, (2) any limited liability company which is a general partner of any Borrower which is a partnership, or (3) any limited liability company which is the managing member or non-member manager of any Borrower which is a limited liability company; and

(H) if not already provided pursuant to Section 8.02(b)(2)(A) above, a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each calendar year;

(3) within forty-five (45) days after the end of each first, second, and third calendar quarter and within one hundred twenty (120) days after the end of each calendar year, and at any other time upon Lender's written request, a rent schedule for the Mortgaged Property showing the name of each tenant and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;

(4) upon Lender's written request, thereafter furnish to Lender within ten (10) Business Days after the end of each month, until the end of the Loan Term, complete and accurate rent schedule data for the Mortgaged Property;

(5) within thirty (30) days after Lender's written request (but, absent an Event of Default, no more frequently than once in any six (6) month period):

(A) any item described in Section 8.02(b)(1) or Section 8.02(b)(2);

(B) a property management or leasing report for the Mortgaged Property, showing the number of rental applications received from tenants or prospective tenants and deposits received from tenants or prospective tenants, and any other information requested by Lender for such period as requested by Lender;

(C) a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each month for such period as requested by Lender;

(D) a statement of real estate owned directly or indirectly by Borrower and Guarantor for such period as requested by Lender;

(E) for any Guarantor:

(i) that is an entity, a statement of income and expenses and a statement of cash flows for the most recent available calendar year and any calendar quarters ending between the available year and the date of the request;

(ii) that is an individual, or a trust established for estate-planning purposes, a personal financial statement for the most recent available calendar year and any calendar quarters ending between the available year and the date of the request; and

(iii) balance sheet(s) showing all assets and liabilities of Guarantor and a statement of all contingent liabilities as of the end of the most recent available calendar year; and

(F) a statement that identifies the following for such period as requested by Lender:

(i) direct owners of Borrower and their respective interests;

(ii) indirect owners (and any non-member managers) of Borrower that Control Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts) and their respective interests;

(iii) indirect owners of Borrower that hold twenty-five percent (25%) or more of the ownership interests in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts) and their respective interests; and

(iv) to the extent that the Persons identified in (i)-(iii) above do not own, in the aggregate, at least fifty percent (50%) of the indirect ownership interests in Borrower, additional indirect owners of Borrower

sufficient to show an aggregate ownership interest of at least fifty percent (50%).

(c) Audited Financials.

In the event Borrower or Guarantor receives or obtains any audited financial statements and such financial statements are required to be delivered to Lender under Section 8.02(b), Borrower shall deliver or cause to be delivered to Lender the audited versions of such financial statements.

(d) Delivery of Books and Records.

If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender, upon written demand, all books and records relating to the Mortgaged Property or its operation.

Section 8.03 Mortgage Loan Administration Matters Regarding Books and Records and Financial Reporting.

(a) Lender's Right to Obtain Audited Books and Records.

Lender may require that Borrower's or Guarantor's books and records be audited, at Borrower's expense, by an independent certified public accountant selected by Lender in order to produce or audit any statements, schedules, and reports of Borrower, Guarantor, or the Mortgaged Property required by Section 8.02, if:

- (1) Borrower or Guarantor fails to provide in a timely manner the statements, schedules, and reports required by Section 8.02 and, thereafter, Borrower or Guarantor fails to provide such statements, schedules, and reports within the cure period provided in Section 14.01(c);
- (2) the statements, schedules, and reports submitted to Lender pursuant to Section 8.02 are not full, complete, and accurate in all material respects as determined by Lender and, thereafter, Borrower or Guarantor fails to provide such statements, schedules, and reports within the cure period provided in Section 14.01(c); or
- (3) an Event of Default has occurred and is continuing.

Notwithstanding the foregoing, the ability of Lender to require the delivery of audited financial statements shall be limited to not more than once per Borrower's fiscal year so long as no Event of Default has occurred during such fiscal year (or any event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing). Borrower shall cooperate with Lender in order to satisfy the provisions of this Section 8.03(a). All related costs and expenses of Lender shall become due and payable by Borrower within ten (10) Business Days after demand therefor.

(b) Credit Reports; Credit Score.

No more often than once in any twelve (12) month period, Lender is authorized to obtain a credit report (if applicable) on Borrower or Guarantor, the cost of which report shall be paid by Borrower. Lender is authorized to obtain a Credit Score (if applicable) for Borrower or Guarantor at any time at Lender's expense.

ARTICLE 9 - INSURANCE

Section 9.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 9.01 are made as of the Effective Date and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Compliance with Insurance Requirements.

Borrower is in compliance with Lender's insurance requirements (or has obtained a written waiver from Lender for any non-compliant coverage) and has timely paid all premiums on all required insurance policies.

(b) Property Condition.

(1) The Mortgaged Property has not been damaged by fire, water, wind, or other cause of loss; or

(2) if previously damaged, any previous damage to the Mortgaged Property has been repaired and the Mortgaged Property has been fully restored.

Section 9.02 Covenants.

(a) Insurance Requirements.

(1) As required by Lender and applicable law, and as may be modified from time to time, Borrower shall:

(A) keep the Improvements insured at all times against any hazards, which insurance shall include coverage against loss by fire and all other perils insured by the "special causes of loss" coverage form, general boiler and machinery coverage, business income coverage, and flood (if any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor) as an area having special flood hazards and to the extent flood insurance is available in that area), and may include sinkhole insurance, mine subsidence insurance, earthquake insurance, terrorism insurance, windstorm insurance and, if the Mortgaged Property does not conform to applicable building, zoning, or land use laws, ordinance and law coverage;

(B) maintain at all times commercial general liability insurance, workmen's compensation insurance, and such other liability, errors and omissions, and fidelity insurance coverage; and

(C) maintain builder's risk and public liability insurance, and other insurance in connection with completing the Repairs or Replacements, as applicable.

(b) Delivery of Policies, Renewals, Notices, and Proceeds.

Borrower shall:

(1) cause all insurance policies (including any policies not otherwise required by Lender) which can be endorsed with standard non-contributing, non-reporting mortgagee clauses making loss payable to Lender (or Lender's assigns) to be so endorsed;

(2) promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums;

(3) deliver evidence, in form and content acceptable to Lender, that each required insurance policy under this Article 9 has been renewed not less than fifteen (15) days prior to the applicable expiration date, and (if such evidence is other than an original or duplicate original of a renewal policy) deliver the original or duplicate original of each renewal policy (or such other evidence of insurance as may be required by or acceptable to Lender) in form and content acceptable to Lender within ninety (90) days after the applicable expiration date of the original insurance policy;

(4) provide immediate written notice to the insurance company and to Lender of any event of loss;

(5) execute such further evidence of assignment of any insurance proceeds as Lender may require; and

(6) provide immediate written notice to Lender of Borrower's receipt of any insurance proceeds under any insurance policy required by Section 9.02(a)(1) above and, if requested by Lender, deliver to Lender all of such proceeds received by Borrower to be applied by Lender in accordance with this Article 9.

Section 9.03 Mortgage Loan Administration Matters Regarding Insurance

(a) Lender's Ongoing Insurance Requirements.

Borrower acknowledges that Lender's insurance requirements may change from time to time. All insurance policies and renewals of insurance policies required by this Loan Agreement shall be:

- (1) in the form and with the terms required by Lender;
- (2) in such amounts, with such maximum deductibles and for such periods required by Lender; and
- (3) issued by insurance companies satisfactory to Lender.

BORROWER ACKNOWLEDGES THAT ANY FAILURE OF BORROWER TO COMPLY WITH THE REQUIREMENTS SET FORTH IN SECTION 9.02(a) OR SECTION 9.02(b)(3) ABOVE SHALL PERMIT LENDER TO PURCHASE THE APPLICABLE INSURANCE AT BORROWER'S COST. SUCH INSURANCE MAY, BUT NEED NOT, PROTECT BORROWER'S INTERESTS. THE COVERAGE THAT LENDER PURCHASES MAY NOT PAY ANY CLAIM THAT BORROWER MAKES OR ANY CLAIM THAT IS MADE AGAINST BORROWER IN CONNECTION WITH THE MORTGAGED PROPERTY. IF LENDER PURCHASES INSURANCE FOR THE MORTGAGED PROPERTY AS PERMITTED HEREUNDER, BORROWER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AT THE DEFAULT RATE AND ANY OTHER CHARGES LENDER MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR THE EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE SHALL BE ADDED TO BORROWER'S TOTAL OUTSTANDING BALANCE OR OBLIGATION AND SHALL CONSTITUTE ADDITIONAL INDEBTEDNESS. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE BORROWER MAY BE ABLE TO OBTAIN ON ITS OWN. BORROWER MAY LATER CANCEL ANY INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING EVIDENCE THAT BORROWER HAS OBTAINED INSURANCE AS REQUIRED BY THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) Application of Proceeds on Event of Loss.

- (1) Upon an event of loss, Lender may, at Lender's option:

(A) hold such proceeds in the Restoration Reserve Account to be applied to reimburse Borrower for the cost of Restoration in accordance with Article 13 and Lender's then-current policies relating to the restoration of casualty damage on similar multifamily residential properties; or

(B) apply such proceeds to the payment of the Indebtedness, whether or not then due; provided, however, Lender shall not apply insurance proceeds to the payment of the Indebtedness and shall permit Restoration pursuant to Section 9.03(b)(1)(A) if all of the following conditions are met:

- (i) no Event of Default has occurred and is continuing (or any event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing);

(ii) Lender determines that the combination of insurance proceeds and amounts provided by Borrower will be sufficient funds to complete the Restoration;

(iii) Lender determines that the Net Cash Flow generated by the Mortgaged Property after completion of the Restoration will be sufficient to support a debt service coverage ratio not less than the debt service coverage ratio immediately prior to the event of loss, but in no event less than 1.0x (the debt service coverage ratio shall be calculated on a thirty (30) year amortizing basis (if applicable, on a proforma basis approved by Lender) in all events and shall include all operating costs and other expenses, Imposition Deposits, deposits to Collateral Accounts, and Mortgage Loan repayment obligations);

(iv) Lender determines that the Restoration will be completed before the earlier of (1) one (1) year before the stated Maturity Date, or (2) one (1) year after the date of the loss or casualty; and

(v) Borrower provides Lender, upon written request, evidence of the availability during and after the Restoration of the insurance required to be maintained pursuant to this Loan Agreement.

(2) Notwithstanding the foregoing, if any loss is estimated to be in an amount equal to or less than \$75,000, Lender shall not exercise its rights and remedies as power-of-attorney herein and shall allow Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such policies of property damage insurance, and to collect and receive the proceeds of property damage insurance; provided that each of the following conditions shall be satisfied:

(A) Borrower shall immediately notify Lender of the casualty giving rise to the claim;

(B) no Event of Default has occurred and is continuing (or any event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing);

(C) the Restoration will be completed before the earlier of (i) one (1) year before the stated Maturity Date, or (ii) one (1) year after the date of the loss or casualty;

(D) Lender determines that the combination of insurance proceeds and amounts provided by Borrower will be sufficient funds to complete the Restoration;

(E) all proceeds of property damage insurance shall be issued in the form of joint checks to Borrower and Lender;

(F) all proceeds of property damage insurance shall be applied to the Restoration;

(G) Borrower shall deliver to Lender evidence satisfactory to Lender of completion of the Restoration and obtainment of all lien releases;

(H) Borrower shall have complied to Lender's satisfaction with the foregoing requirements on any prior claims subject to this provision, if any; and

(I) Lender shall have the right to inspect the Mortgaged Property (subject to the rights of tenants under the Leases).

(3) If Lender elects to apply insurance proceeds to the Indebtedness in accordance with the terms of this Loan Agreement, Borrower shall not be obligated to restore or repair the Mortgaged Property. Rather, Borrower shall restrict access to the damaged portion of the Mortgaged Property and, at its expense and regardless of whether such costs are covered by insurance, clean up any debris resulting from the casualty event, and, if required or otherwise permitted by Lender, demolish or raze any remaining part of the damaged Mortgaged Property to the extent necessary to keep and maintain the Mortgaged Property in a safe, habitable, and marketable condition. Nothing in this Section 9.03(b) shall affect any of Lender's remedial rights against Borrower in connection with a breach by Borrower of any of its obligations under this Loan Agreement or under any Loan Document, including any failure to timely pay Monthly Debt Service Payments or maintain the insurance coverage(s) required by this Loan Agreement.

(c) Payment Obligations Unaffected.

The application of any insurance proceeds to the Indebtedness shall not extend or postpone the Maturity Date, or the due date or the full payment of any Monthly Debt Service Payment, Monthly Replacement Reserve Deposit, or any other installments referred to in this Loan Agreement or in any other Loan Document. Notwithstanding the foregoing, if Lender applies insurance proceeds to the Indebtedness in connection with a casualty of less than the entire Mortgaged Property, and after such application of proceeds the debt service coverage ratio (as determined by Lender) is less than 1.25x based on the then-applicable Monthly Debt Service Payment and the anticipated ongoing Net Cash Flow of the Mortgaged Property after such casualty event, then Lender may, at its discretion, permit an adjustment to the Monthly Debt Service Payments that become due and owing thereafter, based on Lender's then-current underwriting requirements. In no event shall the preceding sentence obligate Lender to make any adjustment to the Monthly Debt Service Payments.

(d) Foreclosure Sale.

If the Mortgaged Property is transferred pursuant to a Foreclosure Event or Lender otherwise acquires title to the Mortgaged Property, Borrower acknowledges that Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned

insurance premiums applicable to the Mortgaged Property and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such Foreclosure Event or such acquisition.

(e) Appointment of Lender as Attorney-In-Fact.

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

ARTICLE 10 - CONDEMNATION

Section 10.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 10.01 are made as of the Effective Date and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Prior Condemnation Action.

No part of the Mortgaged Property has been taken in connection with a Condemnation Action.

(b) Pending Condemnation Actions.

No Condemnation Action is pending or, to Borrower's knowledge, is threatened for the partial or total condemnation or taking of the Mortgaged Property.

Section 10.02 Covenants.

(a) Notice of Condemnation.

Borrower shall:

(1) promptly notify Lender of any Condemnation Action of which Borrower has knowledge;

(2) appear in and prosecute or defend, at its own cost and expense, any action or proceeding relating to any Condemnation Action, including any defense of Lender's interest in the Mortgaged Property tendered to Borrower by Lender, unless otherwise directed by Lender in writing; and

(3) execute such further evidence of assignment of any condemnation award in connection with a Condemnation Action as Lender may require.

(b) Condemnation Proceeds.

Borrower shall pay to Lender all awards or proceeds of a Condemnation Action promptly upon receipt.

Section 10.03 Mortgage Loan Administration Matters Regarding Condemnation.

(a) Application of Condemnation Awards.

Lender may apply any awards or proceeds of a Condemnation Action, after the deduction of Lender's expenses incurred in the collection of such amounts, to:

- (1) the restoration or repair of the Mortgaged Property, if applicable;
 - (2) the payment of the Indebtedness, with the balance, if any, paid to Borrower;
- or
- (3) Borrower.

(b) Payment Obligations Unaffected.

The application of any awards or proceeds of a Condemnation Action to the Indebtedness shall not extend or postpone the Maturity Date, or the due date or the full payment of any Monthly Debt Service Payment, Monthly Replacement Reserve Deposit, or any other installments referred to in this Loan Agreement or in any other Loan Document.

(c) Appointment of Lender as Attorney-In-Fact.

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

(d) Preservation of Mortgaged Property.

If a Condemnation Action results in or from damage to the Mortgaged Property and Lender elects to apply the proceeds or awards from such Condemnation Action to the Indebtedness in accordance with the terms of this Loan Agreement, Borrower shall not be obligated to restore or repair the Mortgaged Property. Rather, Borrower shall restrict access to any portion of the Mortgaged Property which has been damaged or destroyed in connection with such Condemnation Action and, at Borrower's expense and regardless of whether such costs are covered by insurance, clean up any debris resulting in or from the Condemnation Action, and, if required by any Governmental Authority or otherwise permitted by Lender, demolish or raze any remaining part of the damaged Mortgaged Property to the extent necessary to keep and maintain the Mortgaged Property in a safe, habitable, and marketable condition. Nothing in this Section 10.03(d) shall affect any of Lender's remedial rights against Borrower in connection with a breach by Borrower of any of its obligations under this Loan Agreement or under any Loan Document, including any failure to timely pay Monthly Debt Service Payments or maintain the insurance coverage(s) required by this Loan Agreement.

ARTICLE 11 - LIENS, TRANSFERS, AND ASSUMPTIONS

Section 11.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 11.01 are made as of the Effective Date and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) No Labor or Materialmen's Claims.

All parties furnishing labor and materials on behalf of Borrower have been paid in full. There are no mechanics' or materialmen's liens (whether filed or unfiled) outstanding for work, labor, or materials (and no claims or work outstanding that under applicable law could give rise to any such mechanics' or materialmen's liens) affecting the Mortgaged Property, whether prior to, equal with, or subordinate to the lien of the Security Instrument.

(b) No Other Interests.

No Person:

(1) other than Borrower has any possessory ownership or interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of existing Leases, the material terms of all such Leases having been previously disclosed in writing to Lender; or

(2) has an option, right of first refusal, or right of first offer (except as required by applicable law) to purchase the Mortgaged Property, or any interest in the Mortgaged Property.

Section 11.02 Covenants.

(a) Liens; Encumbrances.

Borrower shall not permit the grant, creation, or existence of any Lien, whether voluntary, involuntary, or by operation of law, on all or any portion of the Mortgaged Property (including any voluntary, elective, or non-compulsory tax lien or assessment pursuant to a voluntary, elective, or non-compulsory special tax district or similar regime) other than:

(1) Permitted Encumbrances;

(2) the creation of:

(A) any tax lien, municipal lien, utility lien, mechanics' lien, materialmen's lien, or judgment lien against the Mortgaged Property if bonded off, released of record, or otherwise remedied to Lender's satisfaction within sixty (60)

days after the earlier of the date Borrower has actual notice or constructive notice of the existence of such lien; or

(B) any mechanics' or materialmen's liens which attach automatically under the laws of any Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Borrower is not delinquent in the payment for any such work or materials; and

(3) the lien created by the Loan Documents.

(b) Transfers.

(1) Mortgaged Property.

Borrower shall not Transfer, or cause or permit a Transfer of, all or any part of the Mortgaged Property (including any interest in the Mortgaged Property) other than:

(A) a Transfer to which Lender has consented in writing;

(B) Leases permitted pursuant to the Loan Documents;

(C) [reserved];

(D) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality which are free of Liens (other than those created by the Loan Documents);

(E) the grant of an easement, servitude, or restrictive covenant to which Lender has consented, and Borrower has paid to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request (including reasonable attorneys' fees and a \$5,000 review fee, which shall be in lieu of any other Review Fee or Transfer Fee);

(F) a lien permitted pursuant to Section 11.02(a) of this Loan Agreement; or

(G) the conveyance of the Mortgaged Property following a Foreclosure Event.

(2) Interests in Borrower, Key Principal, or Guarantor.

Other than a Transfer to which Lender has consented in writing, Borrower shall not Transfer, or cause or permit to be Transferred:

(A) any direct or indirect ownership interest in Borrower, Key Principal, or Guarantor (if applicable) if such Transfer would cause a change in Control;

(B) a direct or indirect Restricted Ownership Interest in Borrower, Key Principal, or Guarantor (if applicable);

(C) fifty percent (50%) or more of Key Principal's or Guarantor's direct or indirect ownership interests in Borrower that existed on the Effective Date (individually or on an aggregate basis);

(D) any direct or indirect ownership interest in Borrower, Key Principal, or Guarantor (if applicable) if such transfer would result in a violation of Section 4.02(b); or

(E) the economic benefits or rights to cash flows attributable to any ownership interests in Borrower, Key Principal, or Guarantor (if applicable) separate from the Transfer of the underlying ownership interests if the Transfer of the underlying ownership interest is prohibited by this Loan Agreement.

Notwithstanding the foregoing, if a Publicly-Held Corporation or a Publicly-Held Trust Controls Borrower, Key Principal, or Guarantor, or owns a direct or indirect Restricted Ownership Interest in Borrower, Key Principal, or Guarantor, a Transfer of any ownership interests in such Publicly-Held Corporation or Publicly-Held Trust shall not be prohibited under this Loan Agreement as long as (i) such Transfer does not result in a conversion of such Publicly-Held Corporation or Publicly-Held Trust to a privately held entity, and (ii) Borrower provides written notice to Lender not later than thirty (30) days thereafter of any such Transfer that results in any Person owning ten percent (10%) or more of the ownership interests in such Publicly-Held Corporation or Publicly-Held Trust.

(3) Transfers of Non-Controlling Interests.

Transfers of direct or indirect limited partnership or non-managing member interests in Borrower that result in a Transfer of fifty percent (50%) or more of the limited partnership or non-managing membership interests shall be consented to by Lender if such Transfer satisfies the following conditions:

(A) Key Principal or Guarantor (as applicable) Controls Borrower with the same rights and abilities as Key Principal or Guarantor (as applicable) Controls Borrower immediately prior to the date of such Transfer;

(B) such Transfer does not violate the requirements of Section 11.02(b)(2)(C) or Section 11.02(b)(2)(D);

(C) Borrower shall provide Lender not less than thirty (30) days prior written notice of the proposed Transfer and obtain Lender's approval;

(D) Borrower shall provide with its notice to Lender an organizational chart reflecting, and all organizational documents relevant to, the proposed Transfer;

(E) Borrower shall provide with its notice to Lender a certification that no change of Control of Borrower, Key Principal, or Guarantor (as applicable) shall occur as a result of such Transfer;

(F) if any Person will own twenty-five percent (25%) or more of the direct or indirect ownership interests in Borrower that did not own twenty-five percent (25%) or more before the Transfer, such Person shall not, as of the date of the Transfer, be a Prohibited Person;

(G) Borrower shall pay to Lender:

(i) concurrently with its notice to Lender, the Review Fee plus a transfer fee of \$25,000, which shall be in lieu of any other Transfer Fee; and

(ii) upon demand, any out-of-pocket costs and expenses, including reasonable attorneys' fees and expenses, incurred by Lender in connection with its review of the Transfer request; and

(H) Borrower shall execute upon demand such documents or certifications as Lender reasonably requires in order to confirm the post-transfer ownership structure, compliance with the stated conditions, and any other relevant factual matter.

(4) Name Change or Entity Conversion.

Lender shall consent to Borrower changing its name, changing its jurisdiction of organization, or converting from one type of legal entity into another type of legal entity for any lawful purpose, provided that:

(A) Lender receives written notice at least thirty (30) days prior to such change or conversion, which notice shall include organizational charts that reflect the structure of Borrower both prior to and subsequent to such name change or entity conversion;

(B) such Transfer is not otherwise prohibited under the provisions of Section 11.02(b)(2);

(C) Borrower executes an amendment to this Loan Agreement and any other Loan Documents required by Lender documenting the name change or entity conversion;

(D) Borrower agrees and acknowledges, at Borrower's expense, that (i) Borrower will execute and record in the land records any instrument required by the Property Jurisdiction to be recorded to evidence such name change or entity conversion (or provide Lender with written confirmation from the title company

(via electronic mail or letter) that no such instrument is required), (ii) Borrower will execute any additional documents required by Lender, including the amendment to this Loan Agreement, and allow such documents to be recorded or filed in the land records of the Property Jurisdiction, (iii) Lender will obtain a “date down” endorsement to the Lender’s Title Policy (or obtain a new Title Policy if a “date down” endorsement is not available in the Property Jurisdiction), evidencing title to the Mortgaged Property being in the name of the successor entity and the Lien of the Security Instrument against the Mortgaged Property, and (iv) Lender will file any required UCC-3 financing statement and make any other filing deemed necessary to maintain the priority of its Liens on the Mortgaged Property; and

(E) no later than ten (10) days subsequent to such name change or entity conversion, Borrower shall provide Lender (i) the documentation filed with the appropriate office in Borrower’s state of formation evidencing such name change or entity conversion, (ii) copies of the organizational documents of Borrower, including any amendments, filed with the appropriate office in Borrower’s state of formation reflecting the post-conversion Borrower name, form of organization, and structure, and (iii) if available, new certificates of good standing or valid formation for Borrower.

(5) No Delaware Statutory Trust or Series LLC Conversion.

Notwithstanding any provisions herein to the contrary, no Borrower, Guarantor, or Key Principal shall convert to a Delaware Statutory Trust or a series limited liability company.

(6) Plans of Division.

Borrower shall not Divide. Lender shall consent to a Division by Guarantor or Key Principal provided that:

(A) Lender receives written notice at least thirty (30) days prior to the effective date of such Division, which notice shall include (i) a certification acceptable to Lender that such Division is not otherwise prohibited under the provisions of Article 11, (ii) a copy of the plan of division, and (iii) organizational charts that reflect the organizational structure of Borrower, Guarantor, and Key Principal both prior to and subsequent to such Division;

(B) no later than ten (10) days subsequent to such Division, Borrower shall provide Lender (i) the certificate of division or such other documentation filed with the appropriate office evidencing such Division, (ii) copies of the organizational documents of Borrower (if amended), Guarantor, and Key Principal, including any amendments thereto, that reflect the post-Division organizational structure, and (iii) new certificates of good standing or valid formation for Borrower (if amended), Guarantor, and Key Principal; and

(C) Borrower has paid to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request (including reasonable attorneys' fees and a \$25,000 review fee, which shall be in lieu of any other Review Fee or Transfer Fee).

(c) No Other Indebtedness.

