

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

TO BE HELD TELEPHONICALLY
May 10, 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: 857 6956 6675
Password: 771885

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 May 10, 2022.
(Page 1)
- 6) Receive the board building presentation for May 10, 2022, an overview on the Housing Authority of the County of San Bernardino's legislative platform and advocacy meeting preparation.
(Page 2)
- 7) Receive update from staff on Emergency Housing Vouchers implementation.
(Page 3-4)
- 8) Adopt Resolution No. 147 authorizing the use of remote teleconference meeting procedures by the Board of Commissioners, as authorized by Government Code Section 54953(e) *et seq.*, (AB 361) for the period of May 16, 2022, through June 15, 2022.
(Pages 5-9)
- 9) 1 – Approve Resolution No. 149 extending authorization of the Executive Director and designees to waive internal policies and modify operations as necessary in response to the COVID-19 global pandemic through December 31, 2022.
- 2 – Direct the Executive Director to create and deliver to the Board of Commissioners a summary report of all instances where this waiver is utilized, including specifying policies waived, the reason for the waiver and the estimated financial impact. The report shall be included in each Board of Commissioners regular meeting agenda for the duration of the State of California emergency declaration.
(Pages 10-14)
- 10) Adopt Resolution No. 148 approving restating revisions to the Housing Authority of the County of San Bernardino's Personnel Policy Handbook.
(Pages 15-22)
- 11) Adopt Resolution No. 145 adopting the Policy Manual governing the Housing Authority of the County of San Bernardino's Emergency Solutions Grant.
(Pages 23-66)
- 12) 1 – Approve the non-financial Memorandum of Understanding with the San Bernardino County Department of Behavioral Health for the Veterans Housing Initiative Program beginning July 1, 2022 through June 30, 2027.

- 2 – Authorize the Executive Director to execute and deliver the Memorandum of Understanding to the County of San Bernardino, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.
(Pages 67-81)
- 13) Approve the write-off of portability accounts for the Housing Choice Voucher Program that have been deemed uncollectible in the amount of \$6,122.44.
(Pages 82-83)
- 14) 1 - Approve a contract amendment with the San Bernardino County Transitional Assistance Department for the provision of California Work Opportunity and Responsibility to Kids Housing Support Program services increasing the amount by \$18,162,657 for a total contract amount not to exceed \$31,122,657 and extending the term by two years through June 30, 2024.
- 2 – Authorize and direct the Executive Director to execute and deliver the contract to the San Bernardino County Transitional Assistance Department and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.
(Pages 84-88)
- 15) 1 – Approve a contract amendment with Knowledge and Education for Your Success, Inc. for the provision of California Work Opportunity and Responsibility to Kids Housing Support Program Housing Navigator Services increasing the amount by \$18,162,657 for a total contract amount not to exceed \$31,122,657 and extending the term by two years through June 30, 2024.
- 2 – Authorize and direct the Executive Director to execute and deliver the contract to Knowledge and Education for Your Success, Inc. and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.
(Pages 89-94)
- 16) 1 – Approve Contract No. PC1263 with CSR Air Conditioning & Heating, Neighborly Heating & Cooling Inc. and First Response Air Conditioning & Heating Inc. for on-call heating, ventilation, and air conditioning services for a three-year period from May 11, 2022 through May 10, 2025 with a single two year option through May 10, 2027.
- 2 – Approve an appropriation in an amount not to exceed \$789,000 for on-call heating, ventilation, and air conditioning services through May 10, 2025.
- 3 – Authorize and direct the Executive Director to execute and deliver the contracts to CSR Air Conditioning, Neighborly Heating & Cooling and First Response Air Conditioning and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.
(Pages 95-225)
- 17) 1 – Approve Amendments to Contract No. PC1152, effective May 11, 2022, for agency-wide landscaping services with Advanced Environmental Landscape Corp. increasing the current amount by \$279,580 for a total contract amount not to exceed \$814,314, and to Priority Landscape Services LLC, increasing the current amount by \$185,750 for a total contract amount not to exceed \$506,596 for an aggregate total amount not-to-

exceed \$1,320,910 and exercising the single year option extension for both contracts through April 30, 2023.

2 – Authorize and direct the Executive Director to execute and deliver the contract amendments to Advanced Environmental Landscape Corp. and Priority Landscape Services LLC and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.
(Pages 226-237)

- 18) 1 – Adopt a Resolution No. 146 to:
- a. Authorize the Housing Authority of the County of San Bernardino to enter into a Loan Agreement, Ground Lease Agreement, Agreement to Enter Into a Housing Assistance Payment contract with Valencia Grove II, LLC, Completion Guaranty with Cathay Bank, and Amended Disposition Agreement with HUD for the construction of the Valencia Grove Phase II Affordable Housing Project; and
 - b. Authorize the Executive Director to act, in consultation with Legal Counsel, on behalf of the Housing Authority of the County of San Bernardino in its capacity as Member of Valencia Grove II, LLC with regard to any action requiring a unanimous vote of the Members as delineated under Article 7 of the Operating Agreement of the LLC.
 - c. Authorize the Executive Director of the Housing Authority of the County of San Bernardino, upon consultation with Legal Counsel, to make modifications, execute and deliver the Loan Agreements, Ground Lease Agreement, Agreement to Enter Into a Housing Assistance Payment contract, Completion Guaranty, Amended Disposition Agreement, and the ancillary documents for each necessary to carry out and close the transaction.

2 – Direct the Executive Director of the Housing Authority of the County of San Bernardino to transmit all documents and amendments to the Secretary within 30 days of execution.
(Pages 238-341)

- 19) 1 – Authorize the sale of real property owned by the Housing Authority of the County of San Bernardino at 12797 9th Street, Yucaipa, 14463 Welsh Court, Hesperia, and 14469 Welsh Court, Hesperia.

2 – Adopt Resolution No. 150 finding the sale of the properties to be exempt from the California Surplus Land Act insofar as the properties are to be transferred with affordability restrictions pursuant to Government Code Section 25539.4.

3 – Authorize the Executive Director or her designee to negotiate the sale to income-qualified households at an affordable sales price of three Single Family Homes owned by the Housing Authority of the County of San Bernardino located at:

- a. 12797 9th Street Yucaipa, CA 92399 for a price not to exceed \$436,000
- b. 14463 Welsh Court Hesperia, CA 92345 for a price not to exceed \$357,000
- c. 14469 Welsh Court Hesperia, CA 92345 for a price not to exceed \$345,000

4 – Authorize the Executive Director to execute silent second mortgages, if required to effectuate the sale of each home to eligible family(s), to be recorded against the properties with 45-year affordability covenants prepared in a form approved by Legal Counsel.

5 – Authorize the Executive Director to approve decreases to the total sales prices, not to exceed 5% of the asking price for each home, if required to effectuate the sale to

eligible family(s)

6 – Authorize the Executive Director to upon consultation with Legal Counsel, to make any necessary changes, and to execute all agreements and documents required for the sale of the real properties listed above, and to close escrow on the sale of each.
(Pages 342-374)

CONSENT CALENDAR

APPROVAL OF CONSENT ITEMS: # 21 - 24

- 21) Approve and file Agency-wide Financial Statements through December 2021.
(Pages 375-377)
- 22) Approve the meeting minutes for the Board of Commissioner of the Housing Authority of the County of San Bernardino Regular Meeting held on April 12, 2022.
(Pages 378-386)
- 23) Approve and file Agency-wide Financial Statements through January 2022.
(Pages 387-389)
- 24) Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of February 2022.
(Pages 390-393)
- 24) Individual Board member Comments
- 25) 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**

May 10, 2022

FROM

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

SUBJECT

Executive Director's Report for May 10, 2022

RECOMMENDATION(S)

Receive the Executive Director's Report for May 10, 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 April 21, 2022.

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

May 10, 2022

FROM

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

SUBJECT

Board Building Presentation for May 10, 2022

RECOMMENDATION(S)

Receive the board building presentation for May 10, 2022, an overview on the Housing Authority of the County of San Bernardino's legislative platform and advocacy meeting preparation.
(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 on HACSB's legislative platform and advocacy meeting preparation.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on May 3, 2022.

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

May 10, 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 new 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 32 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 April 25th is as follows:

Coordinated Entry System (CES)	Victim Service Providers (VSP)	Total submission to Date	Referred for Housing Search/Navigation	Housed
629	89	718	284	46

Below are key points related to the status of the EHV program and the housing navigation contract as of April 25th, 2022:

- HACSB has received 58% more referrals than authorized vouchers (authorized vouchers: 455). It is important to note HACSB is still accepting referrals because not all referrals will receive vouchers (due to eligibility issues) and not all voucher holders will be housed (due to inventory, vacancy and client involvement concerns).
- 46 families have been housed (14 additional since the last report) and 284 families are searching for housing with the assistance of the housing navigation services through Brilliant Corners.
- In addition, 130 vouchers are scheduled to be issued through June, 2022.
- Families have been searching for an average of 78 days for housing.
- The unit offers range from the west side of the county to the high and low deserts.
- Brilliant Corners conducts routine case conferencing meetings with the largest referring partner, San Bernardino County Department of Behavioral Health.
- Incomplete applications from referring partners continues to be a challenge. HACSB will continue to schedule trainings for partners to assist with this matter.
- Rent increases outpacing HACSB's payment standards was a challenge. However, the payment standard increase approved at the March 8th Board of Commissioners meeting will assist with this issue.
- Finally, the lack of available rental housing inventory continues to be a major challenge for the program. Families with EHV vouchers are competing for units with over 1,000 families that have vouchers from other programs and also traditional market rate renters.

Overall, the outlook for the EHV program is positive as more families are being placed in housing each month and HACSB will continue to issue vouchers at a rapid pace.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on May 4, 2022.

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

May 10, 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. 147 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 May 16, 2022 through June 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

Continue Resolution AB361 Brown Act Remote Meetings During a State of Emergency
May 10, 2022

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.

On March 8, 2022, the Board adopted Resolution No. 136 (Item No. 7) 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.

On April 12, 2022, the Board adopted Resolution No. 141 (Item No. 12) 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 April 16, 2022, through May 16, 2022.

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 June 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, on April 21, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-147

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 MAY 16, 2022, THROUGH JUNE 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 even fully vaccinated individuals can spread the virus to others resulting in rapid increases of COVID-19 cases and hospitalizations; and

WHEREAS, San Bernardino County currently has a Community Transmission metric of "low"; 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 May 16, 2022, through June 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) June 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)
)
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, 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

May 10, 2022

FROM

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

SUBJECT

Resolution Authorizing the Executive Director and Designees to Waive Internal Policies and Modifying Operations Due to the COVID-19 Global Pandemic

RECOMMENDATION(S)

1. Adopt Resolution No. 149 extending authorization of the Executive Director and designees to waive internal policies and modify operations as necessary in response to the COVID-19 global pandemic through December 31, 2022.
2. Direct the Executive Director to create and deliver to the Board of Commissioners a summary report of all instances where this waiver is utilized, including specifying policies waived, the reason for the waiver and the estimated financial impact. The report shall be included in each Board of Commissioners regular meeting agenda for the duration of the State of California emergency declaration.

(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

It is unknown at this time what the financial impact will be of any additional emergency measures taken by the Housing Authority of the County of San Bernardino (HACSB) as a result of the COVID-19 global pandemic. There certainly will be a financial impact and the intent of this action is to minimize such by allowing the Executive Director and designees to rapidly respond to emergency needs as they occur. This will assist in avoiding potential additional cost and liability, but more importantly to ensure the continued health and safety of our staff and our customers that might accumulate while awaiting Board of Commissioners (Board) approval.

BACKGROUND INFORMATION

On April 14, 2020 (Item No. 8) the Board adopted Resolution No. 84 authorizing through December 31, 2020, the Executive Director and designees to waive internal policies and modify operations as necessary in response to the COVID-19 global pandemic, as proclaimed in a State of Emergency by the Governor of the State of California.

On December 8, 2020 (Item No. 9) the Board adopted Resolution No. 103 extending the authorization of the Executive Director and designees to waive internal policies and modify operations as necessary in response to the COVID-19 global pandemic through December 31, 2021.

Resolution Authorizing the Executive Director and Designees to Waive Internal Policies and Modifying Operations Due to the COVID-19 Global Pandemic
May 10, 2022

On October 12, 2021 (Item No. 7) the Board adopted Resolution No. 122 extending the authorization of the Executive Director and designees to waive internal policies and modify operations as necessary in response to the COVID-19 global pandemic through June 30, 2022.

As a result of the ongoing State of Emergency due to the COVID-19 global pandemic including the risk of a potential surge and/or new COVID-19 variant, this resolution will allow the Executive Director and her designees to continue to waive any internal policies and modify operations that are deemed to be detrimental to the emergency operations of HACSB during the COVID-19 global pandemic until December 31, 2022, unless extended or rescinded by the Board.

As of this writing, it is unknown precisely which additional policies and procedures may be waived, but a partial list may include:

- Certain Personnel policies such as those related to the Families First Coronavirus Response Act and also related to any governmental directives. For example, In February 2022, California Legislature retroactively approved Senate Bill 114 (SB114) requiring California employers with more than 25 employees to provide supplemental paid sick leave to employees for specific COVID-19 related reasons from January 1, 2022 through September 30, 2022. HACSB's Executive Director immediately authorized the policy revision to policy 5006.4 CA COVID Supplemental Paid Sick Leave, of which the policy revision was presented to the Board of Commissioners for approval on March 8, 2022 (Item No. 11). In the ever-changing climate of COVID-19 legislature, HACSB will continue to require authorization to make the quick changes to policies as needed, especially to changes to COVID related sick policies that have been made with little to no notice.
- Certain program policies and procedures, to minimize the financial impact to families within our program(s) whose employment income may be reduced as a result of the pandemic. Currently, the Community Service and Self Sufficiency (CSSR) requirement has been temporarily waived through to April 30, 2022; however, we have not heard if that will be extended yet again.
- Certain Procurement policies and procedures to minimize impact to the ongoing operation, such as extending existing contracts beyond the maximum term or procuring goods or services from a sole source when competitive responses to solicitations have been substantially reduced due to the pandemic.

Information about the crisis, actions and directives of the governmental authorities continue to change with limited notice. The Executive Director continues to require discretion to make decisions as quickly as possible in order to implement any emergency measures and/or contingency plans deemed necessary to preserve the health, safety and welfare of staff, families and communities that we serve.

The Executive Director and staff will continue to work with the United States Department of Housing and Urban Development, both at the local field office and Headquarters, on programmatic statutory and regulatory waivers.

The Executive Director will continue to bring these items to the Board of Commissioners at the next scheduled board meeting following any action taken per the authorization provided by this Resolution.

Resolution Authorizing the Executive Director and Designees to Waive Internal Policies and
Modifying Operations Due to the COVID-19 Global Pandemic
May 10, 2022

PROCUREMENT

Not Applicable

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante on April 27, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2021-149

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO CONTINUING TO AUTHORIZE THE EXECUTIVE DIRECTOR AND DESIGNEES TO WAIVE INTERNAL POLICIES AS NECESSARY IN RESPONSE TO THE COVID-19 GLOBAL PANDEMIC

RECITALS

WHEREAS, on March 4, 2020, the Governor of the State of California proclaimed a State of Emergency in response to the COVID-19 global pandemic; 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, on March 13, 2020, the President of the United States declared a National Emergency in response to the COVID-19 global pandemic; and

WHEREAS, on March 19, 2020, the Governor of the State of California issued a stay at home order to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19; and

WHEREAS, on March 22, 2020, the President of the United States declared a Major Disaster in California in response to the COVID-19 global pandemic; and

WHEREAS, on April 14, 2020 (Item No. 8), the Board of Commissioners adopted Resolution No. 84 authorizing, through December 31, 2020, the Executive Director and designees to waive internal policies and modify operations as necessary in response to the COVID-19 global pandemic;

WHEREAS, on December 3, 2020, the Governor of the State of California issued a revised and extended stay at home order to further protect the health and well-being of all Californians and to slow the spread of COVID-19 across the state; and

WHEREAS, on December 8, 2020 (Item No. 9), the Board of Commissioners adopted Resolution No. 84 authorizing, through December 31, 2021, the Executive Director and designees to waive internal policies and modify operations as necessary in response to the COVID-19 global pandemic; and

WHEREAS, on October 12, 2021 (Item No. 7), the Board of Commissioners adopted Resolution No. 122 authorizing, through June 30, 2022, the Executive Director and designees to waive internal policies and modify operations as necessary in response to the COVID-19 global pandemic; and

WHEREAS, due to the continuing COVID-19 global pandemic the Executive Director and designees continue to require the ability to modify internal policies and operations;

WHEREAS, the Housing Authority of the County of San Bernardino (HACSB) is a public agency performing essential governmental functions and therefore exempt from the State of California stay at home order and must remain in operation; and

WHEREAS, HACSB has adopted numerous policies affecting a wide range of agency operations; and

WHEREAS, in many instances standard policies do not allow for the swift action required in emergency situations; and

WHEREAS, the safety of HACSB employees and residents is of the utmost importance.

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 (Board) 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 authorizes the Executive Director and designees to waive any HACSB's policy and modify HACSB's operations, which are deemed to be detrimental to the emergency operations of the HACSB specific to the COVID-19 global pandemic, through December 31, 2022.

Section 3. The Executive Director is directed to document all instances where this waiver or modification is utilized in a report to be presented to the Board at each regular Board meeting for the duration of the State of California emergency declaration.

Section 4. This Resolution shall remain in effect until December 31, 2022, unless extended or rescinded by the Board.

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

AYES:

NOES:

ABSENT:

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

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

Secretary

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

May 10, 2022

FROM

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

SUBJECT

Employee Handbook Policy Revisions

RECOMMENDATION(S)

Adopt Resolution No. 148 approving revisions to the Housing Authority of the County of San Bernardino's Personnel Policy 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 Personnel Policy 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, the following policy changes are being requested.

2003 Nepotism – The policy revision focuses to clarify nepotism in the workplace and adds in clarification of not hiring relatives of current or former board members consistent with the Housing Authorities' Annual Contributions Contract with the U.S. Department of Housing and Urban Development.

3007 Dress Code – The policy revision adds in a requirement for all maintenance staff to wear American for Testing and Materials (ASTM) certified protective footwear while conducting maintenance related activities. The revision also seeks to allow for nose piercings with a single stud and removing the requirement for body tattoos to be covered while at work, as long as they are appropriate and not offensive.

Policy 4011 – Telecommuting – As the pandemic has shown us, telecommuting is successful in many positions and scenarios. This policy update is to add long-term telecommuting as an option for staff, but also adds in parameters to make sure the in-person customer service with clients and other staff remain the same. The specific positions eligible for telecommuting will be within guidelines held by Human Resources and approved by the Executive Director.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on April 26, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-148

**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 review with Teamsters Local 1932, 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)
)
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, May 10, 2022.

Secretary

2003 Nepotism

~~The Agency may refuse to hire relatives of present employees if doing so could result in actual or potential problems in supervision, security, safety, or morale, or if doing so could create potential conflicts of interest. The Agency defines "relatives" as spouses, registered domestic partners, children, siblings, parents, in-laws, step-relatives, grandparents, grandchildren, aunt, uncle, first cousin, niece and nephew.~~

~~If two employees marry, become registered domestic partners, or become related, causing actual or potential problems such as those described above, only one of the employees will be retained with the Agency, unless reasonable accommodations can be made to eliminate the actual or potential problems. The employees will have 30 days to decide which relative will stay with the Agency. If this decision is not made within the time allowed, the Executive Director will make the decision, taking the employment history and job performance of both employees into account. This is not subject to any appeal or grievance.~~

The Agency is committed to a policy of employment and advancement based on qualifications and merit and does not discriminate in favor of or in opposition to the employment of relatives. Due to the potential for perceived or actual conflicts, such as favoritism or personal conflicts from outside the work environment, which can be carried into the daily working relationship, the Agency will hire relatives of persons currently employed only if:

- A. Candidates for employment will not be working directly for or supervising a relative; or
- B. Candidates for employment will not occupy a position in the same line of authority in which employees can initiate, advise on or participate in decisions involving a direct benefit to the relative, including decisions on hiring, retention, transfer, promotion, wages and leave requests; or
- C. Where the Executive Director finds that any adverse impact on public service would be insignificant.

Due to potential conflict, the Agency generally may not hire relatives of present or former Board of Commissioner members consistent with the Housing Authorities Annual Contributions Contract with the Department of Housing and Urban Development Section 19, Subsection (B). The Agency defines relatives for purposes of this policy as spouses, registered domestic partners, children, siblings, parents, in-laws, step-relatives, grandparents, grandchildren, aunt, uncle, first cousin, niece and nephew.

If two employees become related while working for the Agency, the Agency shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security or morale. This may include, without limitation, allowing either or both affected employees the opportunity to be transferred to another department. During the period of employment, no supervisory relationship shall exist between married or related employees. The Director of Human Resources, following consultation with the applicable supervisor, may place reasonable conditions on such continued employment to the extent necessary to ensure that problems of supervision, safety, security or morale are kept to a minimum.

Where the above circumstances exist and mandate that two spouses or related individuals shall not work in a prohibited relationship, the Executive Director or designee will make reasonable efforts to transfer one individual to a similar comparable position in another department. Although the wishes of the parties as to which individual shall be transferred will be given consideration by the Agency, the controlling factor in determining which individual to transfer shall be the productive operation and efficiency of the Agency. If any such transfer results in a reduction of salary or compensation, the same shall not be considered disciplinary in nature.

If continuing employment of two related individuals cannot be accommodated consistent with the Agency's interest in promotion of safety, security, morale and efficiency, the Agency retains the sole discretion to separate one individual from Agency employment. In this case, the Executive Director or designee shall notify the affected employees, who shall determine which individual will be subject to separation. This separation shall not constitute discipline.

Determinations made pursuant to this Section shall be made on a case-by-case basis. In making any determinations pursuant to this Section, the Executive Director or designee may take into account all relevant factors concerning each of the affected employees, including but not limited to job duties, employment history, etc., within Agency service, and the business reasons of supervision, safety, security and morale.

3007 Dress Code

The Housing Authority of the County of San Bernardino is a professional organization. Because each employee is a representative of the Agency in the eyes of our clients and the public, it is important that each employee report to work properly groomed and wearing appropriate attire. Employees are expected to dress neatly and in a manner consistent with the nature of the work performed. Employees who report to work inappropriately dressed and in non-compliance with this policy may be sent home to change without compensation.

An employee's religious beliefs or medical conditions, as defined by applicable law, that require deviation from the standards as set forth will be considered on an individual basis. Department managers are responsible for enforcing the dress policy, and may provide more specific guidelines, if variance from the policy is deemed appropriate.

Clothing and Footwear

Employees who wear uniforms are expected to report for duty in the assigned uniform. Uniforms are expected to be clean and pressed. All maintenance personnel are required to wear American Society for Testing and Materials (ASTM) certified protective footwear ~~some form of work boot~~ during all days/times conducting maintenance related activities. Footwear must not be defective (torn) to the extent that its ordinary use creates a safety hazard.

Employees who are not required to wear uniforms are expected to wear business clothing appropriate to the position held. Attire is expected to be clean, pressed and well fitting. All footwear is expected to be appropriate to the employee's position. Shoes are to be neat, clean and in good repair.

Examples of unacceptable attire for all employees include tank or halter-tops, flip-flop sandals, bare midriff, low back or front attire, off-the-shoulder or open-shoulder attire, spandex or denim pants, jeans

and T-shirts with inappropriate designs or messages. All clothing should fit appropriately and be clean and without rips or holes.

Spandex/leggings and athletic wear such as sweatshirts, sweatpants and tennis shoes are unacceptable at all times.

Tattoos and Jewelry

Nose piercings will be allowed with a single stud. All other facial piercing jewelry is prohibited. Pierced earrings may be worn to a maximum of three pieces per ear. Ear plugs are to be no larger than ¾ inch in diameter. All body tattoos must be covered while at work may be visible as long as they are appropriate and not offensive. All jewelry must be appropriate so it does not detract from a professional appearance.

Personal Hygiene

Personal hygiene is essential. Therefore it is necessary that all employees maintain a clean, presentable appearance. Personal hygiene includes a regular bath/shower, use of deodorant, and appropriate oral hygiene.

Policy 4011 Telecommuting

The Housing Authority Agency may authorize telecommuting from a home office or satellite office for eligible employees in order to create a flexible and supportive work environment. Telecommuting is an alternative work arrangement in which an eligible employee, with written approval from the employee's supervisor and confirmation from the Director of Human Resources or Executive Director, works ~~one or more days each work week or month~~ from home or a satellite office instead of commuting to their assigned work site. Telecommuting is not intended for employees to work from home or a satellite office on a full-time basis unless business needs dictate. The Agency believes that establishing a culture with in-person interactions is important and therefore will not authorize full-time telecommuting.

In general, telecommuting is a privilege which may be granted under appropriate circumstances, and the operational needs of the Housing Authority Agency are paramount in any decision to grant or revoke the privilege. Telecommuting cannot be used in place of sick leave, FMLA, or other types of leave in which the employee is not medically able to work based on a doctor's certification. Employees requesting a long-term telecommuting assignment must continue to come into their assigned location at least two days a week unless approved by the Executive Director.

Under no circumstances will an employee be permitted to telecommute without written approval by the ir immediate supervisor and confirmation from the Director of Human Resources or Executive Director. Any telecommuting agreement is subject to the terms and conditions set forth in this policy below.

Long-term telecommuting assignments are assignments that are requested on an annual basis and are in effect longer than 90 days. A new request for a long-term assignment must be completed by January each year. Long term assignments are not an entitlement and may be modified or discontinued by the Agency after providing at least two weeks' notice to employees.

Short-term telecommuting assignments are assignments that are requested from 1 week to 90 days.

Any changes to short- or long-term assignments initiated by the employee must go through the approval process.

Telecommuting is not suitable for all employees and/or positions. Authorization for telecommuting assignments will be made based on the following criteria:

- Regular full-time or part-time employee with 6 months or more time in current position (in unusual circumstances, this timeframe may be waived with documented reasoning provided to Human Resources and approved by the Executive Director).
- The operational needs of the department, as determined by the immediate supervisor and appropriate Sr. Management Team member.
- The prior work history; an employee who has been subject to discipline within the prior 6 months is not eligible for consideration.
- The specific job duties of the employee and the ability to perform such duties from a remote location.
- The ability of the employee to perform their specific job duties without diminishing the quantity and quality of the work performed.
- Other considerations deemed necessary and appropriate by the employee's immediate supervisor, Department Head and the Director of Human Resources.

All employees approved for telecommuting must comply with the following telecommuting guidelines in place:

- The employee must be able to be immediately contacted by phone or e-mail during predetermined work hours.
- For employees eligible to earn overtime, the employee must accurately report all time worked. The employee is prohibited from working overtime without the express approval of his or her supervisor.
- Home office must be free of distractions, with reliable and secure internet and/or wireless access.
- Employees are required to have other primary care arrangements during work hours to care for individuals in the home who need supervision, including children under 12 and older individuals in the home who need supervision or are incapable of self-care.
- Employees must notify their supervisor promptly when unable to perform work assignments because of equipment failure or other unforeseen circumstances.
- If the ~~Housing Authority~~Agency has provided ~~Agency~~authority owned equipment, employees agree to follow the ~~Housing Authority~~Agency Policy for the use of such equipment. Employees will report to their supervisor any loss, damage, or unauthorized access to ~~Authority~~Agency owned equipment, immediately upon discovery of such loss, damage, or unauthorized access.
- The employee must remain in good standing with respect to performance and ~~discipline~~ attendance as determined by the ~~Director of Human Resources or Executive Director~~employee's immediate supervisor.
- Employee must be present in-person at all Agency-wide meetings and will not be approved to telecommute on these days.

- Employee must attend a minimum of one (1) department meeting per quarter in person even if meetings fall on days the employee is scheduled to telecommute.
- Employees must commit to providing responsive customer service and must not delay any work of meeting a customer in person even if on a day regularly schedule to telecommute.

An employee can request a telecommuting assignment from their direct supervisor using the Telecommuting Request Form located on Paycom. Requests will be assessed and approved by the appropriate level of Management, which may include the Sr. Management Team member overseeing the employee's location or program. All telecommuting arrangements must be assessed and approved by the Director of Human Resources or Executive Director. Any telecommuting assignment may be cancelled-discontinued at any time by the Director of Human Resources or Executive Director. For further information on telecommuting and specific guidelines, please contact Human Resources.

Based on a national or local emergency, the need to telecommute may arise. During such emergency, the Executive Director, Director of Human Resources or Executive Director designee may authorize telecommuting outside of the approved policy. Exceptions may include authorization for employees in a position less than 6 months and authorization for an employee who has received a disciplinary action within the past 6 months. Under these circumstances, telecommuting may be approved on a longer term-longer-term basis. Telecommuting would be approved at a maximum of two-week30-day increments.

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

May 10, 2022

FROM

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

SUBJECT

Adopt Policy Manual Governing the Housing Authority of the County of San Bernardino's Emergency Solutions Grant

RECOMMENDATION(S)

Adopt Resolution No. 145 adopting the Policy Manual governing the Housing Authority of the County of San Bernardino's Emergency Solutions Grant.
(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 Policy Manual will have no direct financial impact to the Housing Authority of the County of San Bernardino's (HACSB) annual budget.

BACKGROUND INFORMATION

HACSB received 455 Emergency Housing Vouchers (EHVs) from the United States Department of Housing and Urban Development (HUD). HUD requires that housing authorities provide housing navigation support and financial assistance, such as security deposits, utility deposits, application fees and landlord incentives to assist EHV participants with obtaining housing. HUD provided a services fee for the housing navigation and financial assistance of \$3,500 per voucher. In addition, the County of San Bernardino (County) provided \$3.5 million in Emergency Solutions Grant (ESG) funds to enhance housing navigation services and financial assistance for EHV participants.

HUD regulations require grantees and subrecipients to adopt policies and procedures for the administration of the ESG funds. Such policies should include the program eligibility and verification process, services, coordination with the Continuum of Care, grievance procedures, and other program components. To ensure compliance with HUD regulations and County requirements, it is recommended that the Board of Commissioners adopt the resolution to approve the proposed Emergency Solutions Grant Policy Manual.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on April 21, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-145

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE
COUNTY OF SAN BERNARDINO ADOPTING THE POLICY MANUAL GOVERNING THE
EMERGENCY SOLUTIONS GRANT**

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino (HACSB) is required to establish written policies and procedures that outlines regulations necessary to administer the Emergency Solutions Grant on behalf of the County of San Bernardino and the United States Department of Housing and Urban Development (HUD); and

WHEREAS, the HACSB Board of Commissioners is the decision making body responsible for the adoption of the policies for programs administered by HACSB; and

WHEREAS, HACSB desires to adopt a policy manual for the Emergency Solutions Grant program; and

OPERATIVE PROVISIONS

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

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

Section 2. The Board of Commissioners hereby adopts the Policy Manual governing the Housing Authority of the County of San Bernardino's Emergency Solutions Grant, 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)
) 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, May 10, 2022.

Secretary



HOUSING AUTHORITY OF THE
COUNTY OF SAN BERNARDINO

Emergency Solutions Grant (ESG)

Policy Manual

Housing Authority of the County of San Bernardino
715 E. Brier Rd., San Bernardino, CA 92408
(909) 890-0644
hacsb.com

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I. Program Summary

A. Purpose

The Emergency Solutions Grant Program (ESG) provides federal funds to assist individuals and families to quickly regain stability in permanent housing after experiencing a housing crisis or homelessness. ESG funds are comprised of five program components: street outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, and data collection through the Homeless Management Information System; as well as administrative activities. The regulations can be located at 24 CFR Parts 91 and 576.

B. Funding

The County of San Bernardino (County) receives ESG funding from the United States Department of Housing and Urban Development (HUD) as a direct entitlement Grantee under a formula allocation. The County is responsible for determining how the funds will best be apportioned to recipients. The Housing Authority of the County of San Bernardino (HACSB) is a Subrecipient of ESG-CV funds from the County to provide housing navigation, case management and financial supports to clients receiving rental assistance under HACSB's Emergency Housing Voucher (EHV) program. HACSB may contract the ESG funds to a qualified organization to carry out the program and services. The contractor is responsible for complying with HUD requirements, County policies and procedures and HACSB policies and procedures. Because HACSB and its contractor are subject to the same requirements, the term "Subrecipient" in this document will mean both HACSB and HACSB's contractor.

C. Written Standards

Subrecipients must establish and consistently apply written standards for providing ESG assistance. Standards must be established for each area covered by the Subrecipient, including the area over which the services are coordinated and provided to program participants. Subrecipients are required to submit copies of these standards in their annual funding application. Additionally, the County and ESG Subrecipients are required to comply with HUD's minimum standards relevant to ESG that are required by their Continuum of Care (COC). The standards must provide guidance related to the provision of ESG assistance and must be consistently applied to all program participants. The following minimum program standards are required for delivering the ESG program as outlined in 24 CFR Part 576.

1. Evaluating Eligibility for Assistance

HUD requires Subrecipients to participate and comply with the COC coordinated entry process, also identified by HUD as the Coordinated Entry System (CES). The system identifies, assesses and prioritizes homeless individuals and families for housing and services based on vulnerability and severity of need. CES is designed to:

- Ensure that people experiencing homelessness receive the right housing intervention, and
- Prioritize people who need supportive housing the most to be able to access it as quickly as possible.

Under HACSB's EHV program, the CoC members complete an intake and assessment according to their organization's policies and procedures and verify an applicant's housing status. If appropriate, the organization will refer the applicant for HACSB's Emergency Housing Voucher (EHV) program. The CoC member and HACSB utilize CES to make and receive referrals for the EHV program. The EHV program provides rental assistance to individuals and families who are homeless, at-risk of homelessness, recently homeless, and victims of domestic violence, dating violence, sexual assault, stalking or human trafficking. HACSB also accepts domestic violence referrals from Victim Service Providers (VSPs) outside of CES.

In consultation with the CoC, referrals to the EHV program are prioritized by CES in the following order:

1. Homeless
2. Victims of domestic violence, dating violence, sexual assault, stalking or human trafficking
3. Recently homeless
4. At Risk of Homelessness

Not all EHV households are eligible for ESG services. Once the referral is received by CES or from a VSP, HACSB determines which ESG service components the individual or family will qualify for. Eligibility determinations are documented in client files and through third-party documentation provided by the CoC member organization or VSP. Participant self-certification may be collected by the CoC member organization when third-party verification is unavailable.

ESG-CV uses the 50% of Area Median Income (AMI) income limits for individuals and families receiving Homeless Prevention services. HUD releases limits, annually, which can be found at HUDUSER <https://www.huduser.gov/portal/datasets/il.html>.

Re-evaluations of eligibility for continued receipt of homelessness prevention and rapid re-housing assistance are required—every six (6) months for prevention and at six (6) months then annually for rapid re-housing. Minimally, each re-evaluation of eligibility must verify that the client household does not have an annual income that exceeds fifty percent (50%) of HUD determined median family income for the service area **and** the household continues to lack sufficient resources and support networks needed to obtain or retain housing without ESG-CV assistance.

2. Coordination Among Homeless Assistance Providers, Mainstream Subrecipients and Housing Providers

HACSB will coordinate and integrate, to the extent possible, ESG-funded assistance with other programs serving homeless and at-risk of homelessness individuals and families within their service area (refer to 24 CFR 576.400).

3. Determining and Prioritizing Eligibility for Homeless Prevention and Rapid Re-housing Assistance

HACSB receives referrals for assistance from CoC members via the Coordinated Entry System or directly from VSPs. The CoC members and VSPs determine and verify that applicants meet HUD's categorical definition for homeless, imminent risk of homelessness, homeless under other federal statutes, fleeing/attempting to flee domestic violence, or at-risk of homelessness. CoC members will complete the Homeless or At Risk of Homelessness Certifications and submit a referral to the Coordinated Entry System (CES). CES will prioritize the referral according to the prioritization order specified above. VSPs submit the referral and certification directly to HACSB. Housing status and income eligibility will be confirmed by HACSB or HACSB's contractor using the documents provided with the referral. Housing status and supporting certifications will be documented in the client's ESG file.

For Homeless Prevention applicants, the CoC member or VSP will conduct an initial assessment to verify that clients meet HUD's definition of At Risk of Homelessness. The housing status will be documented in client files in accordance with HUD documentation standards with preference given to third-party verification where available. Because the ESG Homeless Prevention funds are used in conjunction with permanent rental assistance vouchers provided by HACSB, the prevention assistance will allow the applicant to regain stability in their current permanent housing or access other permanent housing and achieve stability.

For Rapid Rehousing applicants, the CoC member or VSP will conduct an initial assessment to verify that clients meet HUD's categorical definition for literally homeless or fleeing/attempting to flee domestic violence and are literally homeless. Homeless status will be documented in client files in accordance with HUD documentation standards with preference given to third-party verification where available.

4. Determining Type, Amount, and Duration of Housing Stabilization and/or Relocation Services Provided to Client

ESG funds may be used to pay the cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing. Under ESG-CV, this assistance cannot exceed 60 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing.

Except for housing stability case management, the total period for which any client may receive assistance must not exceed 24 months during any 3-year period. The limits on the assistance apply to the total assistance an individual receives, either as an individual or as part of a family.

D. HMIS Data Collection

All data on persons served and all activities funded with ESG must be entered into HMIS except for domestic violence victims referred by VSPs. The purpose of HMIS is to record and store client-level information about the numbers, characteristics, and needs of homeless and at-risk of homelessness persons who receive program assistance.

For data on domestic violence victims, HACSB or HACSB's contractor will maintain a comparable database of their own design which provides aggregate information and data consistent with HMIS data collection requirements.

E. Continuum of Care Coordination

Pursuant to 24 CFR 576.400, HUD requires collaboration between ESG recipients/Subrecipients and Continuums of Care (COC) in planning, funding, implementing, and evaluating homeless assistance and homelessness prevention programs, locally.

HACSB is coordinating and integrating, to the maximum extent practicable, ESG-funded activities with the Emergency Housing Voucher program targeted to homeless people in HACSB's service area.

HACSB maintains provider membership in and attendance of: 1) the County's Interagency Council on Homelessness (ICH) - which serves as the HUD-designated primary decision-making group and oversight Council for the County's CoC; and, 2) the Homeless Providers Network (HPN), which provides a forum and environment where collaborative public and private non-profit Subrecipients and faith-based organization can work together to improve the current delivery of available homeless-related resources. Both entities are comprised of members of organizations that provide homeless-related services, elected officials, faith-based organizations, workforce development, academic/educational institutions, etc.

F. Homeless Participation Requirement

Pursuant to Homeless Participation requirements under 24 CFR §576.405, ESG programs must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policy-making entity of the recipient, to the extent that the entity considers and makes policies and decisions regarding any facilities, services, or other assistance that receive funding under Emergency Solutions Grant (ESG).

Because members of HACSB's Board are appointed by the County Board of Supervisors and the Board composition is determined by State Health & Safety Code, HACSB will fulfill the homeless participation requirement via its ESG contractor.

II. Client Eligibility

A. Assessment

A Subrecipient, upon receiving client referral from CES, must conduct a complete and comprehensive housing assessment with the household (HH). The assessment will function as the basis for creating the “Housing Plan” which serves as the foundation for resource coordination and resolution of the housing crisis. A copy of the screening assessment for each household will be maintained in the client file. Housing assessments may be completed through HMIS and a printed, hard-copy kept in the client file.

1. Household Composition

Homeless or at-risk of homelessness households who meet one or more of HUD determined categorical homeless definitions or criteria are eligible to receive program assistance. Household composition includes an individual living alone, family with or without children, or a group of individuals who are living together as one economic unit. In all cases, a household must lack sufficient resources and support networks necessary to obtain or retain housing without the provision of ESG assistance in order to be program eligible.

Each client file must contain documentation for all HH members when receiving assistance. The documentation must substantiate identification and can be copies of:

- Driver’s license or State issued identification card and
- Social Security card
- Medi-cal Card for children (if no other identification exists)
- Birth Certificate
- Passport
- Naturalization papers
- U.S. military discharge papers (DD-214)
- Adoption papers
- Custody agreement
- Affidavit of parentage (a written statement of parent concerning child)
- Guardianship papers

2. Household Status

The type of ESG assistance for which an eligible household qualifies is determined by the stability of their current housing or their homeless status. The CoC member or VSP completes the Homeless or At-Risk of Homelessness Certification indicating the household’s current living situation and provides the appropriate documentation. HACSB or HACSB’s contractor will review the certification, documents, and income with the applicant and complete the Housing Status Certification Form provided by the County. A copy of this certification is to be retained in the client file. To receive ESG-funded services, clients must meet one of the homeless or at-risk of homeless definitions as detailed below. In addition to determining homeless status, the definition category of homelessness in which the client falls MUST be identified (i.e., Category 1 – Literally

Homeless; Category 2- Imminent Risk of Homelessness, etc.)

To ensure compliance with the homeless definition in 24 CFR 576.2, documentation of the evidence relied upon to establish and verify homeless status must be retained in client file. The established order of priority for obtaining evidence is as follows. Every attempt, where feasible, must be made to follow this order of priority:

- a. Third-party verification - A certification form from another organization qualified to make a determination of homeless status may be submitted as third-party verification.
- b. Written case worker or intake worker observation- A written statement by the case worker or intake worker may be an option ONLY if third party documentation and verification are unable to be obtained. Written observations must be well-documented, including date, time and efforts made to verify homeless status (i.e. date and time homeless location was visited, where visited, observed evidence of homelessness, who/ what witnesses, if any, were interviewed to verify homeless status, etc.).
- c. Self-Certification – A well-documented statement from the party seeking assistance certifying homelessness may be provided ONLY when options a and b above are not feasible. The statement must include dates/duration of homelessness, circumstances leading to homelessness, current place of residence (i.e. La Merc Park residing in storm drain, etc.), lack financial resources and support system, etc. As a justification for using self-certification, case workers MUST document all attempts to obtain third-party verification and must document why they were unable to provide written observation of homeless status.
- d. Self-certifications are last resort, not first resort. If proper documentation to verify homeless status does not exist, the client may be deemed an ineligible client.

Eligible applicants for program services must meet one of the following categorical definitions of homeless or criteria for being at-risk of homelessness:

Category 1: Literally homeless --a household that lacks a fixed, regular, and adequate nighttime residence, meaning:

- Living in a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; **or**
- Living in a supervised publicly- or privately-operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); **or**
- Exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering the institution.

Eligible activities: Emergency Shelter, Street Outreach, Rapid Rehousing, HMIS

Category 2: Imminent risk of homelessness --a household that will imminently lose their primary nighttime residence, provided that:

- The residence will be lost within 14 days of the date of application for homeless assistance; **and**
- No subsequent residence has been identified; **and**
- The household lacks the resources or support networks needed to obtain other permanent housing.

Eligible activities: Emergency Shelter, Homelessness Prevention, HMIS

Category 3: Homeless Under Other Federal Statutes -- Unaccompanied youth under 25 years of age, or family who do not otherwise qualify as literally homeless or imminent risk of homelessness, but who:

- Are defined as homeless under Section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b (h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a); **and**
- Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance; **and**
- Have experienced persistent instability as measured by two moves or more during the 60-day 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 disabilities, chronic physical health or mental health conditions, substance addiction, histories 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.

Eligible Activities: Emergency Shelter, Homelessness Prevention, HMIS

Category 4: Fleeing, or attempting to flee, domestic violence-- a household who:

- Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; **and**
- Has no other residence; **and**
- Lacks the resources or support networks to obtain other permanent housing.

Eligible activities: Emergency Shelter, Street Outreach, Rapid Rehousing, HMIS

B. Criteria for At-Risk of Homelessness Qualification

Applications for program service from at-risk individuals or households must meet the following definition of At Risk of Homelessness:

- Have an annual income below 50% of median household income for the area (ESG-CV allows up to 50% AMI); **and**
- Do not have sufficient resources or support networks immediately available to prevent them from moving to an emergency shelter or another place defined in Category 1 of the “homeless” definition; **and**
- Meet one of the following conditions:
 - Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for assistance; **or**
 - Is living in the home of another because of economic hardship; **or**
 - Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; **or**
 - Lives in a hotel or motel and the cost is not paid for by charitable organizations or by Federal, State, or local government programs for low-income individuals; **or**
 - Lives in an SRO or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than one and a half persons per room; **or**
 - Is exiting a publicly funded institution or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); **or**
 - Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the approved Consolidated Plan for the County of San Bernardino.

A youth who does not qualify as homeless under the above eligibility criteria, is eligible if they:

- Qualify as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A))m section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); **or**
- Qualify as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a (2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

Eligible activities: Homelessness Prevention, HMIS

C. Income Determination and Requirements

1. Income Eligibility

In accordance with current waivers and alternate requirements under the CARES Act for ESG COVID notices CPD 20-08 and CPD 21-08, ESG income limits have increased to 50% AMI.

Homeless prevention assistance funded under ESG-CV requires applicants to be below 50% AMI at time of intake. Homelessness Prevention program participants must be re-evaluated not less than once every six (6) months. The client's income must be below 50% AMI at the time of re-evaluation in order to remain eligible for ESG.

Rapid re-housing does not have an income eligibility requirement at the time of intake; however, to qualify for continuation of rapid re-housing assistance, an applicant must have an annual income below 50% AMI at the time of re-evaluation. Rapid Re-Housing program participants must be re-evaluated at six (6) months and then not less than once annually thereafter.

2. Calculating Gross Annual Income

Annual Income is the gross amount of income anticipated to be received by a household during the coming year based on the household's circumstances at the time of program intake and assessment. Annual income includes, but is not limited to: the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services. Annual Income determination is consistent with 24 CFR 5.609, also known as Part 5 and the HUD ESG Income Limits.

An Income Calculation Worksheet provided by the County must be completed and a copy kept in the client file, at intake and every six (6) months for homeless prevention and at six (6) months and annually thereafter for rapid re-housing assistance, to determine eligibility for ESG-CV assistance. To be eligible, the gross annual HH income must be at or below fifty percent (50%) AMI. Income is annualized to project gross annual income.

3. Verification Tracking of Income

The case manager must record all attempts, such as phone logs, email correspondence, and copies of certified letters, etc., to obtain required income verifications in the order specified on the Verification Tracking of Income form provided by the County. Staff must provide an explanation detailing outcomes, including obstacles, on the form, if utilizing verification out of the hierarchy sequence. All sources of HH income, for all adult members, must be verified and documented at the following intervals and with the following eligibility criteria:

- a. Homelessness Prevention – at intake and every six (6) months
 - HH must meet 50% ESG-CV income requirements. The County will provide HACSB with the program income limits annually.
- b. Rapid Re-housing – at intake, at six (6) months and annually, at

recertification.

- There are no income restrictions at intake for rapid rehousing assistance; however, at recertification, the 50% HH income requirement applies.

As with homeless status, income must be documented. The Verification of Tracking Income form is an addendum to the Homeless Status Certification Form. Verification must be conducted in the same order of priority:

- Third-party verification - Some examples of common acceptable documentation:
 - Earned Income – pay stubs, previously filed taxes, etc.
 - Unearned Income – statements from government official/agency, unemployment or disability pay stubs, most recent benefit or disability income notice from agency
- Written observation
 - If third-party verification is not available, a case worker may verify income by calling respective agencies to obtain a verbal verification which is in turn documented.
- Self-certification
 - If income verification is not available via third-party verification or written observation then as a last resort, the client may self-certify income. THIS MUST BE A LAST RESORT. In addition to the Self-Certification, the case worker must document, in detail, all attempts made to obtain third-party or written observation verifications. The documented attempts must include dates and times of phone calls made, emails/letters/or form requests sent, who was contacted and results of contact.

When working with ESG program income limits, please be aware of the following key points:

- Under the ESG program, income eligibility is based on the HUD income limits in effect at the time of income verification. Income eligibility is not based on HUD income limits that correspond with the grant year under which the ESG funds were awarded.
- **Rapid Re-Housing Income Requirements** - For program participants receiving ESG "Rapid Re-Housing" assistance, an income assessment is not required at initial evaluation. At re-evaluation - which must take place at six (6) months and annually thereafter, the participant's household must have an annual income that does not exceed 50 percent of median family income for the area, as determined by HUD.
- **Homelessness Prevention Income Requirements** - The ESG-CV Program limits eligibility for homelessness prevention assistance to individuals and families with incomes below 50 percent of AMI at intake and incomes that do not exceed 50 percent of AMI at re-evaluation, which must take place not less than once every six (6) months.

When determining the annual income of a household to establish eligibility for ESG

assistance, the income of all adults in the household will be counted, including nonrelated individuals, within the limitations imposed by 24 CFR 5.609. Not everyone living in the unit is considered a member of the household for the purposes of determining a household's income. Excluded persons include live-in aides, other household(s) in shared housing arrangement, children of live-in aides and an unborn child. A child subject to a shared-custody agreement should be counted as a household member if the child resides with the household at least 50 percent of the time.

Income generated by an asset, such as the interest on a savings or checking account is considered household income even if the household elects not to receive it. For example, though an applicant may elect to reinvest the interest or dividends from an asset, the interest or dividends are still counted as income anticipated to be received during the coming 12 months. Asset income is discussed in 24 CFR 5.609. Income producing assets include: bank accounts; life insurance policies; lump sum additions (legal settlement, refund, etc.); personal property held as investments; retirement/pension funds; trusts; assets disposed of for less than fair market value; and stocks, bonds or mutual funds.

D. Eligibility Documentation and Recordkeeping

HACSB and its contractors will follow the following order of priority for obtaining written documentation of homelessness to verify eligibility for program services:

Third-Party Verification — source documents provided by an outside source.

Third party documentation is the preferable form of verification and includes but is not exclusive to written statement or document from employer, landlord, public benefit worker, homeless or victim service provider. Written verification sent to program staff from the referring organization is preferred.

Intake/Case Manager Worker Observation—documented by subrecipient staff or contractor. Staff documentation may include oral statements made by a social worker, case manager, or other appropriate official at an institution, shelter, or other facility and documented by the program intake worker/case manager. Use of oral statements is allowable when third-party documentation is not available.

Participant Self-certification—applicant signed document certifying eligibility.

Self-certification requires a written and signed document by the individual or head of household seeking assistance attesting to the eligibility facts for which they are certifying. A third party may be designated by a participant to sign documents on their behalf when they are unable to do so. If needed, the Subrecipient must provide access to language interpretation services and assistive devices necessary for participants to understand the documents they are certifying.

Self-certification documentation is only used when documented staff efforts verify that third-party or worker observation documentation is not available.

Documentation verifying eligibility must be available in client files or if kept electronically, available upon request.

DETAILED RECORDKEEPING REQUIREMENTS FOR INDIVIDUALS AND FAMILIES QUALIFYING UNDER THE HOMELESS DEFINITION

Program participants who qualified as homeless because their primary nighttime residence was a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground, or because they were living in a supervised shelter designed to provide temporary living arrangements, one of the following must be obtained and maintained in the program participant files:

- a written referral by another housing or service provider;
- a printed record from HMIS or a comparable database used for VSP referrals;
- a written observation by an outreach worker of the conditions where the individual or family was living; or
- a written certification by the individual or head of household seeking assistance.

Program participants who qualified as homeless because they were exiting an institution where they resided for 90 days or less and had resided in an emergency shelter or place not meant for human habitation immediately before entering that institution, one of the following must be obtained and maintained in the program participant files:

- discharge paperwork or written or oral referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution, or
- a written record of the intake worker's due diligence in attempting to obtain the information above and a written certification by the individual seeking assistance that stated he or she is exiting (or has just exited) the institution where he or she resided for 90 days or less.

For program participants who qualified under paragraph (2) of the homeless definition in 24 CFR 576.2, one of the following must be obtained and maintained in the program participant files evidencing that program participants would have lost their primary nighttime residence (including housing they own, rent, or share with others) within 14 days of the date of application for homeless assistance:

- a court order resulting from an eviction action notifying the individual or family that they must leave within 14 days of the date of their application for homeless assistance, or the equivalent notice under state law; a Notice to Quit, or a Notice to Terminate issued under state law;
- if the primary nighttime residence was a hotel or motel room not paid for by federal, state, or local government programs for low income program participants or by charitable organizations, evidence that the individual or family lacked the resources necessary to reside there for more than 14 days from the date of application for homeless assistance; or an oral statement by the individual or
- head of household seeking assistance that the owner or renter of the housing in which

they currently reside will not allow them to stay for more than 14 days from the date of application for homeless assistance. The statement must be documented by the intake worker. Also, the oral statement was found credible by one of the following:

- a written certification by the owner or renter of the housing or the intake worker's documentation of the owner or renter's oral statement, or
- if the owner or renter of the housing cannot be reached, a written description and certification of the intake worker's due diligence in contacting the owner or renter and a written certification by the head of household seeking the assistance that their statement is true and complete.

For program participants who qualified under paragraph (2) of the homeless definition in 24 CFR 576.2, the program participant files must contain:

- certification from the individual or head of household that no subsequent residence has been identified; and
- certification or other written documentation that the individual or family lacks the resources or support networks to obtain other permanent housing.

For youth and families who qualified under paragraph (3) of the homeless definition in 24 CFR 576.2, the program participant files must confirm that the unaccompanied youth or family with children and youth met the homeless definition of another federal statute as evidenced by a certification of homeless status signed by the local private nonprofit organization or state or local governmental entity responsible for administering assistance under that statute.