Other than the Mortgage Loan, Borrower shall not incur or be obligated at any time with respect to any loan or other indebtedness (except trade payables as otherwise permitted in this Loan Agreement), including any indebtedness secured by a Lien on, or the cash flows from, the Mortgaged Property.

(d) No Mezzanine Financing or Preferred Equity.

Neither Borrower nor any direct or indirect owner of Borrower shall: (1) incur any Mezzanine Debt other than Permitted Mezzanine Debt; (2) issue any Preferred Equity other than Permitted Preferred Equity; or (3) incur any similar indebtedness or issue any similar equity.

Section 11.03 Mortgage Loan Administration Matters Regarding Liens, Transfers, and Assumptions.

(a) Assumption of Mortgage Loan.

Lender shall consent to a Transfer of the Mortgaged Property to and an assumption of the Mortgage Loan by a new borrower if each of the following conditions is satisfied prior to the Transfer:

(1) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(a);

(2) no Event of Default has occurred and is continuing, and no event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing;

(3) Lender determines that:

(A) the proposed new borrower, new key principal, and any other new guarantor fully satisfy all of Lender's then-applicable borrower, key principal, or guarantor eligibility, credit, management, and other loan underwriting standards, which shall include an analysis of (i) the previous relationships between Lender and the proposed new borrower, new key principal, new guarantor, and any Person in Control of them, and the organization of the new borrower, new key principal, and new guarantor (if applicable), and (ii) the operating and financial performance of the Mortgaged Property, including physical condition and occupancy;

(B) none of the proposed new borrower, new key principal, and any new guarantor, or any owners of the proposed new borrower, new key principal, and any new guarantor, are a Prohibited Person, and such Transfer would not result in a violation of the requirements of Section 11.02(b)(2)(D); and

(C) none of the proposed new borrower, new key principal, and any new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date;

(4) [reserved];

(5) the proposed new borrower has:

(A) executed an assumption agreement acceptable to Lender that, among other things, requires the proposed new borrower to assume and perform all obligations of Borrower (or any other transferor), and that may require that the new borrower comply with any provisions of any Loan Document which previously may have been waived by Lender for Borrower, subject to the terms of Section 11.03(g);

(B) if required by Lender, delivered to the title company for filing and/or recording in all applicable jurisdictions, all applicable Loan Documents including the assumption agreement to correctly evidence the assumption and the confirmation, continuation, perfection, and priority of the Liens created hereunder and under the other Loan Documents; and

(C) delivered to Lender a “date-down” endorsement to the Title Policy acceptable to Lender (or a new title insurance policy if a “date-down” endorsement is not available);

(6) one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(A) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(B) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender;

(7) Lender has reviewed and approved the Transfer documents;

(8) Lender has received the fees described in Section 11.03(g); and

(9) with respect to any MBS trust that directly or indirectly holds the Mortgage Loan and issues MBS that are outstanding, the Transfer shall not result in an Adverse Tax Event.

(b) Transfers to Key Principal-Owned Affiliates or Guarantor-Owned Affiliates.

(1) Except as otherwise covered in Section 11.03(b)(2) below, Transfers of direct or indirect ownership interests in Borrower to Key Principal or Guarantor, or to a transferee through which Key Principal or Guarantor (as applicable) Controls Borrower with the same rights and abilities as Key Principal or Guarantor (as applicable) Controls Borrower immediately prior to the date of such Transfer, shall be consented to by Lender if such Transfer satisfies the applicable requirements of Section 11.03(a) as they would relate to such transferee, other than Section 11.03(a)(5).

(2) Transfers of direct or indirect interests in Borrower held by a Key Principal or Guarantor to other Key Principals or Guarantors, as applicable, shall be consented to by Lender if such Transfer satisfies the following conditions:

(A) the Transfer does not cause a change in the Control of Borrower;
and

(B) the transferor Key Principal or Guarantor maintains the same right and ability to Control Borrower as existed prior to the Transfer.

If the conditions set forth in this Section 11.03(b) are satisfied, the Transfer Fee shall be waived provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(c) Estate Planning.

Notwithstanding the provisions of Section 11.02(b)(2), so long as (1) the Transfer does not cause a change in the Control of Borrower, and (2) Key Principal and Guarantor, as applicable, maintain the same right and ability to Control Borrower as existed prior to the Transfer, Lender shall consent to Transfers of direct or indirect ownership interests in Borrower and Transfers of direct or indirect ownership interests in an entity Key Principal or entity Guarantor to:

(A) Immediate Family Members of such transferor, each of whom must have obtained the legal age of majority;

(B) United States domiciled trusts established for the benefit of the transferor or Immediate Family Members of the transferor; or

(C) partnerships or limited liability companies of which the partners or members, respectively, are comprised entirely of (i) such transferor and Immediate Family Members (each of whom must have obtained the legal age of majority) of such transferor, (ii) Immediate Family Members (each of whom must have obtained the legal age of majority) of such transferor, or (iii) United States domiciled trusts established for the benefit of the transferor or Immediate Family Members of the transferor.

If the conditions set forth in this Section 11.03(c) are satisfied, the Transfer Fee shall be waived provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(d) Termination or Revocation of Trust.

If any of Borrower, Guarantor, or Key Principal is a trust, or if Control of Borrower, Guarantor, or Key Principal is Transferred or if a Restricted Ownership Interest in Borrower, Guarantor, or Key Principal would be Transferred due to the termination or revocation of a trust, the termination or revocation of such trust is an unpermitted Transfer; provided that the termination or revocation of the trust due to the death of an individual trustor shall not be considered an unpermitted Transfer so long as:

- (1) Lender is notified within thirty (30) days of the death; and
- (2) such Borrower, Guarantor, Key Principal, or other Person, as applicable, is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 11.03(a) within ninety (90) days of the date of the death causing the termination or revocation.

If the conditions set forth in this Section 11.03(d) are satisfied, the Transfer Fee shall be waived; provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(e) Death of Key Principal or Guarantor; Transfer Due to Death.

(1) If a Key Principal or Guarantor that is a natural person dies, or if Control of Borrower, Guarantor, or Key Principal is Transferred, or if a Restricted Ownership Interest in Borrower, Guarantor, or Key Principal would be Transferred as a result of the death of a Person (except in the case of trusts which is addressed in Section 11.03(d)), Borrower must notify Lender in writing within ninety (90) days in the event of such death. Unless waived in writing by Lender, the deceased shall be replaced by an individual or entity within one hundred eighty (180) days, subject to Borrower's satisfaction of the following conditions:

(A) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(e);

(B) Lender determines that, if applicable:

(i) any proposed new key principal and any other new guarantor (or Person Controlling such new key principal or new guarantor) fully satisfies all of Lender's then-applicable key principal or guarantor eligibility, credit, management, and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new key principal and new guarantor (or Person Controlling such new key principal or new guarantor) and the organization of the new key principal and new guarantor);

(ii) none of any proposed new key principal or any new guarantor, or any owners of the proposed new key principal or any new guarantor, is a Prohibited Person, and such Transfer would not result in a violation of the requirements of Section 11.02(b)(2)(D); and

(iii) none of any proposed new key principal or any new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date; and

(C) if applicable, one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(i) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(ii) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender.

(2) In the event a replacement Key Principal, Guarantor, or other Person is required by Lender due to the death described in this Section 11.03(e), and such replacement has not occurred within such period, the period for replacement may be extended by Lender to a date not more than one (1) year from the date of such death; however, Lender may require as a condition to any such extension that:

(A) the then-current property manager be replaced with a property manager reasonably acceptable to Lender (or if a property manager has not been previously engaged, a property manager reasonably acceptable to Lender be engaged); or

(B) a lockbox agreement or similar cash management arrangement (with the property manager) reasonably acceptable to Lender during such extended replacement period be instituted.

If the conditions set forth in this Section 11.03(e) are satisfied, the Transfer Fee shall be waived, provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(f) Bankruptcy of Guarantor.

(1) Upon the occurrence of any Guarantor Bankruptcy Event, unless waived in writing by Lender, the applicable Guarantor shall be replaced by an individual or entity within ninety (90) days of such Guarantor Bankruptcy Event, subject to Borrower's satisfaction of the following conditions:

(A) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(f);

(B) Lender determines that:

(i) the proposed new guarantor fully satisfies all of Lender's then-applicable guarantor eligibility, credit, management, and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new guarantor and the organization of the new guarantor (if applicable));

(ii) no new guarantor is a Prohibited Person, and such Transfer would not result in a violation of the requirements of Section 11.02(b)(2)(D); and

(iii) no new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date; and

(C) one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(i) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(ii) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender.

(2) In the event a replacement Guarantor is required by Lender due to the Guarantor Bankruptcy Event described in this Section 11.03(f), and such replacement has not occurred within such period, the period for replacement may be extended by Lender in its discretion; however, Lender may require as a condition to any such extension that:

(A) the then-current property manager be replaced with a property manager reasonably acceptable to Lender (or if a property manager has not been previously engaged, a property manager reasonably acceptable to Lender be engaged); or

(B) a lockbox agreement or similar cash management arrangement (with the property manager) reasonably acceptable to Lender during such extended replacement period be instituted.

If the conditions set forth in this Section 11.03(f) are satisfied, the Transfer Fee shall be waived, provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

(g) Further Conditions to Transfers and Assumption.

(1) In connection with any Transfer of the Mortgaged Property, or an ownership interest in Borrower, Key Principal, or Guarantor for which Lender's approval is required under this Loan Agreement (including Section 11.03(a)), Lender may, as a condition to any such approval, require:

(A) additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property;

(B) amendment of the Loan Documents to delete or modify any specially negotiated terms or provisions previously granted for the exclusive benefit of original Borrower, Key Principal, or Guarantor and to restore the original provisions of the standard Fannie Mae form multifamily loan documents, to the extent such provisions were previously modified or to avoid the occurrence of an Adverse Tax Event;

(C) a modification to the amounts required to be deposited into the Reserve/Escrow Account pursuant to the terms of Section 13.02(a)(3)(B);

(D) with respect to any MBS trust that directly or indirectly holds the Mortgage Loan and issues MBS that are outstanding, the Transfer shall not result in an Adverse Tax Event; or

(E) the Transfer would not violate the requirements of Section 11.02(b)(2)(D).

(2) In connection with any request by Borrower for consent to a Transfer, Borrower shall pay to Lender upon demand:

(A) the Transfer Fee (to the extent charged by Lender);

(B) the Review Fee (regardless of whether Lender approves or denies such request); and

(C) all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, regardless of whether Lender approves or denies such request.

ARTICLE 12 - IMPOSITIONS

Section 12.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 12.01 are made as of the Effective Date and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) Payment of Taxes, Assessments, and Other Charges.

Borrower has:

(1) paid (or with the approval of Lender, established an escrow fund sufficient to pay when due and payable) all amounts and charges relating to the Mortgaged Property that have become due and payable before any fine, penalty interest, lien, or costs may be added thereto, including Impositions, leasehold payments, and ground rents;

(2) paid all Taxes for the Mortgaged Property that have become due before any fine, penalty interest, lien, or costs may be added thereto pursuant to any notice of assessment received by Borrower and any and all taxes that have become due against Borrower before any fine, penalty interest, lien, or costs may be added thereto;

(3) no knowledge of any basis for any additional assessments;

(4) no knowledge of any presently pending special assessments against all or any part of the Mortgaged Property, or any presently pending special assessments against Borrower; and

(5) not received any written notice of any contemplated special assessment against the Mortgaged Property, or any contemplated special assessment against Borrower.

Section 12.02 Covenants.

(a) Imposition Deposits, Taxes, and Other Charges.

Borrower shall:

(1) deposit the Imposition Deposits with Lender on each Payment Date (or on another day designated in writing by Lender) in amount sufficient, in Lender's discretion, to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added, plus an amount equal to no more than one-sixth (or the amount permitted by applicable law) of the Impositions for the trailing twelve (12) months (calculated based on the aggregate annual Imposition costs divided by twelve (12) and multiplied by two (2));

(2) deposit with Lender, within ten (10) days after written notice from Lender (subject to applicable law), such additional amounts estimated by Lender to be reasonably necessary to cure any deficiency in the amount of the Imposition Deposits held for payment of a specific Imposition;

(3) except as set forth in Section 12.03(c) below, pay all Impositions, leasehold payments, ground rents, and Taxes when due and before any fine, penalty interest, lien, or costs may be added thereto;

(4) promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and, if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments; and

(5) promptly deliver to Lender a copy of all notices of any special assessments and contemplated special assessments against the Mortgaged Property or Borrower.

Section 12.03 Mortgage Loan Administration Matters Regarding Impositions.

(a) Maintenance of Records by Lender.

Lender shall maintain records of the monthly and aggregate Imposition Deposits held by Lender for the purpose of paying Taxes, insurance premiums, and each other obligation of Borrower for which Imposition Deposits are required.

(b) Imposition Accounts.

All Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency and which accounts meet the standards for custodial accounts as required by Lender from time to time. Lender shall not be obligated to open additional accounts, or deposit Imposition Deposits in additional institutions, when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. No interest, earnings, or profits on the Imposition Deposits shall be paid to Borrower unless applicable law so requires. Imposition Deposits shall not be trust funds or operate to reduce the Indebtedness, unless applied by Lender for that purpose in accordance with this Loan Agreement. For the purposes of 9-104(a)(3) of the UCC, Lender is the owner of the Imposition Deposits and shall be deemed a “customer” with sole control of the account holding the Imposition Deposits.

(c) Payment of Impositions; Sufficiency of Imposition Deposits.

Lender may pay an Imposition according to any bill, statement, or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement, or estimate or into the validity of the Imposition. Imposition Deposits shall be required to be used by Lender to pay Taxes, insurance premiums and any other individual Imposition only if:

- (1) no Event of Default exists;
- (2) Borrower has timely delivered to Lender all applicable bills or premium notices that it has received; and
- (3) sufficient Imposition Deposits are held by Lender for each Imposition at the time such Imposition becomes due and payable.

Lender shall have no liability to Borrower or any other Person for failing to pay any Imposition if any of the conditions are not satisfied. If at any time the amount of the Imposition Deposits held for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender to be held in connection with such Imposition, the excess may be credited against future installments of Imposition Deposits for such Imposition.

(d) Imposition Deposits Upon Event of Default.

If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in such amount and in such order as Lender determines, to pay any Impositions or as a credit against the Indebtedness.

(e) Contesting Impositions.

Other than insurance premiums, Borrower may contest, at its expense, by appropriate legal proceedings, the amount or validity of any Imposition if:

- (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings;
- (2) Lender determines that the Mortgaged Property is not in danger of being sold or forfeited;
- (3) Borrower deposits with Lender (or the applicable Governmental Authority if required by applicable law) reserves sufficient to pay the contested Imposition, if required by Lender (or the applicable Governmental Authority);
- (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested in writing by Lender; and
- (5) Borrower commences, and at all times thereafter diligently prosecutes, such contest in good faith until a final determination is made by the applicable Governmental Authority.

(f) Release to Borrower.

Upon payment in full of all sums secured by the Security Instrument and this Loan Agreement and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower the balance of any Imposition Deposits then on deposit with Lender.

ARTICLE 13 – REPLACEMENTS, REPAIRS, AND RESTORATION

Section 13.01 Covenants.

(a) Initial Deposits to Replacement Reserve Account, Repairs Escrow Account, and Restoration Reserve Account.

(1) On the Effective Date, Borrower shall pay to Lender:

(A) the Initial Replacement Reserve Deposit for deposit into the Replacement Reserve Account; and

(B) the Repairs Escrow Deposit for deposit into the Repairs Escrow Account.

(2) After an event of loss (except as set forth in Section 9.03(b)(2)), Borrower shall deliver or cause to be delivered to Lender any insurance proceeds received under any insurance policy required to be maintained in accordance with Article 9.

(b) Monthly Replacement Reserve Deposits.

Borrower shall deposit the applicable Monthly Replacement Reserve Deposit into the Replacement Reserve Account on each Payment Date.

(c) Payment and Deliverables for Replacements, Repairs, and Restoration.

Borrower shall:

(1) pay all invoices for Replacements, Repairs, and Restoration, regardless of whether funds on deposit in the applicable Reserve/Escrow Account are sufficient to pay the full amount of such invoices, prior to any request for disbursement from such Reserve/Escrow Account (unless Lender has agreed to issue joint checks in connection with a particular Replacement, Repair, or Restoration);

(2) pay all applicable fees and charges of any Governmental Authority on account of the Replacements, Repairs, and Restoration, as applicable;

(3) provide evidence satisfactory to Lender of completion of the Replacements, Restoration (within the period required under Section 9.03(b)(1)(B)(iv) or such other period required by Lender), and any Required Repairs (within the Completion Period or

within such other period or by such other date set forth in the Required Repair Schedule and any Borrower Requested Repairs and Additional Lender Repairs (by the date specified by Lender for any such Borrower Requested Repairs or Additional Lender Repairs)); and

(4) prior to commencement of any Restoration, Borrower shall deliver to Lender, for Lender's review and approval:

(A) a copy of the plans and specifications for the Restoration; and

(B) a copy of all building and other permits and authorizations required by any law, ordinance, statute, rule or regulation of the Governmental Authority to carry out the Restoration.

(d) Assignment of Contracts for Replacements, Repairs, and Restoration.

Borrower shall collaterally assign to Lender as additional security any contract or subcontract for Replacements, Repairs, or Restoration, upon Lender's written request, on a form of assignment approved by Lender.

(e) Indemnification.

If Lender elects to exercise its rights under Section 14.03 due to Borrower's failure to timely commence or complete any Replacements, Repairs, or Restoration, Borrower shall indemnify and hold Lender harmless for, from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with the performance by Lender of the Replacements, Repairs, or Restoration or the investment of the Reserve/Escrow Account Funds; provided that Borrower shall have no indemnity obligation if such actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys' fees, arise as a result of the willful misconduct or gross negligence of Lender, Lender's agents, employees, or representatives as determined by a court of competent jurisdiction pursuant to a final non-appealable court order.

(f) Amendments to Loan Documents.

Subject to Section 5.02, Borrower shall execute and deliver to Lender, upon written request, an amendment to this Loan Agreement, the Security Instrument, and any other Loan Document deemed necessary or desirable to perfect Lender's lien upon any portion of the Mortgaged Property for which Reserve/Escrow Account Funds were expended.

(g) Administrative Fees and Expenses.

Borrower shall pay to Lender:

(1) by the date specified in the applicable invoice, the Repairs Escrow Account Administration Fee, the Replacement Reserve Account Administration Fee, and the

Restoration Reserve Account Administration Fee for Lender's services in administering the Reserve/Escrow Accounts and investing the Reserve/Escrow Account Funds;

(2) upon demand, a reasonable inspection fee, not exceeding the Maximum Inspection Fee, for each inspection of the Mortgaged Property by Lender in connection with a Repair, Replacement, or Restoration item, plus all other reasonable costs and out-of-pocket expenses relating to such inspections; and

(3) upon demand, all reasonable fees charged by any engineer, architect, inspector or other person inspecting the Mortgaged Property on behalf of Lender for each inspection of the Mortgaged Property in connection with a Repair, Replacement, or Restoration item, plus all other reasonable costs and out-of-pocket expenses relating to such inspections.

Section 13.02 Mortgage Loan Administration Matters Regarding Reserves.

(a) Accounts, Deposits, and Disbursements.

(1) Custodial Accounts.

(A) The Replacement Reserve Account shall be an interest-bearing account that meets the standards for custodial accounts as required by Lender from time to time. Lender shall not be responsible for any losses resulting from the investment of the Replacement Reserve Deposits or for obtaining any specific level or percentage of earnings on such investment. All interest, if any, earned on the Replacement Reserve Deposits shall be added to and become part of the Replacement Reserve Account; provided, however, if applicable law requires, and so long as no Event of Default has occurred and is continuing under any of the Loan Documents, Lender shall pay to Borrower the interest earned on the Replacement Reserve Account not less frequently than the Replacement Reserve Account Interest Disbursement Frequency.

(B) Lender shall not be obligated to deposit the Repairs Escrow Deposits or any funds held in the Restoration Reserve Account into an interest-bearing account.

(C) In no event shall Lender be obligated to disburse funds from any Reserve/Escrow Account if an Event of Default has occurred and is continuing.

(2) Disbursements by Lender Only.

Only Lender or a designated representative of Lender may make disbursements from the Reserve/Escrow Accounts. Disbursements shall only be made upon Borrower request and after satisfaction of all conditions for disbursement.

(3) Adjustment to Deposits.

(A) Mortgage Loan Terms Exceeding Ten (10) Years.

If the Loan Term exceeds ten (10) years (or five (5) years in the case of any Mortgaged Property that is an “affordable housing property” as indicated on the Summary of Loan Terms), a property condition assessment shall be ordered by Lender for the Mortgaged Property at the expense of Borrower (which expense may be paid out of the Replacement Reserve Account if excess funds are available). The property condition assessment shall be performed no earlier than the sixth (6th) month and no later than the ninth month of the tenth Loan Year and every tenth Loan Year thereafter if the Loan Term exceeds twenty (20) years (or the fifth Loan Year in the case of any Mortgaged Property that is an “affordable housing property” as indicated on the Summary of Loan Terms and every fifth Loan Year thereafter if the Loan Term exceeds ten (10) years). After review of the property condition assessment, the amount of the Monthly Replacement Reserve Deposit may be adjusted by Lender for the remaining Loan Term by written notice to Borrower so that the Monthly Replacement Reserve Deposits are sufficient to fund the Replacements as and when required and/or the amount to be held in the Repairs Escrow Account may be adjusted by Lender so that the Repairs Escrow Deposit is sufficient to fund the Repairs as and when required.

(B) Transfers.

In connection with any Transfer of the Mortgaged Property, or any Transfer of an ownership interest in Borrower, Guarantor, or Key Principal that requires Lender’s consent, Lender may review the amounts on deposit, if any, in the Reserve/Escrow Accounts, the amount of the Monthly Replacement Reserve Deposit and the likely repairs and replacements required by the Mortgaged Property, and the related contingencies which may arise during the remaining Loan Term. Based upon that review, Lender may require an additional deposit to the Replacement Reserve Account, the Repairs Escrow Account, or the Restoration Reserve Account, or an increase in the amount of the Monthly Replacement Reserve Deposit as a condition to Lender’s consent to such Transfer.

(4) Insufficient Funds.

Lender may, upon ten (10) days’ prior written notice to Borrower, require an additional deposit(s) to the Replacement Reserve Account, the Repairs Escrow Account, or the Restoration Reserve Account, or an increase in the amount of the Monthly Replacement Reserve Deposit, if Lender determines that the amounts on deposit in any of the Reserve/Escrow Accounts are not sufficient to cover the costs for Required Repairs, Required Replacements, or the Restoration or, pursuant to the terms of Section 13.02(a)(9), not sufficient to cover the costs for Borrower Requested Repairs, Additional Lender Repairs, Borrower Requested Replacements, or Additional Lender Replacements.

Borrower's agreement to complete the Replacements, the Repairs, or the Restoration as required by this Loan Agreement shall not be affected by the insufficiency of any balance in the Reserve/Escrow Accounts.

(5) Disbursements for Replacements, Repairs, and Restoration.

(A) With respect to Replacements, disbursement requests may only be made after completion of the applicable Replacements and only to reimburse Borrower for the actual approved costs of the Replacements. Lender shall not disburse from the Replacement Reserve Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from any other Reserve/Escrow Account. Disbursement from the Replacement Reserve Account shall not be made more frequently than the Maximum Replacement Reserve Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Replacement Reserve Account shall not be less than the Minimum Replacement Reserve Disbursement Amount.

(B) With respect to Repairs, disbursement requests may only be made after completion of the applicable Repairs and only to reimburse Borrower for the actual cost of the Repairs, up to the Maximum Repair Cost. Lender shall not disburse any amounts which would cause the funds remaining in the Repairs Escrow Account after any disbursement (other than with respect to the final disbursement) to be less than the Maximum Repair Cost of the then-current estimated cost of completing all remaining Repairs. Lender shall not disburse from the Repairs Escrow Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from any other Reserve/Escrow Account. Disbursement from the Repairs Escrow Account shall not be made more frequently than the Maximum Repair Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Repairs Escrow Account shall not be less than the Minimum Repairs Disbursement Amount.

(C) With respect to Restoration, disbursement requests may only be made after completion of the applicable Restoration and only to pay for or reimburse Borrower for the actual approved costs of the Restoration. Each disbursement shall be equal to the amount of the actual approved costs of the Restoration items covered by the disbursement request. In addition, Lender shall not disburse any amounts which would cause the funds remaining in the Restoration Reserve Account after any disbursement (other than with respect to the final disbursement) to be less than the then-current estimated cost of completing all remaining Restoration. Lender shall not disburse from the Restoration Reserve Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from any other Reserve/Escrow Account. Disbursement from the Restoration Reserve Account shall not be made more frequently than the Maximum Restoration Reserve Disbursement Interval. Other

than in connection with a final request for disbursement, disbursements from the Restoration Reserve Account shall not be less than the Minimum Restoration Reserve Disbursement Amount.

(6) Disbursement Requests.