For youth and families who qualified under paragraph (3) of the homeless definition in 24 CFR 576.2, program participant files must confirm that the program participants did not have a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance, as evidenced by the following:

- written certification by the head of household seeking assistance, or
- written observation by an outreach worker, or
- referral by a housing or service provider

For youth and families who qualified under paragraph (3) of the homeless definition in 24 CFR 576.2, program participant files must indicate that each program participant's records contain a written self-certification that the program participant moved two or more times during the 60-day period immediately before the program participant applied for homeless assistance AND one or more of the following documentation, as applicable, to support the self-certification:

- recorded statements or records obtained from each owner or renter of housing; provider of shelter or housing; or social worker, case worker; or other appropriate official of a hospital or institution in which the individual or family resided;
- a written record of the intake worker's due diligence in attempting to obtain the above records;
- where a move was due to the individual or family fleeing domestic violence, dating violence, sexual assault, or stalking, written self-certification that they were fleeing that situation and they resided at that address.

For youth and families who qualified under paragraph (3) of the homeless definition in 24 CFR 576.2, program participant files must confirm that the program participants' persistent instability was likely to continue for an extended period of time because of: chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or dating violence or childhood abuse; the presence of a child or youth with a disability; two or more barriers to employment (including lack of high school degree or GED; illiteracy; low English proficiency; a history of incarceration; or detention for criminal activity; and/or a history of unstable employment) as evidenced by:

- for chronic disabilities, chronic physical health or mental health conditions, and substance addiction – a written diagnosis from a professional who is licensed by the state to diagnose or treat those conditions; or
- for barriers to employment – employment records, literacy or English proficiency tests, department of corrections records; or
- any other reasonable documentation of any of the conditions in the criteria.

For program participants qualified under paragraph (4) of the definition of homeless in 24 CFR 576.2 and was served by a victim service provider, the records must show that either the program participant or the intake worker certified in writing that the individual or head of household made an oral statement that the program participant:

- was fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions that relate to violence;
- lacked the resources or support networks necessary to obtain other housing; and
- had not identified a subsequent residence.

For program participants qualified under paragraph (4) of the definition of homeless in 24 CFR 576.2 and was served by an organization that is not a victim service provider, the records must contain the required documentation and support for the program participant's oral statement that the individual or family:

- was fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence;
- lacked the resources or support networks needed to obtain other permanent housing; and
- had no other subsequent residence identified.

NOTE: The documentation of the program participant's oral statement must include:

- a written certification by the head of household that the oral statement is true and complete; and
- a written observation of the intake worker or a written referral by a housing or service provider, legal assistance provider, social worker, health-care provider, law enforcement agency, pastoral counselor, or any other organization from whom the program participant had sought assistance for domestic violence, dating violence, sexual assault, or stalking. (This written referral or observation need only include the minimum amount of information required to document that the individual or family is fleeing domestic violence, dating violence, sexual assault or stalking and is not required if

obtaining or maintaining this information would have jeopardized the program participant's health or safety.)

DETAILED RECORDKEEPING REQUIREMENTS FOR INDIVIDUALS AND FAMILIES QUALIFYING UNDER AT-RISK OF HOMELESSNESS DEFINITION

For program participants qualified as at-risk of homelessness under paragraph (1) of the definition in 24 CFR 576.2, the records must reflect that the household's income is below 30 percent of the area median income, as evidenced by an income evaluation form containing HUD's minimum requirements, and at least one of the following:

- source documents for the assets held by the program participant and source document of the income received over the most recent period for which representative data are available before the date of intake; or
- written statement by the relevant third party (e.g., employer) or the written certification by the recipient's or Subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period for which representative data are available; or
- written certification by the program participant of the amount of income the program participant received for the most recent period representative of the income that the program participant was reasonably expected to receive over the 3-month period following the evaluation.

For program participants qualified as at-risk of homelessness under paragraph (1) of the definition in 24 CFR 576.2, the records must reflect the program participant's written certification that the program participant has insufficient financial resources and support networks immediately available to attain housing stability and meets one or more of the conditions under paragraph (1)(iii) of the "at risk of homelessness" definition.

For program participants qualified as at-risk of homelessness under paragraph (1) of the definition in 24 CFR 576.2, the records must show that the program participant met one of the seven conditions under paragraph (1)(iii), as evidenced by one of the following:

- source documents that evidence one or more of the conditions;
- a written statement by the relevant third party or the written certification by the recipient's/Subrecipient's intake staff of the oral verification by the relevant third party that the applicant meets one or more of the conditions; or
- a written statement by the recipient's or Subrecipient's intake staff that the staff person has visited the applicant's residence and determined that the applicant meets one or more of the conditions or, if a visit is not feasible or relevant to the determination, a written statement by the recipient's/Subrecipient's staff describing the efforts taken to obtain the required evidence.

NOTE: The conditions are:

- has moved because of economic reasons two or more times during the 60 days immediately preceding the application for assistance;
- is living in the home of another because of economic hardship;

- has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of the application for assistance;
- lives in a hotel or motel and the cost is not paid by charitable organizations, federal, state, or local government programs for low-income individuals;
- lives in an SRO or efficiency apartment in which there resides more than two persons or lives in a larger housing unit in which there resides more than 1.5 persons per room, as defined by the U.S. Census Bureau;
- is exiting a publicly-funded institution, or system of care, or
- otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness as identified in the County's Consolidated Plan.

For program participants qualified as at-risk of homelessness under paragraph (2) in 24 CFR 576.2, the records must reflect that the program participant met the definition under one of the following federal statutes, as evidenced by a certification of the child or youth's homeless status by the agency or organization responsible for administering assistance under the statute:

- Runaway and Homeless Youth Act;
- Head Start Act;
- Subtitle N of the Violence Against Women Act of 1994;
- Section 330 of the Public Health Service Act;
- The Food and Nutrition Act of 2008;
- Section 17 of the Child Nutrition Act of 1966.

For program participants qualified as at-risk of homelessness under paragraph (3) in 24 CFR 576.2, the records must reflect that the child or youth in the household qualified as homeless under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, as evidenced by certification of the child or youth's homeless status by an agency or organization that administers assistance under the Education for Homeless Children and Youth Program.

NOTE: Under this paragraph of At-Risk of Homelessness, the certification need only specify that the child or youth meets the definition under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act.

III. Allowable Program Service Components and Activities

HACSB will use the ESG funds to provide rapid rehousing and homeless prevention services. ESG may also be used for administrative costs and HMIS as approved by the County.

A. Homelessness Prevention and Rapid Re-housing

Homelessness Prevention Services are intended to prevent persons who are housed from becoming homeless by helping them regain stability in their current housing or in other permanent housing. Eligible participants must be at imminent risk of homelessness, homeless under other federal statutes, fleeing/attempting to flee domestic violence or meet the criteria for being at-risk of homelessness and have annual incomes below 50% of area median income.

Rapid re-housing services are intended to help eligible participants who are literally homeless, including fleeing/attempting to flee domestic violence, to transition from the streets or shelter as quickly as possible into permanent housing and achieve housing stability. Eligible participants for either service component must lack the resources or support networks to help them retain or obtain other appropriate, stable housing.

Eligible activities for both service components include housing relocation and stabilization services.

If a client was first assisted under homelessness prevention and then became homeless, HACSB or HACSB's contractor must exit the client from the homelessness prevention component and enter the individual or household into the rapid re-Housing component.

1. Homelessness Prevention and Rapid Re-housing Comparison

The chart below shows the differences between Homelessness Prevention and Rapid Re-Housing service components.

	Homelessness Prevention	Rapid Re-Housing
Eligible Participants	Category 2 – Imminent Risk Category 3 – Other Federal Statutes Category 4 – Fleeing/Attempting to Flee Domestic Violence and has no other residence OR At-Risk of Homelessness	Category 1 – Literally Homeless OR Category 4 – Fleeing/Attempting to Flee Domestic Violence and has no other residence.
Purpose	<ul style="list-style-type: none"> To <u>prevent</u> persons who are housed from becoming homeless To help such persons <u>regain stability</u> in their current housing or other permanent housing 	<ul style="list-style-type: none"> To help homeless persons living on the streets or in an emergency shelter <u>transition</u> as quickly as possible into permanent housing, and then To help such persons <u>achieve stability</u> in that housing
Reassessment	<ul style="list-style-type: none"> Every 6 months Must have income below 50% AMI, AND Lack resources and support network 	<ul style="list-style-type: none"> At 6 months, then every 12 months Must have income <u>below 50%</u> AMI (at reassessment), AND Lack resources and support network
Eligible Activities	Housing Relocation and Stabilization Services and Financial Assistance	Housing Relocation and Stabilization Services and Financial Assistance
	Short- and Medium-Term Rental Assistance	Short- and Medium-Term Rental Assistance

2. Housing Relocation and Stabilization Financial Assistance

HACSB will utilize ESG funds to pay landlords, utility companies and other third parties for the following housing related costs for Emergency Housing Voucher (EHV) voucher holders:

- a. **Rental application fee** charged by the landlord to all applicants;
- b. **Security deposit**, equal to or not more than 2 month's rent;
- c. **Landlord incentive**, equal to \$1,000 for each tenant leased; and
- d. **Standard utility deposit** (gas, electric, water, sewer) required by the utility company for all customers.

The security deposit and utility deposits are refundable to the tenant upon move-out in accordance with state and local laws.

Financial assistance cannot be provided to a program participant who is receiving the same type of assistance through other public sources or to a program participant who has been provided with replacement housing payments under the Uniform Relocation Act (URA), during the period of time covered by the URA payments. Financial assistance refers to: rental application fees, security deposits, last month's rent, utility deposits, utility payments and moving costs.

3. Housing Relocation and Stabilization Services

HACSB will utilize ESG funds to provide the following services to EHV voucher holders:

- a. **Housing search and placement** including assessment of client housing barriers, needs, and preferences; housing search and landlord recruitment, assistance with rental applications and agreements, transportation to unit showings, and other housing search related services.
- b. **Housing Stability Case Management** including client eligibility and service needs assessment, development of individualized housing and service plans, conducting required re-evaluations and follow-up, and coordinating access to other federal, state and local benefits; and assisting with lease and EHV program compliance.

HACSB will provide long-term rental assistance with Emergency Housing Voucher (EHV) program funding. The housing navigators will assist the tenant in locating housing. The tenant will not be limited to only certain units. ESG funds will not be utilized for rental assistance, utility assistance, or arrears. The EHV program requires a lease between the tenant and owner, contract with the owner, rent reasonableness, and Housing Quality Standards (HQS) inspection. Since EHV program funds are being utilized for rental assistance, the ESG rental assistance requirements do not apply.

4. Eligibility Re-certification

If on-going case management is being provided, reassessments are required for homelessness prevention and rapid re-housing participants. Homelessness prevention reassessments are required every six months and must verify that a household continues to have an annual income below 50% of area median income and lacks the resources or support to retain or obtain appropriate permanent housing. Rapid re-housing assessments are required at six months, then at least once per year to verify that a household's income is below 50% area median income and they lack the resources and support networks to retain or obtain appropriate permanent housing. If a client does not have a change in income or other circumstances that may affect eligibility, there is no immediate effect on the client's eligibility and assistance can continue until the next required re-evaluation.

5. Housing Stability Case Management

ESG funds may be used to pay the cost of assessing, arranging, coordinating and monitoring the delivery of individualized housing stabilization services to a program participant already in permanent housing (not to exceed 24 months) or to assist a program participant to overcome immediate barriers to obtaining housing (not to exceed 60 days). Subrecipients are required to provide case management to all clients receiving homelessness prevention and rapid re-housing services. Case management includes the following services:

- a. Using a coordinated entry process (upon the CoC's development or approval of this system);
- b. Conducting initial evaluation, including verification and documentation of eligibility;
- c. Developing, securing and coordinating services;
- d. Obtaining federal, state, and local benefits;
- e. Monitoring and evaluating participant's progress in the program;
- f. Developing an individualized housing stability service plan; **and**
- g. Conducting re-evaluations of participant's eligibility and types and amounts of assistance needed.

B. Summary of Eligibility by Component

The following summarizes the component of services under HACSB's ESG program for the category of eligible household:

Rapid Re-housing: Individuals defined as Homeless under the following categories are eligible for assistance in Rapid Re-Housing projects:

- Category 1 = Literally Homeless
- Category 4 = Fleeing/ Attempting to Flee DV

Homelessness Prevention: The following are eligible for assistance in Homeless Prevention projects:

- People who have an annual income below 50% AMI **AND** meet the “homeless” definition under the following categories:
 - Category 2 = Imminent Risk of Homeless
 - Category 3 = Homeless Under Other Federal Statutes
 - Category 4 = Fleeing Abuse and Domestic Violence
- People who have an annual income below 50% AMI **AND** meet the “at-risk of homelessness” definition under the following categories:
 - Category 1 = Individuals and Families
 - Category 2 = Unaccompanied Children and Youth
 - Category 3 = Families with Children and Youth

IV. Homeless Management Information System (HMIS)

A. Reporting Requirements

ESG funded client and activity data must be entered into the CoC approved HMIS or alternative database for clients who are victims of violence. Data entry and reporting expectations include:

- Timely and accurate data entry into the HMIS (within 3 working days);
- Acquiring and documenting informed written consent from program participants;
- Protecting program participants’ confidentiality;
- Using the HMIS as a tool to analyze data to inform and improve the delivery of services.

HACSB is required to submit reports to CDH with each Request for Reimbursement claim submitted.

The Subrecipient must ensure all required data elements, as listed below, are entered into the HMIS system for ESG participants, in a timely manner, and is inputted no later than three (3) working days after program entry. Services rendered to clients must be entered into HMIS no later than three (3) working days hours from date of service(s). All clients who exit the program must have an updated status in HMIS within three (3) working days from actual exit date.

In addition to the timely entry of HMIS data, HACSB is required to enter accurate and complete data. The Data Quality Standards assess the data quality and completeness of the following Data Elements entered:

- 1) Client Demographic Data
 - a) Name
 - b) Social Security Number
 - c) Date of Birth
 - d) Race
 - e) Ethnicity
 - f) Gender
 - g) Veteran Status
- 2) Universal Data

- a) Disabling Condition
- b) Project Start Date
- c) Project Exit Date
- d) Destination
- e) Relationship to Head of Household
- f) Client Location
- g) Housing Move-in Date
- h) Living Situation
- 3) Common Program Specific Data Elements
 - a) Income and Sources
 - b) Non-Cash Benefits
 - c) Health Insurance
 - d) Disability Elements
 - e) Physical Disability
 - f) Developmental Disability
 - g) Chronic Health Condition
 - h) HIV/AIDS
 - i) Mental Health Problem
 - j) Substance Abuse
 - k) Domestic Violence
 - l) Contact
 - m) Date of Engagement
 - n) Bed-Night Date
 - o) Housing Assessment Disposition
- 4) Data Timeliness
 - a) Entry Timeliness
 - b) Exit Timeliness

The Data Quality Standards require a program to have a five-percent (5%) or less error rate to ensure data accuracy and less than a five-day lapse in timeliness for entry of data at time of client entry, services are rendered, and client exit. Any performance benchmarks not meeting these standards will be flagged and captured on a Subrecipient's HMIS Data Quality Report Card generated by the Office of Homeless Services.

B. Victim Services Data Collection

For domestic violence survivors, the Subrecipient will maintain a comparable database of their own design which provides aggregate information and data consistent with HMIS data collection requirements. If a domestic violence referral was not made by a victim services provider, the Subrecipient is required to enter data in HMIS.

C. Performance Measures and Follow-Up Contact

In alignment with the federal and state strategic plans to end homelessness, CDH has established performance measures that require the collection of housing status data at the time of program entry, program exit and six months after program exit. While performance measures are in the process of being further identified and defined, Subrecipients are currently required to report on two specific measures:

- Increased housing stability as measured by the percentage of total program participants served who reside in permanent housing at time of exit from program; **and**
- Increased housing stability as measured by the percentage of program participants who at program exit reside in permanent housing and maintain permanent housing for six months from time of exit.

Both measurements should be entered into the HMIS. Preliminary performance benchmarks have been set at 30% for all program participants who exit to permanent housing and 80% for those exiting to permanent housing that remain in permanent housing at six month follow-up. These outcome measurements will be in addition to reporting of required universal data elements that track client characteristic and service data.

Locating and following up with clients can be challenging. Strategies that have shown the best results include the following:

- Follow-up is provided by the case manager or staff with whom the client knows and has worked with;
- Informing the client at time of intake/assessment of the need and value of follow-up and requesting their permission to contact them and/or other identified contacts after they exit the program;
- Securing multiple points of contact for the client prior to their exit such as a friend, family member, employer, landlord or someone who the client is likely to stay in touch with during the six month period;
- Utilizing HMIS clients to verify permanent housing status; and
- Development of MOUs with other agencies such as DHS, Housing Authorities, etc. to determine the housing status of clients.

Regardless of the method of follow-up utilized, Subrecipients must obtain client permission to contact others through a signed release of information.

V. Ineligible Activities and Assistance

Ineligible activities that cannot be funded with ESG include, but are not exclusive to:

- replacement of existing mainstream resources;
- payments made directly to program participants;
- payments on a mortgage or land contract;
- payment of rent for eligible individuals or families for the same period of time and for the same cost types being assisted through any other federal, state, or local housing subsidy program;
- payments on credit card bills or other consumer debt, including child support or garnishments;

- provision of cash assistance;
- payment of costs of discharge planning programs in mainstream institutions such as hospitals, nursing homes, jails, or prisons; **and**
- payment for religious activities (**Note:** While organizations that are religious or faith-based are eligible to receive ESG funds, religious activities must be conducted separately, in time and location, from ESG-funded activities and participation must be voluntary for program participants).

VI. Housing and Facility Standards

A. Occupancy Standards

Occupancy standards provide consistent criteria for determining the size of the permanent housing unit for which the household is eligible, and thus, the amount of assistance to be provided. The Housing Authority will assign one bedroom to the Head of Household, Spouse and/or cohead and an additional bedroom for every two family members. The household may choose a smaller unit size. However, the household may not exceed the following maximum occupancy standards:

MAXIMUM OCCUPANCY STANDARDS	
Number of Bedrooms	Maximum Number of Persons in Household
0 Bedroom	2
1 Bedroom	3
2 Bedrooms	5
3 Bedrooms	7
4 Bedrooms	9
5 Bedrooms	11

Exceptions to the occupancy standards may be granted as a reasonable accommodation for a person with a disability. Some examples of exceptions include a bedroom for a live-in care attendant who is not a member of the household or members with medical problems who need privacy or space for medical equipment.

B. Habitability Standards

All housing units supported with program funds must meet HUD Housing Quality Standards (HQS) for the EHV program and HACSB's local standards. For households moving into a new unit, the unit must meet habitability standards before the lease is signed and the household moves in. For households already residing in a unit, the unit must meet habitability standards before rental assistance can be provided.

C. Lead-Based Paint Requirements

Federal lead-based paint requirements apply any time federal funds are used for housing assistance and the living space or unit was built prior to 1978. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M and R apply to all housing occupied by program participants.

HACSB provides the lead hazard information pamphlet to all ESG recipients at the time of the EHV voucher briefing, which is conducted prior to unit approval.

Landlords must complete a Disclosure of Lead-Based Paint form prior to leasing the unit under the EHV program. The form describes any known current or previous lead-based paint hazards, and documents tenant's receipt of records and the lead hazard information pamphlet. Additionally, a visual lead-based paint assessment is completed by a trained inspector. The lead-based paint assessment is completed in conjunction with the HQS inspection. At Intake, the Application Form will note if there will be any child in the household younger than 6 years. This information is provided to the HQS inspector prior to their examination of the proposed rental unit.

Essential service activities, such as, counseling, case management, street outreach, referrals to employment, etc., are exempt and excluded from the lead-based paint inspection requirements.

D. Environmental Review

Federally funded projects are subject to an environmental review process in 24 CFR Part 58. The County acts on behalf of HUD as the responsible entity to determine if the ESG activity complies with the requirements in 24 CFR Part 58. Any Subrecipient requesting funds for activities under ESG may be subject to full or partial environmental review as applicable. The County will define the level of review required and complete and document all environmental requirements. County staff will process the applicable environmental review in the HUD environmental reporting system known as HUD Environmental Review Online System (HEROS).

VII. Client Confidentiality

A. General Requirements

All information about the applicant/client is confidential. Information is only disclosed for the purpose of determining program eligibility, providing benefits, or investigating possible violation of federal, state and local regulation(s) associated with ESG delivery and never in a setting where members of the public can hear the conversation.

HACSB and its contractor will maintain all client records in a locked area or file cabinet.

B. Electronic Confidentiality

Electronic collection of client information requires procedures for ensuring confidentiality. The following guidelines apply to the use of a computer:

- The computer terminal(s) used must be in a secure location, limiting access to only those persons who have a legitimate interest in and are responsible in viewing client records.
- The computer monitor must be cleared (or a screen saver activated) immediately after accessing a client record.
- The computer terminal must be on a “locked” mode or turned off if the terminal is unattended.
- Access to the HMIS program shall be given to authorized staff persons and only insofar as access is necessary for performing the work required for the ESG program.

C. Victims of Domestic Violence

A Subrecipient must implement procedures to ensure confidentiality of records pertaining to any individual who is provided family violence prevention or treatment services. Victim information cannot be disclosed to any third party without consent of the victim.

Therefore, a comparable database of the Subrecipients design which provide aggregate information and data consistent with HMIS data collection requirements will be maintained by the Subrecipient. Projects serving survivors of domestic violence where the referring partner is not a victim services provider are required to enter data in their HMIS.

HACSB will instruct all staff and subcontractors that the address of a domestic violence provider’s shelter location will not be made public without permission of the provider.

D. Release of Information

Client information (including identifying the person is a client) should not be released without written authorization from the client. A Release of Information form must be completed by the applicant at the time of intake.

Client refusal to provide such authorization cannot be the basis for denying ESG program services to otherwise eligible clients.

VIII. Termination, Grievance and Conflict of Interest Policies

A. Termination or Denial of Assistance

HACSB’s Administrative Plan details denial, termination, and grievance policies and procedures for all Housing Services programs, including EHV. The policies and procedures are posted on HACSB’s website and available upon request. Copies and explanation of the policies and procedures are provided directly to any client when a denial, termination or other action affects the client’s ability to receive assistance. The notice must provide the specific reason(s) for the action and provide a process the applicant can follow to request a review of the decision.

Termination from assistance does not prevent HACSB from providing further assistance, later, to the same household or individual if they are determined eligible for such assistance.

B. Grievance and Appeals Process

The receipt of ESG services and assistance is contingent upon the client also remaining eligible for EHV assistance. If EHV assistance is denied or terminated according to EHV program policies, HACSB will follow its appeal process outlined in the Administration Plan. However, if the client is eligible to receive EHV assistance and the ESG assistance is denied or reduced, HACSB will follow the appeals process outlined in this section.

HACSB has established the following process for addressing ESG client grievances for decisions, including termination or reduction of benefit, denial of benefit or other grievance:

- Informs the participant/applicant of the policy at voucher issuance (prior to ESG enrollment);
- Informs the participant/applicant that they may contest any Subrecipient's decision that denies (for any reason) or limits eligibility of participant/applicant and/or terminates or modifies any ESG benefits;
- Any aggrieved person has thirty (30) calendar days to request an administrative review;
- The applicant/participant has a right to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the decision;
- CDH will be informed of any requests for administrative review within 10 days of receiving the request;
- The applicant/participant and CDH will be notified in writing of the final determination and basis for the decision within ten days of the determination.

Any person or persons designated by HACSB can complete the administrative review, other than the person who made or approved the decision under review or a subordinate of this person.

CDH may require modification of any review or appeal process that CDH determines does not meet basic principles for notification, instruction, time allowance, impartiality, or other necessary component.

HACSB will make accommodations for clients who have language or disability barriers that would prevent them from participating in the appeals process.

C. Conflict of Interest

1. Organizational

The provision of any type or amount of ESG assistance may not be conditioned on an individual's or household's acceptance or occupancy of emergency shelter or housing owned by Subrecipient or an affiliated organization. A Subrecipient is prohibited from conducting a participant's intake assessment to determine program eligibility if the participant resides in housing where the Subrecipient has ownership interest. Subrecipient would need to find another independent organization that is also an ESG grantee to do the intake assessment and ensure that all program participants are eligible even if the Subrecipient has a waiver of the conflict of interest requirements. Conflict of interest

waivers regarding rent assistance and rental agreement requirements can only be approved by HUD. If a Subrecipient wishes to apply for a waiver, they should contact the CDH for guidance in submission of a waiver request which must be approved by CDH who will then submit to HUD. See 24 CFR 576.404(a). Subrecipient must keep records to show compliance with ESG program organizational conflicts-of-interest requirements.

2. Individual

For the procurement of goods and services, HACSB and its contractor must comply with the codes of conduct and conflict of interest requirements under 24 CFR 85.36 (for governments) or 24 CFR 84.42 (for private nonprofit organizations).

Persons for whom the Conflict of Interest requirements apply include any person who is an employee, agent, consultant, officer, or elected or appointed official of the Subrecipient agency. No person who exercises or has exercised any functions or responsibilities with respect to activities assisted under the ESG program, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under the Program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or during the one- year period following his or her tenure.

Upon the written request of CDH, HUD may grant an exception to the provisions of this paragraph on a case-by-case basis. Subrecipients wishing an exception must submit requests to CDH for review and forwarding to HUD. There is no guarantee that an exception will be approved.

IX. Fair Housing

A. Affirmative Outreach

Subrecipient must communicate and make known that use of ESG funded facilities, assistance and services are available to all on a nondiscriminatory basis. Subrecipient must develop and implement affirmative outreach written procedures and communication tools and materials to inform persons without regard to race, color, ethnicity, religion, sex, age, national origin, familial status, or disability, how to obtain access to facilities and services. If it appears the procedures Subrecipient intends to use to accomplish this will not reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those activities and services, Subrecipient must establish additional procedures to ensure those persons are made aware of assistance opportunities.

Reasonable accommodations for persons with disabilities are available in order to ensure disabled participants have an equal opportunity to utilize housing and receive essential services.

B. Nondiscrimination

HACSB and its contractor will comply with all state and federal statutes relating to nondiscrimination. HACSB and its contractor may not take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent housing or provide services
- Make housing or services unavailable
- Deny a dwelling or service
- Set different terms, conditions or privileges for rental of a dwelling or obtaining services
- Provide different housing services or facilities or different services
- Falsely deny that housing is available for inspection or rental or that services are available
- Deny anyone access to a facility or service.

C. Equal Access to Housing Regardless of Sexual Orientation or Gender Identity

On February 3, 2012, HUD published a final rule in the Federal Register entitled, “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity”. This rule became effective March 5, 2012 and was amended in September 2016 with 24 CFR 5.106. The rule provides a regulatory provision that prohibits considering a person’s marital status, sexual orientation, or gender identity in making homeless housing assistance available.