Borrower must submit a disbursement request in writing for each disbursement from a Reserve/Escrow Account, which disbursement request must specify the items of Replacement, Repairs, or Restoration for which reimbursement is requested (provided that for any Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements, and Additional Lender Repairs, Lender shall have approved the use of the Reserve/Escrow Account Funds for such replacements or repairs pursuant to the terms of Section 13.02(a)(9)), and must:

(A) if applicable, specify the quantity and price of the items or materials purchased, grouped by type or category;

(B) if applicable, specify the cost of all contracted labor or other services, including architectural services, involved in the Replacement, Repair, or Restoration for which such request for disbursement is made;

(C) if applicable, include copies of invoices for all items or materials purchased and all contracted labor or services provided;

(D) include evidence of payment of such Replacement, Repair, or Restoration satisfactory to Lender (unless Lender has agreed to issue joint checks in connection with a particular Repair, Replacement, or Restoration item as provided in this Loan Agreement);

(E) if applicable, contain a certification by Borrower that the Repair, Replacement, or Restoration has been completed lien free and in a good and workmanlike manner, in accordance with any plans and specifications previously approved by Lender (if applicable) and in compliance with all applicable laws, ordinances, rules, and regulations of any Governmental Authority having jurisdiction over the Mortgaged Property, and otherwise in accordance with the provisions of this Loan Agreement; and

(F) if applicable, include evidence that any certificates of occupancy required by applicable laws or any Governmental Authority have been issued.

(7) Conditions to Disbursement.

In addition to each disbursement request and information required in connection with such disbursement request, Lender may require any or all of the following at the expense of Borrower as a condition to disbursement of Reserve/Escrow Account Funds (provided that for any Borrower Requested Replacements, Borrower Requested Repairs,

Additional Lender Replacements, and Additional Lender Repairs, Lender shall have approved the use of the Reserve/Escrow Account Funds for such replacements or repairs pursuant to the terms of Section 13.02(a)(9)):

(A) an inspection by Lender of the Mortgaged Property and the applicable Replacement, Repair, or Restoration item;

(B) an inspection or certificate of completion by an appropriate independent qualified professional (such as an architect, engineer or property inspector, depending on the nature of the Repair, Replacement, or Restoration) selected by Lender;

(C) either:

(i) a search of title to the Mortgaged Property effective to the date of disbursement; or

(ii) a “date-down” endorsement to Lender’s Title Policy (or a new Lender’s Title Policy if a “date-down” is not available) extending the effective date of such policy to the date of disbursement, and showing no Liens other than (1) Permitted Encumbrances, (2) liens which Borrower is diligently contesting in good faith that have been bonded off to the satisfaction of Lender, or (3) mechanics’ or materialmen’s liens which attach automatically under the laws of any Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Borrower is not delinquent in the payment for any such work or materials; and

(D) an acknowledgement of payment, waiver of claims, and release of lien for work performed and materials supplied from each contractor, subcontractor or materialman in accordance with the requirements of applicable law and covering all work performed and materials supplied (including equipment and fixtures) for the Mortgaged Property by that contractor, subcontractor, or materialman through the date covered by the disbursement request (or, in the event that payment to such contractor, subcontractor, or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous disbursement).

(8) Joint Checks for Periodic Disbursements.

Lender may, upon Borrower’s written request, issue joint checks, payable to Borrower and the applicable supplier, materialman, mechanic, contractor, subcontractor, or other similar party, if:

(A) the cost of the Replacement, Repair, or Restoration item exceeds the Replacement Threshold, the Repair Threshold, or the Restoration Threshold, as

applicable, and the contractor performing such Replacement, Repair, or Restoration requires periodic payments pursuant to the terms of the applicable written contract;

(B) the contract for such Replacement, Repair, or Restoration item requires payment upon completion of the applicable portion of the work;

(C) Borrower makes the disbursement request after completion of the applicable portion of the work required to be completed under such contract;

(D) the materials for which the request for disbursement has been made are on site at the Mortgaged Property and are properly secured or installed;

(E) Lender determines that the remaining funds in the Reserve/Escrow Account are sufficient to pay the cost of the Replacement, Repair, or Restoration item, as applicable, and the then-current estimated cost of completing all remaining Required Replacements, Restoration, or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements, or Additional Lender Repairs that have been previously approved by Lender;

(F) each supplier, materialman, mechanic, contractor, subcontractor, or other similar party receiving payments shall have provided, if requested in writing by Lender, a waiver of liens with respect to amounts which have been previously paid to them; and

(G) all other conditions for disbursement have been satisfied.

(9) Replacements and Repairs Other than Required Replacements or Required Repairs.

(A) Borrower Requested Replacements and Borrower Requested Repairs.

Borrower may submit a disbursement request from the Replacement Reserve Account or the Repairs Escrow Account to reimburse Borrower for any Borrower Requested Replacement or Borrower Requested Repair. The disbursement request must be in writing and include an explanation for such request. Lender shall make disbursements for Borrower Requested Replacements or Borrower Requested Repairs if:

(i) they are of the type intended to be covered by the Replacement Reserve Account or the Repairs Escrow Account, as applicable;

(ii) the costs are commercially reasonable;

(iii) the amount of funds in the Replacement Reserve Account or Repairs Escrow Account, as applicable, is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements or Additional Lender Repairs that have been previously approved by Lender; and

(iv) all conditions for disbursement from the Replacement Reserve Account or Repairs Escrow Account, as applicable, have been satisfied.

Nothing in this Loan Agreement shall limit Lender's right to require an additional deposit to the Replacement Reserve Account or an increase to the Monthly Replacement Reserve Deposit in connection with any such Borrower Requested Replacements, or an additional deposit to the Repairs Escrow Account for any such Borrower Requested Repairs.

(B) Additional Lender Replacements and Additional Lender Repairs.

Lender may require, as set forth in Section 6.02(b), Section 6.03(c), or otherwise from time to time, upon written notice to Borrower, that Borrower make Additional Lender Replacements or Additional Lender Repairs. Lender shall make disbursements from the Replacement Reserve Account for Additional Lender Replacements or from the Repairs Escrow Account for Additional Lender Repairs, as applicable, if:

(i) the costs are commercially reasonable;

(ii) the amount of funds in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements, or Additional Lender Repairs that have been previously approved by Lender; and

(iii) all conditions for disbursement from the Replacement Reserve Account or Repairs Escrow Account, as applicable, have been satisfied.

Nothing in this Loan Agreement shall limit Lender's right to require an additional deposit to the Replacement Reserve Account or an increase to the Monthly Replacement Reserve Deposit for any such Additional Lender Replacements or an

additional deposit to the Repairs Escrow Account for any such Additional Lender Repair.

(10) Excess Costs.

In the event any Replacement or Repair exceeds the approved cost set forth on the Required Replacement Schedule for Replacements, or the Maximum Repair Cost for Repairs, as applicable, or any Restoration item exceeds the initial cost approved by Lender for Restoration, Borrower may submit a disbursement request to reimburse Borrower for such excess cost. The disbursement request must be in writing and include an explanation for such request. Lender shall make disbursements from the applicable Reserve/Escrow Account, if:

(A) the excess cost is commercially reasonable;

(B) the amount of funds in the applicable Reserve/Escrow Account is sufficient to pay such excess costs and the then-current estimated cost of completing all remaining Required Replacements, Restoration, or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements, or Additional Lender Repairs that have been previously approved by Lender; and

(C) all conditions for disbursement from the applicable Reserve/Escrow Account have been satisfied.

(11) Final Disbursements.

Upon completion and satisfaction of all conditions for disbursements for any Repairs and Restoration, and further provided no Event of Default has occurred and is continuing, Lender shall disburse to Borrower any amounts then remaining in the Repairs Escrow Account or the Restoration Reserve Account, as applicable. Upon payment in full of the Indebtedness and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower any and all amounts then remaining in the Reserve/Escrow Accounts (if not previously released).

(b) Approvals of Contracts; Assignment of Claims.

Lender retains the right to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors, or other parties providing labor or materials in connection with the Replacements, Repairs, or Restoration. Notwithstanding Borrower's assignment (in the Security Instrument) of its rights and claims against all Persons supplying labor or materials in connection with the Replacements, Repairs, or Restoration, Lender will not pursue any such right or claim unless an Event of Default has occurred and is continuing or as otherwise provided in Section 14.03(c).

(c) Delays and Workmanship.

If any work for any Replacement, Repair, or Restoration item has not timely commenced, has not been timely performed in a workmanlike manner, or has not been timely completed in a workmanlike manner, Lender may, without notice to Borrower:

- (1) withhold disbursements from the applicable Reserve/Escrow Account;
- (2) proceed under existing contracts or contract with third parties to make or complete such Replacements, Repairs, or Restoration item;
- (3) apply the funds in the applicable Reserve/Escrow Account toward the labor and materials necessary to make or complete such Replacements, Repairs, or Restoration items, as applicable; or
- (4) exercise any and all other remedies available to Lender under this Loan Agreement or any other Loan Document, including any remedies otherwise available upon an Event of Default pursuant to the terms of Section 14.02.

To facilitate Lender's completion and performance of such Replacements, Repairs, or Restoration items, Lender shall have the right to enter onto the Mortgaged Property and perform any and all work and labor necessary to make or complete the Replacements, Repairs, or Restoration and employ watchmen to protect the Mortgaged Property from damage. All funds so expended by Lender shall be deemed to have been advanced to Borrower, and included as part of the Indebtedness and secured by the Security Instrument and this Loan Agreement.

(d) Appointment of Lender as Attorney-In-Fact.

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

(e) No Lender Obligation.

Nothing in this Loan Agreement shall:

- (1) make Lender responsible for making or completing the Replacements, Repairs, or Restoration;
- (2) require Lender to expend funds, whether from any Reserve/Escrow Account, or otherwise, to make or complete any Replacement, Repair, or Restoration item;
- (3) obligate Lender to proceed with the Replacements, Repairs, or Restoration;
or
- (4) obligate Lender to demand from Borrower additional sums to make or complete any Replacement, Repair, or Restoration item.

(f) No Lender Warranty.

Lender's approval of any plans for any Replacement, Repair, or Restoration, release of funds from any Reserve/Escrow Account, inspection of the Mortgaged Property by Lender or its agents, representatives, or designees, or other acknowledgment of completion of any Replacement, Repair, or Restoration in a manner satisfactory to Lender shall not be deemed an acknowledgment or warranty to any Person that the Replacement, Repair, or Restoration has been completed in accordance with applicable building, zoning, or other codes, ordinances, statutes, laws, regulations, or requirements of any Governmental Authority, such responsibility being at all times exclusively that of Borrower.

ARTICLE 14 - DEFAULTS/REMEDIES

Section 14.01 Events of Default.

The occurrence of any one or more of the following in this Section 14.01 shall constitute an Event of Default under this Loan Agreement.

(a) Automatic Events of Default.

Any of the following shall constitute an automatic Event of Default:

- (1) any failure by Borrower to pay or deposit when due any amount required by the Note, this Loan Agreement or any other Loan Document;
- (2) any failure by Borrower to maintain the insurance coverage required by any Loan Document;
- (3) any failure by Borrower to comply with the provisions of Section 4.02(d) relating to its single asset status;
- (4) if any warranty, representation, certification, or statement of Borrower or Guarantor in this Loan Agreement or any of the other Loan Documents is false, inaccurate, or misleading in any material respect when made;
- (5) fraud, gross negligence, willful misconduct, or material misrepresentation or material omission by or on behalf of Borrower, Guarantor, or Key Principal or any of their officers, directors, trustees, partners, members, or managers in connection with:
 - (A) the application for, or creation of, the Indebtedness;
 - (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Mortgage Loan; or

(C) any request for Lender's consent to any proposed action, including a request for disbursement of Reserve/Escrow Account Funds or Collateral Account Funds;

(6) the occurrence of any Transfer not permitted by the Loan Documents;

(7) the occurrence of a Bankruptcy Event;

(8) the commencement of a forfeiture action or other similar proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Loan Agreement or the Security Instrument or Lender's interest in the Mortgaged Property;

(9) if Borrower, Guarantor, or Key Principal is a trust, or if Control of Borrower, Guarantor, or Key Principal is Transferred or if a Restricted Ownership Interest in Borrower, Guarantor, or Key Principal would be Transferred due to the termination or revocation of a trust, the termination or revocation of such trust, except as set forth in Section 11.03(d);

(10) any failure by Borrower to complete any Repair related to fire, life, or safety issues in accordance with the terms of this Loan Agreement within the Completion Period (or such other date set forth on the Required Repair Schedule or otherwise required by Lender in writing for such Repair); or

(11) any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust, or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable.

(b) Events of Default Subject to a Specified Cure Period.

Any of the following shall constitute an Event of Default subject to the cure period set forth in the Loan Documents:

(1) if Key Principal or Guarantor is a natural person, the death of such individual, unless all requirements of Section 11.03(e) are met;

(2) the occurrence of a Guarantor Bankruptcy Event, unless requirements of Section 11.03(f) are met;

(3) any failure by Borrower, Key Principal, or Guarantor to comply with the provisions of Section 5.02(b) and Section 5.02(c); or

(4) any failure by Borrower to perform any obligation under this Loan Agreement or any Loan Document that is subject to a specified written notice and cure period, which failure continues beyond such specified written notice and cure period as set forth herein or in the applicable Loan Document.

(c) Events of Default Subject to Extended Cure Period.

The following shall constitute an Event of Default if the existence of such condition or event, or such failure to perform or default in performance continues for a period of thirty (30) days after written notice by Lender to Borrower of the existence of such condition or event, or of such failure to perform or default in performance, provided, however, such period may be extended for up to an additional thirty (30) days if Borrower, in the discretion of Lender, is diligently pursuing a cure of such; provided, further, however, no such written notice, grace period, or extension shall apply if, in Lender's discretion, immediate exercise by Lender of a right or remedy under this Loan Agreement or any Loan Document is required to avoid harm to Lender or impairment of the Mortgage Loan (including the Loan Documents), the Mortgaged Property or any other security given for the Mortgage Loan:

(1) any failure by Borrower to perform any of its obligations under this Loan Agreement or any Loan Document (other than those specified in Section 14.01(a) or Section 14.01(b) above) as and when required; or

(2) if Lender incurs any costs or expenses or suffers any loss or damage as a result of any claims, actions, suits or proceedings arising from any tenant opportunity to purchase act applicable to and affecting the Mortgaged Property.

Section 14.02 Remedies.

(a) Acceleration; Foreclosure.

If an Event of Default has occurred and is continuing, the entire unpaid principal balance of the Mortgage Loan, any Accrued Interest, interest accruing at the Default Rate, the Prepayment Premium (if applicable), and all other Indebtedness, at the option of Lender, shall immediately become due and payable, without any prior written notice to Borrower, unless applicable law requires otherwise (and in such case, after any required written notice has been given). Lender may exercise this option to accelerate regardless of any prior forbearance. In addition, Lender shall have all rights and remedies afforded to Lender hereunder and under the other Loan Documents, including, foreclosure on and/or the power of sale of the Mortgaged Property, as provided in the Security Instrument, and any rights and remedies available to Lender at law or in equity (subject to Borrower's statutory rights of reinstatement, if any). Any proceeds of a Foreclosure Event may be held and applied by Lender as additional collateral for the Indebtedness pursuant to this Loan Agreement. Notwithstanding the foregoing, the occurrence of any Bankruptcy Event shall automatically accelerate the Mortgage Loan and all obligations and Indebtedness shall be immediately due and payable without written notice or further action by Lender.

(b) Loss of Right to Disbursements from Collateral Accounts.

If an Event of Default has occurred and is continuing, Borrower shall immediately lose all of its rights to receive disbursements from the Reserve/Escrow Accounts and any Collateral Accounts. During the continuance of any such Event of Default, Lender may use the

Reserve/Escrow Account Funds and any Collateral Account Funds (or any portion thereof) for any purpose, including:

- (1) repayment of the Indebtedness, including principal prepayments and the Prepayment Premium applicable to such full or partial prepayment, as applicable (however, such application of funds shall not cure or be deemed to cure any Event of Default);
- (2) reimbursement of Lender for all losses and expenses (including reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default;
- (3) completion of the Replacement, Repair, Restoration, or for any other replacement or repair to the Mortgaged Property; and
- (4) payment of any amount expended in exercising (and the exercise of) all rights and remedies available to Lender at law or in equity or under this Loan Agreement or under any of the other Loan Documents.

Nothing in this Loan Agreement shall obligate Lender to apply all or any portion of the Reserve/Escrow Account Funds or Collateral Account Funds on account of any Event of Default by Borrower or to repayment of the Indebtedness or in any specific order of priority.

(c) Remedies Cumulative.

Each right and remedy provided in this Loan Agreement is distinct from all other rights or remedies under this Loan Agreement or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of additional default by Borrower in order to exercise any of its remedies with respect to an Event of Default.

Section 14.03 Additional Lender Rights; Forbearance.

(a) No Effect Upon Obligations.

Lender may, but shall not be obligated to, agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, Guarantor, Key Principal, or other third party obligor, to take any of the following actions:

- (1) the time for payment of the principal of or interest on the Indebtedness may be extended, or the Indebtedness may be renewed in whole or in part;
- (2) the rate of interest on or period of amortization of the Mortgage Loan or the amount of the Monthly Debt Service Payments payable under the Loan Documents may be modified;

(3) the time for Borrower's performance of or compliance with any covenant or agreement contained in any Loan Document, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived;

(4) any or all payments due under this Loan Agreement or any other Loan Document may be reduced;

(5) any Loan Document may be modified or amended by Lender and Borrower in any respect, including an increase in the principal amount of the Mortgage Loan;

(6) any amounts under this Loan Agreement or any other Loan Document may be released;

(7) any security for the Indebtedness may be modified, exchanged, released, surrendered, or otherwise dealt with, or additional security may be pledged or mortgaged for the Indebtedness;

(8) the payment of the Indebtedness or any security for the Indebtedness, or both, may be subordinated to the right to payment or the security, or both, of any other present or future creditor of Borrower; or

(9) any other terms of the Loan Documents may be modified.

(b) No Waiver of Rights or Remedies.

Any waiver of an Event of Default or forbearance by Lender in exercising any right or remedy under this Loan Agreement or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of any other Event of Default or preclude the exercise or failure to exercise of any other right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise or failure to exercise of any other right available to Lender. Lender's receipt of any insurance proceeds or amounts in connection with a Condemnation Action shall not operate to cure or waive any Event of Default.

(c) Appointment of Lender as Attorney-In-Fact.

Borrower hereby irrevocably makes, constitutes, and appoints Lender (and any officer of Lender or any Person designated by Lender for that purpose) as Borrower's true and lawful proxy and attorney-in-fact (and agent-in-fact) in Borrower's name, place, and stead, with full power of substitution, to:

(1) use any Reserve/Escrow Account Funds for the purpose of making or completing the Replacements, Repairs, or Restoration;

(2) make such additions, changes, and corrections to the Replacements, Repairs, or Restoration as shall be necessary or desirable to complete the Replacements, Repairs, or Restoration;

(3) employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for such purposes;

(4) pay, settle, or compromise all bills and claims for materials and work performed in connection with the Replacements, Repairs, or Restoration, or as may be necessary or desirable for the completion of the Replacements, Repairs, or Restoration, or for clearance of title;

(5) adjust and compromise any claims under any and all policies of insurance required pursuant to this Loan Agreement and any other Loan Document, subject only to Borrower's rights under this Loan Agreement;

(6) appear in and prosecute any action arising from any insurance policies;

(7) collect and receive the proceeds of insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds;

(8) commence, appear in, and prosecute, in Lender's or Borrower's name, any Condemnation Action;

(9) settle or compromise any claim in connection with any Condemnation Action;

(10) execute all applications and certificates in the name of Borrower which may be required by any of the contract documents;

(11) prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the rehabilitation and repair of the Mortgaged Property;

(12) take such actions as are permitted in this Loan Agreement and any other Loan Documents;

(13) execute such financing statements and other documents and to do such other acts as Lender may require to perfect and preserve Lender's security interest in, and to enforce such interests in, the collateral; and

(14) carry out any remedy provided for in this Loan Agreement and any other Loan Documents, including endorsing Borrower's name to checks, drafts, instruments and other items of payment and proceeds of the collateral, executing change of address forms with the postmaster of the United States Post Office serving the address of Borrower, changing the address of Borrower to that of Lender, opening all envelopes addressed to Borrower, and applying any payments contained therein to the Indebtedness.

Borrower hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable and shall not be affected by the disability or incompetence of Borrower. Borrower specifically acknowledges and agrees that this power of attorney granted to Lender may be assigned by Lender to Lender's successors or assigns as holder of the Note (and the other Loan Documents). The foregoing powers conferred on Lender under this Section 14.03(c) shall not impose any duty upon Lender to exercise any such powers and shall not require Lender to incur any expense or take any action. Borrower hereby ratifies and confirms all that such attorney-in-fact may do or cause to be done by virtue of any provision of this Loan Agreement and any other Loan Documents.

Notwithstanding the foregoing provisions, Lender shall not exercise its rights as set forth in this Section 14.03(c) unless: (A) an Event of Default has occurred and is continuing, or (B) Lender determines, in its discretion, that exigent circumstances exist or that such exercise is necessary or prudent in order to protect and preserve the Mortgaged Property, or Lender's lien priority and security interest in the Mortgaged Property.

(d) Borrower Waivers.

If more than one Person signs this Loan Agreement as Borrower, each Borrower, with respect to any other Borrower, hereby agrees that Lender, in its discretion, may:

- (1) bring suit against Borrower, or any one or more of Borrower, jointly and severally, or against any one or more of them;
- (2) compromise or settle with any one or more of the persons constituting Borrower, for such consideration as Lender may deem proper;
- (3) release one or more of the persons constituting Borrower, from liability; or
- (4) otherwise deal with Borrower, or any one or more of them, in any manner, and no such action shall impair the rights of Lender to collect from any Borrower the full amount of the Indebtedness.

Section 14.04 Waiver of Marshaling.

Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Loan Agreement, any other Loan Document or applicable law. Lender shall have the right to determine the order in which all or any part of the Indebtedness is satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Loan Agreement waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property

be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Loan Agreement or any other Loan Documents.

Lender shall account for any moneys received by Lender in respect of any foreclosure on or disposition of collateral hereunder and under the other Loan Documents provided that Lender shall not have any duty as to any collateral, and Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers. NONE OF LENDER OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES SHALL BE RESPONSIBLE TO BORROWER (a) FOR ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED PURSUANT TO A FINAL, NON-APPEALABLE COURT ORDER BY A COURT OF COMPETENT JURISDICTION, OR (b) FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

ARTICLE 15 - MISCELLANEOUS

Section 15.01 Governing Law; Consent to Jurisdiction and Venue.

(a) Governing Law.

This Loan Agreement and any other Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the Property Jurisdiction without regard to the application of choice of law principles.

(b) Venue.

Any controversy arising under or in relation to this Loan Agreement or any other Loan Document shall be litigated exclusively in the Property Jurisdiction without regard to conflicts of laws principles. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Loan Agreement or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence, or otherwise.

Section 15.02 Notice.

(a) Process of Serving Notice.

Except as otherwise set forth herein or in any other Loan Document, all notices under this Loan Agreement and any other Loan Document shall be:

- (1) in writing and shall be:
 - (A) delivered, in person;

- (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
 - (C) sent by overnight courier; or
 - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at Borrower's Notice Address and Lender's Notice Address, as applicable; and
- (3) deemed given on the earlier to occur of:
- (A) the date when the notice is received by the addressee; or
 - (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

(b) Change of Address.

Any party to this Loan Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified on the Summary of Loan Terms in accordance with this Section 15.02.

(c) Default Method of Notice.

Any required notice under this Loan Agreement or any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 15.02.

(d) Receipt of Notices.

Neither Borrower nor Lender shall refuse or reject delivery of any notice given in accordance with this Loan Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

Section 15.03 Successors and Assigns Bound; Sale of Mortgage Loan.

(a) Binding Agreement.

This Loan Agreement shall bind, and the rights granted by this Loan Agreement shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower. However, a Transfer not permitted by this Loan Agreement shall be an Event of Default and shall be void ab initio.

(b) Sale of Mortgage Loan; Change of Servicer.

Nothing in this Loan Agreement shall limit Lender's (including its successors and assigns) right to sell or transfer the Mortgage Loan or any interest in the Mortgage Loan. The Mortgage Loan or a partial interest in the Mortgage Loan (together with this Loan Agreement and the other Loan Documents) may be sold one or more times without prior written notice to Borrower. A sale may result in a change of the Loan Servicer.

Section 15.04 Counterparts.

This Loan Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document and all such counterparts shall be construed together and shall constitute one instrument.

Section 15.05 Joint and Several (or Solidary) Liability.

If more than one Person signs this Loan Agreement as Borrower, the obligations of such Persons shall be joint and several (solidary instead for purposes of Louisiana law).

Section 15.06 Relationship of Parties; No Third Party Beneficiary.

(a) Solely Creditor and Debtor.

The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Loan Agreement shall create any other relationship between Lender and Borrower. Nothing contained in this Loan Agreement shall constitute Lender as a joint venturer, partner, or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower.

(b) No Third Party Beneficiaries.

No creditor of any party to this Loan Agreement and no other Person shall be a third party beneficiary of this Loan Agreement or any other Loan Document or any account created or contemplated under this Loan Agreement or any other Loan Document. Nothing contained in this Loan Agreement shall be deemed or construed to create an obligation on the part of Lender to any third party and no third party shall have a right to enforce against Lender any right that Borrower may have under this Loan Agreement. Without limiting the foregoing:

(1) any Servicing Arrangement between Lender and any Loan Servicer shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness;

(2) Borrower shall not be a third party beneficiary of any Servicing Arrangement; and

(3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

Section 15.07 Severability; Entire Agreement; Amendments.

The invalidity or unenforceability of any provision of this Loan Agreement or any other Loan Document shall not affect the validity or enforceability of any other provision of this Loan Agreement or of any other Loan Document, all of which shall remain in full force and effect, including the Guaranty. All of the Loan Documents contain the complete and entire agreement among the parties as to the matters covered, rights granted, and the obligations assumed in this Loan Agreement and the other Loan Documents. This Loan Agreement may not be amended or modified except by written agreement signed by the parties hereto.

Section 15.08 Construction.

(a) The captions and headings of the sections of this Loan Agreement and the Loan Documents are for convenience only and shall be disregarded in construing this Loan Agreement and the Loan Documents.

(b) Any reference in this Loan Agreement to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit or Schedule attached to this Loan Agreement or to a Section or Article of this Loan Agreement.

(c) Any reference in this Loan Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(d) Use of the singular in this Loan Agreement includes the plural and use of the plural includes the singular.

(e) As used in this Loan Agreement, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.

(f) Whenever Borrower’s knowledge is implicated in this Loan Agreement or the phrase “to Borrower’s knowledge” or a similar phrase is used in this Loan Agreement, Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s knowledge after reasonable and diligent inquiry and investigation.

(g) Unless otherwise provided in this Loan Agreement, if Lender’s approval, designation, determination, selection, estimate, action, or decision is required, permitted, or contemplated hereunder, such approval, designation, determination, selection, estimate, action, or decision shall be made in Lender’s sole and absolute discretion.

(h) All references in this Loan Agreement to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(i) “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

(j) If the Mortgage Loan proceeds are disbursed on a date that is later than the Effective Date, as described in Section 2.02(a)(1), the representations and warranties in the Loan Documents with respect to the ownership and operation of the Mortgaged Property shall be deemed to be made as of the disbursement date.

Section 15.09 Mortgage Loan Servicing.

All actions regarding the servicing of the Mortgage Loan, including the collection of payments, the giving and receipt of notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives written notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such written notice from Lender shall govern. The Loan Servicer may change from time to time (whether related or unrelated to a sale of the Mortgage Loan). If there is a change of the Loan Servicer, Borrower will be given written notice of the change.

Section 15.10 Disclosure of Information.

Lender may furnish information regarding Borrower, Key Principal, or Guarantor, or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase, or securitization of the Mortgage Loan, including trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

Section 15.11 Waiver; Conflict.

No specific waiver of any of the terms of this Loan Agreement shall be considered as a general waiver. If any provision of this Loan Agreement is in conflict with any provision of any other Loan Document, the provision contained in this Loan Agreement shall control.

Section 15.12 No Reliance.

Borrower acknowledges, represents, and warrants that:

(a) it understands the nature and structure of the transactions contemplated by this Loan Agreement and the other Loan Documents;

(b) it is familiar with the provisions of all of the documents and instruments relating to such transactions;

(c) it understands the risks inherent in such transactions, including the risk of loss of all or any part of the Mortgaged Property;

(d) it has had the opportunity to consult counsel; and

(e) it has not relied on Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Loan Agreement or any other Loan Document or otherwise relied on Lender in any manner in connection with interpreting, entering into, or otherwise in connection with this Loan Agreement, any other Loan Document, or any of the matters contemplated hereby or thereby.

Section 15.13 Subrogation.

If, and to the extent that, the proceeds of the Mortgage Loan are used to pay, satisfy, or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust, or other lien encumbering the Mortgaged Property, such Mortgage Loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall be subrogated automatically, and without further action on its part, to the rights, including lien priority, of the owner or holder of the obligation secured by such prior lien, whether or not such prior lien is released.

Section 15.14 Counting of Days.

Except where otherwise specifically provided, any reference in this Loan Agreement to a period of "days" means calendar days, not Business Days. If the date on which Borrower is required to perform an obligation under this Loan Agreement is not a Business Day, Borrower shall be required to perform such obligation by the Business Day immediately preceding such date; provided, however, in respect of any Payment Date, or if the Maturity Date is other than a Business Day, Borrower shall be obligated to make such payment by the Business Day immediately following such date.

Section 15.15 Revival and Reinstatement of Indebtedness.

If the payment of all or any part of the Indebtedness by Borrower, Guarantor, or any other Person, or the transfer to Lender of any collateral or other property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Insolvency Laws relating to a Voidable Transfer, and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the advice of its counsel, then the amount of such Voidable Transfer or the amount of such Voidable Transfer that Lender is required or elects to repay or restore, including all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection therewith, and the Indebtedness shall be automatically revived, reinstated, and restored by such amount and shall exist as though such Voidable Transfer had never been made.

Section 15.16 Time is of the Essence.

Borrower agrees that, with respect to each and every obligation and covenant contained in this Loan Agreement and the other Loan Documents, time is of the essence.

Section 15.17 Final Agreement.

THIS LOAN AGREEMENT ALONG WITH ALL OF THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Loan Agreement and the other Loan Documents. This Loan Agreement, the other Loan Documents, and any of their provisions may not be waived, modified, amended, discharged, or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in that agreement.

Section 15.18 WAIVER OF TRIAL BY JURY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER (a) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS LOAN AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER, THAT IS TRIABLE OF RIGHT BY A JURY, AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Section 15.19 Tax Savings Clause.

Notwithstanding anything to the contrary herein, no modification to the Loan Documents (whether in connection with a Transfer or otherwise) shall result in an Adverse Tax Event.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Borrower and Lender have signed and delivered this Loan Agreement under seal (where applicable) or have caused this Loan Agreement to be signed and delivered under seal (where applicable) by their duly authorized representatives. Where applicable law so provides, Borrower and Lender intend that this Loan Agreement shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

[INSERT BORROWER SIGNATURE BLOCK(S)]

By: _____(SEAL)
Name: _____
Title: _____

LENDER:

[INSERT LENDER SIGNATURE BLOCK(S)]

By: _____(SEAL)
Name: _____
Title: _____

SCHEDULES AND EXHIBITS

Schedules

Schedule 1	Definitions Schedule (required)	Form _____
Schedule 2	Summary of Loan Terms (required)	Form _____
Schedule 3	Schedule of Interest Rate Type Provisions (required)	Form _____
Schedule 4	Prepayment Premium Schedule (required)	Form _____
Schedule 5	Required Replacement Schedule (required)	
Schedule 6	Required Repair Schedule (required)	
Schedule 7	Exceptions to Representations and Warranties Schedule (required)	
Schedule 8	Ownership Interests Schedule	

Exhibits

[Exhibit ____	Modifications to Loan Agreement (if applicable)	Form _____]
[ADD EXHIBITS AS NECESSARY		Form _____]

Borrower hereby acknowledges and agrees that the Schedules and Exhibits referenced above are hereby incorporated fully into this Loan Agreement by this reference and each constitutes a substantive part of this Loan Agreement.

Borrower Initials

**SCHEDULE 1 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Definitions Schedule

[INSERT DEFINITIONS SCHEDULE 1 FOR APPLICABLE INTEREST RATE TYPE]

**SCHEDULE 2 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Summary of Loan Terms

**[INSERT SUMMARY OF LOAN TERMS SCHEDULE 2 FOR APPLICABLE
INTEREST RATE TYPE]**

**SCHEDULE 3 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Schedule of Interest Rate Type Provisions

[INSERT SCHEDULE 3 PROVISIONS FOR APPLICABLE INTEREST RATE TYPE]

**SCHEDULE 4 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Prepayment Premium Schedule

**[INSERT SCHEDULE 4 PREPAYMENT PREMIUM FOR APPLICABLE INTEREST
RATE TYPE]**

**SCHEDULE 5 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Required Replacement Schedule

[INSERT PROPERTY CONDITION ASSESSMENT REPLACEMENT SCHEDULE]

**SCHEDULE 6 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Required Repair Schedule

[IF NO REPAIRS ARE REQUIRED, INSERT NONE.]

**[DRAFTING NOTE: COMPLETE CHART INCLUDING PROPERTY ADDRESSES
AND FANNIE MAE MORTGAGE LOAN NUMBER]**

Property Address	Loan Number

**[DRAFTING NOTE: THIS SCHEDULE MUST BE COMPLETED IF ANY REPAIRS
ARE REQUIRED, EVEN IF FUNDING OF THE REPAIRS ESCROW ACCOUNT IS
WAIVED]**

Repair Description	Estimated Cost	Maximum Repair Cost	Completion Date
		Estimated Cost x [125][150]%	
		.	

**SCHEDULE 7 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

Exceptions to Representations and Warranties Schedule

[IF NONE, SO STATE]

**SCHEDULE 8 TO
MULTIFAMILY LOAN AND SECURITY AGREEMENT**


Ownership Interests Schedule

[INSERT ORGANIZATIONAL CHARTS FOR BORROWER]

[DRAFTING NOTE: BORROWER MUST SHOW THE FOLLOWING ON THE OWNERSHIP INTERESTS SCHEDULE: (A) THE ROLE/TITLE OF EACH ENTITY WITHIN THE OWNERSHIP STRUCTURE (I.E., LIMITED PARTNERSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY, MANAGING MEMBER, GENERAL PARTNER, ETC.); (B) THE STATE OF ORGANIZATION OF EACH ENTITY; (C) RESPECTIVE INTERESTS OF EACH DIRECT AND INDIRECT OWNER TO THE EXTENT REQUIRED UNDER SECTION 4.01(a)(2); AND (D) IDENTIFICATION OF THE KEY PRINCIPAL AND GUARANTOR.]

[Remainder of Page Intentionally Blank]

Andalusia, Hampton, Mentone, Sunset



March 1, 2022

DRAFT

Prepared For:

Evan Miles

909-332-6317

Emiles@HACSB.com

Prepared By

Kenji Tamaoki

415-291-5033

Kenji.Tamaoki@PGIM.com

LOAN SUMMARY & TERMS

Loan program

	Combined	Andalusia	Hampton	Mentone	Sunset
Total loan amount	\$23,215,000	\$14,089,000	\$2,469,000	\$2,738,000	\$3,919,000
Annual debt service					
Actual (amortizing)	\$1,339,081	\$812,722	\$142,424	\$157,922	\$226,013
Actual (interest-only)	\$954,806	\$579,529	\$101,559	\$112,596	\$161,123
Outstanding balance at maturity	\$18,481,189	\$11,216,467	\$1,965,498	\$2,179,685	\$3,119,539
DSCR - Minimum @ actual rate		1.200	1.250	1.200	1.200
DSCR - Actual rate	1.239	1.200	1.567	1.200	1.200
LTV - Maximum		80.0%	75.0%	80.0%	80.0%
LTV - Actual	46.9%	41.3%	75.0%	65.0%	49.7%
Interest rate	Index	1.960%	1.960%	1.960%	1.960%
	Spread	2.097%	2.097%	2.096%	2.095%
	All-in	4.057%	4.057%	4.056%	4.055%
Permanent loan term (months)	120	120	120	120	120
Amortization period (months)	360	360	360	360	360
Interest only term (months)	0	0	0	0	0
Prepayment terms					
Prepayment requirement 1	Yield Maintenance	Yield Maintenance	Yield Maintenance	Yield Maintenance	Yield Maintenance
Term (months after closing)	84	84	84	84	84
Prepayment requirement 2	1% Fixed Prepayment	1% Fixed Prepayment	1% Fixed Prepayment	1% Fixed Prepayment	1% Fixed Prepayment
Term (months after closing)	117	117	117	117	117

NOTES:

1. This is a preliminary analysis based on current market conditions and information supplied by this Applicant.
2. All terms are subject to lender approval.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.

SOURCES

	Combined	Andalusia	Hampton	Mentone	Sunset
Prudential loan	\$23,215,000	\$14,089,000	\$2,469,000	\$2,738,000	\$3,919,000
Borrower cash	-	-	-	-	-
Other sources	-	-	-	-	-
Total sources	\$23,215,000	\$14,089,000	\$2,469,000	\$2,738,000	\$3,919,000
Excess / (Shortfall)	\$8,932,357	\$3,554,718	\$2,313,014	\$735,408	\$2,329,218

USES

Existing mortgage balances	12,754,139	9,677,977	-	1,737,229	1,338,933
Yield maintenance	783,221	593,593	-	107,090	82,538
Upfront reserves					
Insurance and tax escrows	-	-	-	-	-
Other reserves	-	-	-	-	-
Construction					
Hard construction costs	30,000	15,000	5,000	5,000	5,000
General requirements	-	-	-	-	-
Builder's overhead	-	-	-	-	-
Builder's profit	-	-	-	-	-
Hard cost contingency	-	-	-	-	-
Architect and engineering fees	-	-	-	-	-
Bond premium	-	-	-	-	-
Furniture, fixtures and equipment	-	-	-	-	-
Other fees - mortgagor	-	-	-	-	-
Other fees - general contractor	-	-	-	-	-
Soft costs					
Accounting and consultants	-	-	-	-	-
Cost certification	-	-	-	-	-
Insurance, legal, organization	-	-	-	-	-
Permits and impact fees	-	-	-	-	-
Real estate taxes	-	-	-	-	-
Relocation	-	-	-	-	-
Soft cost contingency	200,000	50,000	50,000	50,000	50,000
Financing costs					
PGIM fees	174,113	105,668	18,518	20,535	29,393
PGIM third party expenses	140,000	35,000	35,000	35,000	35,000
PGIM processing fee	20,000	5,000	5,000	5,000	5,000
PGIM legal	100,000	25,000	25,000	25,000	25,000
Agency standby and application fees	16,171	7,045	2,469	2,738	3,919
Title & recording	65,000	20,000	15,000	15,000	15,000
Other uses	-	-	-	-	-
Total	\$14,282,643	\$10,534,282	\$155,987	\$2,002,592	\$1,589,782

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

March 08, 2022

FROM

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

SUBJECT

Contracts with Montgomery Plumbing, Inc., A-Advantage Plumbing and Pro-Craft Construction for On-Call Plumbing Services

RECOMMENDATION(S)

1. Approve Contract No. PC1261 with Montgomery Plumbing, Inc., A-Advantage Plumbing, and Pro-Craft Construction for on-call plumbing services for a three-year term from March 9, 2022 through March 8, 2025, with an option to extend the term for up to two additional years through March 8, 2027.
2. Approve an appropriation in an amount not to exceed \$1,226,269 for on-call plumbing services through March 8, 2027.
3. Authorize and direct the Executive Director to execute and deliver the contracts to Montgomery Plumbing, Inc., A-Advantage Plumbing and Pro-Craft Construction, 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 resources needed to accomplish its mission

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

HACSB provides safe and desirable homes and communities.

FINANCIAL IMPACT

This item is not expected to exceed a multi-year amount of \$1,226,296 and will be funded from operating funds from the respective developments.

BACKGROUND INFORMATION

HACSB currently contracts with various trade contractors to supplement our internal maintenance department to maintain our affordable housing and administrative offices. HACSB currently operates multiple offices in our affordable housing communities as well as administrative buildings. To ensure timely service to our customers, including affordable housing residents, HACSB currently contracts with professional plumbing companies. Approval of this item will provide on-call plumbing services to our various offices across the county on an as-needed basis.

PROCUREMENT

On December 21, 2022, the Procurement and Contracts Department issued a Request for Proposal (RFP) PC1261 for on-call plumbing services, which resulted in the receipt of four proposals. Outreach efforts included email invitations to contractors, 250 vendor notifications, and 61 Housing Authority vendors through the agency's electronic bidding software, PlanetBids.com. The proposals were evaluated per the requirements of the RFP in which Montgomery Plumbing,

Contracts with Montgomery Plumbing, Inc., A-Advantage Plumbing and Pro-Craft Construction
for On-Call Plumbing Services
March 8, 2022

Inc., A-Advantage Plumbing and Pro-Craft Construction had the best price, considered responsive, and determined best qualified to provide this service to HACSB.

Sealed bids were received by the deadline from the following organizations:			
<u>Contractors Name</u>	<u>Location</u>	<u>Meets Qualifications</u>	<u>Hourly Rate Score</u>
Montgomery Plumbing, Inc.	Moreno Valley, California	Yes	1
A-Advantage Plumbing	Yucaipa, California	Yes	2
Pro-Craft Construction	Redlands, California	Yes	3

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 contracts for on-call plumbing services to Montgomery Plumbing, Inc., A-Advantage Plumbing, and Pro-Craft Construction.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 24, 2022.

THIS CONSULTING, SERVICES, AND NON-ROUTINE MAINTENANCE RELATED SERVICES AGREEMENT (NON-CONSTRUCTION) ("Agreement") is made as of the **9th day of March 2022** ("Effective Date") by and between **Montgomery Plumbing, Inc. (PC1261)** ("Contractor"), Inc. 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") and in any Work Authorization. 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. The Statement of Work, attached hereto as Exhibit "A" and incorporated herein by reference.
2. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Work) (Form HUD 5370 C1), attached hereto as Exhibit "B" and incorporated herein by reference.
3. Additional General Provisions, attached hereto as Exhibit "C" and incorporated herein by reference ("Additional Provisions").
4. The Sample Work Authorization, attached hereto as Exhibit "D" and incorporated herein by reference ("Work Authorization").
5. The California Prevailing Wage Requirements, attached hereto as Exhibit "E" and incorporated herein by referenced.
6. 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 **three (3) year period**, beginning on or about **March 9, 2022** and expiring on **March 8, 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. HACSB shall have the option to extend the Agreement for up to two (2) years. The optional years shall be exercised by written amendments executed by authorized representatives of each party. Option years will begin on or about **March 8, 2025** and expire no later than **March 9, 2027**. 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"). 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 Work Authorization, HACSB agrees to pay Contractor for the provision of work per the fee schedule **for the three (3) year base contract period.** Details defined in Exhibit A – Scope of Services – Fee Schedule. Additional year extensions may require board approval for additional funds. 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.

The maximum amount of payment under this Contract is a combined total for all contractors providing on-call Plumbing services identified in the corresponding Board Agenda Item, and together shall not exceed \$1,226,269.00. Payment shall only be made for work authorized and performed pursuant to the requirements of this Contract.

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 of 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 venturer, agent or legal representative of HACSB for any purpose, nor shall Contractor 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 Work Authorization ("Additional Work") is required to be performed by Contractor, such Additional Work shall be memorialized in an additional 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. Terminate the Work Authorization for the specific Work; or
 - iv. 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 Work Authorization) which involves the delivery to HACSB of identified Deliverables (as defined in the Work Authorization and this Agreement), 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 Work Authorization 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 Work Authorization.

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 Contractor. 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 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.

Except as otherwise required by law, any notice, information, request or reply ("**Notice**") required or permitted to be given under the provisions of this Contract shall be in writing and shall be given or served either personally or by mail. If given or served by mail, such Notice shall be deemed sufficiently given if:

- (1) Deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or
- (2) Sent by express mail, Federal Express, or similar overnight service, provided proof of service is available, addressed to the addresses of the Parties specified below in Section 27.4 or to such other address as may be duly specified by the respective Parties.

Any notice given or served by certified mail shall be deemed given or served three (3) business days after deposit in the mails, or as a signed receipt may show, unless a copy of the Notice is concurrently transmitted by electronic or telephonic facsimile, in which case the Notice shall be deemed given or served as of the date of deposit of the original in the mails. Any Notice given or served by express mail, Federal Express, or other similar overnight service, shall be deemed given or served the day following deposit in the mails or delivery to

the carrier, unless a copy of the Notice is concurrently transmitted by electronic or telephone facsimile, in which case the Notice shall be deemed given or served as of the date of deposit of the original in the mails or delivery to the carrier.

All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardipide, Procurement Department
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841
alardapide@hacsb.com

If to Contractor:

Mark Montgomery
Montgomery Plumbing, Inc.
28625 Maranda Court
Moreno Valley, CA 92555
Monty-2-@roadrunner.com

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 multiple counterparts, and when so executed by each of the parties hereto shall constitute a single agreement binding upon all of the parties hereto.

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)**

PC1261 – Plumbing Services

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

Date: _____

Montgomery Plumbing Inc.

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

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

All work is to be performed according to industry standards, according to the material manufacturers' recommendations and to the satisfaction of HACSB. The Contractor will perform plumbing maintenance and repairs for buildings owned by HACSB as requested by the Property Manager or their designee. The HACSB offers no guarantee of any amount of work to be performed under the Contract.

If requested by the Property Manager, Project Manager, or Supervising Maintenance Worker; awarded contractor shall provide plumbing services according to the specifications included in the scope of work in this section.

I. General Requirements

- A. The Contractor shall furnish all labor, equipment, tools, parts, materials, and supplies required to repair, replace, remove stoppages, and install existing and new plumbing systems as required. This includes the provision of all replacement parts and component systems required for existing building plumbing systems in accordance with all original equipment manufacturer specifications. Contractor shall list all areas of plumbing, which Contractor will not provide services for. The services shall additionally include, but not be limited to:
 - Expediting services
 - Regular service calls
 - Emergency service calls
- B. Repair, replacement, stoppage removal and installation services provided by the Contractor shall comply with and conform to all applicable Federal, State, and local regulations, laws and codes.
- C. The Contractor shall possess a valid California C-36 Plumbing CSLB License for the duration of the contract to perform all work in accordance with latest plumbing codes for the County of San Bernardino and local jurisdiction, where applicable, and according to this Scope of Work.
- D. For public funded projects, the Contractor shall renew their registration with the Department of Industrial Relations (DIR) and submit proof of registration information, including PWCR number on a yearly basis to HACSB.
- E. The Contractor shall provide services in a thorough and workman like manner observing any laws, statues, ordinances, rules, or regulations of any governmental agencies or public authorities and to the satisfaction of the Housing Authority.
- F. The Contractor shall comply with both State and Federal Prevailing Wage requirements.
- G. The Contractor shall charge for services rendered in accordance to the contract's fee schedule.
- H. The Contractor shall provide all labor, equipment, and materials necessary to complete all the necessary work.

II. Specifications

The Contractor shall provide repair and maintenance to all plumbing systems associated with housing units (residential) and office buildings (commercial) on an as-needed basis and following the submission of a proposal and approval by HACSB as provided in Section IV below that include, but not limited to:

- A. Installing, repairing, modifying, and troubleshooting on a variety of bathrooms and kitchen fixtures;

- B. Installing, modifying, improving, reconditioning, repairing, clearing, troubleshooting, replacing sewer lines (main and general branches, other drain lines), and water lines (main and general distribution lines);
- C. Cleaning and unstopping drains and sewer lines from 1" to 8", including sewer, drain video camera inspecting, and high pressure jetting, where applicable;
- D. Installing and repairing gas pipes, including pipe insulation, and heat tape;
- E. Installing and repairing heaters;
- F. Flushing holding tanks;
- G. Maintain and/or repair sump pump system for biofilter;
- H. Servicing, maintaining and repairing of boilers (water heaters and hydronic heating systems) and regular water heaters (electrical and gas) 40 gallon – 100 gallon.

III. Permits

- A. Contractor shall be responsible for obtaining all plumbing permits required by the local governmental agency having jurisdiction over the project when applicable.
- B. Contractor shall deliver to HACSB within 10 calendar days all operation and maintenance manuals, where applicable, upon completion of the work:
 - 1. Copies of all warranties and guarantees;
 - 2. Materials list of items provided;
 - 3. Manufacturer's installation procedures which will become the basis for accepting or rejecting actual installation procedures used on the work; and
 - 4. Manufacturer's specifications and other data needed to provide compliance with specified requirements.

IV. Job Proposals

- A. The Contractor shall provide a written itemized proposal for as needed repairs and other services to HACSB.
- B. The Contractor shall charge labor hours in accordance to the fee schedule.
- C. The Contractor shall not start any work until HACSB has approved the proposal in writing and/or email.
- D. The Contractor shall provide warranty language for the work requested on the job proposal.
- E. Work which exceeds five hundred (\$500), the Contractor shall furnish a report, which shall include a scope of work, bill of materials, fixed price, and time required for completion, and request written authorization from HACSB.

V. Invoices

- A. The Contractor shall invoice in accordance to the fee schedule provided in this Exhibit A.
- B. The Contractor shall include on every invoice the following:
 - a. Name and address of site,
 - b. Name of requester,
 - c. Work performed,
 - d. Purchase Order number,
 - e. Cost of materials/supplies,
 - f. Total number of labor hours,
 - g. Total number of employees that completed work.
- C. The Contractor shall provide one point of contact for all invoicing.
- D. The Contractor shall provide receipts for materials, supplies, parts and equipment at HACSB's request.

VI. Materials, Equipment, Supplies and Parts

- A. The Contractor shall be responsible for the purchase of all materials, equipment, supplies and parts to provide the needed services. The Contractor shall purchase materials, equipment, supplies and parts that are reasonably priced and equivalent to or better than the existing.
- B. The Contractor shall use materials and equipment that are safe for the environment and safe for the use by the Contractor's employees.

VII. Hourly Rates

- A. The Contractor shall charge only for the time worked on-site.
- B. The Contractor shall have pre-approved email when work needs to be performed after business or emergency hours.

VIII. Warranties on Materials, Repairs and Parts

- A. The Contractor shall warranty repair service for not less than 180 days following the date of acceptance of the repair service by the HACSB staff.
- B. The Contractor shall provide copies of all the manufactures warranty to HACSB for materials, equipment and parts.
- C. The Contractor shall correct defect(s) on service repairs and parts within 24 hours at no cost to HACSB.

IX. Project Coordinators

- A. The HACSB project coordinator for this project is the Supervising Maintenance Worker, who can be contacted via telephone numbers, which will be provided to the awarded contractor(s). Any work at the site shall be scheduled through HACSB at least forty-eight (48) hours in advance of the work.
- B. The Contractor shall provide a full-time Supervisor with at least 5 years of experience in managing projects of similar size and scope as contained in this Scope of Work.
- C. The Contractor shall assign a sufficient number of employees to perform the required work. At least one employee on site shall be authorized to act for the Contractor in every detail and must be able to communicate effectively.
- D. The Contractor's Project Coordinator shall have a cellular telephone, which number shall be provided to HACSB. The Project Manager or Project Coordinator 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 daily to review overall performance, receive special instructions regarding the scope of work or other pertinent items regarding the contract, and the contractor's performance.
- E. Before the work commences, the contractor must provide a work schedule that is approved by HACSB.
- F. The Contractor's employees assigned to the Contract shall wear an appropriate uniform at all times. The uniform must display the Contractor's company name. All uniforms, will be provided by the Contractor, at the Contractor's expense.