Refer to: <https://www.hudexchange.info/resources/documents/Equal-Access-Final-Rule-2016.pdf> for more information. Gender identity is defined as the gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person's perceived gender identity. Perceived gender identity means the gender with which a person is perceived to identify based on that person's appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents. HACSB’s equal access on gender identity policies are described in the Administrative Plan.

X. Recordkeeping

A. Client File Documentation

Sufficient records must be established and maintained to enable CDH and HUD to determine whether ESG requirements are being met. HACSB must make sure any contractors assisting with the ESG program also maintain appropriate and complete records.

Documentation of client eligibility and services received must be maintained in printed or electronically-saved client case files, including files for applicants found to be ineligible. File documentation will be the basis of CDH monitoring to ensure Sub-recipient is in compliance with program requirements and HUD regulations.

At the minimum, client files must contain the following, if applicable to Subrecipient’s service to the program participant:

- Verification of use of coordinated entry;

- Signed Release of Information;
- Intake form and assessment of household needs;
- Homeless or at risk of homelessness verification;
- Evidence applicant has no subsequent housing options and lacks sufficient resources to retain housing, but is not homeless;
- Rent Reasonableness documentation;
- Housing Quality Standards inspection;
- Signed Lease Agreement;
- Signed Rental Assistance Contract;
- Verification of client income and assets;
- Re-evaluations of eligibility;
- Housing Plan and housing assistance provided;
- Verification of outstanding rent arrears;
- Case notes;
- Evidence of referrals from CES and/or other coordinating agencies;
- Documentation of payments made on client's behalf; **and**
- Written notice of program termination.

B. Electronic Files

Client file documents, signatures and policy documents will be collected and maintained either electronically or in paper form.

C. Records Retention

Currently, program records including client files will be retained for five (5) years. Fiscal records, which include books, documents, papers, plans, and agency records that document all program expenditures, or such longer period as may be required due to any audit, controversy or litigation arising out of, or relating to, program use.

XI. Financial Management

A. Administration

Each awarded Subrecipient is eligible to request a de minimis rate of up to 10% for indirect costs. If an agency has been approved for above this amount, a letter from the federal agency approving an Indirect Cost Rate Proposal (ICRP) greater than the 10% de minimis must be provided to the County supporting that ICRP.

B. Program Match

Under ESG-CV funding, HACSB does not have a matching requirement.

Under ESG, Subrecipients are required to meet match requirements established in 576.201 and 2 CFR 200.306 and obtain matching contributions from any source, including any Federal (non-ESG) source, as well as state, local, and private sources. Use of any Federal source must not prohibit those funds from being used as ESG match and not already be matched with ESG

funds. HACSB must ensure the laws governing any funds used as matching contributions do not prohibit the use of those funds as match.

1. ESG Match Criteria

- The matching contribution must be made after the date that HUD and CDH sign the ESG Grant Agreement;
- Cash contributions must be expended within the expenditure deadline in 576.203;
- Non-cash contributions must be made within the expenditure deadline in 576.203.
- Contributions used to match a previous ESG grant or other source requiring a match may not be used to match current or subsequent ESG grants;
- Contributions that have been or will be counted as satisfying a match requirement of other federal funds may not be used as match for ESG funding;
- The matching funds must be used for ESG eligible services and activities; **and**
- Are not included as contributions to any other Federal awards;
- Are necessary and reasonable for accomplishment of ESG project or program objectives;
- Allowable under Part 200 Subpart E- Cost Principles.
- Non-cash contributions made on or after January 6, 2016, must valued in accordance with the requirements at 2 CFR 200.306(d) through (j) and 24 CFR 576.201 (c).

2. Program Services Match

If a match is required, HACSB will track the source, amount and use of the matching funds for each grant.

The backup documentation of the match must include the following: contract/award of match, general ledger/fiscal accounting report, invoices/proof of expenditures covered by match; if in kind, description of match and valuation methodology used), which reflects records of the source and use of contributions made to satisfy the matching requirement. Records must indicate that the match was expended with the ESG expenditure period of the grant number the match is being applied, before the ESG deadline and that the costs were allowable costs under the ESG program. To the extent feasible, volunteer services must be supported by the same methods that Subrecipient uses to support the allocation of regular personnel costs.

C. Funds Disbursement

HACSB and HACSB's contractors will retain supporting documentation of all costs charged to the ESG grant and be able to provide evidence that grant funds were spent on allowable costs. Each reimbursement request must be accompanied by the required documentation as identified on the ESG Claims Reimbursement Checklist.

XII. Monitoring

A. Process

HACSB will perform on-site monitoring of all subcontractors performing services under the ESG grant at least once during and no later than the third quarter of the term of the Subrecipient agreement. Any HACSB contractors are subject to all federal, state, and local rules, regulations and laws. The monitoring procedures as imposed by the County to the Subrecipients must likewise be imposed upon any HACSB contractors

HACSB will monitor Subrecipients to ensure compliance with and applicability to 2 CFR Part 200, including but not limited to:

- Uniform Administrative Requirements;
- Cost Principles; and
- Audit requirements for Federal awards.

1. Monitoring Preparation

Preparing for the formal on-site monitoring review of a contractor entails extensive preparation. The Monitoring will be scheduled and conducted by HACSB's ESG staff. The monitoring will entail desk audits and onsite monitoring. The following steps are considered part of the preparation for monitoring:

- Review previous year's monitoring results to determine if any previous findings existed, if findings /concerns have been remediated and determine if a clearance letter has been issued.
- Review written agreements to facilitate a complete understanding of the activity(ies) being implemented to determine the monitoring parameters.
- Determine monitoring parameters. Monitoring parameters are those requirements applicable to the Subrecipient in the implementation of a particular ESG-funded activity to include but not be limited to:
 - Eligibility of activity, activity costs, client, program delivery costs and staff costs;
 - Certification and verification of homeless or at-risk status;
 - Processes and Procedures are in adherence to federal rules and regulations (i.e. income limits, Fair Market Rent, Rent Reasonableness, habitability inspections, lead-based paint compliance, etc.);
 - Review of match documentation, timing and eligibility. Examples of documentation reviewed will be: letters of award and/or contracts, general

ledgers or financial tracking showing expenditures of match, use of match and match balances; proof of expenditures such as invoices, account of services provided used as match, etc.

- Review of performance goals (established performance outcomes and expenditures);
 - Review of audited financial statements and single audits, if applicable;
 - Review of staffing and organizational capacity;
 - Review of documentation and recordkeeping requirements;
 - Review of case management notes and housing plans to ensure clients needs are being met;
 - Appropriate use of HMIS and CES systems;
- HACSB will utilize the HUD's monitoring checklists for monitoring of contractors. The selection of the appropriate monitoring checklists to be used in the monitoring review is part of monitoring preparation. Since the checklists are HUD's checklists, some of the questions may pertain partially or fully to the County or to HACSB. Those questions will not be applicable to the contractor.

HACSB will use HUD's monitoring exhibits contained in Chapter 28 – Emergency Solutions Grant (ESG) Program, excerpted from HUD's CPD Monitoring Handbook – REV-7, including but not limited to as its ESG Monitoring Checklists:

- Exhibit 28-1 – Guide for Review of Homeless and At-Risk Determination/Recordkeeping requirements
- Exhibit 28-2 – Guide for Review of ESG Recipient's Overall Grant Management
- Exhibit 28-3 – Guide for Review of ESG Subrecipient Grant Management
- Exhibit 28-6 – Guide for Review of ESG Rapid Re-housing and Homelessness Prevention Requirements
- Exhibit 28-7 – Guide for Review of ESG Match Requirements
- Exhibit 28-8 – Guide for Review of ESG Financial Management and Cost Allowability Requirements
- Exhibit 28-9 – Guide for Review of ESG Procurement Requirements
- Exhibit 28-10 – Guide for Review of ESG Equipment and Equipment Disposition Requirements

- Assemble file documentation checklists. Some aspects of monitoring checklists may pertain only to the County or HACSB. In such instances, the checklists will be excluded or parts that do not apply will be marked as “N/A”. Any applicable documentation will be reviewed remotely or on-site at the contractor’s place of business.

2. Intent to Monitor

After determining the contractor activities to be monitored, determining the monitoring parameters and preparing the checklists, program staff will contact the contractor informally to schedule the date(s), times, and location of the monitoring review. Once those details are confirmed, a formal Intent to Monitor Letter will be prepared and transmitted to the chief executive officer of the contractor with copies to contractor’s program implementation team. The selected monitoring checklists should be enclosed with the Intent to Monitor Letter.

For any monitoring activity involving an on-site inspection of client files, the specific files will be randomly selected from the HMIS report generated by HACSB staff and reviewed on-site during the monitoring.

3. Entrance Conference

HACSB will conduct a brief entrance conference with the chief executive officer of the Subrecipient and their key staff members to provide an overview of the monitoring visit. Program staff will:

- Explain the scope of the monitoring review;
- Provide an overview of the records to be reviewed;
- Confirm the schedules of key contractor staff members who can answer questions about project records;
- Confirm schedules for any on-site inspections at project locations;
- Ask the Subrecipient to show HACSB monitoring staff the location of copy machine(s), restrooms and the monitoring workspace;
- Provide the contractor with an estimated timeframe for the completion of the monitoring review; and
- Tentatively schedule an exit conference with the chief executive of the Subrecipient and their key staff members.

Upon the conclusion of the entrance conference, the monitoring review generally commences with the review of selected activities using the HUD checklists provided with the Intent to Monitor Letter.

4. Conducting the Monitoring Review

Using the HUD checklists as a guide, review project records to determine the answers to each question. Where feasible, copies of source documentation should be referenced on the HUD checklist with a copy attached to the checklist for HACSB’s monitoring file. In particular, any documentation that substantiates a monitoring finding or concern should

be copied and attached to the HUD checklist for reference by program staff when writing the Monitoring Review Letter. As questions come up during the review that are not addressed in the project records provided, program staff should consult with Subrecipient staff to locate additional documentation or to determine that no documentation exists to provide the answer to a particular question.

The vast majority of the questions on the HUD monitoring checklists should be answered based on source documentation from contractor's files. A contractor's compliance with the regulations and the written agreement should be determined principally upon the source documentation available. Where indicated in the HUD monitoring checklists, interviews with contractor staff may be required to gain knowledge of their implementation process – particularly where such processes differ from written policies, the ESG program regulations or the agreement governing the activity.

During the course of the review—particularly at the conclusion of each day on-site, it is advisable to spend 15-20 minutes with key contractor staff to let them know about any documentation that appears to be missing or about findings or concerns that have arisen during the course of that day's review. Often, letting those staff members know about those issues during the course of the review will result in the production of additional documentation to clarify and resolve the potential finding or concern. These informal conversations are also good opportunities to provide technical assistance to contractor staff on matters that will be findings or concerns. Such conversations should be constructive and facilitate greater understanding of any findings or concerns.

5. Exit Conference

The exit conference is conducted between HACSB's monitoring staff and the chief executive officer of the Subrecipient as well as key contractor staff. The purpose of the exit conference is to summarize the results of the monitoring review and to inform the contractor about the findings or concerns they can expect to see in the Monitoring Review Letter. For each finding or concern, program staff should provide some indication of the required corrective actions that will be included in the Monitoring Review Letter. Providing this information during the exit conference will give the contractor an opportunity to get a head start on the resolution of monitoring review findings and concerns. Program staff should also provide an indication of when the Monitoring Review Letter will be sent to the chief executive officer of the contractor.

6. Monitoring Review Letter

The Monitoring Results Letter will be issued and generally be addressed to the chief executive officer of the contractor. The letter should recapitulate the particulars of the monitoring review, including the dates of the review, activities reviewed and HACSB monitoring staff who conducted the review.

The Monitoring Results Letter should describe the difference between a finding and concern. A finding is a condition observed during the monitoring review that is not compliant with the applicable regulation. The HUD monitoring checklist questions include

the regulatory citation for a particular question. Where there is not a regulatory citation, the question is included to assist the reviewer in understanding the program or activity more fully and to identify issues that, if not properly addressed, could result in substandard performance or result in monitoring findings down the road.

Each finding in the Monitoring Results Letter should include a description of the requirement, regulatory citation and the condition(s) observed that do not comply with the regulations. Each finding should be accompanied by a corresponding required corrective action that will either resolve the finding and/or assist the Subrecipient in preventing the finding on future projects. If a finding is irresolvable, such as failing to check the debarment status of a contractor prior to the contract award date, the required corrective action would be to have the contractor submit a written commitment to incorporate that requirement into their policies and procedures and to train their staff to adhere to the particular requirement on future ESG- funded projects.

Each concern identified during the monitoring visit should also be described in the Monitoring Review Letter. The concern should include a description of the condition(s) observed during the review that could result in substandard performance or result in future monitoring findings. Where appropriate, HACSB should include recommended corrective actions to the contractor to assist the contractor in avoiding the concern on future projects.

The Monitoring Results Letter should include a requirement that the contractor provide a formal written response to HACSB within a reasonable timeframe (generally 30 days). A written request for an extension may be submitted. The approval of the extension is at the sole discretion of HACSB. The extended timeframe will be determined at that time and on a case-by-case basis.

7. Monitoring Clearance

A Monitoring Clearance Letter should be issued to the contractor following the receipt of a satisfactory monitoring response. This is the final step in the monitoring process.

8. Enforcement

Just as the contractor is monitored and held to the programmatic and regulatory requirements, HACSB will be the subject of monitoring by the County and the County will be subject to monitoring and enforcement conducted by HUD, as prescribed in 24 CFR 576.407(c) and 2 CFR 200.331(h). As such the following will apply:

9. Performance reviews

HUD will review the performance of each recipient in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and, when appropriate, its Subrecipients, as well as information from onsite monitoring, audit reports, and information from IDIS and HMIS. Where

applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the recipient.

If HUD determines preliminarily that the recipient or one of its Subrecipients has not complied with an ESG program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data, that the recipient has complied with Emergency Solutions Grant (ESG) requirements. HUD may change the method of payment to require the recipient to obtain HUD's prior approval each time the recipient draws down Emergency Solutions Grant (ESG) funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all ESG program requirements.

If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with ESG program requirements, HUD will take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

10. Remedial actions and sanctions

Remedial actions and sanctions for a failure to meet an ESG program requirement will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

- a. HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with ESG requirements, including:
 - (i) Preparing and following a schedule of actions for carrying out activities affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities;
 - (ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;
 - (iii) Canceling or revising activities likely to be affected by the noncompliance, before expending ESG funds for the activities;
 - (iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;
 - (v) Suspending disbursement of ESG funds for some or all activities;
 - (vi) Reducing or terminating the remaining grant of a Subrecipient and reallocating those funds to other Subrecipients; and
 - (vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

- b. HUD may change the method of payment to a reimbursement basis.
- c. HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.
- d. HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.
- e. HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.
- f. HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.
- g. HUD may reduce or terminate the remaining grant of a recipient and reallocate those funds to other recipients in accordance with subpart D of this part.
- h. HUD may condition a future grant.
- i. HUD may take other remedies that are legally available.

11. Recipient sanctions

If the recipient determines that a Subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other Subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other sub recipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The recipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in § 576.203.

12. Retention of Monitoring Records

Program staff must maintain a monitoring review file that includes copies of:

- Intent to Monitor Letter;
- Completed monitoring review checklists;
- Documentation collected during the monitoring review to substantiate answers or observations made on the monitoring review checklists;
- Monitoring Review Letter;
- Contractor's Monitoring Review Response; and
- Monitoring Review Clearance Letter.

B. Records Access

Contractor shall permit HACSB, CDH, the federal government, and the duly authorized representatives of such entities access to, and the right to copy, all program client and fiscal records for such purposes as research, data collection, evaluations, monitoring, and auditing. At the sole discretion of CDH, access to records shall include the removing of records from contractor's office. Access to records is not limited to the required retention period, but as least as long as the records are retained.

The contractor must provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of ESG funds the contractor received during the preceding five years.

All records confidential in nature must remain in a locked cabinet, in a secure area accessible only to authorized personnel.

C. Other Requirements

As a condition of receiving ESG funding, the County and its Subrecipients must comply with other Federal requirements including:

- Federal Funding Accountability and Transparency Act (FFATA) Reporting Requirements
- Section 3
- Lobbying Certification and Disclosure
- The County will require Subrecipients to submit lobbying certification and disclosure forms as a condition of receiving an award over \$100,000.
- Drug-Free Workplace
- § 576.407 Other Federal requirements
- Environmental review responsibilities
- Davis-Bacon Act
- Procurement of Recovered Materials
- Displacement, relocation, and acquisition.

XIII. Acronyms and Definitions

A. Acronym List

Acronyms commonly used are:

CDH	Community Development and Housing
CES	Coordinated Entry System
CFR	Code of Federal Regulations
COC	Continuum of Care
EHV	Emergency Housing Voucher
ESG	Emergency Solutions Grant
FMR	Fair Market Rent
HS	Habitability Standards
HH	Household

HMIS	Homeless Management Information System
HPRP	Homelessness Prevention and Rapid Re-Housing Program
HQS	Housing Quality Standards
HUD	United States Department of Housing and Urban Development
IDIS	Integrated Disbursement and Information System
VSP	Victim Services Provider

B. Definitions

Domestic Violence: this definition includes domestic violence, dating violence, sexual assault, stalking, attempting to cause, or intentionally, knowingly or recklessly causing or placing another in fear of imminent serious physical injury or emotional, mental or verbal abuse, and using coercive or controlling behavior. This does not include other criminal acts such as violence perpetrated by a stranger, neighbor, acquaintance, or friend, unless those persons are family members, intimate partners or household members.

HMIS: means Homeless Management Information System. Referrals from VSPs use a comparable database (see “HMIS” section of this manual).

Recipient: the entity receiving funds directly from HUD through an executed grant agreement for the Emergency Solutions Grant Program also referred to as Community Development and Housing (CDH).

Shelter: “Emergency shelter,” means any facility whose purpose is to provide temporary shelter for the homeless including congregate shelters, hotels/motels paid for by charitable organizations, or federal, state and/or local government programs, which do not require occupants to sign leases or occupancy agreements.

Subrecipient(s): Subrecipients, also known as service providers, are entities that directly provide ESG client services and receive funding directly from the Recipient.

Support Network: examples include family, friends and faith-based or other social networks.

Temporary Living: residing in a facility for no more than 90 days.

Unaccompanied Youth: unaccompanied youth are less than 25 years of age and homeless under other Federal statutes **and**:

- (A) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;
- (B) Have experienced persistent instability as measured by two moves or more in the preceding 60 days; **and**
- (C) Can be expected to continue in such status for an extended period due to special needs or barriers.

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

May 10, 2022

FROM

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

SUBJECT

Memorandum of Understanding with San Bernardino County Department of Behavioral Health for Veterans Housing Initiative Program

RECOMMENDATION(S)

1. Approve the non-financial Memorandum of Understanding with the San Bernardino County Department of Behavioral Health for the Veterans Housing Initiative Program beginning July 1, 2022 through June 30, 2027.
2. Authorize and direct the Executive Director to execute and deliver the Memorandum of Understanding to the County of San Bernardino, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

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

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

FINANCIAL IMPACT

The Memorandum of Understanding (MOU) with the San Bernardino County Department of Behavioral Health (DBH) is in-kind and as such does not have a financial impact on the Housing Authority of the County of San Bernardino (HACSB).

BACKGROUND INFORMATION

As part of the veterans housing efforts, the Veterans Housing Initiative Program (VHIP) was created to provide housing and services for veterans who do not qualify for Veterans Administration (VA) services. VHIP provides permanent housing subsidies with supportive services to homeless individual veteran households and homeless veteran families. Currently, we have 12 families that are receiving these services. The MOU will allow HACSB to continue working with DBH and other veteran service agencies to identify eligible households to access subsidized permanent housing units. Furthermore, in the goal of helping veterans in general, HACSB has received multiple awards for vouchers under the Veterans Administration Supportive Housing (VASH) program in recent years to continue housing veterans. DBH will continue to provide intensive case management services and referrals for behavioral health services to support the long-term stability of the VHIP households.

Based on the individual need, DBH provides an average of six-months of case management services per household to assist in identifying and removing barriers to successfully becoming employed, housed and/or educated to the level needed to achieve self-sufficiency. DBH assesses the household's living situation, physical and emotional health, and safety. DBH develops a plan and timeline to assist the household to regain stability and monitors each household's progress toward making the necessary changes to improve its situation. DBH documents the household's

Memorandum of Understanding with County of San Bernardino Department of Behavioral
Health for the Veterans Housing Initiative Program
May 10, 2022

progress, participates in case coordination meetings with HACSB and continually assesses the service needs of the families.

The recommended MOU will refresh this partnership between HACSB and DBH to continue providing these valuable supportive services to Veteran families.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by our General Legal Counsel, Fred Galante, on April 21, 2022

**MEMORANDUM OF UNDERSTANDING
Between**

**San Bernardino County Department of Behavioral Health (DBH)
and
Housing Authority of the County of San Bernardino (HACSB)
for the
Veteran Housing Initiative Program**

July 1, 2022 – June 30, 2027

WHEREAS, the San Bernardino County Department of Behavioral Health, hereafter referred to as DBH, provides mental health and substance use disorder services to individuals and their families in need of permanent housing in San Bernardino County; and

WHEREAS, the Housing Authority of the County of San Bernardino, hereafter referred to as HACSB, provides permanent housing subsidies to homeless individuals and families through the Veteran Housing Initiative Program who are also in need of supportive services; and

WHEREAS, HACSB agrees to work with the DBH and local veterans' services providers in identifying eligible families to access subsidized units within the Veteran Housing Initiative Program, and in return DBH agrees to provide case management services to all eligible participants in the Veteran Housing Initiative Program; and

WHEREAS, HACSB and DBH desire an agreement for the purpose of defining their respective roles in both providing housing units and case management services to participants in the Veteran Housing Initiative Program in order to achieve and maintain an enriched quality of life; and

NOW THEREFORE, DBH and HACSB mutually agree to the following terms and conditions:

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I. PURPOSE

The Veteran Housing Initiative Program, administered by the HACSB, provides permanent housing subsidies with supportive services to homeless veteran single person households and homeless veterans and their families who are residents of San Bernardino County. Twelve (12) permanent housing units are available through the Veteran Housing Initiative Program. In exchange for case management services, HACSB will work with DBH, Substance Use Disorder and Recovery Services (SUDRS) Administration, and other veteran's services agencies, in identifying eligible individuals and families to access up to twelve (12) subsidized units within the Veteran Housing Initiative Program. DBH will provide intensive case management services and referrals for behavioral health services to support the long-term stability of the households. Based on the need, DBH will provide six (6) months or more of case management services per household unit in the Veterans Housing Initiative Program. Referrals to the Veteran Housing Initiative Program will be made by the HACSB, recognized veterans' services agencies, and DBH. Participants must meet the definition of homeless as defined by the U.S. Department of Housing and Urban Development (HUD) as individuals and are families who lack a fixed, regular, and adequate nighttime residence.

II. DEFINITIONS

- A. Definition of May, Shall, and Should. Whenever in this document the words "may", "shall", and "should" are used, the following definitions shall apply: "may" is permissive; "shall" is mandatory; and "should" means desirable.
- B. Administrative Plan: Policy manual that details rules and policies that govern the voucher programs under the HACSB.
- C. Authorization for Release of Protected Health Information (PHI): A HIPAA compliant authorization signed by the client or client's legal representative, authorizing DBH to release the client's information to a designated recipient. This form must be completed thoroughly with specified records to be shared, a designated time frame and expiration date, as well as a signature by the DBH client or his/her legal representative. If the form is signed by a legal representative, proof from the court system designating legal representation must accompany the request.
- D. Barriers: Temporary or long-term personal or other problems/issues that interfere with participation, employment, or job search.
- E. Case Plan: A comprehensive plan developed by DBH staff with the participant to assist the individual/family in resolving the identified situation, barriers or crisis involving behavioral health, employment, education and housing stability needs.
- F. Counseling: Advice and support that is given to people to help them experience relief from emotional distress and assist them in reaching their goals for a happier life.
 - 1. Individual Counseling: One-on-one counseling.
 - 2. Group Counseling: Counseling in a group setting that offers opportunities to work on necessary issues.
- G. Department of Behavioral Health (DBH): The San Bernardino County Department of Behavioral Health, under state law, provides mental health and substance use disorder treatment services to County residents. In order to maintain a continuum of care, DBH operates or contracts for the provision of prevention and early intervention services, 24-hour care, day treatment outpatient services, case management, and crisis and referral services.

Community services are provided in all major County metropolitan areas and are readily accessible to County residents.

- H. Department of Housing and Urban Development (HUD): The Department of Housing and Urban Development is responsible for national policy and programs that address America's housing needs that improve and develop the Nation's communities and enforce fair housing laws.
- I. Episode: The period that a case is open. If a participant exits treatment, the case is closed, and that episode ends. When a participant returns, a new episode of treatment occurs with a new opening date. Episode tracking is a state data requirement.
- J. Family: Is used interchangeably with "applicant", "participant" or "consumer."
- K. Family Obligations Agreement: Contract between the eligible participant and the HACSB that details the requirements, rules, policies, and responsibilities for participation in the program. A contract signed by the eligible participant with HACSB does not preclude or override any requirements made by DBH, or contained in the landlord/tenant lease
- L. Health Insurance Portability and Accountability Act (HIPAA): A federal law designed to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.
- M. Housing Authority of the County of San Bernardino (HACSB): The Housing Authority of the County of San Bernardino is one of the most progressive housing authorities in the Country and also the largest provider of affordable housing in San Bernardino County.
- N. Landlord: An individual, firm, corporation, partnership, HACSB or similar entity; or a designated property manager that holds title to the housing that receives funding through rental subsidies on behalf of this program.
- O. Mental Health Treatment Services: Services include timely and consistent assessment; defined and time-limited treatment that removes mental health as a barrier to employment; effective communication regarding participation in treatment; quality assurance monitoring to ensure the appropriate level and timeliness of care and quality of services; ongoing support for continued employment and electronic tracking of all services.
 - 1. Behavioral Health Assessment: An evaluation to identify the level of a participant's behavioral health needs or conditions that limit ability to work and the appropriate level of treatment and/or rehabilitation for the participant. It may include a clinical analysis of the history and current status of the participant's mental, emotional, or behavioral disorder.
 - 2. Outpatient Services: Participant is provided group counseling sessions weekly and ongoing individual counseling sessions. Participant is provided case management services to access and monitor needed behavioral health and/or community services.
 - 3. Crisis Intervention: A rapid response service enabling the participant to cope with a crisis, while maintaining his/her status as a functioning community member to the greatest extent possible.
- P. MOU: Memorandum of Understanding is a document describing an agreement between parties.

- Q. Personally Identifiable Information (PII): PII is information that can be used alone or in conjunction with other personal or identifying information, which is linked or linkable to a specific individual. This includes: name, social security number, date of birth, address, driver's license, photo identification, other identifying number (case number, client index number, medical record number, etc.).
- R. Protected Health Information (PHI): PHI is *individually identifiable health information* held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper or oral. Individually identifiable information is information, including demographic data, that relates to the individual's past, present or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual, and identifies the individual or for which there is reasonable basis to believe it can be used to identify the individual. PHI excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than fifty (50) years.
- S. Subcontractor: An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Contractor who is performing services on behalf of Contractor under the Contract or under a separate contract with or on behalf of Contractor.
- T. Substance Use Disorder (SUD): Substance Use Disorder includes substance use and substance dependence. Substance use is a maladaptive pattern of substance use manifested by recurrent and significant adverse consequences related to the repeated use of substances. Substance dependence is a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues use of substances despite significant substance related problems. Substance Use Disorder Services is the provision of services to prevent or reduce the harm of alcohol and other drugs throughout San Bernardino County through community action, education, support, and collaboration.
1. Outpatient Services: Non-residential substance use disorder services in which a participant is provided a minimum of two group counseling sessions a week and one individual counseling session per 30-day period. Outpatient services are designed to provide a substance free environment with structure and supervision to further a participant's ability to improve his/her level of functioning.
 2. Residential Services: Substance use disorder services that are provided to residents at a program which is maintained and operated to provide 24 hour, residential, non-medical, substance use disorder recovery or treatment services. Services are provided in a substance free environment and support recovery or treatment for substance use disorder related problems. Services are provided by program-designated personnel and may include the following elements: withdrawal management (detoxification), recovery/treatment planning, educational sessions, social/recreational activities, individual and group counseling sessions, family and parenting education, case management, customer file review, relapse prevention and information about and assistance in obtaining health, social, vocational, and other community services.

- U. Substance Use Disorder and Recovery Services (SUDRS): The term “SUDRS” refers to San Bernardino County Department of Behavioral Health – Substance Use Disorder and Recovery Services.
- V. Substance Use Disorder Treatment Services: Services include timely and consistent assessment, defined and time-limited treatment that removes substance use as a barrier to employment, effective communication regarding participation in treatment, quality assurance monitoring to ensure the appropriate level and timeliness of care and quality of services, ongoing support for continued employment, and recovery from substance use disorders; and electronic tracking of all services.
- W. Supportive Housing: Permanent housing programs in which participants receive subsidized affordable housing services, through either DBH or HACSB, and other case management, self-sufficiency and career development support to help participants maintain their residency and improve self-sufficiency.
- X. Target Population: Eligible homeless veteran single person households and homeless veterans and their families.
- Y. Unsubsidized Employment: Direct employment without a subsidy wherein the wage is paid entirely by the employer.
- Z. Veteran Housing Initiative Program: Provides permanent housing subsidies to homeless individual veteran households and homeless veteran families who are residents of San Bernardino County. The Veteran Housing Initiative Program aims to end veteran homelessness. The program will help resolve extremely critical needs of veterans in the county by offering project-based voucher rental subsidies to veteran households who are identified as eligible by the Housing Authority. Eligible veteran households must be homeless at time of application. Homeless is defined as:
- Individuals and families who lack a fixed, regular, and adequate nighttime residence and can provide verification that their nighttime residence is:
 - A supervised publicly or privately-operated shelter designed to provide temporary living accommodation (including welfare hotels, congregate shelters, and transitional housing for mentally ill); or
 - A public or private place that provides temporary residence for individuals intended to be institutionalized (not incarcerated); or
 - A public or private place not designed for, or ordinarily used as, regular sleeping accommodations for human beings.

III. HACSB SERVICE RESPONSIBILITIES

- A. Provide housing services, as described in Subsection D below, to qualified applicants who are County residents. Services will be provided through the HACSB offices located in San Bernardino, Upland and Victorville or at other non-HACSB sites as needed to accommodate the veteran.
- B. Refer all families participating in the Veteran Housing Initiative Program to DBH for case management services based on the level of participant need.
- C. Maintain Authorization for Release of Protected Health Information (PHI) for each participant in the program to ensure one communication between DBH and HACSB.

- D. Provide housing services that include: screening eligibility and verification of applications, criminal background checks, orientation screenings, issuance of Family Obligations Agreement, initial and regular housing inspections, determination of rents, payments to the landlord, landlord responsibilities and responding to complaints and appeals regarding housing services.
- E. Screen applicants and ensure individuals meet the qualifications as outlined in the Housing Services Program Administrative Plan.
- F. Notify the applicant of acceptance into the program and coordinate initial contact with DBH. Conduct orientation meetings to provide instructions to applicants on policies, the Family Obligations Agreement, and to outline applicant's rental responsibilities.
- G. To the extent permitted by law, facilitate regular case conference meetings with DBH and service providers to discuss identification of barriers to productive treatment, mutual problem solving, and future planning.
- H. Immediately notify DBH Office of Compliance of any suspected or actual breach of confidential information at the address below:

DBH Office of Compliance
303 East Vanderbilt Way
San Bernardino, CA 92415-0026

- I. Inform applicants of the benefits in participating in the Veteran Housing Initiative Program activities. Participants that do not participate may jeopardize their opportunity to successfully maintain ongoing housing assistance.
- J. Client Privacy
 - 1. Review applicable DBH policies, procedures, and/or requirements and assure any assigned staff required to perform services under this Agreement adhere to said policies, procedures, and requirements. This may include, but is not limited to policies, laws and regulations pertaining to protection of client privacy and appropriate safeguarding measures.
 - 2. Should HACSB require the need to obtain PHI of a DBH client, HACSB must follow appropriate methods of obtaining authorization to access PHI. This includes through a valid court order or subpoena or a signed Authorization for Release of PHI (this form can be obtained by DBH and is located on the DBH website forms index).

IV. HACSB GENERAL RESPONSIBILITIES

- A. Without the prior written consent of DBH, this MOU is not assignable by HACSB either in whole or in part.
- B. HACSB will maintain all records and books pertaining to the delivery of services under this MOU and demonstrate accountability for MOU performance. Said records shall be kept and maintained within HACSB. DBH shall have the right upon reasonable notice and at reasonable hours of business to examine and inspect such records and books.
- C. HACSB shall adhere to mutually developed complaint/grievance procedures with regard to participant satisfaction. Grievance procedures shall be clearly defined in HACSB's Housing Services Administrative Plan in accordance with HUD Code of Federal Regulations. HACSB shall provide a system, approved by DBH, through which participants of service will have the

opportunity to express and have considered their views and complaints regarding the delivery of services. The procedure must be in writing and available to all participants.

- D. HACSB shall exercise reasonable diligence to protect from unauthorized use or disclosure names and other identifying information concerning participants receiving services pursuant to this MOU, except for statistical information not identifying any participant. HACSB shall not use or disclose any identifying information for any other purpose other than carrying out HACSB obligations under this MOU, except as may be otherwise required by law. This provision will remain in force even after the termination of the MOU.
- E. HACSB shall obtain and complete required documents as well as maintain satisfactory performance as outlined herein for the period of this MOU defined in Section IX.

V. DBH RESPONSIBILITIES

- A. Provide 1.0 FTE Social Worker II to provide intensive case management services to Veteran Housing Initiative Program individuals and families that are experiencing an identified situation or crisis that may include:
 - 1. Homelessness
 - 2. Untreated or undertreated behavioral needs, including mental health or substance use disorder needs
- B. Based on the need, DBH will provide an average of six (6) months case management services per family unit to assist in identifying and removing barriers to families successfully becoming employed, housed or educated to the level needed to achieve self-sufficiency.
- C. Ensure individuals and families receive appropriate behavioral health services and other services as needed either by direct service from a County clinic/program, referral to a contracted community based organization or through linkages to other social services. Services shall include, but are not limited to:
 - 1. Mental Health Services and/or Treatment
 - 2. Substance Use Disorder Services and/or Treatment
 - 3. Domestic Violence Shelters
- D. Ensure participants who are homeless receive counseling for any underlying issues related to homelessness as determined on a case-by-case basis by DBH staff.
- E. Accept referrals from HACSB for behavioral health evaluations and treatment.
- F. Develop a case plan for all program participants.
- G. Obtain a Health Insurance Portability and Accountability Act (HIPAA) compliant authorization to release information for each referred participant prior to any discussions with HACSB on participant's progress in case plan.
- H. Provide or arrange for transportation on a case-by-case basis for participants to attend appointments and utilize resources as outlined in the participants' case plan.
- I. Provide case management services to all referred participants. The referrals for case management services include the provision of services for all members of the family unit. Services include on-going assessments, referrals for services, the development of a plan and timeline that documents the participant's progress. Case management duties are as follows:

1. Frequent and on-going contact with each individual/family, ranging from **daily to weekly**, depending on level of need and progress, **via phone and/or in-person**, to determine the effectiveness of services provided to participating individuals and family members, as determined by DBH staff.
 2. Assess the stability of the household's living situation, physical and emotional health and safety.
 3. Assess weekly progress toward Case Plan goals and make necessary changes to improve the household's success in meeting these goals.
 4. Provide appropriate referrals for services needed to assist the family.
 5. Monitor each household's progress toward making the necessary changes to improve the situation or crisis.
 6. Participate in case coordination meetings with the HACSB.
 7. Provide training to HACSB tenants regarding tenant responsibilities, good neighbor policy and household budgeting.
 8. Provide group house meetings and workshop activities.
 9. Make every effort, including home visits, to engage individuals and families who are not making adequate progress.
- J. Ensure case management of all participants is maintained with all required forms and documentation. DBH shall maintain individual participant case folders in a secured file cabinet for a period of seven years from the close of the participant's services.
- K. Maintain participant case folders and utilize established DBH forms for program participants served through DBH.
- L. Maintain a quality assurance process to ensure timely and appropriate assessment and treatment of participants.
- M. Provide quarterly reports for the Veteran Housing Initiative Program to HACSB that include the following:
1. The total number of participants served through the program,
 2. The total number of participants who became employed through the program,
 3. The total number of participants who discontinued the program,
 4. A survey report highlighting the barriers to employment or improving current employment, education and training needs and barriers to maintaining housing.
- N. Provide direct supervision of case manager, a DBH employee.
- O. DBH shall cooperate with HACSB in the implementation, monitoring and evaluation of this MOU and comply with any and all reporting requirements established by this MOU.
- P. Pursuant to HIPAA, DBH has implemented administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability PHI transmitted or maintained in any form or medium.
- Q. DBH shall provide satisfactory performance as outlined herein for the period of this MOU defined in Section IX.

VI. MUTUAL RESPONSIBILITIES

- A. DBH and HACSB agree they will establish mutually satisfactory methods for the exchange of such information as may be necessary in order that each party may perform its duties and functions under this agreement; and appropriate procedures to ensure all information is safeguarded from improper disclosure in accordance with applicable State and Federal laws and regulations.
- B. DBH and HACSB agree they will establish mutually satisfactory methods for problem resolution at the lowest possible level as the optimum, with a procedure to mobilize problem resolution up through DBH and Housing Authority's mutual chain of command, as deemed necessary.
- C. DBH and HACSB agree to develop and implement procedures, surveys and forms necessary to administer and document program referral, participation, compliance, and effectiveness.
- D. DBH and HACSB agree to adhere to mutually developed complaint/grievance procedures with regard to participant satisfaction, and in respect of the grievance procedures clearly defined in HACSB's Housing Services Administrative Plan, in accordance with Department of Housing and Urban Development(s) Code of Federal Regulations. HACSB shall provide a system, in agreement with DBH, through which service participants will have the opportunity to express and have considered their views and complaints regarding the delivery of services. The procedure must be in writing and available to all participants.
- E. DBH and HACSB will establish measurable benchmarks to determine participants' progress and ability to participate in additional supportive and enrichment activities.
- F. DBH and HACSB agree they will collaborate in providing In-Service Training to staff about the Veteran Housing Initiative Program and services offered under this MOU.
- G. Performance Outcomes

The outcomes-based criteria which shall be achieved are as follows:

The goal of the Veterans Housing Initiative Program will be for the individual/family to achieve the level needed for self-sufficiency based on case management services provided by DBH. HACSB shall provide a report of outcomes achieved by the individual/families 60 days after the end of each fiscal year.

- H. DBH and HACSB shall observe all federal, state and county requirements, and applicable law concerning the confidentiality of behavioral health records. DBH and HACSB, as required by applicable law, shall strictly maintain confidentiality of behavioral health records of clients.

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), DBH and HACSB have implemented administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of health information that is transmitted or maintained in any form or medium, and have agreed to report any security incident of which the parties become aware. The parties will insure that any agent or subcontractor who receives health information agrees to implement reasonable and appropriate safeguards. It is understood between DBH and HACSB that this provision complies with 45 CFR 164.314 (a)(2)(ii) and serves in lieu of a Business Associates Agreement.

- I. Privacy and Security

1. Both parties shall adhere to any County applicable privacy-related policies pertaining to PII. DBH has a specific responsibility to comply with all applicable State and Federal regulations pertaining to privacy and security of client PHI and strictly maintain the confidentiality of behavioral health records, and HACSB shall assist DBH in upholding said confidentiality by applying safeguards as discussed herein. Regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) PHI or electronic Protected Health Information (ePHI).
2. In addition to the aforementioned protection of IIHI, PHI and e-PHI, both parties shall adhere to the protection of personally identifiable information (PII) and Medi-Cal PII. PII includes any information that can be used to search for or identify individuals such as but not limited to name, social security number or date of birth. Whereas Medi-Cal PII is the information that is directly obtained in the course of performing an administrative function on behalf of Medi-Cal, such as determining eligibility that can be used alone in conjunction with any other information to identify an individual.
3. Reporting Improper Access, Use, or Disclosure of Unsecure PHI and PII
Upon discovery of any unauthorized use, access or disclosure of PHI or any other security incident with regards to PHI or PII, HACSB agrees to report to DBH no later than one (1) business day upon the discovery of a potential breach. HACSB shall cooperate and provide information to DBH to assist with appropriate reporting requirements to the DBH Office of Compliance.
4. Both parties shall ensure any DBH client PHI that is stored on its premises will be locked and secure in adherence to IIHI and PHI privacy requirements.

VII. FISCAL PROVISIONS

This is a non-financial MOU.

VIII. RIGHT TO MONITOR AND AUDIT

- A. DBH staff or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Inspector General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, staff information, patient records and other pertinent items as requested, and shall have absolute right to monitor the performance of HACSB in the delivery of services provided under this MOU. Full cooperation shall be given by HACSB in any auditing or monitoring conducted according to this agreement.
- B. HACSB shall cooperate with DBH in the implementation, monitoring, and evaluation of this MOU and comply with any and all reporting requirements established by this MOU.
- C. HACSB shall provide all reasonable facilities and assistance for the safety and convenience of DBH 's representative in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of HACSB.

IX. TERM

This Memorandum of Understanding (MOU) is effective as of July 1, 2022 and expires June 30, 2027, but may be terminated earlier in accordance with provisions of the EARLY TERMINATION section of this MOU.

X. EARLY TERMINATION

This MOU may be terminated without cause upon thirty (30) days written notice by either party. DBH's Director is authorized to exercise DBH's rights with respect to any termination of this MOU. The HACSB Executive Director, or his/her appointed designee, has authority to terminate this MOU on behalf of HACSB.

XI. INDEMNIFICATION

The HACSB agrees to indemnify, defend (with counsel reasonably approved by the County) and hold harmless the County DBH and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and or liability arising out of this MOU from the negligence of the HACSB, including the acts, errors or omissions of the HACSB and for any costs or expenses incurred by the County DBH on account of any claim resulting from the acts or negligence of the HACSB or its authorized officers, employees, agents, and volunteers, except where such indemnification is prohibited by law.

The County DBH agrees to indemnify, defend (with counsel reasonably approved by the HACSB) and hold harmless the HACSB and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and or liability arising out of this MOU from the negligence of the County DBH, including the acts, errors or omissions of the County DBH and for any costs or expenses incurred by the HACSB on account of any claim resulting from the acts or negligence of the County DBH or its authorized officers, employees, agents, and volunteers, except where such indemnification is prohibited by law.

XII. GENERAL PROVISIONS

- A. No waiver of any of the provisions of the MOU documents shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other or future exercise of that right or any exercise of any other right.
- B. Any alterations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
- C. The DBH and HACSB are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.

XIII. CONCLUSION

- A. This MOU, consisting of thirteen (13) pages is the full and complete document describing services to be rendered by HACSB to DBH including all covenants, conditions and benefits.
- B. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective departments to the terms and conditions set forth in this document.

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

IN WITNESS WHEREOF, the Housing Authority of the County of San Bernardino and San Bernardino County have entered into this agreement as of the date first set forth above.

SAN BERNARDINO COUNTY

HOUSING AUTHORITY OF THE COUNTY OF
SAN BERNARDINO

►
Curt Hagman, Chairman, Board of Supervisors

By ►
(Authorized signature - sign in blue ink)

Dated: _____

Name Maria Razo
(Print or type name of person signing contract)

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Title Executive Director
(Print or Type)

Lynna Monell
Clerk of the Board of Supervisors
of San Bernardino County

Dated: _____

By _____
Deputy

Address 715 E. Brier Drive
San Bernardino, CA

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

May 10, 2022

FROM

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

SUBJECT

Uncollectible Portability Accounts for the Housing Choice Voucher Program to be Written Off

RECOMMENDATION(S)

Approve the write-off of portability accounts for the Housing Choice Voucher Program that have been deemed uncollectible in the amount of \$6,122.44.
(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 total cost of the write-off loss is \$6,122.44. The loss will be charged to the Housing Authority of the County of San Bernardino (HACSB) operating budget of the Housing Choice Voucher program.

BACKGROUND INFORMATION

In the Housing Choice Voucher (HCV) program, portability is a term used when a family/individual wants to transfer or “port” their housing assistance to an area outside of the jurisdiction of the housing authority that first issued them their voucher. Porting in or out of a jurisdiction is an option for eligible households in order to move throughout the United States. When a program participant ports, the receiving public housing authority (PHA) may use one of their vouchers to absorb the participant or bill the initial PHA for Housing Assistance Payments (HAP) and administrative fees.

If a portability account is established when a participant transfers to HACSB and leases a unit, HACSB bills the initial PHA for the HAP and administrative fee. Such billings must be received by the initial PHA within 90 days of the expiration date on the initial PHA’s voucher. If the billing is received late, the initial PHA may refuse to reimburse the receiving PHA. The billing and follow up process has been a cumbersome process for the housing services specialists, as a result, we designated a Housing Services Specialist to reconcile and collect the outstanding portability balances. These files had been spread among all of the housing services specialists. This project led to the creation of a Portability Specialist position dedicated to monitoring current accounts and collecting on past due portability balances. This has resulted in a significant reduction in outstanding portability balances. During FY 20-21, balances over 90 days old were reduced from a total of \$92,152.89 to \$6,517.52 because of on-going collection and reconciliation efforts.

Approval of this item will write-off the portability accounts that have been determined to be uncollectible after numerous efforts were made to collect from the initial PHA. The total write-off amount is \$6,122.44 as detailed in the table below.

Uncollectible Portability Accounts for the Housing Choice Voucher Program to be Written Off
May 10, 2022

Initial PHA	Period	Number of accounts	Amount owed
Dallas	2016	1	\$926.80
San Francisco	2014-2015	1	\$1,700.00
Oakland	2014	2	\$1,689.19
Lexington	2014	1	\$1,806.45
Total			\$6,122.44

On February 9, 2021, the Board of Commissioners (Item No. 11) authorized a list of balances for write-off; however, the items listed above were still under investigation to determine if the amounts owed were correct or to make attempts to contact the initial PHA to collect the amount owed. Since then, these balances have proven uncollectable.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on April 21, 2022.

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

May 10, 2022

FROM

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

SUBJECT

Contract Amendment with the San Bernardino County Transitional Assistance Department for California Work Opportunity and Responsibility to Kids Housing Support Program Services

RECOMMENDATION(S)

1. Approve a contract amendment with the San Bernardino County Transitional Assistance Department for the provision of California Work Opportunity and Responsibility to Kids Housing Support Program services increasing the amount by \$18,162,657 for a total contract amount not to exceed \$31,122,657 and extending the term by two years through June 30, 2024.
 2. Authorize and direct the Executive Director to execute and deliver the contract to the San Bernardino County Transitional Assistance Department 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 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

San Bernardino County's (County) Transitional Assistance Department (TAD) received notification from the California Department of Social Services (CDSS) of Fiscal Year 2021-2022 allocation for the California Work Opportunity and Responsibility to Kids (CalWORKs) Housing Support Program (HSP) in an amount of \$18,162,657 for a total contract amount not to exceed \$31,122,657. The recommended contract is for a two-year period by mutual agreement by TAD and the Housing Authority of the County of San Bernardino (HACSB).

BACKGROUND INFORMATION

Under the terms of the recommended contract, HACSB will continue to provide contracted services to TAD, for the provision of housing and rental assistance for CalWORKs families who identify themselves as homeless. CalWORKs HSP was established through SB 855 (Chapter 29, Statutes of 2014) to promote housing stability for families in the CalWORKs program. The Rapid Rehousing (RRH) services provided through HSP offer time-limited, individualized rental assistance at a level that enables the family to maintain housing while they seek to increase income; learn to manage a household budget; relocate to less expensive housing; and/or reduce expenses to sustain their housing. Rental assistance will be provided in a manner that is intended to prevent families from experiencing a sudden and unmanageable increase to their housing expenses at the end of program assistance. HACSB, and its affiliate non-profit, Knowledge and Education for Your Success, Inc. (KEYS), work with families and private landlords to provide RRH and rental assistance. Based on an average cost of \$14,041.40 per family, a total of 285 families and approximately 300 new households will be served annually with the available HSP allocation

Contract Amendment with the San Bernardino County Transitional Assistance Department for California Work Opportunity and Responsibility to Kids Housing Support Program Services
May 10, 2022

in 2022-24. Since January 2015 to date, the partnership with TAD, HACSB, and KEYS has served more than 3,120 families, of which 7,593 are children, resulting in the placement of 2,163 households, including 4,923 children, in permanent housing.

KEYS partners with community and faith-based organizations to leverage and support payment of security deposits, utility assistance, furniture needs, and other housing costs as appropriate to the situation.

PROCUREMENT

The County's Purchasing Department determined that the non-competitive nature of a contract with HACSB is justified based on CDSS' allocation to the County as a result of TAD's proposal to partner with HACSB in its application for HSP funding.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on April 21, 2022.



Contract Number

20-503 A-2

SAP Number

4400014304

Transitional Assistance Department

Department Contract Representative	John Greswit, Contract Analyst
Telephone Number	(909) 388-0255
Contractor	Housing Authority of the County of San Bernardino
Contractor Representative	Maria Razo, Executive Director
Telephone Number	(909) 890-0644
Contract Term	07/01/2020 through 06/30/2024
Original Contract Amount	\$12,960,000
Amendment Amount	\$18,162,657
Total Contract Amount	\$31,122,657
Cost Center	5017601000 and 5017611000

IT IS HEREBY AGREED AS FOLLOWS:

AMENDMENT NO. 2

It is hereby agreed to amend Contract No. 20-503, effective May 25, 2022, as follows:

SECTION V. FISCAL PROVISIONS

Paragraph A. is amended to read as follows:

- A. The maximum amount of payment under this Contract shall not exceed \$31,122,657, which is 100% federally and state funded, and payment shall be subject to availability of funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.

SECTION VIII. TERM

Section VIII. is amended to read as follows:

This Contract is effective as of July 1, 2020, and is extended from its amended expiration date of June 30, 2022, to expire on June 30, 2024, but may be terminated earlier in accordance with the provisions of Section IX of the

Contract. The Contract term may be extended for one (1) additional one-year period by mutual agreement of the parties.

ATTACHMENT C – PROGRAM BUDGET

Amend Contract No. 20-503 by adding a new Attachment C, CalWORKs Housing Support Program Budget Effective July 1, 2021 through June 30, 2024, attached hereto and incorporated herein by this reference.

All other terms and conditions of Contract No. 20-503 remain in full force and effect.

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

SAN BERNARDINO COUNTY

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By _____
Deputy

HOUSING AUTHORITY OF THE COUNTY OF
SAN BERNARDINO

(Print or type name of corporation, company, contractor, etc.)