X. Training

The Contractor shall provide training programs for all new employees and continuing in-service training for all employees. All employees shall be trained in their assigned tasks and in the safe handling of equipment. All equipment shall be checked daily for safety. All employees must wear safety and protective gear according to Cal-OSHA standards.

XI. Work Schedules

The Contractor shall perform work when needed and requested, including day and night hours as well as weekends and holidays.

A. Regular Service Hours

The Contractor shall perform all regular service hours during the hours of 7:30 a.m. to 4:30 p.m., Monday through Friday, except for holidays as noted in Section V – E Holiday Work.

B. After-Hours Services

The Contractor shall provide weekday after-hour service during the hours of 4:30 p.m. to 7:30a.m. Weekends and holiday are considered after hours. Service requests shall be responded to within four (4) hours after HACSB notification to Contractor.

C. Emergency Services

The Contractor shall perform any emergency service requested by HACSB on the same business day the request is made. The Contractor shall respond and arrive at the property within three (3) hours from the time of notification.

D. The Contractor shall provide services, on a twenty-four (24) hour, seven (7) days per week basis.

XII. Work Authorization

- A. The Contractor shall be required to visit the potential job site and submit a written quotation prior to the authorization of work, at no additional charge to the HACSB. The quotation shall be provided within" three (3) business days" of the original request, and shall include a detailed summary in accordance with the contract rates. If the quotation is accepted and the work performed, the Contractor's invoice shall not exceed the quoted amount unless previously authorized by the Property Manager or their designee.

XIII. Site Control

- A. Any areas being worked in shall be secured from public access, clearly marked, and barricaded, if necessary. At all times, work shall not interfere with ingress or egress of the building or normal operations by tenants, HACSB employees or vehicles. All surrounding surfaces and vegetation shall be protected from contact with any materials used in this project.
- B. The contractor is solely responsible for damage to surrounding surfaces, facilities, vegetation, vehicles, or persons caused by its materials, equipment, workers, or agents. The contractor shall make every effort to maintain a clean, quiet, and orderly work area throughout the term of this project. No materials or equipment shall be left on the site when the contractor's workers are not present. The contractor is responsible for protecting the work from damage from any source prior to final acceptance.
- C. At the completion of work, remove all materials, supplies, debris and rubbish and leave each area in a clean, acceptable condition.
- D. It is the responsibility of the Contractor to remove from the worksite, daily, all debris and to dispose of such properly, pursuant to all applicable (local, State and Federal) codes, laws and regulations. Debris shall not be disposed of in the HACSB dumpsters.

XIV. Day and Time

All services shall be performed on a day and time convenient to the HACSB and which will be firmly established during the negotiations held between the HACSB and the top ranked proposer.

XV. Prevailing Wage Requirements

As further set forth in Exhibit "E" of this contract will be funded with public funds. The bidder shall be responsible for complying with all applicable labor requirements as dictated by the type of contract/project described below:

A. Davis Bacon Prevailing Wage (Federal Funds) – Applicable for Affordable Housing Units

When the source of funds are determined to be in whole or partially with federal funds, Federal Labor Standards Provisions (HUD 4010) refer to Exhibit J, including prevailing wage requirements of the Davis-Bacon and Related Acts (DBRA) shall be enforced.

The current U.S. Department of Labor prevailing wage determinations are applicable as follows:

- Residential Federal Wage Determination General Decision Number CA20210017 11/26/2021
- Non-Residential Federal Wage Determination General Decision Number CA20210026 11/12/2021

The applicable DOL General Wage Determination will depend on if the location of the work to be performed is at a residential or non-residential site. These rates are the minimum rates that must be paid to ALL employees performing work in these classifications at the project site(s). The most current Federal Wage Decisions are listed as attachments under Appendix A.

The Federal Labor Standards Provisions (HUD 4010), including prevailing wage requirements of Davis-Bacon and Related Acts (DBRA) shall be enforced, in addition to all labor requirements of the State of California prevailing wage laws, regulations, codes, as set forth above. When federal and either state or local funds are used and a discrepancy between Federal Regulations and State Law is found to exist, the more stringent of the two shall prevail.

B. California State Prevailing Wage (Public Funds) – Applicable for Authority Owned Properties (AOP)

Contractor shall pay its employees that perform such work as stated within this RFP at a rate not less than the California State Prevailing Wage for San Bernardino County Residential Determination (Residential Plumber) plus fringe benefits. For non-residential projects (buildings) – General Prevailing Wage Determination plus fringe benefits.

Please refer to Appendix B for the State of California Labor Code for more detail. Regardless of the funding source (federal, state, or local), the Contractor shall comply with all labor requirements of the State of California prevailing wage laws, regulations, codes, etc., applicable to this contract, including but not limited to, the following: California Labor Code Section 1770 et seq., which requires contractors to pay their workers based on the prevailing wage rates established and issued by the Department of Industrial Relations (DIR), Division of Labor Statistics. Said rates can be obtained on the website at www.dir.ca.gov.

The Contractor and Subcontractor shall also: 1) Pay not less than the prevailing wage to all workers, as defined in the California Code of Regulations (CCR) section 16000(a), and as set forth in Labor Code

Sections 1771 and 1774: 2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works job sites; 3) Provide workers' compensation coverage as set forth in Labor Code Section 1861; 4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance fee; 5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776; 6) Pay workers overtime pay; as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the DIR Director as set forth in CCR's Section 16200; 7) Comply with Section 16101 of these regulations regarding discrimination; 8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5; 9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and 10) Comply with any other applicable requirements imposed by the State of California.

State of California LABOR CODE - Section 1771.1

- (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- (b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.
- (c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:
 - (1) The subcontractor is registered prior to the bid opening.
 - (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.
 - (3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.
- (d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.
- (e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.
- (f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.
- (g) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.

(Added by Stats. 2014, Ch. 28, Sec. 63. (SB 854) Effective June 20, 2014.)

DIR Registration:

The DIR requires registration of public works projects to be completed within five days of awarding the contract. A PWC 100 form will be completed by the awarding body. The completion and the submission of this form fulfills the required public works project award notification as required by Labor Code sec. 1773.3

Service Area Locations and Funding

Provide Plumbing Services on an as-needed basis for the various HACSB Authority Owned sites.

Property:	Address:	City:	Units:	Funded:	Wage:	Service: Yes/No
Las Palmas	8980 Date St., #1A-#3D	Fontana, CA	16 units	Public	Residential	Yes
Kingsley Patio Homes	10302 – 10399 Poulson Ct.	Montclair, CA	34 units	Public	Residential	Yes
Mentone Property	1232 Crafton Ave., #A1-C10	Mentone, CA	34 units	Public	Residential	Yes
Yucaipa Crest	12385 6 th St., #101-923	Yucaipa, CA	45 units	Public	Residential	Yes
Yucaipa Terrace	12435 6 th St., #101-1005	Yucaipa, CA	51 units	Public	Residential	Yes
Andalusia	13520 Third Ave.	Victorville, CA	168 units	Public	Residential	Yes
Chino Affordable Housing	13088 Monte Vista Ave.	Chino, CA	50 units	Public	Residential	Yes
Maplewood Homes	1738 West 9 th St.	San Bernardino, CA	427 units	Public	Residential	Yes
Barstow Affordable Housing	421 South 7 th St.	Barstow, CA	220 units	Public	Residential	Yes
Colton Affordable Housing	772 Pine St.	Colton, CA	125 units	Public	Residential	Yes
Redlands Affordable Housing	803 West Brockton Ave./9 th St.	Redlands, CA	87 units	Public	Residential	Yes
Central Office	715 E. Brier Drive	San Bernardino	Building	Public	Non-Residential	Yes
Housing Programs Office	672& 680 S Waterman Ave	San Bernardino	Building	Public	Non-Residential	Yes
HCV – Victorville	15465 Seneca Rd	Victorville	Building	Public	Non-Residential	Yes
HCV – Ontario	424 North Lemon Ave	Ontario	Building	Public	Non-Residential	Yes

The repeated failure of Contractor to provide service when contacted shall result in termination of this Agreement pursuant to Article 18 for nonperformance. The HACSB shall document failure to respond, and the Contractor may not be permitted to participate in future contracts for these services.

Exhibit A - Fee Schedule

ITEM	DESCRIPTION	STANDARD HOURLY RATE	OVER TIME RATE	EMERGENCY AFTER HOURS HOURLY RATE	HOLIDAY HOURLY RATE
	Provide pricing per the specifications of RFP PC1261 for: State Prevailing wage rate is applicable.				
1	RESIDENTIAL site (Units).	110.85	145.10	145.10	179.25
2	NON-RESIDENTIAL site (Buildings).	143.75	190.10	190.10	233.50
	Provide pricing per the specifications of RFP PC1261 for: Federal Davis-Bacon wages rate is applicable.				
3	RESIDENTIAL site (Units).	114.20	152.30	152.30	190.50
4	NON-RESIDENTIAL site (Buildings).	141.25	189.25	189.25	237.50
5	Additional charges/services (please list – attach sheet)				

Additional Charges

Hydrojetting	\$ 450.00
Camera	\$ 275.00
Leak Detection	\$ 275.00
Jackhammer, Cement Saw	\$ 200.00

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

Document on Following Page

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour 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. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (*without* maintenance) greater than \$150,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$150,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$150,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) 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 which is attached hereto and made a part hereof. 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 the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the 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.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II; and**
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

- (a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

- (b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

EXHIBIT C

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 Work Authorization, 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 California Department of Industrial Relations - Division of Occupational Safety and Health.
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. 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 Dollars (\$1,000,000) per occurrence. 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 on 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 Dollars (\$1,000,000) combined single limit coverage. Contractor shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. 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 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.

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, 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.

- c. 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.
- d. 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.
- e. 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.
- f. 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. **RESERVED.**
- 25. **CALIFORNIA PREVAILING WAGE:** By its execution of this Contract, Contractor certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work." If the Services/Scope of Work are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Contractor shall defend, indemnify and hold the HACSB, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Exhibit E, which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Contractor shall comply with all applicable terms and conditions in Exhibit E. The applicable general prevailing wage determinations are on file with the HACSB and are available to any interested party on request. Contractor shall post a copy of the applicable prevailing wage determinations at the job site.
- 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 10000 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 4.1 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)(1).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) 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(a)(3), 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 et seq., 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. 3701 et seq.) 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 Public Contract Code 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 Public Contract Code 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 10295.1.
37. **Iran Contracting Act**
IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

Exhibit D

Work Authorization

Schedule Dates:

Start Date:

Completion Date:

Total Contract Cost: **Per Fee Schedule Located in Exhibit A of Contract**

.

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

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

Additional General Provisions ("Exhibit C")

Work Authorization ("Exhibit D")

Exhibit E

PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Scope of Work in the Agreement requires the payment of prevailing wages and compliance with the following requirements:

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., HACSB has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the HACSB, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

2. Payment of Prevailing Rates

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

3. Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the HACSB for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4. Ineligible Contractors:

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the HACSB. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

5. Payroll Records:

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
- ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the HACSB, the Division of Labor Standards Enforcement of the DIR;
- iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the HACSB or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the HACSB or the

Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;

- iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the HACSB or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the HACSB of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the HACSB, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. Limits on Hours of Work:

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

7. Penalty for Excess Hours:

The Contractor shall pay to the HACSB a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
 - i. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
 - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
 - iii. This project is subject to compliance monitoring and enforcement by the DIR.
 - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
 - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - 2) The HACSB reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.

- 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
 - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.
- b. Labor Code section 1725.5 states the following:
- “A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.
- (a) To qualify for registration under this section, a contractor shall do all of the following:
- (1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.
 - (B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.
 - (2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:
 - (A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.
 - (B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.
 - (C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.
 - (D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.
 - (E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:
 - (i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.
 - (ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).
 - (b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.
 - (c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or

engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:

"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at the address on file with either of the following:

(i) The Contractors' State License Board.

(ii) The Secretary of State.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:

"a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016."

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.

b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor

Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

2. Compliance with [California Labor Code section 1777.5](#) requires all public works contractors to:

- a. Submit Contract Award Information (DAS-140):
 - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
 - ii. The DAS-140 is a notification "announcement" of the Contractor's participation on a public works project—*it is not a request for the dispatch of an apprentice*.
 - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
 - iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
 - v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. Employ Registered Apprentices
 - i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
 - iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
 - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
 - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
 - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
 - i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
 - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
 - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
 - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
 - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

3. Exemptions to Apprenticeship Requirements:

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
 - i. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
 - ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
 - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
 - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

4. Exemption from Apprenticeship Ratios:

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
 - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
 - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
 - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
 - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

5. Contractor's Compliance:

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

THIS CONSULTING, SERVICES, AND NON-ROUTINE MAINTENANCE RELATED SERVICES AGREEMENT (NON-CONSTRUCTION) ("Agreement") is made as of the **9th day of March, 2022** ("Effective Date") by and between **A-Advantage Plumbing (PC1261)** ("Contractor"), Inc. 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") and in any Work Authorization. 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. The Statement of Work, attached hereto as Exhibit "A" and incorporated herein by reference.
2. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Work) (Form HUD 5370 C1), attached hereto as Exhibit "B" and incorporated herein by reference.
3. Additional General Provisions, attached hereto as Exhibit "C" and incorporated herein by reference ("Additional Provisions").
4. The Sample Work Authorization, attached hereto as Exhibit "D" and incorporated herein by reference ("Work Authorization").
5. The California Prevailing Wage Requirements, attached hereto as Exhibit "E" and incorporated herein by referenced.
6. 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 **three (3) year period**, beginning on or about **March 9, 2022** and expiring on **March 8, 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. HACSB shall have the option to extend the Agreement for up to two (2) years. The optional years shall be exercised by written amendments executed by authorized representatives of each party. Option years will begin on or about **March 8, 2025** and expire no later than **March 9, 2027**. 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"). 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 Work Authorization, HACSB agrees to pay Contractor for the provision of work per the fee schedule **for the three (3) year base contract period.** Details defined in Exhibit A – Scope of Services – Fee Schedule. Additional year extensions may require board approval for additional funds. 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.

The maximum amount of payment under this Contract is a combined total for all contractors providing on-call Plumbing services identified in the corresponding Board Agenda Item, and together shall not exceed \$1,226,269.00. Payment shall only be made for work authorized and performed pursuant to the requirements of this Contract.

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 of 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 venturer, agent or legal representative of HACSB for any purpose, nor shall Contractor 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 Work Authorization ("Additional Work") is required to be performed by Contractor, such Additional Work shall be memorialized in an additional 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. Terminate the Work Authorization for the specific Work; or
 - iv. 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 Work Authorization) which involves the delivery to HACSB of identified Deliverables (as defined in the Work Authorization and this Agreement), 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 Work Authorization 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 Work Authorization.

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 Contractor. 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 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.

Except as otherwise required by law, any notice, information, request or reply ("**Notice**") required or permitted to be given under the provisions of this Contract shall be in writing and shall be given or served either personally or by mail. If given or served by mail, such Notice shall be deemed sufficiently given if:

- (1) Deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or
- (2) Sent by express mail, Federal Express, or similar overnight service, provided proof of service is available, addressed to the addresses of the Parties specified below in Section 27.4 or to such other address as may be duly specified by the respective Parties.

Any notice given or served by certified mail shall be deemed given or served three (3) business days after deposit in the mails, or as a signed receipt may show, unless a copy of the Notice is concurrently transmitted by electronic or telephonic facsimile, in which case the Notice shall be deemed given or served as of the date of deposit of the original in the mails. Any Notice given or served by express mail, Federal Express, or other similar overnight service, shall be deemed given or served the day following deposit in the mails or delivery to

the carrier, unless a copy of the Notice is concurrently transmitted by electronic or telephone facsimile, in which case the Notice shall be deemed given or served as of the date of deposit of the original in the mails or delivery to the carrier.

All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardipide, Procurement Department
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841
alardapide@hacsb.com

If to Contractor:

William Johnston
A-Advantage Plumbing
34625 Cedar Avenue
Yucaipa, CA 92399
Karen@a-advantageplumbing.com

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 multiple counterparts, and when so executed by each of the parties hereto shall constitute a single agreement binding upon all of the parties hereto.

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)**

PC1261 – Plumbing Services

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

Date: _____

A-Advantage Plumbing

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

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

All work is to be performed according to industry standards, according to the material manufacturers' recommendations and to the satisfaction of HACSB. The Contractor will perform plumbing maintenance and repairs for buildings owned by HACSB as requested by the Property Manager or their designee. The HACSB offers no guarantee of any amount of work to be performed under the Contract.

If requested by the Property Manager, Project Manager, or Supervising Maintenance Worker; awarded contractor shall provide plumbing services according to the specifications included in the scope of work in this section.

I. General Requirements

- A. The Contractor shall furnish all labor, equipment, tools, parts, materials, and supplies required to repair, replace, remove stoppages, and install existing and new plumbing systems as required. This includes the provision of all replacement parts and component systems required for existing building plumbing systems in accordance with all original equipment manufacturer specifications. Contractor shall list all areas of plumbing, which Contractor will not provide services for. The services shall additionally include, but not be limited to:
 - Expediting services
 - Regular service calls
 - Emergency service calls
- B. Repair, replacement, stoppage removal and installation services provided by the Contractor shall comply with and conform to all applicable Federal, State, and local regulations, laws and codes.
- C. The Contractor shall possess a valid California C-36 Plumbing CSLB License for the duration of the contract to perform all work in accordance with latest plumbing codes for the County of San Bernardino and local jurisdiction, where applicable, and according to this Scope of Work.
- D. For public funded projects, the Contractor shall renew their registration with the Department of Industrial Relations (DIR) and submit proof of registration information, including PWCR number on a yearly basis to HACSB.
- E. The Contractor shall provide services in a thorough and workman like manner observing any laws, statutes, ordinances, rules, or regulations of any governmental agencies or public authorities and to the satisfaction of the Housing Authority.
- F. The Contractor shall comply with both State and Federal Prevailing Wage requirements.
- G. The Contractor shall charge for services rendered in accordance to the contract's fee schedule.
- H. The Contractor shall provide all labor, equipment, and materials necessary to complete all the necessary work.

II. Specifications

The Contractor shall provide repair and maintenance to all plumbing systems associated with housing units (residential) and office buildings (commercial) on an as-needed basis and following the submission of a proposal and approval by HACSB as provided in Section IV below that include, but not limited to:

- A. Installing, repairing, modifying, and troubleshooting on a variety of bathrooms and kitchen fixtures;

- B. Installing, modifying, improving, reconditioning, repairing, clearing, troubleshooting, replacing sewer lines (main and general branches, other drain lines), and water lines (main and general distribution lines);
- C. Cleaning and unstopping drains and sewer lines from 1" to 8", including sewer, drain video camera inspecting, and high pressure jetting, where applicable;
- D. Installing and repairing gas pipes, including pipe insulation, and heat tape;
- E. Installing and repairing heaters;
- F. Flushing holding tanks;
- G. Maintain and/or repair sump pump system for biofilter;
- H. Servicing, maintaining and repairing of boilers (water heaters and hydronic heating systems) and regular water heaters (electrical and gas) 40 gallon – 100 gallon.

III. Permits

- A. Contractor shall be responsible for obtaining all plumbing permits required by the local governmental agency having jurisdiction over the project when applicable.
- B. Contractor shall deliver to HACSB within 10 calendar days all operation and maintenance manuals, where applicable, upon completion of the work:
 - 1. Copies of all warranties and guarantees;
 - 2. Materials list of items provided;
 - 3. Manufacturer's installation procedures which will become the basis for accepting or rejecting actual installation procedures used on the work; and
 - 4. Manufacturer's specifications and other data needed to provide compliance with specified requirements.

IV. Job Proposals

- A. The Contractor shall provide a written itemized proposal for as needed repairs and other services to HACSB.
- B. The Contractor shall charge labor hours in accordance to the fee schedule.
- C. The Contractor shall not start any work until HACSB has approved the proposal in writing and/or email.
- D. The Contractor shall provide warranty language for the work requested on the job proposal.
- E. Work which exceeds five hundred (\$500), the Contractor shall furnish a report, which shall include a scope of work, bill of materials, fixed price, and time required for completion, and request written authorization from HACSB.

V. Invoices

- A. The Contractor shall invoice in accordance to the fee schedule provided in this Exhibit A.
- B. The Contractor shall include on every invoice the following:
 - a. Name and address of site,
 - b. Name of requester,
 - c. Work performed,
 - d. Purchase Order number,
 - e. Cost of materials/supplies,
 - f. Total number of labor hours,
 - g. Total number of employees that completed work.
- C. The Contractor shall provide one point of contact for all invoicing.
- D. The Contractor shall provide receipts for materials, supplies, parts and equipment at HACSB's request.

VI. Materials, Equipment, Supplies and Parts

- A. The Contractor shall be responsible for the purchase of all materials, equipment, supplies and parts to provide the needed services. The Contractor shall purchase materials, equipment, supplies and parts that are reasonably priced and equivalent to or better than the existing.
- B. The Contractor shall use materials and equipment that are safe for the environment and safe for the use by the Contractor's employees.

VII. Hourly Rates

- A. The Contractor shall charge only for the time worked on-site.
- B. The Contractor shall have pre-approved email when work needs to be performed after business or emergency hours.

VIII. Warranties on Materials, Repairs and Parts

- A. The Contractor shall warranty repair service for not less than 180 days following the date of acceptance of the repair service by the HACSB staff.
- B. The Contractor shall provide copies of all the manufactures warranty to HACSB for materials, equipment and parts.
- C. The Contractor shall correct defect(s) on service repairs and parts within 24 hours at no cost to HACSB.

IX. Project Coordinators

- A. The HACSB project coordinator for this project is the Supervising Maintenance Worker, who can be contacted via telephone numbers, which will be provided to the awarded contractor(s). Any work at the site shall be scheduled through HACSB at least forty-eight (48) hours in advance of the work.
- B. The Contractor shall provide a full-time Supervisor with at least 5 years of experience in managing projects of similar size and scope as contained in this Scope of Work.
- C. The Contractor shall assign a sufficient number of employees to perform the required work. At least one employee on site shall be authorized to act for the Contractor in every detail and must be able to communicate effectively.
- D. The Contractor's Project Coordinator shall have a cellular telephone, which number shall be provided to HACSB. The Project Manager or Project Coordinator 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 daily to review overall performance, receive special instructions regarding the scope of work or other pertinent items regarding the contract, and the contractor's performance.
- E. Before the work commences, the contractor must provide a work schedule that is approved by HACSB.
- F. The Contractor's employees assigned to the Contract shall wear an appropriate uniform at all times. The uniform must display the Contractor's company name. All uniforms, will be provided by the Contractor, at the Contractor's expense.

X. Training

The Contractor shall provide training programs for all new employees and continuing in-service training for all employees. All employees shall be trained in their assigned tasks and in the safe handling of equipment. All equipment shall be checked daily for safety. All employees must wear safety and protective gear according to Cal-OSHA standards.

XI. Work Schedules

The Contractor shall perform work when needed and requested, including day and night hours as well as weekends and holidays.

A. Regular Service Hours

The Contractor shall perform all regular service hours during the hours of 7:30 a.m. to 4:30 p.m., Monday through Friday, except for holidays as noted in Section V – E Holiday Work.

B. After-Hours Services

The Contractor shall provide weekday after-hour service during the hours of 4:30 p.m. to 7:30a.m. Weekends and holiday are considered after hours. Service requests shall be responded to within four (4) hours after HACSB notification to Contractor.

C. Emergency Services

The Contractor shall perform any emergency service requested by HACSB on the same business day the request is made. The Contractor shall respond and arrive at the property within three (3) hours from the time of notification.

D. The Contractor shall provide services, on a twenty-four (24) hour, seven (7) days per week basis.

XII. Work Authorization

- A. The Contractor shall be required to visit the potential job site and submit a written quotation prior to the authorization of work, at no additional charge to the HACSB. The quotation shall be provided within" three (3) business days" of the original request, and shall include a detailed summary in accordance with the contract rates. If the quotation is accepted and the work performed, the Contractor's invoice shall not exceed the quoted amount unless previously authorized by the Property Manager or their designee.

XIII. Site Control

- A. Any areas being worked in shall be secured from public access, clearly marked, and barricaded, if necessary. At all times, work shall not interfere with ingress or egress of the building or normal operations by tenants, HACSB employees or vehicles. All surrounding surfaces and vegetation shall be protected from contact with any materials used in this project.
- B. The contractor is solely responsible for damage to surrounding surfaces, facilities, vegetation, vehicles, or persons caused by its materials, equipment, workers, or agents. The contractor shall make every effort to maintain a clean, quiet, and orderly work area throughout the term of this project. No materials or equipment shall be left on the site when the contractor's workers are not present. The contractor is responsible for protecting the work from damage from any source prior to final acceptance.
- C. At the completion of work, remove all materials, supplies, debris and rubbish and leave each area in a clean, acceptable condition.
- D. It is the responsibility of the Contractor to remove from the worksite, daily, all debris and to dispose of such properly, pursuant to all applicable (local, State and Federal) codes, laws and regulations. Debris shall not be disposed of in the HACSB dumpsters.