By ►

(Authorized signature - sign in blue ink)

Name Maria Razo

(Print or type name of person signing contract)

Title Executive Director

(Print or Type)

Dated: _____

Address 715 East Brier Drive

San Bernardino, CA 92408

FOR COUNTY USE ONLY

Approved as to Legal Form

►
Adam Ebright, County Counsel

Date _____

Reviewed for Contract Compliance

►
Patty Steven, HS Contracts

Date _____

Reviewed/Approved by Department

►
Gilbert Ramos, Director

Date _____

CalWORKs HOUSING SUPPORT PROGRAM
July 1, 2021 through June 30, 2024

			FT 2021/22		FT 2022/23		FT 2023/24		Contract Total	
			PTEs	BUDGET	PTEs	BUDGET	PTEs	BUDGET	PTEs	BUDGET
I. DIRECT FINANCIAL ASSISTANCE	1. PERMANENT HOUSING	Financial Assistance		\$3,320,631		\$3,320,631		\$3,320,631		\$9,961,893
	2. INTERIM	Accounting Assistant- Motel	1	\$38,427	1	\$38,427	1	\$38,427	3	\$115,281
		Housing Navigator	3	\$44,335	3	\$44,335	3	\$44,335	9	\$133,005
		Housing Officer	1	\$34,853	1	\$34,853	1	\$34,853	3	\$104,559
		Engagement Officer	1	\$34,195	1	\$34,195	1	\$34,195	3	\$102,585
		Intake Specialist	3	\$116,367	3	\$116,367	3	\$116,367	9	\$349,101
		Bridges (PJAC/HSP)		\$27,000		\$27,000		\$27,000		\$81,000
		Risk Mitigation		\$255,000		\$255,000		\$255,000		\$765,000
		HSA (ML)		\$450,000		\$450,000		\$450,000		\$1,350,000
		Inspections		\$128,334		\$128,334		\$128,334		\$385,002
		Health and Wellbeing		\$114,000		\$114,000		\$114,000		\$342,000
		Organization Capacity Building/Assessments		\$45,000		\$45,000		\$45,000		\$135,000
		Tenant / Landlord Education Workshops		\$6,000		\$6,000		\$6,000		\$18,000
		Resources Coordination		\$100,000		\$100,000		\$100,000		\$300,000
		Certification/Trainings		\$15,000		\$15,000		\$15,000		\$45,000
		Making Home Habitable		\$150,000		\$150,000		\$150,000		\$450,000
		Housing First		\$100,000		\$100,000		\$100,000		\$300,000
		Motel/H.O.P.E		\$415,734		\$415,734		\$415,734		\$1,247,202
	3. PREVENTION	Prevention Assistance		\$300,000		\$300,000		\$300,000		\$900,000
II. CASE MANAGEMENT	1. PERSONNEL	Program Manager	5	\$223,927	5	\$223,927	5	\$223,927	15	\$671,781
		Service Coordinators	17	\$603,036	17	\$603,036	17	\$603,036	51	\$1,809,108
		Health Navigator	1	\$10,147	1	\$10,147	1	\$10,147	3	\$30,441
		Administration & Program Management (Housing Authority/KEYS)		\$739,279		\$739,279		\$739,279		\$2,217,837
III. ADMINISTRATIVE /SUPPORTIVE EXPENSES	2. PERSONNEL OTHER	Executive Director	1	\$118,470	1	\$118,470	1	\$118,470	3	\$355,410
		Deputy Executive Director	1	\$100,601	1	\$100,601	1	\$100,601	3	\$301,803
		Finance Manager	1	\$74,900	1	\$74,900	1	\$74,900	3	\$224,700
		Accountant	1	\$59,248	1	\$59,248	1	\$59,248	3	\$177,744
		Accounting Assistant	2	\$96,273	2	\$96,273	2	\$96,273	6	\$288,819
	3. DATA COLLECTION AND TRACKING EXPENSES	Data Collection and Tracking Expenses (Housing Authority/KEYS)		\$378,802		\$378,802		\$378,802		\$1,136,406
		Data Analytic Manager	1	\$48,788	1	\$48,788	1	\$48,788	3	\$146,364
		Data Analyst Lead	1	\$26,668	1	\$26,668	1	\$26,668	3	\$80,004
		Data Specialist	1	\$39,204	1	\$39,204	1	\$39,204	3	\$117,612
			41	\$8,214,219	41	\$8,214,219	41	\$8,214,219	123	\$24,642,657
TOTAL PROGRAM EXPENSES										

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

May 10, 2022

FROM

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

SUBJECT

Contract Amendment with Knowledge and Education for Your Success, Inc. for California Work Opportunity and Responsibility to Kids Housing Support Program Services

RECOMMENDATION(S)

1. Approve a contract amendment with Knowledge and Education for Your Success, Inc. for the provision of California Work Opportunity and Responsibility to Kids Housing Support Program Housing Navigator Services increasing the amount by \$18,162,657 for a total contract amount not to exceed \$31,122,657 and extending the term by two years through June 30, 2024.
2. Authorize and direct the Executive Director to execute and deliver the contract to Knowledge and Education for Your Success, Inc. 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 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 this item is not expected to exceed a total contract amount of \$31,122,657 of which funding resources are available from California Work Opportunity and Responsibility to Kids (CalWORKs) Housing Support Program (HSP) funds received by the Housing Authority of the County of San Bernardino (HACSB) pursuant to its CalWORKs HSP contract with the San Bernardino County Transitional Assistance Department (TAD).

BACKGROUND INFORMATION

Under the terms of the recommended contract, HACSB's affiliate non-profit, Knowledge and Education for Your Success, Inc. (KEYS) will continue to provide housing navigation and rental assistance for CalWORKs families who identify themselves as homeless. CalWORKs HSP was established through SB 855 (Chapter 29, Statutes of 2014) to promote housing stability for families in the CalWORKs program. The Rapid Rehousing (RRH) services provided through HSP offer time-limited, individualized rental assistance at a level that enables the family to maintain housing while they seek to increase income; learn to manage a household budget; relocate to less expensive housing; and/or reduce expenses to sustain their housing. Rental assistance will be provided in a manner that is intended to prevent families from experiencing a sudden and unmanageable increase to their housing expenses at the end of program assistance. Additionally, KEYS partners with community and faith-based organizations to leverage and support payment of security deposits, utility assistance, furniture needs, and other housing costs as appropriate to the situation.

Based on an average cost of \$14,041.40 per family, a total of 285 families and approximately 300 new households will be served annually with the available HSP allocation in 2022-24. Since January 2015 to date, the partnership with TAD, HACSB, and KEYS has served more than 3,120 families, of which 7,593 are children, resulting in the placement of 2,163 households, including 4,923 children, in permanent housing.

Implementation of this item is contingent upon Board of Supervisors and Board of Commissioners approval of a contract between the County of San Bernardino and HACSB.

PROCUREMENT

The contract award was non-competitive due to TAD writing KEYS and HACSB directly into the contract proposal for the state funding. Also, the San Bernardino County Purchasing Department determined that the non-competitive nature of a contract with HACSB and KEYS is justified based on California Department of Social Services allocation to the County of San Bernardino as a result of TAD's proposal to partner with HACSB in its application for HSP funding.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on April 26, 2022.



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

**FIRST AMENDMENT TO CONSULTING, SERVICES, AND NON-ROUTINE MAINTENANCE
RELATED SERVICES AGREEMENT (NON-CONSTRUCTION)**

BETWEEN

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

And

KNOWLEDGE, EDUCATION FOR YOUR SUCCESS, INC. (KEYS)

This Second Amendment to Consulting, Services, and Non-Routine Maintenance Related Services Agreement (Non-Construction) is entered into as of July 1, 2022 by and between the Housing Authority of the County of San Bernardino (Authority), a public body, corporate and politic and Knowledge, Education For Your Success, Inc., a California public benefit nonprofit corporation ("KEYS"). The Authority and KEYS are referred to herein, collectively, as the "Parties."

RECITALS

WHEREAS, on June 9, 2020 (Item No. 9), the Board of Commissioners approved that certain non-competitive Consulting, Services, and Non-Routine Maintenance Related Services Agreement (Non-Construction), dated as of July 1, 2020 (the "Agreement"), by and between the Authority and KEYS, for the purpose of KEYS providing Housing Navigator Services in the amount of \$6,480,000, for the period of July 1, 2020 through June 30, 2021.

WHEREAS, on June 8, 2021 (Item No. 7), the Board of Commissioners approved that certain non-competitive Consulting, Services, and Non-Routine Maintenance Related Services Agreement (Non-Construction), dated as of July 1, 2020 (the "Agreement"), by and between the Authority and KEYS, for the purpose of KEYS providing Housing Navigator Services increasing the amount by \$6,480,000, for a total contract amount not to exceed \$12,960,000 and extending the term by one year through June 30, 2022.

WHEREAS, the Parties now desire to further amend the Agreement, extending the contract for a two year period, and increasing the total contract amount by \$18,162,657 from \$12,960,000 to \$31,122,657 for a total contract period of July 1, 2020 through June 30, 2024.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Authority and KEYS hereby agree as follows:

AGREEMENT

1. Fiscal Provisions. Section V of the Agreement, entitled “Fiscal Provisions”, at Subsection A, shall be amended in its entirety to increase the Contract Sum by \$18,162,657 and extend the term to read as follows:

“A. The maximum amount of reimbursement under this Contract shall not exceed \$31,122,657 for a total contract period of July 1, 2020 through June 30, 2024, of which 100% federally and state funded, and shall be subject to availability of funds to the County and HACSB. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor’s services and expenses incurred in the performance hereof, including travel and per diem.”

2. Term. Section VII of the Agreement, entitled “Term”, shall be amended in its entirety to read as follows:

“This Contract shall be effective as of July 1, 2020 and expires June 30, 2024, but may be terminated earlier in accordance with provisions of Section IX of the Contract. The Contract term may be extended for one (1) additional year period by mutual agreement of the parties.

3. CalWORKs Housing Support Program. Attachment C to the Agreement, entitled “CalWORKs Housing Support Program”, shall be replaced with the new Attachment C attached to this Amendment.

4. Full Force and Effect. Except as amended hereby, all other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Housing Authority of the County of San Bernardino and Applied Real Estate Analysis, Inc. have signed the amendment.

**KNOWLEDGE, EDUCATION, FOR YOUR
SUCCESS, INC.**

By: _____

Name: _____

Title: _____

Date: _____

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

By: _____

Name: Maria Razo

Title: Executive Director

Date: _____

CalWORKs HOUSING SUPPORT PROGRAM
July 1, 2021 through June 30, 2024

			FT 2021/22		FT 2022/23		FT 2023/24		Contract Total	
			PTEs	BUDGET	PTEs	BUDGET	PTEs	BUDGET	PTEs	BUDGET
I. DIRECT FINANCIAL ASSISTANCE	1. PERMANENT HOUSING	Financial Assistance		\$3,320,631		\$3,320,631		\$3,320,631		\$9,961,893
	2. INTERIM	Accounting Assistant- Motel	1	\$38,427	1	\$38,427	1	\$38,427	3	\$115,281
		Housing Navigator	3	\$44,335	3	\$44,335	3	\$44,335	9	\$133,005
		Housing Officer	1	\$34,853	1	\$34,853	1	\$34,853	3	\$104,559
		Engagement Officer	1	\$34,195	1	\$34,195	1	\$34,195	3	\$102,585
		Intake Specialist	3	\$116,367	3	\$116,367	3	\$116,367	9	\$349,101
		Bridges (PJAC/HSP)		\$27,000		\$27,000		\$27,000		\$81,000
		Risk Mitigation		\$255,000		\$255,000		\$255,000		\$765,000
		HSAA (ML)		\$450,000		\$450,000		\$450,000		\$1,350,000
		Inspections		\$128,334		\$128,334		\$128,334		\$385,002
		Health and Wellbeing		\$114,000		\$114,000		\$114,000		\$342,000
		Organization Capacity Building/Assessments		\$45,000		\$45,000		\$45,000		\$135,000
		Tenant / Landlord Education Workshops		\$6,000		\$6,000		\$6,000		\$18,000
		Resources Coordination		\$100,000		\$100,000		\$100,000		\$300,000
		Certification/Trainings		\$15,000		\$15,000		\$15,000		\$45,000
		Making Home Habitable		\$150,000		\$150,000		\$150,000		\$450,000
		Housing First		\$100,000		\$100,000		\$100,000		\$300,000
		Motel/H.O.P.E		\$415,734		\$415,734		\$415,734		\$1,247,202
	3. PREVENTION	Prevention Assistance		\$300,000		\$300,000		\$300,000		\$900,000
II. CASE MANAGEMENT	1. PERSONNEL	Program Manager	5	\$223,927	5	\$223,927	5	\$223,927	15	\$671,781
		Service Coordinators	17	\$603,036	17	\$603,036	17	\$603,036	51	\$1,809,108
		Health Navigator	1	\$10,147	1	\$10,147	1	\$10,147	3	\$30,441
III. ADMINISTRATIVE /SUPPORTIVE EXPENSES	1. PROGRAM MANAGEMENT	Administration & Program Management (Housing Authority/KEYS)		\$739,279		\$739,279		\$739,279		\$2,217,837
	2. PERSONNEL OTHER	Executive Director	1	\$118,470	1	\$118,470	1	\$118,470	3	\$355,410
		Deputy Executive Director	1	\$100,601	1	\$100,601	1	\$100,601	3	\$301,803
		Finance Manager	1	\$74,900	1	\$74,900	1	\$74,900	3	\$224,700
		Accountant	1	\$59,248	1	\$59,248	1	\$59,248	3	\$177,744
		Accounting Assistant	2	\$96,273	2	\$96,273	2	\$96,273	6	\$288,819
	3. DATA COLLECTION AND TRACKING EXPENSES	Data Collection and Tracking Expenses (Housing Authority/KEYS)		\$378,802		\$378,802		\$378,802		\$1,136,406
		Data Analytic Manager	1	\$48,788	1	\$48,788	1	\$48,788	3	\$146,364
		Data Analyst Lead	1	\$26,668	1	\$26,668	1	\$26,668	3	\$80,004
		Data Specialist	1	\$39,204	1	\$39,204	1	\$39,204	3	\$117,612
TOTAL PROGRAM EXPENSES			41	\$8,214,219	41	\$8,214,219	41	\$8,214,219	123	\$24,642,657

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

May 10, 2022

FROM

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

SUBJECT

On-Call Contracts with CSR Air Conditioning & Heating, Neighborly Heating & Cooling Inc. and First Response Air Conditioning & Heating Inc. for HVAC Services Agency-wide.

RECOMMENDATION(S)

1. Approve Contract No. PC1263 with CSR Air Conditioning & Heating, Neighborly Heating & Cooling Inc. and First Response Air Conditioning & Heating Inc. for on-call heating, ventilation, and air conditioning services for a three-year period from May 11, 2022 through May 10, 2025 with a single two year option through May 10, 2027.
2. Approve an appropriation in an amount not to exceed \$789,000 for on-call heating, ventilation, and air conditioning services through May 10, 2025.
3. Authorize and direct the Executive Director to execute and deliver the contracts to CSR Air Conditioning, Neighborly Heating & Cooling and First Response Air Conditioning and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

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

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

FINANCIAL IMPACT

The total amount is not expected to exceed \$789,000 for the initial three year period, which is funded through the Housing Authority of the County of San Bernardino's (HACSB) property operations budget. The amount for Fiscal Year 2022 is included in the budget and will be included in subsequent fiscal year budgets.

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 heating, ventilation, and air conditioning (HVAC) companies. Approval of this item will provide on-call HVAC services to our various offices across the county on an as-needed basis.

PROCUREMENT

HACSB issued a Request for Proposal (RFP) PC1264 for HVAC Services on January 24, 2022 which resulted in the receipt of six proposals. Outreach efforts included email invitations and posting on our eBidding website, PlanetBids, and posting on the agency website. The proposals

On-Call Contracts with CSR Air Conditioning, Neighborly Heating & Cooling and First Response Air Conditioning for HVAC Services agency-wide
May 10, 2022

were evaluated based on the following criteria: Qualifications which include capability, experience and past performance, and average overall cost per site. The proposals were evaluated per the requirements of the RFP in which CSR Air Conditioning & Heating, Neighborly Heating & Cooling Inc. and First Response Air Conditioning & Heating Inc. were deemed reasonably priced, considered responsive, and determined qualified to provide this service to HACSB.

<u>Proposals were received from the following vendors</u>			
<u>Contractors Name</u>	<u>Location</u>	<u>Meets Qualifications</u>	<u>Overall Score</u>
CSR Air Conditioning & Heating	Highland, CA	Yes	100
Neighborly Heating & Cooling Inc.	Moreno Valley, CA	Yes	78
First Response Air Conditioning & Heating Inc.	Yorba Linda, CA	Yes	77
Sun Woodard Enterprises	Victorville, CA	Yes	60
Cal-Air Heating & Cooling	Redlands, CA	Yes	56
ABM Building Solutions LLC	San Bernardino, CA	Yes	61

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on April 26, 2022.

THIS CONSULTING, SERVICES, AND NON-ROUTINE MAINTENANCE RELATED SERVICES AGREEMENT (NON-CONSTRUCTION) ("Agreement") is made as of the **11th day of May, 2022** ("Effective Date") by and between **CSR Air Conditioning & Heating (PC1263)** ("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 and II – (with or without Maintenance Work)(Form HUD 5370 C1&C2), 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>.
7. HUD Determined Maintenance Wages attached hereto as Exhibit "F" and incorporated.

ARTICLE 3. Term; Time of Completion. Contractor shall commence work under this agreement for a **three (3) year period**, beginning on or about **May 11, 2022** and expiring on **May 10, 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 **May 11, 2025** and expire no later than **May 10, 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 HVAC services identified in the corresponding Board Agenda Item, and together shall not exceed \$789,000. 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 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. Approved invoices processed NET30
- b. 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
- c. 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%).
- d. 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.
- e. 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.
- f. 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.
- g. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.
- h. 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.
- i. 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 Form HUD 5370 C1 and C2 and the other Contract Documents, the provision of Form HUD 5370 C1 and C2 shall apply. 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:

Chris Lewis, Vice President
CSR Air Conditioning & Heating Inc.
27015 5th St.
Highland, CA 92346
Clewis.csrinc@outlook.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)**

PC1263 – HVAC Services

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

Date: _____

CSR Air Conditioning & Heating

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. Contractor for each location or all locations will perform HVAC maintenance and repairs for buildings owned and operated 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.

HVAC provider shall perform the following service requirements:

- Provide schedule of quarterly (4) inspections for fan coil and chill water systems.
- Renew filters; check all drive belts for tension and wear, and replace as needed.
- Check all controls for loose connections; tighten as required; blow off dust, lint, grease and grime.
- Check drip pan for scale; scrape and clean; check and clean condensation and Y strainer.
- If equipped with condensation pump, clean pump out, lube pump.
- Lubricate unit bearing and pillow blocks.
- Check fans, tension, alignment and rotation.
- Inspect and wash condenser fan coils and fresh-air intake filters at each service.
- Wash evaporator coils annually.
- All motor amperages should be checked and adjusted accordingly.
- Check out condenser and cooling coil motor air intake and outlet, assuring that all ports are free and clear of any lint, dust, and debris.
- Check anti-freeze with hydrometer (to-10F Temp) and add additional anti-freeze when necessary at current price (where applicable).
- Check refrigerant charge, leak test; repair and recharge if necessary.
- Lubricate automatic dampers and check operation.
- Check all electrical connections, contacts and fuses.
- Make note of any malfunctions and any corrective action taken.
- Make note of all recommendations.
- Seasonal changes shall coincide with the service inspection provided for that period.

The repeated failure of any Contractor to provide service when contacted shall result in that Contractor's contract being canceled for nonperformance. The HACSB shall document failure to respond, and the Contractor may not be permitted to participate in future contracts for these services.

1.01 GENERAL REQUIREMENTS

Services to be provided by the Contractor may include any or all of the following items:

- A. The Contractor shall furnish all labor, equipment, tools, parts, materials, and supplies required to repair, replace, remove stoppages, and install existing and new HVAC systems as required. This includes the provision of all replacement parts and component systems required for existing building HVAC systems in accordance with all original equipment manufacturer specifications. Contractor

shall list all areas of HVAC, 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.

1.02 PROJECT COORDINATORS

- A. The HACSB project coordinator for this project is the Property Manager at each site, 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 Project Coordinator for the duration of the term of this agreement.
- C. The contractor's Project Coordinator shall have a cellular telephone, which number shall be provided to HACSB. The Project Manager or 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.
- D. Before the work commences, the contractor must provide a work schedule that is approved by HACSB.

1.03 REGULAR SERVICE CALLS

- A. Service requests made to Contractor prior to 12:30 P.M. shall be responded to within four (4) hours after the HACSB notification to Contractor.
- B. Work which exceeds five hundred dollars (\$500), the Contractor shall furnish to the HACSB a report, which shall include a scope of work, bill of materials, fixed price, and time required for completion, and request written authorization from the HACSB.

1.04 EMERGENCY SERVICE CALLS

- A. Emergency service requests made to Contractor shall be responded to within three (3) hours of notification to Contractor.
- B. Work which exceeds five hundred dollars (\$500), the Contractor shall furnish to the HACSB a report, which shall include a scope of work, bill of materials, fixed price, and time required for completion, and request written authorization from the HACSB.

1.05 WARRANTY/GUARANTEE

- A. All work provided by any Contractor pursuant to any contract that ensues from this RFP shall be warranted or guaranteed by that Contractor for a period of time of not less than 180 days.

1.06 WAGE RATE

A. Wage Rate – Authority Owned Properties:

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. Contractor will be responsible for registering with the Department of Industrial Relations (DIR). Wages can be found at <http://www.dir.ca.gov/OPRL/2016-2/PWD/index.htm>. Please refer to the State of California Labor Code for more detail. See list of properties affected by this wage below and provide pricing accordingly.

1.07 CONTRACTORS EMPLOYEES

- A. The contractor shall ensure that personnel are knowledgeable of all the requirements of these specifications. The contractor shall be responsible for instructing his employees in safety measures considered appropriate. CAL OSHA safety requirements shall be complied within all activities under this award.

1.05 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.

1.06 WORK SCHEDULE

- A. *The Contractor shall perform work when needed and requested, including day and night hours as well as weekends and holidays.*
- B. *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*

1.07 CLEAN UP

- A. *At the completion of work, remove all materials, supplies, debris and rubbish and leave each area in a clean, acceptable condition.*

Exhibit A - Fee Schedule

Additional Document on Following Page

Repairs and Maintenance (other than Preventive Maintenance):

Item	Description	Yr 1 2022-23	Yr 2 2023-24	Yr 3 2024-25
	Provide pricing per the specifications of RFP PC1263 for: (note--all labor rates are subject to State Prevailing Wages)			
1	Straight time rate (per hour)	\$120.00	\$130.00	\$130.00
2	Overtime rate (per hour)	\$180.00	\$195.00	\$195.00
3	Holiday and Sunday Rate (per hour)	\$240.00	\$260.00	\$260.00
4	Material Cost markup (percentage)	10-25%	10-25%	10-25%
5	Transportation charges (if any)—list by lot if variance	\$40	\$40	\$40
6	Additional charges/services (please list—attach to sheet)			

CSR Air Conditioning & Heating Inc.

Item Num	Section	Description	UOM	QTY	- Unit Price	- Line Total
1	Section 1	Straight Time Rate (per hour)	Hour	1	\$120.00	\$120.00
2	Section 1	Overtime Rate (per hour)	Hour	1	\$180.00	\$180.00
3	Section 1	Holiday and Sunday Rate (per hour)	Hour	1	\$240.00	\$240.00
4	Section 1	Material Cost Markup (percentage)	Percent	1	\$0.00	\$0.00
5	Section 1	Transportation changes (if any)	Percent	1	\$40.00	\$40.00
6	SITE #1 Administration Building	Preventative Maintenance Quarterly	Units	10	\$75.00	\$750.00
7	SITE #1 Administration Building	1st Year Cost of Filters	Each	1	\$321.25	\$321.25
8	SITE #1 Administration Building	2nd Year Cost of Filters	Each	1	\$369.38	\$369.38
9	SITE #2Housing Programs Office	Preventative Maintenance Quarterly	Units	14	\$67.50	\$945.00
10	SITE #2Housing Programs Office	1st Year Cost of Filters	Each	1	\$563.75	\$563.75
11	SITE #2Housing Programs Office	2nd Year Cost of Filters	Each	1	\$648.75	\$648.75
12	Site #3Ontario Office	Preventative Maintenance Quarterly	Units	2	\$150.00	\$300.00
13	Site #3Ontario Office	1st Year Cost of Filters	Each	1	\$56.25	\$56.25
14	Site #3Ontario Office	2nd Year Cost of Filters	Each	1	\$65.00	\$65.00
15	Site #4Victorville Office	Preventative Maintenance Quarterly	Units	3	\$80.00	\$240.00
16	Site #4Victorville Office	1st Year Cost of Filters	Each	1	\$51.25	\$51.25
17	Site #4Victorville Office	2nd Year Cost of Filters	Each	1	\$59.38	\$59.38
18	Site #5San Bernardino	Preventative Maintenance Quarterly	Units	8	\$40.63	\$325.00
19	Site #5San Bernardino	1st Year Cost of Filters	Each	1	\$53.75	\$53.75
20	Site #5San Bernardino	2nd Year Cost of Filters	Each	1	\$61.88	\$61.88
21	Site #6Chino	Preventative Maintenance Quarterly	Units	1	\$130.00	\$130.00
22	Site #6Chino	1st Year Cost of Filters	Each	1	\$0.00	\$0.00
23	Site #6Chino	2nd Year Cost of Filters	Each	1	\$0.00	\$0.00
24	Site #7 Colton	Preventative Maintenance Quarterly	Units	2	\$75.00	\$150.00
25	Site #7 Colton	1st Year Cost of Filters	Each	1	\$26.25	\$26.25
26	Site #7 Colton	2nd Year Cost of Filters	Each	1	\$30.63	\$30.63
27	Site #8Redlands	Preventative Maintenance Quarterly	Units	4	\$51.25	\$205.00
28	Site #8Redlands	1st Year Cost of Filters	Each	1	\$26.25	\$26.25
29	Site #8Redlands	2nd Year Cost of Filters	Each	1	\$30.63	\$30.63
30	Site #9Barstow	Preventative Maintenance Quarterly	Units	11	\$36.82	\$405.02
31	Site #9Barstow	1st Year Cost of Filters	Each	1	\$121.88	\$121.88
32	Site #9Barstow	2nd Year Cost of Filters	Each	1	\$140.63	\$140.63
33	Site #10Central Shop	Preventative Maintenance Quarterly	Units	4	\$77.50	\$310.00
34	Site #10Central Shop	1st Year Cost of Filters	Each	1	\$31.88	\$31.88
35	Site #10Central Shop	2nd Year Cost of Filters	Each	1	\$36.88	\$36.88

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

Document on Following Page

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

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 \$250,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$250,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$250,000 – 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

- (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.

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.

Exhibit F
HUD Determined Maintenance Wages

To Be Provided Separately

THIS CONSULTING, SERVICES, AND NON-ROUTINE MAINTENANCE RELATED SERVICES AGREEMENT (NON-CONSTRUCTION) ("Agreement") is made as of the **11th day of May, 2022** ("Effective Date") by and between **Neighborly Heating & Cooling Inc. (PC1263)** ("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 and II – (with or without Maintenance Work)(Form HUD 5370 C1&C2), 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>.
7. HUD Determined Maintenance Wages attached hereto as Exhibit "F" and incorporated.

ARTICLE 3. Term; Time of Completion. Contractor shall commence work under this agreement for a **three (3) year period**, beginning on or about **May 11, 2022** and expiring on **May 10, 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 **May 11, 2025** and expire no later than **May 10, 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 HVAC services identified in the corresponding Board Agenda Item, and together shall not exceed \$789,000. 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 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. Approved invoices processed NET30
- b. 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
- c. 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%).
- d. 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.
- e. 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.
- f. 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.
- g. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.
- h. 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.
- i. 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 Form HUD 5370 C1 and C2 and the other Contract Documents, the provision of Form HUD 5370 C1 and C2 shall apply. 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
alardipide@hacsb.com

If to Contractor:

Otis Odom President Neighborly
Heating & Cooling Inc. 12625
Frederick St.
Moreno Valley, CA 92553
Neighborly@verizon.net

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)**

PC1263 – HVAC Services

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

Date: _____

Neighborly Heating & Cooling 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. Contractor for each location or all locations will perform HVAC maintenance and repairs for buildings owned and operated 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.

HVAC provider shall perform the following service requirements:

- Provide schedule of quarterly (4) inspections for fan coil and chill water systems.
- Renew filters; check all drive belts for tension and wear, and replace as needed.
- Check all controls for loose connections; tighten as required; blow off dust, lint, grease and grime.
- Check drip pan for scale; scrape and clean; check and clean condensation and Y strainer.
- If equipped with condensation pump, clean pump out, lube pump.
- Lubricate unit bearing and pillow blocks.
- Check fans, tension, alignment and rotation.
- Inspect and wash condenser fan coils and fresh-air intake filters at each service.
- Wash evaporator coils annually.
- All motor amperages should be checked and adjusted accordingly.
- Check out condenser and cooling coil motor air intake and outlet, assuring that all ports are free and clear of any lint, dust, and debris.
- Check anti-freeze with hydrometer (to-10F Temp) and add additional anti-freeze when necessary at current price (where applicable).
- Check refrigerant charge, leak test; repair and recharge if necessary.
- Lubricate automatic dampers and check operation.
- Check all electrical connections, contacts and fuses.
- Make note of any malfunctions and any corrective action taken.
- Make note of all recommendations.
- Seasonal changes shall coincide with the service inspection provided for that period.

The repeated failure of any Contractor to provide service when contacted shall result in that Contractor's contract being canceled for nonperformance. The HACSB shall document failure to respond, and the Contractor may not be permitted to participate in future contracts for these services.

1.01 GENERAL REQUIREMENTS

Services to be provided by the Contractor may include any or all of the following items:

- A. The Contractor shall furnish all labor, equipment, tools, parts, materials, and supplies required to repair, replace, remove stoppages, and install existing and new HVAC systems as required. This includes the provision of all replacement parts and component systems required for existing building HVAC systems in accordance with all original equipment manufacturer specifications. Contractor

shall list all areas of HVAC, 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.

1.02 PROJECT COORDINATORS

- A. The HACSB project coordinator for this project is the Property Manager at each site, 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 Project Coordinator for the duration of the term of this agreement.
- C. The contractor's Project Coordinator shall have a cellular telephone, which number shall be provided to HACSB. The Project Manager or 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.
- D. Before the work commences, the contractor must provide a work schedule that is approved by HACSB.

1.03 REGULAR SERVICE CALLS

- A. Service requests made to Contractor prior to 12:30 P.M. shall be responded to within four (4) hours after the HACSB notification to Contractor.
- B. Work which exceeds five hundred dollars (\$500), the Contractor shall furnish to the HACSB a report, which shall include a scope of work, bill of materials, fixed price, and time required for completion, and request written authorization from the HACSB.

1.04 EMERGENCY SERVICE CALLS

- A. Emergency service requests made to Contractor shall be responded to within three (3) hours of notification to Contractor.
- B. Work which exceeds five hundred dollars (\$500), the Contractor shall furnish to the HACSB a report, which shall include a scope of work, bill of materials, fixed price, and time required for completion, and request written authorization from the HACSB.

1.05 WARRANTY/GUARANTEE

- A. All work provided by any Contractor pursuant to any contract that ensues from this RFP shall be warranted or guaranteed by that Contractor for a period of time of not less than 180 days.

1.06 WAGE RATE

A. Wage Rate – Authority Owned Properties:

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. Contractor will be responsible for registering with the Department of Industrial Relations (DIR). Wages can be found at <http://www.dir.ca.gov/OPRL/2016-2/PWD/index.htm>. Please refer to the State of California Labor Code for more detail. See list of properties affected by this wage below and provide pricing accordingly.

1.07 CONTRACTORS EMPLOYEES

- A. The contractor shall ensure that personnel are knowledgeable of all the requirements of these specifications. The contractor shall be responsible for instructing his employees in safety measures considered appropriate. CAL OSHA safety requirements shall be complied within all activities under this award.

1.05 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.

1.06 WORK SCHEDULE

- A. *The Contractor shall perform work when needed and requested, including day and night hours as well as weekends and holidays.*
- B. *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*

1.07 CLEAN UP

- A. *At the completion of work, remove all materials, supplies, debris and rubbish and leave each area in a clean, acceptable condition.*

Exhibit A - Fee Schedule

Additional Document on Following Page

Repairs and Maintenance (other than Preventive Maintenance):

Item	Description	Yr 1 2022-23	Yr 2 2023-24	Yr 3 2024-25
	Provide pricing per the specifications of RFP PC1263 for: (note--all labor rates are subject to State Prevailing Wages)			
1	Straight time rate (per hour)	69	70	71.
2	Overtime rate (per hour)	69	70	71
3	Holiday and Sunday Rate (per hour)	69	70	71
4	Material Cost markup (percentage)	12 %	13%	14%
5	Transportation charges (if any)—list by lot if variance			
6	Additional charges/services (please list—attach to sheet)			

Neighborly Heating & Cooling

Item Num	Section	Description	UOM	QTY	Unit Price	Line Total
1	Section 1	Straight Time Rate (per hour)	Hour	1	\$69.00	\$69.00
2	Section 1	Overtime Rate (per hour)	Hour	1	\$69.00	\$69.00
3	Section 1	Holiday and Sunday Rate (per hour)	Hour	1	\$69.00	\$69.00
4	Section 1	Material Cost Markup (percentage)	Percent	1	\$12.00	\$12.00
5	Section 1	Transportation changes (if any)	Percent	1	\$12.00	\$12.00
6	SITE #1 Administration Building	Preventative Maintenance Quarterly	Units	10	\$100.00	\$1,000.00
7	SITE #1 Administration Building	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
8	SITE #1 Administration Building	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90
9	SITE #2Housing Programs Office	Preventative Maintenance Quarterly	Units	14	\$100.00	\$1,400.00
10	SITE #2Housing Programs Office	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
11	SITE #2Housing Programs Office	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90
12	Site #3Ontario Office	Preventative Maintenance Quarterly	Units	2	\$100.00	\$200.00
13	Site #3Ontario Office	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
14	Site #3Ontario Office	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90
15	Site #4Victorville Office	Preventative Maintenance Quarterly	Units	3	\$100.00	\$300.00
16	Site #4Victorville Office	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
17	Site #4Victorville Office	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90
18	Site #5San Bernardino	Preventative Maintenance Quarterly	Units	8	\$100.00	\$800.00
19	Site #5San Bernardino	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
20	Site #5San Bernardino	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90
21	Site #6Chino	Preventative Maintenance Quarterly	Units	1	\$100.00	\$100.00
22	Site #6Chino	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
23	Site #6Chino	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90
24	Site #7 Colton	Preventative Maintenance Quarterly	Units	2	\$100.00	\$200.00
25	Site #7 Colton	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
26	Site #7 Colton	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90
27	Site #8Redlands	Preventative Maintenance Quarterly	Units	4	\$100.00	\$400.00
28	Site #8Redlands	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
29	Site #8Redlands	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90
30	Site #9Barstow	Preventative Maintenance Quarterly	Units	11	\$100.00	\$1,100.00
31	Site #9Barstow	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
32	Site #9Barstow	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90
33	Site #10Central Shop	Preventative Maintenance Quarterly	Units	4	\$100.00	\$400.00
34	Site #10Central Shop	1st Year Cost of Filters	Each	1	\$35.00	\$35.00
35	Site #10Central Shop	2nd Year Cost of Filters	Each	1	\$36.90	\$36.90

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

Document on Following Page

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

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 \$250,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$250,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$250,000 – 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.
- (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.

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.

Exhibit F
HUD Determined Maintenance Wages

To Be Provided Separately

THIS CONSULTING, SERVICES, AND NON-ROUTINE MAINTENANCE RELATED SERVICES AGREEMENT (NON-CONSTRUCTION) ("Agreement") is made as of the **11th day of May, 2022** ("Effective Date") by and between **First Response Air Conditioning & Heating Inc. (PC1263)** ("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 and II – (with or without Maintenance Work)(Form HUD 5370 C1&C2), 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>.
7. HUD Determined Maintenance Wages attached hereto as Exhibit "F" and incorporated.

ARTICLE 3. Term; Time of Completion. Contractor shall commence work under this agreement for a **three (3) year period**, beginning on or about **May 11, 2022** and expiring on **May 10, 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 **May 11, 2025** and expire no later than **May 10, 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 HVAC services identified in the corresponding Board Agenda Item, and together shall not exceed \$789,000. 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. Approved invoices processed NET30
- b. 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
- c. 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%).
- d. 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.
- e. 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.
- f. 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.
- g. Invoices prepared in accordance with this provision will not be submitted more frequently than monthly to HACSB.
- h. 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.
- i. 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 Form HUD 5370 C1 and C2 and the other Contract Documents, the provision of Form HUD 5370 C1 and C2 shall apply. 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:

Ivan Rosas, Service Manager
First Response Air Conditioning &
Heating
22349 La Palma Ave.
Yorba Linda, CA 92887
ivanamagnummechanical.net

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)**

PC1263 – HVAC Services

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

Date: _____

First Response Air Conditioning & Heating 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. Contractor for each location or all locations will perform HVAC maintenance and repairs for buildings owned and operated 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.

HVAC provider shall perform the following service requirements:

- Provide schedule of quarterly (4) inspections for fan coil and chill water systems.
- Renew filters; check all drive belts for tension and wear, and replace as needed.
- Check all controls for loose connections; tighten as required; blow off dust, lint, grease and grime.
- Check drip pan for scale; scrape and clean; check and clean condensation and Y strainer.
- If equipped with condensation pump, clean pump out, lube pump.
- Lubricate unit bearing and pillow blocks.
- Check fans, tension, alignment and rotation.
- Inspect and wash condenser fan coils and fresh-air intake filters at each service.
- Wash evaporator coils annually.
- All motor amperages should be checked and adjusted accordingly.
- Check out condenser and cooling coil motor air intake and outlet, assuring that all ports are free and clear of any lint, dust, and debris.
- Check anti-freeze with hydrometer (to-10F Temp) and add additional anti-freeze when necessary at current price (where applicable).
- Check refrigerant charge, leak test; repair and recharge if necessary.
- Lubricate automatic dampers and check operation.
- Check all electrical connections, contacts and fuses.
- Make note of any malfunctions and any corrective action taken.
- Make note of all recommendations.
- Seasonal changes shall coincide with the service inspection provided for that period.

The repeated failure of any Contractor to provide service when contacted shall result in that Contractor's contract being canceled for nonperformance. The HACSB shall document failure to respond, and the Contractor may not be permitted to participate in future contracts for these services.

1.01 GENERAL REQUIREMENTS

Services to be provided by the Contractor may include any or all of the following items:

- A. The Contractor shall furnish all labor, equipment, tools, parts, materials, and supplies required to repair, replace, remove stoppages, and install existing and new HVAC systems as required. This includes the provision of all replacement parts and component systems required for existing building HVAC systems in accordance with all original equipment manufacturer specifications. Contractor

shall list all areas of HVAC, 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.

1.02 PROJECT COORDINATORS

- A. The HACSB project coordinator for this project is the Property Manager at each site, 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 Project Coordinator for the duration of the term of this agreement.
- C. The contractor's Project Coordinator shall have a cellular telephone, which number shall be provided to HACSB. The Project Manager or 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.
- D. Before the work commences, the contractor must provide a work schedule that is approved by HACSB.

1.03 REGULAR SERVICE CALLS

- A. Service requests made to Contractor prior to 12:30 P.M. shall be responded to within four (4) hours after the HACSB notification to Contractor.
- B. Work which exceeds five hundred dollars (\$500), the Contractor shall furnish to the HACSB a report, which shall include a scope of work, bill of materials, fixed price, and time required for completion, and request written authorization from the HACSB.

1.04 EMERGENCY SERVICE CALLS

- A. Emergency service requests made to Contractor shall be responded to within three (3) hours of notification to Contractor.
- B. Work which exceeds five hundred dollars (\$500), the Contractor shall furnish to the HACSB a report, which shall include a scope of work, bill of materials, fixed price, and time required for completion, and request written authorization from the HACSB.

1.05 WARRANTY/GUARANTEE

- A. All work provided by any Contractor pursuant to any contract that ensues from this RFP shall be warranted or guaranteed by that Contractor for a period of time of not less than 180 days.

1.06 WAGE RATE

A. Wage Rate – Authority Owned Properties:

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. Contractor will be responsible for registering with the Department of Industrial Relations (DIR). Wages can be found at <http://www.dir.ca.gov/OPRL/2016-2/PWD/index.htm>. Please refer to the State of California Labor Code for more detail. See list of properties affected by this wage below and provide pricing accordingly.

1.07 CONTRACTORS EMPLOYEES

- A. The contractor shall ensure that personnel are knowledgeable of all the requirements of these specifications. The contractor shall be responsible for instructing his employees in safety measures considered appropriate. CAL OSHA safety requirements shall be complied within all activities under this award.

1.05 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.

1.06 WORK SCHEDULE

- A. *The Contractor shall perform work when needed and requested, including day and night hours as well as weekends and holidays.*
- B. *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*

1.07 CLEAN UP

- A. *At the completion of work, remove all materials, supplies, debris and rubbish and leave each area in a clean, acceptable condition.*

Exhibit A - Fee Schedule

Additional Document on Following Page

Repairs and Maintenance (other than Preventive Maintenance):

Item	Description	Yr 1 2022-23	Yr 2 2023-24	Yr 3 2024-25
	Provide pricing per the specifications of RFP PC1263 for: (note--all labor rates are subject to State Prevailing Wages)			
1	Straight time rate (per hour)	105.00	115.00	125.00
2	Overtime rate (per hour)	120.00	129.00	135.00
3	Holiday and Sunday Rate (per hour)	160.00	175.00	220.00
4	Material Cost markup (percentage)	10%	10%	10%
5	Transportation charges (if any)—list by lot if variance	98.00	105.00	120.00
6	Additional charges/services (please list—attach to sheet)	0	0	0

First Response Air conditioning Heating

Item Num	Section	Description	UOM	QTY	- Unit Price	Line Total
1	Section 1	Straight Time Rate (per hour)	Hour	1	\$99.00	\$99.00
2	Section 1	Overtime Rate (per hour)	Hour	1	\$105.00	\$105.00
3	Section 1	Holiday and Sunday Rate (per hour)	Hour	1	\$125.00	\$125.00
4	Section 1	Material Cost Markup (percentage)	Percent	1	\$10.00	\$10.00
5	Section 1	Transportation changes (if any)	Percent	1	\$98.00	\$98.00
6	SITE #1 Administration Building	Preventative Maintenance Quarterly	Units	10	\$100.80	\$1,008.00
7	SITE #1 Administration Building	1st Year Cost of Filters	Each	1	\$672.00	\$672.00
8	SITE #1 Administration Building	2nd Year Cost of Filters	Each	1	\$772.00	\$772.00
9	SITE #2Housing Programs Office	Preventative Maintenance Quarterly	Units	14	\$100.80	\$1,411.20
10	SITE #2Housing Programs Office	1st Year Cost of Filters	Each	1	\$1,092.00	\$1,092.00
11	SITE #2Housing Programs Office	2nd Year Cost of Filters	Each	1	\$1,200.00	\$1,200.00
12	Site #3Ontario Office	Preventative Maintenance Quarterly	Units	2	\$105.00	\$210.00
13	Site #3Ontario Office	1st Year Cost of Filters	Each	1	\$48.00	\$48.00
14	Site #3Ontario Office	2nd Year Cost of Filters	Each	1	\$63.00	\$63.00
15	Site #4Victorville Office	Preventative Maintenance Quarterly	Units	3	\$105.00	\$315.00
16	Site #4Victorville Office	1st Year Cost of Filters	Each	1	\$189.00	\$189.00
17	Site #4Victorville Office	2nd Year Cost of Filters	Each	1	\$210.00	\$210.00
18	Site #5San Bernardino	Preventative Maintenance Quarterly	Units	8	\$105.00	\$840.00
19	Site #5San Bernardino	1st Year Cost of Filters	Each	1	\$230.00	\$230.00
20	Site #5San Bernardino	2nd Year Cost of Filters	Each	1	\$280.00	\$280.00
21	Site #6Chino	Preventative Maintenance Quarterly	Units	1	\$105.00	\$105.00
22	Site #6Chino	1st Year Cost of Filters	Each	1	\$25.00	\$25.00
23	Site #6Chino	2nd Year Cost of Filters	Each	1	\$32.00	\$32.00
24	Site #7 Colton	Preventative Maintenance Quarterly	Units	2	\$105.00	\$210.00
25	Site #7 Colton	1st Year Cost of Filters	Each	1	\$32.00	\$32.00
26	Site #7 Colton	2nd Year Cost of Filters	Each	1	\$52.00	\$52.00
27	Site #8Redlands	Preventative Maintenance Quarterly	Units	4	\$105.00	\$420.00
28	Site #8Redlands	1st Year Cost of Filters	Each	1	\$130.00	\$130.00
29	Site #8Redlands	2nd Year Cost of Filters	Each	1	\$180.00	\$180.00
30	Site #9Barstow	Preventative Maintenance Quarterly	Units	11	\$105.00	\$1,155.00
31	Site #9Barstow	1st Year Cost of Filters	Each	1	\$272.00	\$272.00
32	Site #9Barstow	2nd Year Cost of Filters	Each	1	\$290.00	\$290.00
33	Site #10Central Shop	Preventative Maintenance Quarterly	Units	4	\$105.00	\$420.00
34	Site #10Central Shop	1st Year Cost of Filters	Each	1	\$45.00	\$45.00
35	Site #10Central Shop	2nd Year Cost of Filters	Each	1	\$67.00	\$67.00

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

Document on Following Page

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

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 \$250,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$250,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$250,000 – 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.
- (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.

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.

Exhibit F
HUD Determined Maintenance Wages

To Be Provided Separately

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

May 10, 2022

FROM

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

SUBJECT

Contract Amendments for Landscaping Services for Multiple Housing Communities

RECOMMENDATION(S)

1. Approve Amendments to Contract No. PC1152, effective May 11, 2022, for agency-wide landscaping services with Advanced Environmental Landscape Corp. increasing the current amount by \$279,580 for a total contract amount not to exceed \$814,314, and to Priority Landscape Services LLC, increasing the current amount by \$185,750 for a total contract amount not to exceed \$506,596 for an aggregate total amount not-to-exceed \$1,320,910 and exercising the single year option extension for both contracts through April 30, 2023.
2. Authorize and direct the Executive Director to execute and deliver the contract amendments to Advanced Environmental Landscape Corp. and Priority Landscape Services LLC and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

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

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

FINANCIAL IMPACT

The total amount for both contracts is not expected to exceed \$465,330 for the one-year option term, which is funded through the Housing Authority of the County of San Bernardino's (HACSB) property operations budget. The amount for Fiscal Year 2022 is included in the budget and will be included in subsequent fiscal year budgets.

BACKGROUND INFORMATION

HACSB currently contracts with landscape vendors to provide grounds-keeping and irrigation maintenance at 39 affordable housing sites and four administrative offices located throughout San Bernardino County. Several of these sites have significant acreage that require robust landscape services. Approval of the proposed contracts will help maintain the landscaping services necessary at these sites. Based on the geographical size of HACSB's internally managed property portfolio, two qualified vendors have been selected.

PROCUREMENT

On November 25, 2019, HACSB issued a Request for Proposal (RFP) PC1152 for Landscaping Services which resulted in the receipt of eight proposals. Outreach efforts included advertisements in four local newspapers, email invitations to 45 vendors, posting on our electronic bidding website, PlanetBids, and posting on the agency website. The proposals were evaluated per the requirements of the RFP in which Advanced Environmental Landscape Corp. and Priority

Contract Amendments for Landscaping Services for Multiple Housing Communities
May 10, 2022

Landscape Services LLC were deemed reasonably priced, considered responsive, and determined qualified to provide this service to HACSB.

On March 10, 2020 the Board of Commissioners (Item No. 8) approved contracts, effective May 1, 2020, for agency-wide landscaping services to Advanced Environmental Landscape Corp. in an amount not to exceed \$519,160 and to Priority Landscape Services LLC, in an amount not to exceed \$311,501 for an overall total amount not-to-exceed \$830,661 for a two year base period through April 30, 2022.

Amendment No. 1 with Priority Landscape and Amendment No. 2 with Advanced Environmental Landscape increased the contracts by 3% as authorized by the Executive Director per HACSB's Procurement Policy and extended the contracts through May 10, 2022.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on May 4, 2022.



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

**AMENDMENT #2 TO CONTRACT FOR LANDSCAPE SERVICES
(PC1152)**

BETWEEN

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

And

PRIORITY LANDSCAPE SERVICES LLC

This Amendment No. 2 ("Second Amendment"), dated May 11, 2022 ("Effective Date"), to Agreement for Landscape Services (PC1152), is entered into by and between the Housing Authority of the County of San Bernardino, a California public body, ("Authority") and Priority Landscape Services LLC ("Contractor").

RECITALS

WHEREAS, on May 1, 2020 the Authority and Contractor entered into that certain Consulting, Services, and Non-Routine Maintenance Related Services Agreement (Non-Construction), dated May 1, 2020 relating to Landscape Services ("Agreement") with a total price of \$311,501.00;

WHEREAS, on May 1, 2022, the Authority and Contractor entered into Amendment No. 1 to the Agreement to extend the contract through May 10, 2022 and increase the contract 3%, \$9,345.00 for a total amount not-to-exceed \$320,846.00.

WHEREAS, the Authority and Contractor now wish to enter into this second Amendment to the Agreement to increase the contract by \$185,750.00 for a total amount not-to-exceed \$506,596.00 for the option year term through April 30, 2023.

OPERATIVE PROVISIONS

NOW, THEREFORE, the foregoing Recitals being true and correct, and in consideration of the mutual covenants and obligations contained in this Second 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 one (1) year term and expiring on April 30, 2023. 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 Second Agreement, all provisions of the Agreement, as amended, shall remain unchanged and in full force and effect. From and after the date of this Second Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by Amendment No. 2.

Section 4. Affirmation of Agreement; Warranty Re Absence of Defaults. Authority and Contractor 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. 2 as provided herein. Each party represents and warrants to the other that the Agreement, as amended by Amendment No. 2, is currently an effective, valid, and binding obligation.

Contractor represents and warrants to Authority that, as of the date of this Second 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 Contractor that, as of the date of this Second Amendment, Contractor 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 Second 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.

IN WITNESS WHEREOF, the Housing Authority of the County of San Bernardino and Priority Landscape Services LLC

PRIORITY LANDSCAPE SERVICES LLC

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

By: _____

By: _____

Name: _____

Name: Maria Razo

Title: _____

Title: Executive Director

Date: _____

Date: _____

Exhibit A-1

Schedule Dates:

Effective Date: May 11, 2022

Completion Date: April 30, 2023

Total Agreement Cost: Not to exceed \$506,596.00

Original Agreement Amount Not to Exceed	\$311,501.00
Net Change Orders Previously Approved	\$0.00
Net Change Order Previously Approved – Amendment #1	\$9,345.00
Net Change Order – Amendment #2	\$185,750.00
Agreement Value as Amended Not to Exceed	\$506,596.00



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

**AMENDMENT #3 TO CONTRACT FOR LANDSCAPE SERVICES
(PC1152)**

BETWEEN

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

And

ADVANCED ENVIRONMENTAL LANDSCAPE CORP.

This Amendment No. 3 ("Third Amendment"), dated May 11, 2022 ("Effective Date"), to Agreement for Landscape Services (PC1152), is entered into by and between the Housing Authority of the County of San Bernardino, a California public body, ("Authority") and Advanced Environmental Landscape Corp. ("Contractor").

RECITALS

WHEREAS, the Authority and Contractor entered into that certain Consulting, Services, and Non-Routine Maintenance Related Services Agreement (Non-Construction), dated May 1, 2020 relating to Landscape Services ("Agreement") with a total price of \$519,160.00;

WHEREAS, on June 30, 2021, the Authority and Contractor entered into Amendment No. 1 to the Agreement to remove the Canyon Villa property from the contract.

WHEREAS, on May 1, 2022, the Authority and Contractor entered into Amendment No. 2 to the Agreement to extend the contract through May 10, 2022 and increase the contract 3%, \$15,574.00 for a total amount not-to-exceed \$534,734.00.

WHEREAS, the Authority and Contractor now wish to enter into this third Amendment to the Agreement to increase the contract by \$279,580.00 for a total amount not-to-exceed \$814,314.00 for the option year term through April 30, 2023.

OPERATIVE PROVISIONS

NOW, THEREFORE, the foregoing Recitals being true and correct, and in consideration of the mutual covenants and obligations contained in this Third 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 one (1) year term and expiring on April 30, 2023. 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 Third Agreement, all provisions of the Agreement, as amended, shall remain unchanged and in full force and effect. From and after the date of this Third Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by Amendment No. 3.

Section 4. Affirmation of Agreement; Warranty Re Absence of Defaults. Authority and Contractor 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. 3 as provided herein. Each party represents and warrants to the other that the Agreement, as amended by Amendment No. 3, is currently an effective, valid, and binding obligation.

Contractor represents and warrants to Authority that, as of the date of this Third 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 Contractor that, as of the date of this Third Amendment, Contractor 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 Third 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.

IN WITNESS WHEREOF, the Housing Authority of the County of San Bernardino and Advanced Environmental Landscape Corp.

**ADVANCED ENVIRONMENTAL
LANDSCAPE CORP.**

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

By: _____

By: _____

Name: _____

Name: Maria Razo

Title: _____

Title: Executive Director

Date: _____

Date: _____

Exhibit A-1

Schedule Dates:

Effective Date: May 11, 2022

Completion Date: April 30, 2023

Total Agreement Cost: Not to exceed \$814,314.00

Original Agreement Amount Not to Exceed	\$519,160.00
Net Change Orders Previously Approved	\$0.00
Net Change Order Previously Approved – Amendment #1	\$0.00
Net Change Order Previously Approved – Amendment #2	\$15,574.00
Net Change Order – Amendment #3	\$279,580.00
Agreement Value as Amended Not to Exceed	\$814,314.00

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

May 10, 2022

FROM

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

SUBJECT

Approve various agreements and documents to facilitate construction of the Valencia Grove Phase II affordable housing project

RECOMMENDATION(S)

1. Adopt a Resolution No. 146 to:
 - a. Authorize the Housing Authority of the County of San Bernardino to enter into a Loan Agreement, Ground Lease Agreement, Agreement to Enter Into a Housing Assistance Payment contract with Valencia Grove II, LLC, Completion Guaranty with Cathay Bank, and Amended Disposition Agreement with HUD for the construction of the Valencia Grove Phase II Affordable Housing Project; and
 - b. Authorize the Executive Director to act, in consultation with Legal Counsel, on behalf of the Housing Authority of the County of San Bernardino in its capacity as Member of Valencia Grove II, LLC with regard to any action requiring a unanimous vote of the Members as delineated under Article 7 of the Operating Agreement of the LLC.
 - c. Authorize the Executive Director of the Housing Authority of the County of San Bernardino, upon consultation with Legal Counsel, to make modifications, execute and deliver the Loan Agreements, Ground Lease Agreement, Agreement to Enter Into a Housing Assistance Payment contract, Completion Guaranty, Amended Disposition Agreement, and the ancillary documents for each necessary to carry out and close the transaction.
2. Direct the Executive Director of the Housing Authority of the County of San Bernardino to transmit all documents and amendments to the Secretary within 30 days of execution.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

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

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

FINANCIAL IMPACT

Phase II of the Valencia Grove affordable housing development will result in the development of 104 multifamily housing units affordable to low-income families at or below 80% Area Median Income (AMI) at a cost to HACSB of approximately \$186,000 per unit. Leasing to families at or below 80% of the AMI meets the requirements of HUD's public housing disposition approvals for this development. The Housing Authority of the County of San Bernardino (HACSB) will use proceeds from leveraging existing HACSB owned developments to fund a below market interest rate loan in a total loan amount of \$11,745,000. . HACSB has planned for the funding to support the Redlands Lugonia Redevelopment plan by leveraging the value of several properties within HACSB's real estate portfolio, therefore approving this action will not change the HACSB FY 2022 budget.