XIV. Day and Time

All services shall be performed on a day and time convenient to the HACSB and which will be firmly established during the negotiations held between the HACSB and the top ranked proposer.

XV. Prevailing Wage Requirements

As further set forth in Exhibit "E" of this contract will be funded with public funds. The bidder shall be responsible for complying with all applicable labor requirements as dictated by the type of contract/project described below:

A. Davis Bacon Prevailing Wage (Federal Funds) – Applicable for Affordable Housing Units

When the source of funds are determined to be in whole or partially with federal funds, Federal Labor Standards Provisions (HUD 4010) refer to Exhibit J, including prevailing wage requirements of the Davis-Bacon and Related Acts (DBRA) shall be enforced.

The current U.S. Department of Labor prevailing wage determinations are applicable as follows:

- Residential Federal Wage Determination General Decision Number CA20210017 11/26/2021
- Non-Residential Federal Wage Determination General Decision Number CA20210026 11/12/2021

The applicable DOL General Wage Determination will depend on if the location of the work to be performed is at a residential or non-residential site. These rates are the minimum rates that must be paid to ALL employees performing work in these classifications at the project site(s). The most current Federal Wage Decisions are listed as attachments under Appendix A.

The Federal Labor Standards Provisions (HUD 4010), including prevailing wage requirements of Davis-Bacon and Related Acts (DBRA) shall be enforced, in addition to all labor requirements of the State of California prevailing wage laws, regulations, codes, as set forth above. When federal and either state or local funds are used and a discrepancy between Federal Regulations and State Law is found to exist, the more stringent of the two shall prevail.

B. California State Prevailing Wage (Public Funds) – Applicable for Authority Owned Properties (AOP)

Contractor shall pay its employees that perform such work as stated within this RFP at a rate not less than the California State Prevailing Wage for San Bernardino County Residential Determination (Residential Plumber) plus fringe benefits. For non-residential projects (buildings) – General Prevailing Wage Determination plus fringe benefits.

Please refer to Appendix B for the State of California Labor Code for more detail. Regardless of the funding source (federal, state, or local), the Contractor shall comply with all labor requirements of the State of California prevailing wage laws, regulations, codes, etc., applicable to this contract, including but not limited to, the following: California Labor Code Section 1770 et seq., which requires contractors to pay their workers based on the prevailing wage rates established and issued by the Department of Industrial Relations (DIR), Division of Labor Statistics. Said rates can be obtained on the website at www.dir.ca.gov.

The Contractor and Subcontractor shall also: 1) Pay not less than the prevailing wage to all workers, as defined in the California Code of Regulations (CCR) section 16000(a), and as set forth in Labor Code

Sections 1771 and 1774: 2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works job sites; 3) Provide workers' compensation coverage as set forth in Labor Code Section 1861; 4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance fee; 5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776; 6) Pay workers overtime pay; as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the DIR Director as set forth in CCR's Section 16200; 7) Comply with Section 16101 of these regulations regarding discrimination; 8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5; 9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and 10) Comply with any other applicable requirements imposed by the State of California.

State of California LABOR CODE - Section 1771.1

- (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- (b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.
- (c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:
 - (1) The subcontractor is registered prior to the bid opening.
 - (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.
 - (3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.
- (d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.
- (e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.
- (f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.
- (g) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.

(Added by Stats. 2014, Ch. 28, Sec. 63. (SB 854) Effective June 20, 2014.)

DIR Registration:

The DIR requires registration of public works projects to be completed within five days of awarding the contract. A PWC 100 form will be completed by the awarding body. The completion and the submission of this form fulfills the required public works project award notification as required by Labor Code sec. 1773.3

Service Area Locations and Funding

Provide Plumbing Services on an as-needed basis for the various HACSB Authority Owned sites.

Property:	Address:	City:	Units:	Funded:	Wage:	Service: Yes/No
Las Palmas	8980 Date St., #1A-#3D	Fontana, CA	16 units	Public	Residential	Yes
Kingsley Patio Homes	10302 – 10399 Poulson Ct.	Montclair, CA	34 units	Public	Residential	Yes
Mentone Property	1232 Crafton Ave., #A1-C10	Mentone, CA	34 units	Public	Residential	Yes
Yucaipa Crest	12385 6 th St., #101-923	Yucaipa, CA	45 units	Public	Residential	Yes
Yucaipa Terrace	12435 6 th St., #101-1005	Yucaipa, CA	51 units	Public	Residential	Yes
Andalusia	13520 Third Ave.	Victorville, CA	168 units	Public	Residential	Yes
Chino Affordable Housing	13088 Monte Vista Ave.	Chino, CA	50 units	Public	Residential	Yes
Maplewood Homes	1738 West 9 th St.	San Bernardino, CA	427 units	Public	Residential	Yes
Barstow Affordable Housing	421 South 7 th St.	Barstow, CA	220 units	Public	Residential	Yes
Colton Affordable Housing	772 Pine St.	Colton, CA	125 units	Public	Residential	Yes
Redlands Affordable Housing	803 West Brockton Ave./9 th St.	Redlands, CA	87 units	Public	Residential	Yes
Central Office	715 E. Brier Drive	San Bernardino	Building	Public	Non-Residential	Yes
Housing Programs Office	672& 680 S Waterman Ave	San Bernardino	Building	Public	Non-Residential	Yes
HCV – Victorville	15465 Seneca Rd	Victorville	Building	Public	Non-Residential	Yes
HCV – Ontario	424 North Lemon Ave	Ontario	Building	Public	Non-Residential	Yes

The repeated failure of Contractor to provide service when contacted shall result in termination of this Agreement pursuant to Article 18 for nonperformance. The HACSB shall document failure to respond, and the Contractor may not be permitted to participate in future contracts for these services.

Exhibit A - Fee Schedule

ITEM	DESCRIPTION	STANDARD HOURLY RATE	OVER TIME RATE	EMERGENCY AFTER HOURS HOURLY RATE	HOLIDAY HOURLY RATE
	Provide pricing per the specifications of RFP PC1261 for: State Prevailing wage rate is applicable.				and Sundays
1	RESIDENTIAL site (Units).	\$ 122. ⁰⁰	\$ 183. ⁰⁰	183. ⁰⁰	\$ 244. ⁰⁰
2	NON-RESIDENTIAL site (Buildings).	\$ 122. ⁰⁰	\$ 183. ⁰⁰	183. ⁰⁰	\$ 244. ⁰⁰
	Provide pricing per the specifications of RFP PC1261 for: Federal Davis-Bacon wages rate is applicable.				
3	RESIDENTIAL site (Units).	\$ 122. ⁰⁰	\$ 183. ⁰⁰	\$ 183. ⁰⁰	\$ 183. ⁰⁰
4	NON-RESIDENTIAL site (Buildings).	\$ 122. ⁰⁰	\$ 183. ⁰⁰	\$ 183. ⁰⁰	\$ 183. ⁰⁰
5	Additional charges/services (please list – attach sheet) Pls see attached - Two Sheets - Pricing + additional Charges.				

Additional Charges

• Hydro Jetter.	\$300
• Jack Hammer.	\$75
• Leak Detector.	\$250
• Line Locator.	\$250
• Sewer camera.	\$250
• Cement Saw.	\$100
• Snake Fee.	\$30
• Trencher.	\$250
• Pumps	\$75 - \$100
• Generator	\$75
• V Plate.	\$100
• Excavator (4 hrs Min)	\$600
• Excavator (8 hrs)	\$1200

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

Document on Following Page

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour 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. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (*without* maintenance) greater than \$150,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$150,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$150,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) 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 which is attached hereto and made a part hereof. 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 the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the 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.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

- Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A
- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
 - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
 - (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
 - (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
 - (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

- (ii) forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.
- (iii)

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II; and**
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

- (a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

- (b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

EXHIBIT C

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 Work Authorization, 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 California Department of Industrial Relations - Division of Occupational Safety and Health.
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. 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 Dollars (\$1,000,000) per occurrence. 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 on 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 Dollars (\$1,000,000) combined single limit coverage. Contractor shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. 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 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.

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, 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.

- c. 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.
- d. 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.
- e. 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.
- f. 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. **RESERVED.**
- 25. **CALIFORNIA PREVAILING WAGE:** By its execution of this Contract, Contractor certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work." If the Services/Scope of Work are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Contractor shall defend, indemnify and hold the HACSB, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Exhibit E, which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Contractor shall comply with all applicable terms and conditions in Exhibit E. The applicable general prevailing wage determinations are on file with the HACSB and are available to any interested party on request. Contractor shall post a copy of the applicable prevailing wage determinations at the job site.
- 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 10000 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 4.1 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)(1).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) 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(a)(3), 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 et seq., 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. 3701 et seq.) 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 Public Contract Code 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 Public Contract Code 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 10295.1.
37. **Iran Contracting Act**
IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

Exhibit D

Work Authorization

Schedule Dates:

Start Date:

Completion Date:

Total Contract Cost: **Per Fee Schedule Located in Exhibit A of Contract**

.

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

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

Additional General Provisions ("Exhibit C")

Work Authorization ("Exhibit D")

Exhibit E

PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Scope of Work in the Agreement requires the payment of prevailing wages and compliance with the following requirements:

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., HACSB has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the HACSB, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

2. Payment of Prevailing Rates

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

3. Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the HACSB for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4. Ineligible Contractors:

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the HACSB. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

5. Payroll Records:

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
- ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the HACSB, the Division of Labor Standards Enforcement of the DIR;
- iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the HACSB or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the HACSB or the

Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;

- iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
- v. Copies provided to the public, by the HACSB or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the HACSB of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.

- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the HACSB, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. Limits on Hours of Work:

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

7. Penalty for Excess Hours:

The Contractor shall pay to the HACSB a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
 - i. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
 - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
 - iii. This project is subject to compliance monitoring and enforcement by the DIR.
 - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
 - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - 2) The HACSB reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.

- 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
 - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.
- b. Labor Code section 1725.5 states the following:
- “A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.
- (a) To qualify for registration under this section, a contractor shall do all of the following:
- (1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.
 - (B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.
 - (2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:
 - (A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.
 - (B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.
 - (C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.
 - (D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.
 - (E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:
 - (i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.
 - (ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).
 - (b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.
 - (c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or

engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:

"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at the address on file with either of the following:

(i) The Contractors' State License Board.

(ii) The Secretary of State.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:

"a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016."

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.

b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor

Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

2. Compliance with [California Labor Code section 1777.5](#) requires all public works contractors to:

- a. Submit Contract Award Information (DAS-140):
 - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
 - ii. The DAS-140 is a notification "announcement" of the Contractor's participation on a public works project—*it is not a request for the dispatch of an apprentice*.
 - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
 - iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
 - v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. Employ Registered Apprentices
 - i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
 - iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
 - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
 - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
 - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
 - i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
 - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
 - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
 - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
 - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

3. Exemptions to Apprenticeship Requirements:

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
 - i. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
 - ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
 - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
 - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

4. Exemption from Apprenticeship Ratios:

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
 - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
 - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
 - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
 - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

5. Contractor's Compliance:

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

THIS CONSULTING, SERVICES, AND NON-ROUTINE MAINTENANCE RELATED SERVICES AGREEMENT (NON-CONSTRUCTION) ("Agreement") is made as of the **9th day of March 2022** ("Effective Date") by and between **Pro-Craft Construction (PC1261)** ("Contractor"), Inc. 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") and in any Work Authorization. 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. The Statement of Work, attached hereto as Exhibit "A" and incorporated herein by reference.
2. General Conditions for Non-Construction Contracts Section I – (with or without Maintenance Work) (Form HUD 5370 C1), attached hereto as Exhibit "B" and incorporated herein by reference.
3. Additional General Provisions, attached hereto as Exhibit "C" and incorporated herein by reference ("Additional Provisions").
4. The Sample Work Authorization, attached hereto as Exhibit "D" and incorporated herein by reference ("Work Authorization").
5. The California Prevailing Wage Requirements, attached hereto as Exhibit "E" and incorporated herein by referenced.
6. 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 **three (3) year period**, beginning on or about **March 9, 2022** and expiring on **March 8, 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. HACSB shall have the option to extend the Agreement for up to two (2) years. The optional years shall be exercised by written amendments executed by authorized representatives of each party. Option years will begin on or about **March 8, 2025** and expire no later than **March 9, 2027**. 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"). 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 Work Authorization, HACSB agrees to pay Contractor for the provision of work per the fee schedule **for the three (3) year base contract period.** Details defined in Exhibit A – Scope of Services – Fee Schedule. Additional year extensions may require board approval for additional funds. 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.

The maximum amount of payment under this Contract is a combined total for all contractors providing on-call Plumbing services identified in the corresponding Board Agenda Item, and together shall not exceed \$1,226,269.00. Payment shall only be made for work authorized and performed pursuant to the requirements of this Contract.

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 of 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 venturer, agent or legal representative of HACSB for any purpose, nor shall Contractor 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 Work Authorization ("Additional Work") is required to be performed by Contractor, such Additional Work shall be memorialized in an additional 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. Terminate the Work Authorization for the specific Work; or
 - iv. 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 Work Authorization) which involves the delivery to HACSB of identified Deliverables (as defined in the Work Authorization and this Agreement), 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 Work Authorization 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 Work Authorization.

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 Contractor. 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 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.

Except as otherwise required by law, any notice, information, request or reply ("**Notice**") required or permitted to be given under the provisions of this Contract shall be in writing and shall be given or served either personally or by mail. If given or served by mail, such Notice shall be deemed sufficiently given if:

- (1) Deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or
- (2) Sent by express mail, Federal Express, or similar overnight service, provided proof of service is available, addressed to the addresses of the Parties specified below in Section 27.4 or to such other address as may be duly specified by the respective Parties.

Any notice given or served by certified mail shall be deemed given or served three (3) business days after deposit in the mails, or as a signed receipt may show, unless a copy of the Notice is concurrently transmitted by electronic or telephonic facsimile, in which case the Notice shall be deemed given or served as of the date of deposit of the original in the mails. Any Notice given or served by express mail, Federal Express, or other similar overnight service, shall be deemed given or served the day following deposit in the mails or delivery to

the carrier, unless a copy of the Notice is concurrently transmitted by electronic or telephone facsimile, in which case the Notice shall be deemed given or served as of the date of deposit of the original in the mails or delivery to the carrier.

All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

Angie Lardipide, Procurement Department
Housing Authority of the County of San Bernardino
715 E. Brier Drive
San Bernardino, CA 92408-2841
alardapide@hacsb.com

If to Contractor:

Timothy McFayden
Pro-Craft Construction
500 Iowa St.,
Redlands, CA 92373
estimating@procraftci.com

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 multiple counterparts, and when so executed by each of the parties hereto shall constitute a single agreement binding upon all of the parties hereto.

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)**

PC1261 – Plumbing Services

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

Date: _____

Pro-Craft Construction

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

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

All work is to be performed according to industry standards, according to the material manufacturers' recommendations and to the satisfaction of HACSB. The Contractor will perform plumbing maintenance and repairs for buildings owned by HACSB as requested by the Property Manager or their designee. The HACSB offers no guarantee of any amount of work to be performed under the Contract.

If requested by the Property Manager, Project Manager, or Supervising Maintenance Worker; awarded contractor shall provide plumbing services according to the specifications included in the scope of work in this section.

I. General Requirements

- A. The Contractor shall furnish all labor, equipment, tools, parts, materials, and supplies required to repair, replace, remove stoppages, and install existing and new plumbing systems as required. This includes the provision of all replacement parts and component systems required for existing building plumbing systems in accordance with all original equipment manufacturer specifications. Contractor shall list all areas of plumbing, which Contractor will not provide services for. The services shall additionally include, but not be limited to:
 - Expediting services
 - Regular service calls
 - Emergency service calls
- B. Repair, replacement, stoppage removal and installation services provided by the Contractor shall comply with and conform to all applicable Federal, State, and local regulations, laws and codes.
- C. The Contractor shall possess a valid California C-36 Plumbing CSLB License for the duration of the contract to perform all work in accordance with latest plumbing codes for the County of San Bernardino and local jurisdiction, where applicable, and according to this Scope of Work.
- D. For public funded projects, the Contractor shall renew their registration with the Department of Industrial Relations (DIR) and submit proof of registration information, including PWCR number on a yearly basis to HACSB.
- E. The Contractor shall provide services in a thorough and workman like manner observing any laws, statues, ordinances, rules, or regulations of any governmental agencies or public authorities and to the satisfaction of the Housing Authority.
- F. The Contractor shall comply with both State and Federal Prevailing Wage requirements.
- G. The Contractor shall charge for services rendered in accordance to the contract's fee schedule.
- H. The Contractor shall provide all labor, equipment, and materials necessary to complete all the necessary work.

II. Specifications

The Contractor shall provide repair and maintenance to all plumbing systems associated with housing units (residential) and office buildings (commercial) on an as-needed basis and following the submission of a proposal and approval by HACSB as provided in Section IV below that include, but not limited to:

- A. Installing, repairing, modifying, and troubleshooting on a variety of bathrooms and kitchen fixtures;

- B. Installing, modifying, improving, reconditioning, repairing, clearing, troubleshooting, replacing sewer lines (main and general branches, other drain lines), and water lines (main and general distribution lines);
- C. Cleaning and unstopping drains and sewer lines from 1" to 8", including sewer, drain video camera inspecting, and high pressure jetting, where applicable;
- D. Installing and repairing gas pipes, including pipe insulation, and heat tape;
- E. Installing and repairing heaters;
- F. Flushing holding tanks;
- G. Maintain and/or repair sump pump system for biofilter;
- H. Servicing, maintaining and repairing of boilers (water heaters and hydronic heating systems) and regular water heaters (electrical and gas) 40 gallon – 100 gallon.

III. Permits

- A. Contractor shall be responsible for obtaining all plumbing permits required by the local governmental agency having jurisdiction over the project when applicable.
- B. Contractor shall deliver to HACSB within 10 calendar days all operation and maintenance manuals, where applicable, upon completion of the work:
 - 1. Copies of all warranties and guarantees;
 - 2. Materials list of items provided;
 - 3. Manufacturer's installation procedures which will become the basis for accepting or rejecting actual installation procedures used on the work; and
 - 4. Manufacturer's specifications and other data needed to provide compliance with specified requirements.

IV. Job Proposals

- A. The Contractor shall provide a written itemized proposal for as needed repairs and other services to HACSB.
- B. The Contractor shall charge labor hours in accordance to the fee schedule.
- C. The Contractor shall not start any work until HACSB has approved the proposal in writing and/or email.
- D. The Contractor shall provide warranty language for the work requested on the job proposal.
- E. Work which exceeds five hundred (\$500), the Contractor shall furnish a report, which shall include a scope of work, bill of materials, fixed price, and time required for completion, and request written authorization from HACSB.

V. Invoices

- A. The Contractor shall invoice in accordance to the fee schedule provided in this Exhibit A.
- B. The Contractor shall include on every invoice the following:
 - a. Name and address of site,
 - b. Name of requester,
 - c. Work performed,
 - d. Purchase Order number,
 - e. Cost of materials/supplies,
 - f. Total number of labor hours,
 - g. Total number of employees that completed work.
- C. The Contractor shall provide one point of contact for all invoicing.
- D. The Contractor shall provide receipts for materials, supplies, parts and equipment at HACSB's request.

VI. Materials, Equipment, Supplies and Parts

- A. The Contractor shall be responsible for the purchase of all materials, equipment, supplies and parts to provide the needed services. The Contractor shall purchase materials, equipment, supplies and parts that are reasonably priced and equivalent to or better than the existing.
- B. The Contractor shall use materials and equipment that are safe for the environment and safe for the use by the Contractor's employees.

VII. Hourly Rates

- A. The Contractor shall charge only for the time worked on-site.
- B. The Contractor shall have pre-approved email when work needs to be performed after business or emergency hours.

VIII. Warranties on Materials, Repairs and Parts

- A. The Contractor shall warranty repair service for not less than 180 days following the date of acceptance of the repair service by the HACSB staff.
- B. The Contractor shall provide copies of all the manufactures warranty to HACSB for materials, equipment and parts.
- C. The Contractor shall correct defect(s) on service repairs and parts within 24 hours at no cost to HACSB.

IX. Project Coordinators

- A. The HACSB project coordinator for this project is the Supervising Maintenance Worker, who can be contacted via telephone numbers, which will be provided to the awarded contractor(s). Any work at the site shall be scheduled through HACSB at least forty-eight (48) hours in advance of the work.
- B. The Contractor shall provide a full-time Supervisor with at least 5 years of experience in managing projects of similar size and scope as contained in this Scope of Work.
- C. The Contractor shall assign a sufficient number of employees to perform the required work. At least one employee on site shall be authorized to act for the Contractor in every detail and must be able to communicate effectively.
- D. The Contractor's Project Coordinator shall have a cellular telephone, which number shall be provided to HACSB. The Project Manager or Project Coordinator 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 daily to review overall performance, receive special instructions regarding the scope of work or other pertinent items regarding the contract, and the contractor's performance.
- E. Before the work commences, the contractor must provide a work schedule that is approved by HACSB.
- F. The Contractor's employees assigned to the Contract shall wear an appropriate uniform at all times. The uniform must display the Contractor's company name. All uniforms, will be provided by the Contractor, at the Contractor's expense.

X. Training

The Contractor shall provide training programs for all new employees and continuing in-service training for all employees. All employees shall be trained in their assigned tasks and in the safe handling of equipment. All equipment shall be checked daily for safety. All employees must wear safety and protective gear according to Cal-OSHA standards.

XI. Work Schedules

The Contractor shall perform work when needed and requested, including day and night hours as well as weekends and holidays.

A. Regular Service Hours

The Contractor shall perform all regular service hours during the hours of 7:30 a.m. to 4:30 p.m., Monday through Friday, except for holidays as noted in Section V – E Holiday Work.

B. After-Hours Services

The Contractor shall provide weekday after-hour service during the hours of 4:30 p.m. to 7:30a.m. Weekends and holiday are considered after hours. Service requests shall be responded to within four (4) hours after HACSB notification to Contractor.

C. Emergency Services

The Contractor shall perform any emergency service requested by HACSB on the same business day the request is made. The Contractor shall respond and arrive at the property within three (3) hours from the time of notification.

D. The Contractor shall provide services, on a twenty-four (24) hour, seven (7) days per week basis.

XII. Work Authorization

- A. The Contractor shall be required to visit the potential job site and submit a written quotation prior to the authorization of work, at no additional charge to the HACSB. The quotation shall be provided within" three (3) business days" of the original request, and shall include a detailed summary in accordance with the contract rates. If the quotation is accepted and the work performed, the Contractor's invoice shall not exceed the quoted amount unless previously authorized by the Property Manager or their designee.

XIII. Site Control

- A. Any areas being worked in shall be secured from public access, clearly marked, and barricaded, if necessary. At all times, work shall not interfere with ingress or egress of the building or normal operations by tenants, HACSB employees or vehicles. All surrounding surfaces and vegetation shall be protected from contact with any materials used in this project.
- B. The contractor is solely responsible for damage to surrounding surfaces, facilities, vegetation, vehicles, or persons caused by its materials, equipment, workers, or agents. The contractor shall make every effort to maintain a clean, quiet, and orderly work area throughout the term of this project. No materials or equipment shall be left on the site when the contractor's workers are not present. The contractor is responsible for protecting the work from damage from any source prior to final acceptance.
- C. At the completion of work, remove all materials, supplies, debris and rubbish and leave each area in a clean, acceptable condition.
- D. It is the responsibility of the Contractor to remove from the worksite, daily, all debris and to dispose of such properly, pursuant to all applicable (local, State and Federal) codes, laws and regulations. Debris shall not be disposed of in the HACSB dumpsters.

XIV. Day and Time

All services shall be performed on a day and time convenient to the HACSB and which will be firmly established during the negotiations held between the HACSB and the top ranked proposer.

XV. Prevailing Wage Requirements

As further set forth in Exhibit "E" this contract will be funded with public funds. The bidder shall be responsible for complying with all applicable labor requirements as dictated by the type of contract/project described below:

A. Davis Bacon Prevailing Wage (Federal Funds) – Applicable for Affordable Housing Units

When the source of funds are determined to be in whole or partially with federal funds, Federal Labor Standards Provisions (HUD 4010) refer to Exhibit J, including prevailing wage requirements of the Davis-Bacon and Related Acts (DBRA) shall be enforced.

The current U.S. Department of Labor prevailing wage determinations are applicable as follows:

- Residential Federal Wage Determination General Decision Number CA20210017 11/26/2021
- Non-Residential Federal Wage Determination General Decision Number CA20210026 11/12/2021

The applicable DOL General Wage Determination will depend on if the location of the work to be performed is at a residential or non-residential site. These rates are the minimum rates that must be paid to ALL employees performing work in these classifications at the project site(s). The most current Federal Wage Decisions are listed as attachments under Appendix A.

The Federal Labor Standards Provisions (HUD 4010), including prevailing wage requirements of Davis-Bacon and Related Acts (DBRA) shall be enforced, in addition to all labor requirements of the State of California prevailing wage laws, regulations, codes, as set forth above. When federal and either state or local funds are used and a discrepancy between Federal Regulations and State Law is found to exist, the more stringent of the two shall prevail.

B. California State Prevailing Wage (Public Funds) – Applicable for Authority Owned Properties (AOP)

Contractor shall pay its employees that perform such work as stated within this RFP at a rate not less than the California State Prevailing Wage for San Bernardino County Residential Determination (Residential Plumber) plus fringe benefits. For non-residential projects (buildings) – General Prevailing Wage Determination plus fringe benefits.

Please refer to Appendix B for the State of California Labor Code for more detail. Regardless of the funding source (federal, state, or local), the Contractor shall comply with all labor requirements of the State of California prevailing wage laws, regulations, codes, etc., applicable to this contract, including but not limited to, the following: California Labor Code Section 1770 et seq., which requires contractors to pay their workers based on the prevailing wage rates established and issued by the Department of Industrial Relations (DIR), Division of Labor Statistics. Said rates can be obtained on the website at www.dir.ca.gov.

The Contractor and Subcontractor shall also: 1) Pay not less than the prevailing wage to all workers, as defined in the California Code of Regulations (CCR) section 16000(a), and as set forth in Labor Code

Sections 1771 and 1774: 2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works job sites; 3) Provide workers' compensation coverage as set forth in Labor Code Section 1861; 4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance fee; 5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776; 6) Pay workers overtime pay; as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the DIR Director as set forth in CCR's Section 16200; 7) Comply with Section 16101 of these regulations regarding discrimination; 8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5; 9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and 10) Comply with any other applicable requirements imposed by the State of California.

State of California LABOR CODE - Section 1771.1

- (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
 - (b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.
 - (c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:
 - (1) The subcontractor is registered prior to the bid opening.
 - (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.
 - (3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.
 - (d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.
 - (e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.
 - (f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.
 - (g) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.
- (Added by Stats. 2014, Ch. 28, Sec. 63. (SB 854) Effective June 20, 2014.)

DIR Registration:

The DIR requires registration of public works projects to be completed within five days of awarding the contract. A PWC 100 form will be completed by the awarding body. The completion and the submission of this form fulfills the required public works project award notification as required by Labor Code sec. 1773.3

Service Area Locations and Funding

Provide Plumbing Services on an as-needed basis for the various HACSB Authority Owned sites.

Property:	Address:	City:	Units:	Funded:	Wage:	Service: Yes/No
Las Palmas	8980 Date St., #1A-#3D	Fontana, CA	16 units	Public	Residential	Yes
Kingsley Patio Homes	10302 – 10399 Poulson Ct.	Montclair, CA	34 units	Public	Residential	Yes
Mentone Property	1232 Crafton Ave., #A1-C10	Mentone, CA	34 units	Public	Residential	Yes
Yucaipa Crest	12385 6 th St., #101-923	Yucaipa, CA	45 units	Public	Residential	Yes
Yucaipa Terrace	12435 6 th St., #101-1005	Yucaipa, CA	51 units	Public	Residential	Yes
Andalusia	13520 Third Ave.	Victorville, CA	168 units	Public	Residential	Yes
Chino Affordable Housing	13088 Monte Vista Ave.	Chino, CA	50 units	Public	Residential	Yes
Maplewood Homes	1738 West 9 th St.	San Bernardino, CA	427 units	Public	Residential	Yes
Barstow Affordable Housing	421 South 7 th St.	Barstow, CA	220 units	Public	Residential	Yes
Colton Affordable Housing	772 Pine St.	Colton, CA	125 units	Public	Residential	Yes
Redlands Affordable Housing	803 West Brockton Ave./9 th St.	Redlands, CA	87 units	Public	Residential	Yes
Central Office	715 E. Brier Drive	San Bernardino	Building	Public	Non-Residential	Yes
Housing Programs Office	672& 680 S Waterman Ave	San Bernardino	Building	Public	Non-Residential	Yes
HCV – Victorville	15465 Seneca Rd	Victorville	Building	Public	Non-Residential	Yes
HCV – Ontario	424 North Lemon Ave	Ontario	Building	Public	Non-Residential	Yes

The repeated failure of Contractor to provide service when contacted shall result in termination of this Agreement pursuant to Article 18 for nonperformance. The HACSB shall document failure to respond, and the Contractor may not be permitted to participate in future contracts for these services.

Exhibit A - Fee Schedule

ITEM	DESCRIPTION	STANDARD HOURLY RATE	OVER TIME RATE	EMERGENCY AFTER HOURS HOURLY RATE	HOLIDAY HOURLY RATE
	Provide pricing per the specifications of RFP PC1261 for: State Prevailing wage rate is applicable.				
1	RESIDENTIAL site (Units).	\$140.00	\$188.00	\$188.00	\$236.00
2	NON-RESIDENTIAL site (Buildings).	\$140.00	\$188.00	\$188.00	\$236.00
	Provide pricing per the specifications of RFP PC1261 for: Federal Davis-Bacon wages rate is applicable.				
3	RESIDENTIAL site (Units).	\$140.00	\$188.00	\$188.00	\$236.00
4	NON-RESIDENTIAL site (Buildings).	\$140.00	\$188.00	\$188.00	\$236.00
5	Additional charges/services (please list – attach sheet)				

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

Document on Following Page

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour 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. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (*without* maintenance) greater than \$150,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$150,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$150,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) 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 which is attached hereto and made a part hereof. 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 the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the 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.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

- Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A
- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
 - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
 - (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
 - (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
 - (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) **Withholding for unpaid wages and liquidated damages.**

HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/01/2014)

Public Reporting Burden for this collection of information is estimated to average 0.08 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II; and**
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

- (a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

- (b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

EXHIBIT C

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 Work Authorization, 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 California Department of Industrial Relations - Division of Occupational Safety and Health.
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. 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 Dollars (\$1,000,000) per occurrence. 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 on 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 Dollars (\$1,000,000) combined single limit coverage. Contractor shall be named as an additional insured with respect to such automobile liability insurance policy.
- d. 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 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.

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, 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.

- c. 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.
- d. 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.
- e. 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.
- f. 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. **RESERVED.**
- 25. **CALIFORNIA PREVAILING WAGE:** By its execution of this Contract, Contractor certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work." If the Services/Scope of Work are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Contractor shall defend, indemnify and hold the HACSB, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Exhibit E, which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Contractor shall comply with all applicable terms and conditions in Exhibit E. The applicable general prevailing wage determinations are on file with the HACSB and are available to any interested party on request. Contractor shall post a copy of the applicable prevailing wage determinations at the job site.
- 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 10000 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 4.1 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)(1).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) 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(a)(3), 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 et seq., 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. 3701 et seq.) 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 Public Contract Code 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 Public Contract Code 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 10295.1.
37. **Iran Contracting Act**
IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

Exhibit D

Work Authorization

Schedule Dates:

Start Date:

Completion Date:

Total Contract Cost: **Per Fee Schedule Located in Exhibit A of Contract**

.

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

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

Additional General Provisions ("Exhibit C")

Work Authorization ("Exhibit D")

Exhibit E

PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Scope of Work in the Agreement requires the payment of prevailing wages and compliance with the following requirements:

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., HACSB has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the HACSB, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

2. Payment of Prevailing Rates

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

3. Prevailing Rate Penalty

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the HACSB for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

4. Ineligible Contractors:

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the HACSB. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

5. Payroll Records:

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
- ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the HACSB, the Division of Labor Standards Enforcement of the DIR;
- iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the HACSB or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the HACSB or the

Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;

- iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the HACSB or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the HACSB of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the HACSB, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. Limits on Hours of Work:

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

7. Penalty for Excess Hours:

The Contractor shall pay to the HACSB a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
 - i. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
 - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
 - iii. This project is subject to compliance monitoring and enforcement by the DIR.
 - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
 - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - 2) The HACSB reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.

- 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
 - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.
- b. Labor Code section 1725.5 states the following:
- “A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, “contractor” includes a subcontractor as defined by Section 1722.1.
- (a) To qualify for registration under this section, a contractor shall do all of the following:
- (1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.
 - (B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.
 - (2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:
 - (A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.
 - (B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.
 - (C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.
 - (D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.
 - (E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:
 - (i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.
 - (ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).
 - (b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.
 - (c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or

engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

c. Labor Code section 1771.1 states the following:

"(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at the address on file with either of the following:

(i) The Contractors' State License Board.

(ii) The Secretary of State.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:

"a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016."

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.

b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor

Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:

- a. Submit Contract Award Information (DAS-140):
 - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
 - ii. The DAS-140 is a notification "announcement" of the Contractor's participation on a public works project—*it is not a request for the dispatch of an apprentice*.
 - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
 - iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
 - v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. Employ Registered Apprentices
 - i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
 - iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
 - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
 - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
 - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. Make Training Fund Contributions
 - i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
 - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
 - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
 - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
 - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

3. Exemptions to Apprenticeship Requirements:

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
 - i. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
 - ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
 - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
 - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
 - v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

4. Exemption from Apprenticeship Ratios:

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
 - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
 - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
 - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
 - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

5. Contractor's Compliance:

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

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

March 8, 2022

FROM

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

SUBJECT

Amend Regulatory Agreements for Aventerra Apartments I & II

RECOMMENDATION(S)

1. Approve the Second Amendment to Amended and Restated Regulatory Agreements and Declaration of Restrictive Covenants for the Adventerra I & II Apartments projects in Fontana, California.
2. Authorize the Executive Director to enter into the Second Amendment to Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants with CF Aventerra I 2014, L.P. for the Aventerra I Apartments, and CF Aventerra II 2014, L.P. for the Aventerra II Apartments, said agreements and documents to be executed in substantially the form on file with the Board of Commissioners, with such changes therein as may be necessary or as the Executive Director may approve, upon consultation with Legal Counsel, as being in the best interests of the Housing Authority of the County of San Bernardino, such approval to be evidenced conclusively by the execution, delivery and recording thereof.
3. Authorize the Executive Director to execute and deliver such other documents required to be executed pursuant to the Second Amendment to Amended and Restated Regulatory Agreements and Declaration of Restrictive Covenants, upon consultation with Legal Counsel, as being in the best interests of the Housing Authority of the County of San Bernardino, and to record such documents with the San Bernardino County Recorder's office in accordance with the agreement.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

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

FINANCIAL IMPACT

Approval of this item will extend the affordability covenants for the two apartment complexes, Aventerra I & II in Fontana, CA, to the year 2057 from the current sunset date of 2024 at no cost to the Housing Authority of the County of San Bernardino (HACSB). This results in a total of 56 housing units remaining affordable to lower income families (at or below 80% AMI) for 33 more years than currently required. Additionally, HACSB will begin receiving an annual compliance monitoring fee of \$3,000 (adjusted 2% annually) for each site to insure that the affordability restrictions are being complied with.

BACKGROUND INFORMATION

In 1985, HACSB issued Multifamily Housing Revenue bonds to finance the construction by a private developer of two apartment complexes in Fontana, CA. The bonds were issued under a Federal National Mortgage Association (Fannie Mae) program as the 1985 Series A bonds for the Arrow Royale Apartments (106 units) and 1985 Series B bonds for the Citrus Arrow

Apartments (166 units). The financing included a Regulatory Agreement and Declaration of Restrictive Covenants that required that at least twenty percent of the dwelling units at each property be rented to lower income tenants at affordable rent on a continuous basis. Subsequent to the original 1985 bond issue, the original owner/developer defaulted, and the property was acquired via foreclosure by Fannie Mae. Under the bond indenture for each property, a default triggered mandatory redemption of the original bonds. As a result, in 1994, Fannie Mae requested that the authority assist in the refinancing and prepayment of the 1985 Series A and B bonds through the issuance of 1994 Series A and B bonds with Fannie Mae as the successor owner. The original Regulatory Agreement and Declaration of Restrictive Covenants was amended to reflect the new financing and ownership. The final maturity date of the 1994 Series bonds was to be August 1, 2024, whereupon the Restrictive Covenants would sunset. The financing allowed for the assignment, by Fannie Mae, of the ownership of the property(s) to a private buyer, which Fannie Mae completed in 1995. The property changed hands once again in 2005 when the current owner, C.F. Aventerra, LLC, acquired the property through a financing which defeased and retired the 1994 Series bonds. The Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants has remained in place throughout, obligating the owner to comply with the affordability restrictions through the 2024 term.

The current owner of the property(s), now called Aventerra I & II, is in the process of refinancing with an FHA loan through the U.S. Department of Housing and Urban Development (HUD). The new loan will be amortized over a 35-year term. HUD is conditioning the new loan on extension of the affordability covenant for the full term. Therefore, this action amends and extends the term of the affordability restrictions under the Regulatory Agreement and Declaration of Restrictive Covenants from the current sunset date of 2024 to 2057 (35 years from this year's anticipated closing).

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 25, 2022.

Free recording requested in accordance)
with CA Gov. Code § 27383)

RECORDED AT THE REQUEST OF)
AND WHEN RECORDED MAIL TO:)

Housing Authority - County of San Bernardino)
715 East Brier Drive)
San Bernardino, CA 92408)
Attn: Executive Director)

APNs: 0191-171-46-0-000

(Space above for Recorder's Use)

SECOND AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS SECOND AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "Amendment") is made and entered into as of this ____ day of _____, 2022, by and between CF AVENTERRA I 2014, L.P., a California limited partnership ("Owner"), and the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO (the "Housing Authority").

RECITALS

A. The Housing Authority of the County of San Bernardino (the "Issuer") and U.S. Bank National Association, successor by merger to U.S. Bank Trust National Association, as successor-in-interest to Seattle-First National Bank, a national banking association (the "Trustee"), entered into that certain Indenture of Trust, dated as of July 1, 1994 (the "Indenture"), in connection with the issuance of the Issuer's \$3,320,000 Multifamily Housing Revenue Refunding Bonds (Citrus Arrow Apartments Project) 1994 Series B (the "Bonds"), which were issued to refund Issuer's \$5,550,000 Multifamily Housing Revenue Bonds (Fannie Mae Program – Citrus Arrow Apartments Project) 1985 Series B (the "Prior Bonds").

B. The Issuer loaned the proceeds of the Bonds to the Federal National Mortgage Association, in its capacity as project owner (the "Original Borrower"), pursuant to the Financing Agreement, dated as of July 1, 1994, among the Issuer, the Trustee and the Original Borrower (the "Loan Agreement").

C. The proceeds of the Bonds were used to refinance a 166-unit multi-family residential rental housing complex originally known as Citrus Arrow Apartments, which was subsequently renamed Cambridge I Apartments, and is now known as Aventerra I Apartments located in Fontana, California, and more particularly described in the legal description attached hereto as Exhibit A (the "Project").

D. In connection with the loan of the proceeds of the Bonds to the Original Borrower, Issuer, Trustee, and Original Borrower entered into that certain Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of July 1, 1994 and recorded in the Official Records of the County of San Bernardino, California (the “Official Records”) on July 13, 1994 as Document No. 94-303356, as assigned by Original Borrower to Foundation for Social Resources, Inc., a Delaware nonprofit corporation (“FSR Borrower”), pursuant to that certain Assignment and Assumption Agreement Regarding Regulatory Agreement and Declaration of Restrictive Covenants and Loan Agreement dated as of June 1, 1995 and recorded in the Official Records on June 29, 1995 as Document No. 19950222822, as subsequently assigned by FSR Borrower to PA Cambridge L.P., a California limited partnership (“Cambridge Borrower”), pursuant to that Assignment and Assumption Agreement dated as of August 17, 1998 and recorded in the Official Records on August 19, 1998 as Document No. 19980335884, as assigned by Cambridge Borrower to Owner, successor by conversion to C.F. Aventerra, LLC, a Delaware limited liability company, pursuant to that Assignment and Assumption Agreement Regarding Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of February 23, 2005 and recorded in the Official Records on February 24, 2005 as Document No. 2005-0131331 (the “2005 Assignment and Assumption to Regulatory Agreement” and together with prior amendments and assignments, collectively, the “Regulatory Agreement”).

E. Owner is refinancing the Project with a mortgage loan (the “FHA Loan”) in the amount of \$24,480,000.00 from Dwight Capital LLC, a Delaware limited liability company (“Lender”), for the benefit of the Project, to be secured by a Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement, which FHA Loan is insured by the U.S. Department of Housing and Urban Development (“HUD”) pursuant to Section 207, pursuant to Section 223(f) of the National Housing Act, as amended.

F. As a condition of insuring the FHA Loan, HUD requires that the Regulatory Agreement be amended to include certain restrictions recorded against the Project.

G. In order to preserve the affordability of the Project, Owner has requested to amend the Regulatory Agreement to extend the affordability covenants and the Housing Authority has agreed to the amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Housing Authority agree as follows:

1. Defined Terms. Capitalized terms used but not defined in this Amendment have the meanings set forth in the Regulatory Agreement.

2. Qualified Project Period. The paragraph entitled “Qualified Project Period” in Section 15 of the 2005 Assignment and Assumption to Regulatory Agreement, which amended the Regulatory Agreement’s Section 1 definition and Section 12 term of the “Qualified Project

Period,” is hereby amended to provide that the “Termination Date” of the Qualified Project Period shall be April 1, 2057.

3. HUD Rider. The “HUD Rider to Restrictive Covenants” attached hereto as Exhibit B is hereby added to the Regulatory Agreement and incorporated therein by this reference.

4. Amendment to Regulatory Agreement. The Regulatory Agreement, at Section 7, shall be amended to add the following new Subsection 7(j) to read as follows, with all other provisions of Section 7 remaining unmodified and in full force and effect:

(j) Owner shall pay Housing Authority an annual reporting and monitoring fee equal to Three Thousand and 00/100 Dollars (\$3,000.00) with the first fee due on the Effective Date on May 1, 2022, and on each anniversary date thereafter (“Annual Payment”) until the Termination Date. The Annual Payment amount shall increase annually by two percent (2.00%) until the Termination Date. The Annual Payment shall be paid to Housing Authority without demand and issued to the Housing Authority at 715 East Brier Drive, San Bernardino, CA 92408, Attention Executive Director. If Owner fails to pay the Annual Payment when due, Owner shall be deemed in default and said amount shall bear interest at the rate of ten percent (10%) per annum until paid in full.

5. Reimbursement of Issuer’s Expenses. As consideration for this Amendment, Owner shall reimburse the Housing Authority all its attorney’s fees incurred with this Amendment no later than ten (10) days after the Housing Authority’s approval of this Amendment or by close of escrow, whichever occurs first.

6. Miscellaneous.

a) Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California.

b) Ratification. The parties hereto adopt and ratify by reference all of the remaining terms and conditions of the Regulatory Agreement as if said Regulatory Agreement were set forth herein in full; provided, however, that in the event of any conflict between the Regulatory Agreement and this Amendment, this Amendment shall govern and control.

c) Execution in Counterparts. This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date first written above.

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

[Signatures continue on following page]

OWNER:

CF AVENTERRA I 2014, L.P.,
a California limited partnership

By: AOF/Pacific Fontana AV Management, LLC,
a California limited liability company,
its Managing General Partner

By: AOF/Pacific Affordable Housing Corp.,
a California nonprofit public benefit corporation,
its Manager

By: _____
Name: _____
Its: _____

By: Fontana AV Management, LLC,
a Delaware limited liability company,
its Co-General Partner

By: _____
Naty Saidoff, Manager

ACKNOWLEDGEMENT

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 _____)
County of _____)

On _____, 202____, before me, _____ [insert name and title of officer), personal 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 authorities 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.

Signature _____

[NOTARY SEAL]

ACKNOWLEDGEMENT

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 _____)
County of _____)

On _____, 202____, before me, _____ [insert name and title of officer), personal 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 authorities 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.

Signature _____

[NOTARY SEAL]

ACKNOWLEDGEMENT

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 _____)
County of _____)

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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.

Signature _____

[NOTARY SEAL]

EXHIBIT A

Aventerra I Apartments Legal Description

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows:

PARCEL A:

PARCEL 2 OF PARCEL MAP NO. 8827, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 91 PAGES 15 AND 16 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

THE EAST 136 FEET OF THE NORTH 230 FEET OF THE WEST 4.33 ACRES OF THE EAST 14.33 ACRES OF FARM LOT 670 ACCORDING TO MAP SHOWING SUBDIVISION OF LAND BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11 PAGE 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE EAST 26 FEET,

ALSO, EXCEPTING THE SOUTH 10 FEET OF THE NORTH 40 FEET OF FARM LOT 670, AS CONVEYED TO THE CITY OF FONTANA FOR STREET PURPOSES, RECORDED JANUARY 11, 1957 IN BOOK 4129 PAGE 379 OFFICIAL, RECORDS.

PARCEL C:

THE WEST 4.33 ACRES OF THE EAST 14.33 ACRES OF FARM LOT 670, ACCORDING TO MAP SHOWING SUBDIVISION OF LAND BELONGING TO THE SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11 PAGE 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE WEST 150 FEET OF THE NORTH 230 FEET,

ALSO EXCEPT THEREFROM THE WEST 110 FEET OF THE EAST 136 FEET OF THE NORTH 230 FEET,

ALSO EXCEPTING THEREFROM THE SOUTH 10 FEET OF THE NORTH 40 FEET OF FARM LOT 670 AS CONVEYED TO THE CITY OF FONTANA FOR STREET PURPOSES, RECORDED JANUARY 11, 1987, IN

BOOK 4129 PAGE 379, OFFICIAL RECORDS.

EXHIBIT B

HUD RIDER TO RESTRICTIVE COVENANTS

(See attached)

HUD Rider To Restrictive Covenants

This RIDER TO RESTRICTIVE COVENANTS is made as of February 1, 2022, by CF AVENTERRA I 2014, L.P., a California limited partnership ("Borrower"), and HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO ("Agency").

WHEREAS, Borrower has obtained financing from Dwight Capital LLC, a Delaware limited liability company ("Lender") for the benefit of the project known as Aventerra I Apartments ("Project"), which loan is secured by a Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of February 1, 2022, and recorded in the Official Records of the County of San Bernardino, ("Official Records") concurrently with the Amendment to which this Rider is attached, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower's predecessor-in-interest received tax-exempt bond financing from the Agency, and Agency required certain restrictions be recorded against the Project in connection with such tax-exempt bond financing; and

WHEREAS, Borrower's predecessor-in-interest entered into that certain Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of July 1, 1994 and recorded in the Official Records on July 13, 1994 as Document Number 94-303356, as assigned by Original Borrower to Foundation for Social Resources, Inc., a Delaware nonprofit corporation ("FSR Borrower"), pursuant to that certain Assignment and Assumption Agreement Regarding Regulatory Agreement and Declaration of Restrictive Covenants and Loan Agreement dated as of June 1, 1995 and recorded in the Official Records on June 29, 1995 as Document Number 19950222822, as subsequently assigned by FSR Borrower to PA Cambridge L.P., a California limited partnership ("Cambridge Borrower"), pursuant to that Assignment and Assumption Agreement dated as of August 17, 1998 and recorded in the Official Records on August 19, 1998 as Document Number 19980335884, and as assigned by Cambridge Borrower to Owner, successor by conversion to C.F. Aventerra, LLC, a Delaware limited liability company, pursuant to that Assignment and Assumption Agreement Regarding Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of February 23, 2005 and recorded in the Official Records on February 24, 2005 as Document Number 2005-0131331 (collectively, as amended and assigned, the "Restrictive Covenants") with respect to the Project; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- (a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.
- (b) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Dwight Capital LLC, a Delaware limited liability company, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act, 12 USC § 1701 *et seq.*, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

- (c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants

impose no terms or requirements that conflict with the National Housing Act and related regulations.

- (d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.
- (e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and will not serve as a basis for default under the HUD Requirements, unless a separate default also arises under the HUD Requirements.
- (f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:
 - (i) Available surplus cash, if the Borrower is a for-profit entity;
 - (ii) Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
 - (iii) Available residual receipts authorized for release by HUD, if the Borrower is a non-profit entity; or
 - (iv) A HUD-approved collateral assignment of any HAP contract.
- (g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.
- (h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.
- (i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent

statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this HUD Rider to Restrictive Covenants to be executed on the date first written above.

AGENCY:

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

[Signatures continue on following page]

BORROWER:

CF AVENTERRA I 2014, L.P.,
a California limited partnership

By: AOF/Pacific Fontana AV Management, LLC,
a California limited liability company,
its Managing General Partner

By: AOF/Pacific Affordable Housing Corp.,
a California nonprofit public benefit corporation,
its Manager

By: _____
Name: _____
Its: _____

By: Fontana AV Management, LLC,
a Delaware limited liability company,
its Co-General Partner

By: _____
Name: _____
Its: _____

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

COUNTY OF _____

On _____, 20____, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person 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

[Seal]

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

COUNTY OF _____

On _____, 20____, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person 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

[Seal]

Free recording requested in accordance)
with CA Gov. Code § 27383)

RECORDED AT THE REQUEST OF)
AND WHEN RECORDED MAIL TO:)

Housing Authority - County of San Bernardino)
715 East Brier Drive)
San Bernardino, CA 92408)
Attn: Executive Director)

APNs: 0191-171-12-0-000

(Space above for Recorder's Use)

SECOND AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS SECOND AMENDMENT TO AMENDED AND RESTATED REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "Amendment") is made and entered into as of this ____ day of _____, 2022, by and between CF AVENTERRA II 2014, L.P., a California limited partnership ("Owner"), and the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO (the "Housing Authority").

RECITALS

A. The Housing Authority of the County of San Bernardino (the "Issuer") and U.S. Bank National Association, as successor-in-interest to Seattle-First National Bank, a national banking association (the "Trustee"), entered into that certain Indenture of Trust, dated as of June 1, 1994 (the "Indenture"), in connection with the issuance of the Issuer's \$2,120,000 Multifamily Housing Revenue Refunding Bonds (Arrow Royale Apartments Project) 1994 Series A (the "Bonds"), which were issued to refund Issuer's \$3,600,000 Multifamily Housing Revenue Bonds (Fannie Mae Program – Arrow Royale Apartments Project) 1985 Series A (the "Prior Bonds").

B. The Issuer loaned the proceeds of the Bonds to the Federal National Mortgage Association, in its capacity as project owner (the "Original Borrower"), pursuant to the Financing Agreement, dated as of July 1, 1994, among the Issuer, the Trustee and the Original Borrower (the "Loan Agreement").

C. The proceeds of the Bonds were used to refinance a 106-unit multi-family residential rental housing complex originally known as Arrow Royale Apartments, which was subsequently renamed Cambridge II Apartments, and is now known as Aventerra II Apartments located in Fontana, California, and more particularly described in the legal description attached hereto as Exhibit A (the "Project").

D. In connection with the loan of the proceeds of the Bonds to the Original Borrower, Issuer, Trustee, and Original Borrower entered into that certain Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of July 1, 1994 and recorded in the Official Records of the County of San Bernardino, California (the “Official Records”) on July 13, 1994 as Document No. 94-303360, as assigned by Original Borrower to Foundation for Social Resources, Inc., a Delaware nonprofit corporation (“FSR Borrower”), pursuant to that certain Assignment and Assumption Agreement Regarding Regulatory Agreement and Declaration of Restrictive Covenants and Loan Agreement dated as of June 1, 1995 and recorded in the Official Records on June 29, 1995 as Document No. 95-222825, as subsequently assigned by FSR Borrower to PA Cambridge L.P., a California limited partnership (“Cambridge Borrower”), pursuant to that Assignment and Assumption Agreement dated as of August 17, 1998 and recorded in the Official Records on August 19, 1998 as Document No. 19980335885, and as assigned by Cambridge Borrower to Owner, successor by conversion to C.F. Aventerra, LLC, a Delaware limited liability company, pursuant to that Assignment and Assumption Agreement Regarding Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of February 23, 2005 and recorded in the Official Records on February 24, 2005 as Document No. 2005-0131332 (the “2005 Assignment and Assumption to Regulatory Agreement” and together with prior amendments and assignments, collectively, the “Regulatory Agreement”).

E. Owner is refinancing the Project with a mortgage loan (the “FHA Loan”) in the amount of \$16,160,000.00 from Dwight Capital LLC, a Delaware limited liability company (“Lender”), for the benefit of the Project, to be secured by a Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement, which FHA Loan is insured by the U.S. Department of Housing and Urban Development (“HUD”) pursuant to Section 207, pursuant to Section 223(f) of the National Housing Act, as amended.

F. As a condition of insuring the FHA Loan, HUD requires that the Regulatory Agreement be amended to include certain restrictions recorded against the Project.

G. In order to preserve the affordability of the Project, Owner has requested to amend the Regulatory Agreement to extend the affordability covenants and the Housing Authority has agreed to the amendment.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Housing Authority agree as follows:

1. Defined Terms. Capitalized terms used but not defined in this Amendment have the meanings set forth in the Regulatory Agreement.

2. Qualified Project Period. The paragraph entitled “Qualified Project Period” in Section 15 of the 2005 Assignment and Assumption to Regulatory Agreement, which amended the Regulatory Agreement’s Section 1 definition and Section 12 term of the “Qualified Project

Period,” is hereby amended to provide that the “Termination Date” of the Qualified Project Period shall be April 1, 2057.

3. HUD Rider. The “HUD Rider to Restrictive Covenants” attached hereto as Exhibit B is hereby added to the Regulatory Agreement and incorporated therein by this reference.

4. Amendment to Regulatory Agreement. The Regulatory Agreement, at Section 7, shall be amended to add the following new Subsection 7(j) to read as follows, with all other provisions of Section 7 remaining unmodified and in full force and effect:

“(j) Owner shall pay Housing Authority an annual reporting and monitoring fee equal to Three Thousand and 00/100 Dollars (\$3,000.00) with the first fee due on the Effective Date on May 1, 2022, and on each anniversary date thereafter (“Annual Payment”) until the Termination Date. The Annual Payment amount shall increase annually by two percent (2.00%) until the Termination Date. The Annual Payment shall be paid to Housing Authority without demand and issued to the Housing Authority at 715 East Brier Drive, San Bernardino, CA 92408, Attention Executive Director. If Owner fails to pay the Annual Payment when due, Owner shall be deemed in default and said amount shall bear interest at the rate of ten percent (10%) per annum until paid in full.

5. Reimbursement of Issuer’s Expenses. As consideration for this Amendment, Owner shall reimburse the Housing Authority all its attorney’s fees incurred with this Amendment no later than ten (10) days after the Housing Authority’s approval of this Amendment or by close of escrow, whichever occurs first.

6. Miscellaneous.

a) Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California.

b) Ratification. The parties hereto adopt and ratify by reference all of the remaining terms and conditions of the Regulatory Agreement as if said Regulatory Agreement were set forth herein in full; provided, however, that in the event of any conflict between the Regulatory Agreement and this Amendment, this Amendment shall govern and control.

c) Execution in Counterparts. This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed on the date first written above.

HOUSING AUTHORITY:

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

[Signatures continue on following page]

OWNER:

CF AVENTERRA II 2014, L.P.,
a California limited partnership

By: AOF/Pacific Fontana AV Management, LLC,
a California limited liability company,
its Managing General Partner

By: AOF/Pacific Affordable Housing Corp.,
a California nonprofit public benefit corporation,
its Manager

By: _____
Name: _____
Its: _____

By: Fontana AV Management, LLC,
a Delaware limited liability company,
its Co-General Partner

By: _____
Naty Saidoff, Manager

ACKNOWLEDGEMENT

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 _____)
County of _____)

On _____, 202____, before me, _____ [insert name and title of officer), personal 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 authorities 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.

Signature _____

[NOTARY SEAL]

ACKNOWLEDGEMENT

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 _____)
County of _____)

On _____, 202____, before me, _____ [insert name and title of officer), personal 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 authorities 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.

Signature _____

[NOTARY SEAL]

ACKNOWLEDGEMENT

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State of _____)
County of _____)

On _____, 202____, before me, _____ [insert name and title of officer), personal 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 authorities 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.

Signature _____

[NOTARY SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

The Land referred to herein below is situated in the City of Fontana, County of San Bernardino, State of California, and is described as follows:

THE WEST 5 ACRES OF THE EAST 10 ACRES OF FARM LOT 670, ACCORDING TO MAP SHOWING SUBDIVISION OF LAND BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, IN THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN [BOOK 11, PAGE 12](#) OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE SOUTH 10 FEET OF THE NORTH 40 FEET OF SAID LOT 670, AS CONVEYED TO THE CITY OF FONTANA, BY DEED RECORDED JANUARY 11, 1957 IN [BOOK 4129, PAGE 379](#), OFFICIAL RECORDS.

For conveyancing purposes only: APN 0191-171-12-0-000

EXHIBIT B

HUD RIDER TO RESTRICTIVE COVENANTS

(See attached)

HUD Rider To Restrictive Covenants

This RIDER TO RESTRICTIVE COVENANTS is made as of February 1, 2022, by CF AVENTERRA II 2014, L.P., a California limited partnership ("Borrower"), and HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO ("Agency").

WHEREAS, Borrower has obtained financing from Dwight Capital LLC, a Delaware limited liability company ("Lender") for the benefit of the project known as Aventerra II Apartments ("Project"), which loan is secured by a Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of February 1, 2022, and recorded in the Official Records of the County of San Bernardino, ("Official Records") concurrently with the Amendment to which this Rider is attached, and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower's predecessor-in-interest received tax-exempt bond financing from the Agency, and Agency required certain restrictions be recorded against the Project in connection with such tax-exempt bond financing; and

WHEREAS, Borrower's predecessor-in-interest entered into that certain Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of July 1, 1994 and recorded in the Official Records on July 13, 1994 as Document Number 94-303360, as assigned by Original Borrower to Foundation for Social Resources, Inc., a Delaware nonprofit corporation ("FSR Borrower"), pursuant to that certain Assignment and Assumption Agreement Regarding Regulatory Agreement and Declaration of Restrictive Covenants and Loan Agreement dated as of June 1, 1995 and recorded in the Official Records on June 29, 1995 as Document Number 95-222825, as subsequently assigned by FSR Borrower to PA Cambridge L.P., a California limited partnership ("Cambridge Borrower"), pursuant to that Assignment and Assumption Agreement dated as of August 17, 1998 and recorded in the Official Records on August 19, 1998 as Document Number 19980335885, and as assigned by Cambridge Borrower to Owner, successor by conversion to C.F. Aventerra, LLC, a Delaware limited liability company, pursuant to that Assignment and Assumption Agreement Regarding Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of February 23, 2005 and recorded in the Official Records on February 24, 2005 as Document Number 2005-0131332 (collectively, as amended and assigned, the "Restrictive Covenants") with respect to the Project; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- (a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.
- (b) The following terms shall have the following definitions:

“Code” means the Internal Revenue Code of 1986, as amended.

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Dwight Capital LLC, a Delaware limited liability company, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act, 12 USC § 1701 *et seq.*, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

- (c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants

impose no terms or requirements that conflict with the National Housing Act and related regulations.

- (d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.
- (e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and will not serve as a basis for default under the HUD Requirements, unless a separate default also arises under the HUD Requirements.
- (f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:
 - (i) Available surplus cash, if the Borrower is a for-profit entity;
 - (ii) Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
 - (iii) Available residual receipts authorized for release by HUD, if the Borrower is a non-profit entity; or
 - (iv) A HUD-approved collateral assignment of any HAP contract.
- (g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.
- (h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.
- (i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent

statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this HUD Rider to Restrictive Covenants to be executed on the date first written above.

AGENCY:

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

[Signatures continue on following page]

BORROWER:

CF AVENTERRA II 2014, L.P.,
a California limited partnership

By: AOF/Pacific Fontana AV Management, LLC,
a California limited liability company,
its Managing General Partner

By: AOF/Pacific Affordable Housing Corp.,
a California nonprofit public benefit corporation,
its Manager

By: _____
Name: _____
Its: _____

By: Fontana AV Management, LLC,
a Delaware limited liability company,
its Co-General Partner

By: _____
Name: _____
Its: _____

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

COUNTY OF _____

On _____, 20____, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person 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

[Seal]

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

COUNTY OF _____

On _____, 20____, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person 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

[Seal]

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

March 8, 2022

FROM

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

SUBJECT

Regular Meeting Minutes for Meeting Held on February 8, 2022

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 February 8, 2022.
(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 February 8, 2022, 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 February 23, 2022.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF
THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO
February 08, 2022**

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 854 1865 6828, Password 150726) at 3:01 p.m. on February 08, 2022.

Details of the meeting discussion can be obtained through the recording of the Board of Commissioners meeting through a Public Records Request submitted in person or through the HACSB website: <https://hacsb.com/public-records-request/>

1) Call to Order and Roll Call

The meeting was called to order, and upon roll call, the following were present:

Vice Chair Cooper
Commissioner MacDuff
Commissioner Miller
Commissioner Pinedo
Commissioner Tarango

Chair Johnson was recorded as absent.

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, Sr. Management Analyst; Kristin Maithonis, Assistant Director of Housing Services; Perlle Liu, Asset Management Analyst; Evan Miles, Project Manager; Angie Lardapide, Procurement and Contracts Supervisor; Jesse Diaz, Finance Manager; George Silva, Family Empowerment Services Manager and Claudia Hurtado, Executive Assistant.

Also present, Fred Galante and Colin Tanner, Legal Counsel to the Housing Authority and Erin, Phillips, Consultant with Gonser Gerber.

2) Additions or Deletions to the Agenda

The Vice-Chair called for additions or deletions to the February 08, 2022, agenda. There were none.

3) General Public Comment

The Vice-Chair provided an opportunity for members of the public to address the Board of Commissioners.

Public comment was provided by Barbara Whittington.

4) Closed Session

Closed Session described as follows was held by the HACSB Board of Commissioners, designated leadership team and Legal Counsel:

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

Following closed session, General Counsel Fred Galante reported that the Board of Commissioners held a closed session to discuss the item, as listed on the agenda, and no reportable action was taken.

5) Executive Director's Report

The Executive Director's Report was requested.

Executive Director Razo gave the Executive Director's Report.

Discussion amongst the Board of Commissioners took place regarding the report.

6) Board Building Presentation

The Board Building Presentation was requested.

Executive Director Razo gave the Board Building Presentation which included an overview of the Valencia Grove redevelopment project.

Discussion amongst the Board of Commissioners took place regarding the presentation.

7) Emergency Housing Vouchers Implementation Update

Discussion calendar item number 7 to receive update from staff on Emergency Housing Vouchers implementation, was requested.

Executive Director Razo explained the item.

8) Resolution No. 134

Discussion Calendar item number 8 to Adopt Resolution No. 134 authorizing the use of remote teleconference meeting procedures by the Board of Commissioners, as authorized by Government Code Section 54953(e) *et seq.*, for the period of February 14, 2022 through March 15, 2022, was requested.

Executive Director Razo and Legal Counsel Fred Galante explained the item.

Commissioner MacDuff moved to approve the discussion calendar item number 8, as recommended by staff and Commissioner Tarango seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Vice Chair Cooper
Commissioner MacDuff
Commissioner Miller
Commissioner Pinedo
Commissioner Tarango

Nays

9) Resolution No. 135

Discussion calendar item number 9 to Adopt Resolution No. 135 approving revisions to the Admissions and Continued Occupancy Plan governing the Housing Authority of the County of San Bernardino's public housing program, was requested.

Executive Director Razo explained the item.

Commissioner MacDuff moved to approve the discussion calendar item number 9, as recommended by staff, and Commissioner Tarango duly seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Vice Chair Cooper
Commissioner MacDuff
Commissioner Miller
Commissioner Pinedo
Commissioner Tarango

Nays

10) Grant of Easement and Right of Way to Southwest Gas Corporation

Discussion calendar item number 10 to 1) Approve a grant of easement and right of way to Southwest Gas Corporation, to use and maintain underground natural gas supply system on real property owned by the Housing Authority of the County of San Bernardino, at 8956 G Avenue in the City of Hesperia, 2) Authorize and direct the Executive Director, upon consultation with Legal Counsel, to accept and sign ancillary documents or exhibits necessary to finalize and record the grants of easement with the County of San Bernardino Recorder, was requested.

Executive Director Razo explained the item.

Discussion amongst the Board of Commissioners took place regarding the item.

Commissioner Tarango moved to approve discussion calendar item number 10, as recommended by staff, and Commissioner MacDuff duly seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Vice Chair Cooper

Nays

Commissioner MacDuff
Commissioner Miller
Commissioner Pinedo
Commissioner Tarango

11) Purchase of a Single-Family Home at 934 Barbara Lane in the City of Redlands

Discussion calendar item number 11 Acting as the Housing Successor Agency for the former Redevelopment Agency for the City of Redlands to 1) Exercise Housing Successor Agency's right of First Refusal pursuant to section 8.4 of the Declaration of Covenants, Conditions and Restrictions recorded for 934 Barbra Lane, Redlands, CA 92374, to purchase the property for the amount of \$450,000, 2) Direct the Executive Director of the Housing Authority of the County of San Bernardino, in consultation with Legal Counsel, to execute the Purchase and Sales Agreement and all ancillary documents required to close the purchase of 934 Barbra Lane, Redlands, CA 92374 and to transmit and record all documents as necessary with the San Bernardino County Recorder within 30 days of execution, was requested.

Executive Director Razo explained the item.

Discussion amongst the Board of Commissioners took place regarding the item.

Commissioner MacDuff moved to approve the discussion calendar item number 11 as recommended by staff. The motion was duly seconded by Commissioner Tarango, and upon roll call the Ayes and Nays were as follows:

Ayes
Vice Chair Cooper
Commissioner MacDuff
Commissioner Miller
Commissioner Pinedo
Commissioner Tarango

Nays

12-14) Consent Items

Approval of the consent calendar agenda items numbers 12 - 14 was requested.

Commissioner MacDuff moved to approve consent calendar agenda item numbers 12-14, to:

12) Approve the meeting minutes for the Board of Commissioners of the Housing Authority of the County of San Bernardino Regular Meeting held on January 8, 2022.

13) Approve and file Agency-wide Financial Statements through October 2021.

14) Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of November 2021.

The motion was duly seconded by Commissioner Tarango and upon roll call the Ayes and Nays were as follows:

Ayes

Nays

Vice Chair Cooper
Commissioner MacDuff
Commissioner Miller
Commissioner Pinedo
Commissioner Tarango

Vice Chair Cooper provided an opportunity for individual Board member comments. There were no individual Board member comments.

16) Strategic Planning Workshop

Erin Phillips, consultant with Gonser Gerber LLP, facilitated the Strategic Planning Workshop with the Board of Commissioners.

There being no other business, Commissioner Pinedo moved for the regular meeting of Tuesday, February 8, 2022, to be adjourned, which motion was duly seconded by Commissioner MacDuff. There being no objection to the call for adjournment, the meeting was adjourned by unanimous consent at 5:48 p.m.

Tim Johnson, Chair

Beau Cooper, Vice Chair

Cassie MacDuff

Sylvia Miller

Dr. Ciriaco “Cid” Pinedo

Bobby Tarango

Attest:

Secretary

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

March 8, 2022

FROM

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

SUBJECT

Agency-wide Financial Statements through November 2021

RECOMMENDATION(S)

Approve and file Agency-wide Financial Statements through November 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 loss through November 2021 for Federal Fiscal Year (FFY) 2021-22 is \$29,585. The net loss is currently less than the anticipated net income, with a variance of \$1.9 million. The primary reasons for the budget variance are included below.

There are lower than anticipated costs in administrative expenses in the amount of \$644k mainly due to timing related to the computer software annual costs along with physical needs work that was budgeted, but will be completed later in the year in the amount of \$725 thousand (reflected in the extraordinary maintenance expenses line). Examples of extraordinary maintenance expenses budgeted include asphalt repairs, concrete repairs, roofing work and exterior painting. Housing assistance payments are \$1.6 million lower than expected due to a current lower lease rate, this has also resulted in a decrease in housing assistance payment revenue from HUD. We currently have over 1,000 families with a voucher searching for a home to rent. The monthly expenses for 1,000 families at the current average housing assistance payments per unit cost of \$819 would equate to \$819,000 per month. Depreciation expenses and other non-operating items are not budgeted and amount to \$890 thousand through November 2021.

Financial Summary	FY 2022 YTD
Revenues	\$23,487,625
Expenses	\$22,628,622
Operating Net Income/(Loss)	\$895,003
Operating Transfers/Non-Operating Items	\$888,588
Net Income/(Loss)	\$(29,585)

BACKGROUND INFORMATION

HACSB administers multiple housing programs and is the largest provider of affordable housing in the County of San Bernardino. The FFY 2021-22 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.

Despite ongoing 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 February 24, 2022.

HACSB Budget Comparison

Period = Oct 2021-Nov 2021

	YTD Actual	YTD Budget	Variance	% Var	Annual
INCOME					
TENANT INCOME					
Total Rental Income	4,480,098	4,348,890	131,208	3.02	26,093,339
Total Other Tenant Income	79,236	100,171	-20,935	-20.90	600,732
NET TENANT INCOME	4,559,334	4,449,061	110,273	2.48	26,694,072
GRANT INCOME					
TOTAL GRANT INCOME	18,068,988	22,803,446	-4,734,458	-20.76	136,820,678
OTHER INCOME					
TOTAL OTHER INCOME	859,302	1,455,603	-596,300	-40.97	6,918,012
TOTAL INCOME	23,487,625	28,708,110	-5,220,485	-18.18	170,432,762
EXPENSES					
GRANT EXPENSES					
TOTAL GRANT EXPENSES	850,684	1,730,172	879,487	50.83	10,381,030
ADMINISTRATIVE					
Total Administrative Salaries	1,849,939	2,004,446	154,507	7.71	14,891,275
Total Legal Expense	29,247	82,705	53,458	64.64	493,744
Total Other Admin Expenses	929,908	1,003,718	73,811	7.35	6,012,450
Total Miscellaneous Admin Expenses	447,369	809,267	361,898	44.72	2,799,577
TOTAL ADMINISTRATIVE EXPENSES	3,256,464	3,900,137	643,674	16.50	24,197,045
TENANT SERVICES					
TOTAL TENANT SERVICES EXPENSES	97,224	36,845	-60,379	-163.87	212,482
UTILITIES					
TOTAL UTILITY EXPENSES	571,898	640,453	68,556	10.70	3,883,825
MAINTENANCE AND OPERATIONS					
Total General Maint Expense	423,469	391,499	-31,970	-8.17	2,768,190
Total Materials	122,599	156,334	33,735	21.58	936,669
Total Contract Costs	315,891	674,290	358,399	53.15	4,048,806
TOTAL MAINTENANCE EXPENSES	861,960	1,222,124	360,164	29.47	7,753,664
GENERAL EXPENSES					
TOTAL GENERAL EXPENSES	182,065	207,218	25,153	12.14	1,218,695
EXTRAORDINARY MAINTENANCE EXPENSES					
TOTAL EXTRAORDINARY MAINTENANCE EXPENSES	283,086	1,006,454	723,368	71.87	3,710,753
HOUSING ASSISTANCE PAYMENTS					
TOTAL HOUSING ASSISTANCE PAYMENTS	16,283,875	17,853,490	1,569,615	8.79	107,120,942
FINANCING EXPENSE					
TOTAL FINANCING EXPENSES	241,366	242,607	1,241	0.51	1,455,642
TOTAL OPERATING EXPENSES	22,628,622	26,839,500	4,210,878	15.69	159,934,078
OPERATING NET INCOME	859,003	1,868,610	-1,009,607	-54.03	10,498,684
NET OPERATING TRANSFER IN/OUT	0	0	0	N/A	0
NON-OPERATING ITEMS					
TOTAL NON-OPERATING ITEMS	888,588	0	-888,588	N/A	0
NET INCOME	-29,585	1,868,610	-1,898,195	-101.58	10,498,684

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

March 8, 2022

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 December 2021

RECOMMENDATION(S)

Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of December 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 December 31, 2021, is \$16,552.62. 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 December 2021 is \$16,552.62, as delineated in the following table. Attached is a worksheet that itemizes the individual accounts.

SUMMARY BY PROPERTY MANAGEMENT		
PROPERTY	NO. VACATED	TOTAL
481130 – Maplewood	2	\$3,032.25
408 – Sunrise Vista	4	\$7,224.34

Vacated Tenant Accounts for the Authority Owned Portfolio to be Written Off as Collection Loss
for the Month of December 2021
March 8, 2021

SUMMARY BY PROPERTY MANAGEMENT		
PROPERTY	NO. VACATED	TOTAL
409 – Andalusia	1	\$505.00
418 – Grandview	0	-
467 – Hillcrest	1	\$160.00
Concessions Write Off	0	-
TOTAL RENT WRITE OFF	8	\$10,921.59
Miscellaneous Charges		\$105.00
Maintenance Charges		\$8,806.03
Legal Charges		\$1,225.00
Security Deposits Applied		(\$4,505.00)
NET TOTAL WRITE OFF		\$16,552.62

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on February 21, 2022.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End: 12/31/21

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
481130 Maplewood													
1	C.	D.		V	365.00	733.25			3,035.00	-	3,768.25	1,187.00	2,581.25
2	E.	R.		V	206.00	2,299.00			650.00		2,949.00	993.00	1,956.00
3													
4													
TOTALS:						3,032.25	-	-	3,685.00	-	6,717.25	2,180.00	4,537.25

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
1	Resident notice to vacate	12/03/21		N/A	N/A	N/A		N/A	N/A	12/20/21
2	Resident notice to vacate	03/03/21		N/A	N/A	N/A		N/A	N/A	12/21/21
3										
4										

408 - Sunrise Vista													
1	C.	R.		V				30.00			30.00		30.00
2	N.	V.		V	825.00	1,042.34			1,575.68		2,618.02	400.00	2,218.02
3	G.	M.		D	825.00	3,433.00			584.00		4,017.00	500.00	3,517.00
4	B.	M.		E	825.00	2,749.00			1,044.00	1,225.00	5,018.00	100.00	4,918.00
							-		-	-	-		-
TOTALS:						7,224.34	-	30.00	3,203.68	1,225.00	11,683.02	1,000.00	10,683.02

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	Cancelled								app fee unpaid	
2	Skip									12/20/21
3	Death									12/29/21
4	3 Day Pay or Quit	08/20/21	Posted	08/23/21	08/27/21	N/A		11/10/21	Criminal case/stabbing	12/01/21

409 - Andalusia													
1	H.	A.		S	1,010.00	505.00	-	75.00	1,268.35	-	1,848.35	900.00	948.35
2													
TOTALS:						505.00	-	75.00	1,268.35	-	1,848.35	900.00	948.35

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	Skipped	N/A	N/A	N/A	N/A	N/A		N/A	N/A	12/15/21
2										

*Reasons: E= Eviction S=Skip V=Voluntary T=Terminated Tenancy **Unpaid Misc.: D=Deceased Stipulated agreements for rent, maintenance charges 362 charges, etc.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End: 12/31/21

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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418 - Grandview													
5	S.	A.					-		(50.00)		(50.00)		(50.00)
							-				-		-
TOTALS:						-	-	-	(50.00)	-	(50.00)	-	(50.00)

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
5	Payment on bad debt									

467 - Hillcrest													
6	H.	M.		V	686.00	160.00			699.00		859.00	425.00	434.00
											-		-
TOTALS:						160.00	-	-	699.00	-	859.00	425.00	434.00

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
6	Resident Notice to vacate	11/02/21	N/A	N/A	N/A	N/A		N/A	N/A	12/07/21

ALL PROPERTY TOTALS:						10,921.59	-	105.00	8,806.03	1,225.00	21,057.62	4,505.00	16,552.62
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Submitted by: Lucy Leslie Date: 1/11/2022 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.