Approve various agreements and documents necessary to facilitate construction of the Valencia Grove Phase II affordable housing project
May 10, 2022

BACKGROUND INFORMATION

Valencia Grove, formally known as the Redlands Lugonia public housing site located in the City of Redlands, is a 1942 Public Housing development that originally consisted of 115 units. HACSB has been pursuing a vision to demolish the old Public Housing and develop 238 residential rental and homeownership units. In the previous construction phase, 85 new affordable housing rental units were built. Phase II construction will include 104 new multi-family rental units affordable to families at or below 80% of the area median income (AMI). The final construction phase (phase III) will include 39 detached single-family homes available for sale to families at or below 120% AMI. Approval of this item will allow the project to proceed to construction of Phase II.

Phase II Financing Plan

On September 14, 2021, the Board of Commissioners approved Resolution No. 2021-121, which authorized certain acts and approved certain agreements relating to the Valencia Grove phase II project. The Resolution authorized formation of a Limited Liability Company called Valencia Grove II, LLC (the LLC), of which Housing Partners I, Inc. (HPI), HACSB's affiliate nonprofit, will serve as Managing Member, for the specific purpose of constructing and subsequently owning and managing a 104 unit multifamily rental complex on the Valencia Grove phase II parcel. The approval described HACSB's intent to ground lease the project site to the LLC. Associated with that ground lease being recommended for approval today, the action also authorizes a ground lease loan to the LLC at the market value of the land (\$7,600,000 including prepaid permits and fees).

The original Disposition Agreement as approved by HUD in 2012, allows redevelopment of the former Redlands Lugonia Public Housing site utilizing a long-term ground lease directly to HPI at \$1 dollar per year. This anticipated a financing utilizing Low Income Housing tax credits (as done with Phase 1). Since it is the intent for the Phase II development to utilize alternative (conventional) financing that is much less restrictive, we propose to amend the Disposition Agreement with HUD to reflect such, as well as amend the bedroom mix to reflect market demand and to facilitate the transfer of the land to the LLC via a long-term ground lease secured by a land lease loan at current appraised value.

On March 8, 2022, the Board of Commissioners approved the refinancing of four (4) existing rental properties within HACSB's existing housing portfolio. The approval described HACSB's intent to utilize excess cash proceeds generated by the refinancing to support the Valencia Grove Phase II project. Today's action authorizes a below market interest rate loan to be made by HACSB to the LLC which includes approximately \$7 million funded with proceeds of that refinancing, \$1.13 million from the pending sale of three (3) single family homes (item #19 on today's agenda), \$1.615 Million from the refinance of the Summit Place property in 2020, and \$2 million from the pending refinance of the Vista Del Sol property being completed by HPI. The aggregate total amount for the Below Market Interest rate loan is therefore \$11.745 million. Including the land lease loan, HACSB's overall financial commitment to the project is \$19.345 million (\$186,000 per unit).

The LLC has been actively seeking a financial structure that reduces the very high overall development costs which is all too common for affordable housing. While HACSB's proposed cash/equity contribution to the Valencia Grove phase II project is substantial, the goal has been

Approve various agreements and documents necessary to facilitate construction of the Valencia Grove Phase II affordable housing project
May 10, 2022

to arrive at a structure which not only reduces total development cost, but also provides a return on investment to HACSB. Most current affordable housing development projects (such as under the Low Income Housing Tax Credit (LIHTC) program) require multiple layers of cash contribution from local government jurisdictions that isn't expected to ever be repaid. To avoid that result, the LLC has arrived at a financial structure for Valencia Grove phase II that does, in fact, allow the opportunity for HACSB to at least recoup a portion of the cash investment upon occupancy and stabilization of the project and conversion of the construction loan to permanent.

The LLC's proposed financing for Valencia Grove phase II utilizes a "Variable Rate Demand Obligation" (VRDO), which will be funded via the issuance and sale of bonds. The bonds may either be taxable or tax-exempt. If the development team deems it in the best interest of the project for the bonds to be tax-exempt, then HACSB will be the issuer of the bonds. In either case, the VRDO is a long-term municipal bond which can be offered to investors through money-market funds. The VRDO allows the LLC to borrow money for long periods of time while paying short-term interest rates to investors. Because money market interest rates, such as the bank prime rate, are variable over time, the interest rate applicable to a VRDO is variable as well. Every time the prevailing money market rate changes, a VRDO's interest rate is adjusted accordingly. To mitigate the interest rate risk, an interest rate "cap" will be purchased which the interest rate will never exceed. As the name implies, VRDOs are payable on demand. This means that the investor or lender of the funds can request a repayment of the entire debt amount at his or her discretion, and the funds must be repaid once the demand has been made. Once repaid, the VRDO is remarketed and sold to other investors. To mitigate the risk of default in meeting the repayment demand, VRDO Issuers employ credit enhancements through letters of credit (LOCs) from a highly rated financial institution. In this case, the LLC will utilize Cathay Bank to provide the LOC, under which Cathay Bank guarantees to make the ongoing timely payment of interest and repayment of principal upon demand. To further mitigate risk, since Cathay Bank is a member of the Federal Home Loan Bank (FHLB), FHLB itself will provide a "Standby" Letter of Credit to back-up Cathay Bank's guaranty. Such credit enhancement equates to a near triple-A rating for the underlying bonds, which is very attractive to investors.

As was the case with Valencia Grove phase I, the lender for phase II (Cathay Bank) is requesting that HACSB provide a Completion Guaranty for the project. A Completion Guaranty, sometimes called a "cost overrun guaranty", is an agreement under a construction loan, in which a completion guarantor promises the project being financed will be completed even if the borrower defaults on the loan. As the "parent" organization of HPI, this is something HACSB has done in the past for multiple projects.

The primary intent of utilizing this form of financing for Valencia Grove phase II is first, to minimize the total development cost, and second, to maximize HACSB's ability to recoup as much as possible of the initial cash investment necessary to complete construction. Accordingly, this structure limits repayment of the construction loan to interest only for the construction /stabilization period (2 Years) and then allows an additional 2 year period before conversion to permanent financing. This additional period (which includes a "cap" that the variable interest rate can't exceed) will allow the LLC time to fully evaluate different alternatives in order to maximize the permanent loan to allow repayment of as much as possible of HACSB's original cash investment.

Approve various agreements and documents necessary to facilitate construction of the Valencia Grove Phase II affordable housing project
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Total construction sources for the project are shown in the table below. Land Value and other “sunk” costs, including predevelopment A&E and prepaid permits and fees that occurred prior to transfer of the land to the LLC have been excluded.

CONSTRUCTION SOURCES	AMOUNT	CONSTRUCTION USES	AMOUNT
Cathay Bank Letter of Credit (Tax-Exempt VRDO)	\$18,665,000	Direct Construction Costs	\$28,795,554
HACSB Capital Loan	\$11,745,000	Indirect Costs (A&E Construction Admin, Insurance, bonds & Misc. Fees)	\$ 1,890,140
HPI Capital Loan	\$ 2,000,000	Financing Costs	\$ 1,724,306
Total	\$32,410,000		\$32,410,000

Total development cost of the project excluding the land value equals \$32,410,000. The cost per unit for construction is therefore \$311,635 and includes the development of 104 units with related sitework on the Phase II parcel only, as all offsite construction required by the City of Redlands to support the overall Valencia Grove development (retention basin, street improvements, etc.) was already completed with phase I.

Principal Documents required for Construction Loan Closing

The following principal documents are required to be executed on behalf of HACSB: Ground Lease and Ground Lease Loan Agreements (between HACSB and the LLC in its respective capacities as Property Owner (Lessor) and Property Developer (Lessee) (attached); Development Loan Agreement (between HACSB and the LLC in its respective capacities as Lender and Borrower); Agreement to Enter Into a Housing Assistance Payments (AHAP) contract (between HACSB and the LLC in its respective capacities as Contract Administrator and Owner); Completion Guaranty (between HACSB and Cathay Bank in its respective capacities as Completion Guarantor and Lender) (attached); and Amended Disposition Agreement between HACSB and HUD, which is currently being prepared at the request of HACSB staff in coordination with the local HUD office. Certain other miscellaneous documents and certificates associated with the above Agreements are expected to be executed by HACSB in furtherance of the financing (Deeds of Trust, Regulatory Agreement, Subordinations, Assignments, etc.). At the time of docketing, the principal documents in substantially final form will be presented to HACSB. Any changes to the documents following HACSB approval will require the consent of HACSB Legal Counsel.

Ground Lease and Ground Lease Loan Agreements: HACSB will lease approximately 8 acres of the former Redlands Lugonia public housing site in Redlands to the LLC developing Phase II (104 units) of the Valencia Grove rental housing development for a term of ninety (90) years. The lease

Approve various agreements and documents necessary to facilitate construction of the Valencia Grove Phase II affordable housing project
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shall be financed by a Ground Lease Loan in the amount of \$7,600,000 representing the current appraised value of the leased premises (including prepaid fees and permits).

Development Loan Agreement: HACSB will provide a capital loan to the LLC in the amount of \$11.745 million for the purpose of assisting in the construction of the project. The loan will be a below market interest rate, residual receipts loan with a 55 year term and will be subordinate to the permanent bond loan. An associated Regulatory Agreement will be recorded requiring that the housing remain affordable to low-income (at or below 80% AMI) families over the term.

AHAP Contract: HACSB will enter into an AHAP contract with the LLC, as required by the U.S. Department of Housing and Urban Development (HUD) to provide long-term rental assistance in the form of Project-based housing choice vouchers for 8 of the 104 housing units to be constructed. The AHAP contract provides the terms and conditions for receipt of HUD rental subsidies over a twenty (20) year term (renewable for an additional 20 years). These project based vouchers were received by HUD for this development as tenant protection vouchers and have been reserved for this development as per the commitment to HUD.

Completion Guarantee: HACSB will execute a Completion Guaranty in favor of Cathay Bank whereupon HACSB will serve as guarantor that the project being financed is completed even upon default of the LLC (borrower).

Amended Disposition Agreement: HACSB will amend the Disposition Agreement with HUD to revise the bedroom mix to reflect market demand, allow financing other than LIHTC, and revise terms of the ground lease to facilitate the transfer of the Valencia Grove Phase II property to the LLC via a lease valued at current appraised value.

PROCUREMENT

Not Applicable

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on May 3, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022- 146

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO AUTHORIZING CERTAIN ACTS AND APPROVING CERTAIN AGREEMENTS RELATING TO VALENCIA GROVE PHASE II AFFORDABLE HOUSING PROJECT

On Tuesday, _____, 20____, on motion of Commissioner _____, duly seconded by Commissioner _____ and carried, the following resolution is adopted by the Board of Commissioners of the Housing Authority of the County of San Bernardino.

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

WHEREAS, Housing Partners I, Inc. (HPI) is a California 501(c)(3) tax exempt nonprofit public benefit corporation formed to assist the Authority in providing affordable housing; and

WHEREAS, the Authority and HPI formed a California Limited Liability Company to undertake the development of the Valencia Grove Phase II project consisting of one hundred four (104) affordable rental housing units (the "Project"); and

WHEREAS, The Authority is the owner of the former Redlands Lugonia Public Housing site which consists of approximately 20 acres at the Northeast corner of Lugonia Avenue and Orange Street in the City of Redlands, San Bernardino County (the "Project site"); and

WHEREAS, HPI is acting as Managing Member of Valencia Grove II LLC, a California limited liability company, (the "LLC") formed to develop, own, and operate the Project; and

WHEREAS, the Authority is also a Member of the LLC; and

WHEREAS, the Authority will convey a leasehold interest in a portion of the Project site to the LLC by execution of a long-term ground lease for development of the Project; and

WHEREAS, the Authority will allow easements for right of way, utilities and reciprocal use to be established at the Project site to facilitate development of the Project; and

WHEREAS, the Authority will provide loans to the LLC in an aggregate amount not to exceed nineteen million, three hundred forty five thousand dollars (\$19,345,000) (the "Development Loans") for development of the Project; and

WHEREAS, the Authority received approval from the United States Department of Housing and Urban Development ("HUD") for the Demolition and Disposition of the former Redlands Lugonia Public Housing development (the "HUD Disposition Agreement"), whereupon HUD also awarded the Authority with an allocation of tenant protection vouchers to support replacement of the former public housing units, as a result of which the Authority will commit eight (8) Project-Based Vouchers (PBV) to the Project; and

WHEREAS, the Authority will request that HUD amend the Demolition and Disposition Agreement to reflect that the land lease will be conveyed to the LLC pursuant to a land lease loan valued at the current appraised value of the land, that the development may utilize financing other than low income housing tax credits for construction and that bedroom sizes of units to be developed will be adjusted to reflect market demand for respective bedroom sizes; and

WHEREAS, as part of the PBV commitment the Authority is required to enter into certain documents evidencing the PBV commitment including but not limited to an Agreement to Enter Into a Housing Assistance Payments Contract (AHAP).

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing Authority of the County of San Bernardino, as follows:

Section 1. The above recitals are true and correct, and the Board of Commissioners of the Housing Authority so finds and determines.

Section 2. The Executive Director of the Housing Authority of the County of San Bernardino (the "Authorized Officer") is hereby authorized and directed, for and in the name of the Housing Authority acting in its capacity as member of the LLC, to vote on and approve, in consultation with Legal Counsel, any action requiring unanimous Vote of the Members as delineated under Article 7 of the Operating Agreement of the LLC.

Section 3. The Development Loan Agreement, in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the Development Loan Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Development Loan Agreement by the Authorized Officer.

Section 4. The documents ancillary to the Development Loan Agreement, including the Promissory Note, Deed of Trust and Regulatory Agreement, in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the documents ancillary to the Development Loan Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the documents ancillary to the Development Loan Agreement by the Authorized Officer.

Section 5. The Ground Lease Agreement, in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the Ground Lease Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Ground Lease Agreement by the Authorized Officer.

Section 6. The Ground Lease Loan Agreement, in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the Ground Lease Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Ground Lease Agreement by the Authorized Officer.

Section 7. The documents ancillary to the Ground Lease Loan Agreement, including the Promissory Note and Deed of Trust, in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The

Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the documents ancillary to the Ground Lease Loan Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the documents ancillary to the Ground Lease Loan Agreement(s) by the Authorized Officer.

Section 8. The AHAP, in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the AHAP in the form on file with the Secretary of the Board, with such changes, insertions and omissions as HUD or the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the AHAP by the Authorized Officer.

Section 9. The second amendment to the HUD Disposition Agreement for the land identified as CA019000150 (future known as Valencia Grove) in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the second amendment to the HUD Disposition Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as HUD or the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the documents(s) by the Authorized Officer.

Section 10. The documents ancillary to the HUD Disposition Agreement, as may be required by HUD, including the Releases of Declarations of Trust, the HUD Use Agreement, and HUD Subordination Agreements, in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the documents ancillary to the HUD Disposition Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as HUD or the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the documents(s) by the Authorized Officer.

Section 11. The Reciprocal Easement Agreement, in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the Reciprocal Easement Agreement in the form on file with the Secretary of the Board, with such changes, insertions and omissions as the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Reciprocal Easement Agreement by the Authorized Officer. The Authorized Officer is further authorized and directed, for and in the name of the Housing Authority, to execute and deliver additional Easement Agreements as may be required to establish rights of way, utilities and reciprocal use as necessary to facilitate the development of the Project, with such Easement Agreements as the Authorized Officer, in consultation with Legal Counsel, may approve, such approval to be conclusively evidenced by the execution of the Easement Agreements by the Authorized Officer. The Authorized Officer is further authorized and directed, for and in the name of the Housing Authority, to execute and deliver all Certifications and other documents as may be required to facilitate the development of the Project, with such Certifications and other documents as the Authorized Officer, in consultation with Legal Counsel, may approve, such approval to be conclusively evidenced by the execution of the Certifications and other documents by the Authorized Officer.

Section 12. The Bank Subordination Agreements and Assignments of Agreements as necessary to facilitate development of the project, in substantially the form on file with the Secretary of the Board and made a part hereof as though set forth in full herein, be and the same is hereby approved. The Authorized Officer is hereby authorized and directed, for and in the name of the Housing Authority, to execute and deliver the Bank Subordination Agreements and Assignments of Agreements in the form on file with the Secretary of the Board, with such changes, insertions and omissions as the Authorized Officer, in consultation with Legal Counsel, may require or approve, such requirement or approval to be conclusively evidenced by the execution of the Bank Subordination Agreements and Assignments of Agreements by the Authorized Officer.

Section 13. The Authorized Officer shall deliver to the Secretary of the Board of Commissioners an original of each of the Development Loan Agreement, documents ancillary to the Development Loan Agreement, Ground Lease Agreement, Ground Lease Loan Agreement, documents ancillary to the Ground Lease Loan Agreement, AHAP, second amendment to the HUD Disposition Agreement, documents ancillary to the HUD Disposition Agreement, Reciprocal Easement Agreement, Bank Subordination Agreements, and Assignments of Agreements within thirty (30) days of the full execution thereof.

Section 14. The Authorized Officer shall be authorized to execute any other form or document required by any lender, investor, regulator or other third party involved in the transaction, as long as the Authorized Officer and Legal Counsel determine that the substance of such document does not materially conflict with the substance and intent of this Resolution.

Section 15. The Authorized Officer shall be authorized to advance funds under the Development Loan Agreement in an amount not to exceed \$500,000 to cover necessary deposits and/or fees including, but not limited to, Bank commitment fees, Credit Enhancement fees, Rate-Lock fees and other associated costs of the financing as required prior to financial closing.

Section 16. All actions heretofore taken by the officers, employees and agents of the Authority toward finalizing the Ground Lease, Development Loan Agreement, including the Promissory Note, Deed of Trust and Regulatory Agreement and all related agreements and activities with respect to the Valencia Grove Phase II Multifamily Rental Housing Project are approved, confirmed and ratified.

Section 17. 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:

* * * * *



MEMORANDUM

DATE: May 10, 2022

TO: Board of Commissioners of the Housing Authority of the County of San Bernardino

FROM: Gus Joslin, Deputy Executive Director

SUBJECT: Staff Report/Detailed Project Summary for Various Board Actions related to financing of Valencia Grove Phase II

REQUESTED ACTION

Approve various actions and agreements, including Capital Loan commitment in the approximate amount of \$11,745,000 and (if required) issuance of Housing Authority of the County of San Bernardino tax-exempt multifamily housing revenue bonds up to \$19 million (the Bonds) for the construction of Phase II of the Valencia Grove multifamily affordable housing development (the Project) located at the former Redlands Lugonia public housing site at Lugonia Ave. and Orange Street in the City of Redlands.

STAFF RECOMMENDATION

That the Board of Commissioners (the Board) of the Housing Authority of the County of San Bernardino (HACSB) approve the capital loan commitments and issuance of the Bonds (if required) to fund construction of the Project.

Background

The proposed bond issuance will support the next (second) construction phase of Valencia Grove, which will add 104 affordable rental housing units. The Borrower is Valencia Grove II, LLC (the LLC), whose Managing Member is Housing Partners I, Inc (HPI - HACSB's affiliate nonprofit), the project developer. Valencia Grove is HACSB's 228-unit, new construction mixed-income rental housing/homeownership development which reconstructs the former Redlands Lugonia public housing site located at the northeast corner of Lugonia Avenue and Orange Street in the City of Redlands. In partnership with HPI, HACSB has successfully been transforming the former 115-unit public housing site, which HACSB has owned and managed since 1941. In March 2016, the first development phase of Valencia Grove was completed and commenced occupancy. It is located at the western half of the site and consists of 85 affordable apartment homes. Phase I achieved full occupancy almost immediately upon completion since many previous residents of the former Redlands Lugonia site returned to the newly constructed units.

Variable Rate Construction Financing

The LLC's proposed financing for the Project utilizes a "Variable Rate Demand Obligation" (VRDO), which will be funded via the issuance and sale of tax-exempt bonds by HACSB. The VRDO is therefore a long-term municipal bond which can be offered to investors through money-market funds. This allows the LLC to borrow money for long periods of time while paying short-term interest rates to investors. Because money market interest rates, such as the bank prime rate, are variable over time, the interest rate applicable to a VRDO is variable as well. Every time the prevailing money market rate changes, a VRDO's interest rate is adjusted accordingly. To mitigate the interest rate risk, a "cap" will be purchased which is an amount that the interest rate will never exceed. Under a VRDO, the Issuer utilizes a Remarketing Agent/Underwriter (the Agent) who is a municipal securities dealer that sets the interest rate for a variable rate issue and is responsible for selling the securities to investors. The Agent receives a fee for these services that is paid with proceeds of each transaction.

As the name implies, VRDOs are payable on demand. This means that the investor or lender of the funds can request a repayment of the entire debt amount at his or her discretion, and the funds must be repaid once the demand has been made. Once repaid, the VRDO is remarketed by the Agent and sold to other investors. To mitigate the risk of default in meeting the repayment demand, VRDO Issuers employ credit enhancements through letters of credit (LOCs) from a highly rated financial institution. In this case, the LLC will utilize Cathay Bank to provide the LOC, under which Cathay Bank guarantees to make the ongoing timely payment of interest and repayment of principal upon demand. To further mitigate risk, since Cathay Bank is a member of the Federal Home Loan Bank (FHLB), FHLB itself will provide a "Standby" Letter of Credit to back-up Cathay Bank's guaranty. Such credit enhancement equates to a near triple-A rating for the underlying bonds, which is very attractive to investors.

The Bonds will be issued (securities sold by the Agent) over time to fund construction draws as requested by the developer. Additionally, the capital loans from HACSB and HPI will be utilized first to fund the initial stages of construction to minimize the period of time that interest will be payable on the bonds. In other words, the VRDOs will not be sold until well into the construction project (6-12 months), and only enough to fund individual construction draws as coordinated with the construction schedule. Upon construction completion and stabilized occupancy of the site, the loan will be converted to a permanent loan held by Cathay Bank. Security for the bonds includes a first lien and pledge of revenues of the Project (upon completion), the Project itself (in the form of a note and deed of trust), and completion guaranties as required by the lender. Other than the capital loans provided by the HPI and HACSB, no other funds of HACSB are pledged as security or otherwise obligated for the Bonds or the Project.

The Project – Use of Bonds Proceeds & Justification for Borrowing

The planned development phases at Valencia Grove are part of a broader strategy to stimulate economic and development activity in the surrounding neighborhood through creation of a mixed income community. The Project includes development of 104 multi-family units with primary funding from proceeds of tax-exempt bonds issued by HACSB. 100% of the 104 units will be affordable to families at or below 80% of the Area Median Income (AMI), with 8 of those units

affordable for families at or below 30% AMI, and 1 manager's unit. Residents will share common area amenities including playgrounds/tot lots, barbeque picnic areas, dual functioning park/detention basin for on-site water retention and the 5000 square foot community center housing the leasing office and community space for social services and resident activities which opened with phase I.

The Project includes sixteen (16), 2-story buildings and includes 24 1-BRM, 51 2-BRM, 18 3-BRM, and 11 4-BRM units. The respective square footage of the units is 858 SF for one bedroom units, 928 and 1,160 SF for the two bedroom units, 900 and 1135 SF for the three bedroom units and 1515 and 1700 SF for the four bedroom units. The affordability will range from 30% - 80% AMI.

The Project will include long-term rental subsidies in the form of eight (8) Project-Based Housing Choice Vouchers (PBV) funded by HUD and administered by HACSB. The PBV allows families with incomes at or below 30% of AMI to reside at the site. Additional financing leveraged with the bonds includes capital loans from both HACSB and HPI. The financing contributions committed from HACSB and HPI are based on the funding necessary to eliminate the financial gap (See Financing Structure). Included in this submittal for your information is the detailed breakdown (Attachment D) identifying the project's uses of funds for the construction period.

Prevailing Wages

The Project will be a development of Valencia Grove II LLC, as managed by HPI. Capital contributions made by HACSB will be sourced from non-federal, unrestricted local reserves accumulated primarily from equity secured from the refinancing of multiple properties owned by HACSB, and shall be in the form of below market interest rate loans where, pursuant to California Labor Code Section 1720 (c)(5)(E), the Project is not considered a public work and therefore not subject to prevailing wages.

Project Sustainability

The Project will comply with State of California's 2019 Energy Efficiency Standards as well as mandatory provisions of the 2019 CALGreen Code (Title 24, Part 11 of the California Code of Regulations). ENERGY STAR rated appliances will be standard.

Property Management

The Project will be managed by Beacon Property Management who is currently managing the Phase I site. Beacon is highly qualified, with over 20 years of property management experience. It currently manages over 1,200 affordable housing units under the HACSB/HPI portfolio throughout San Bernardino County.

The Property

The Project will be built on an 8 acre site comprising lot 41 of the new tract map 18762.2 for the redevelopment project (see attached site aerial map and Tract Map and site plan under Attachments B and C). The site is flat and cleared (old buildings and associated infrastructure have been demolished), with direct access from Lugonia (via 6th St.) and Orange (via E. Delaware St.).

Directly North of the site is Lugonia Elementary School. To the East is a vacant parcel of land bordered by a single-family home subdivision. To the South (across Lugonia) is a mix of commercial retail and single family homes. To the West (across Orange) is the headquarters of the Redlands Unified School District. The property includes Omnitrans Bus Stops on both Orange and Lugonia, two of the city's main thoroughfares. A Boy's and Girl's Club facility and a City of Redlands Senior Center are within walking distance to the site.

Relocation

The site is completely vacant, with all original buildings, as well as former site infrastructure already demolished. The majority of original families occupying the former public housing site have either been relocated to other sites managed by HACSB, or moved into the new Phase I portion of the site once it was completed in 2016.

Public Benefit – Affordable Housing Impact

100% of the Project's 104 units (excluding 1 manager's unit) will be affordable to families with income levels at or below 80% of AMI. 8 of the affordable units will continue to be subsidized by HACSB with Project-based housing choice vouchers. Income levels required of families in order to live in the Project's affordable units, begins at \$0 to qualify for a rental assisted (voucher) unit, to \$31,290, which is the maximum income for a 4 bedroom unit at 30% AMI in San Bernardino County for an eight-person household, to \$83,440, which is the maximum income for a 4 bedroom unit at 80% AMI in San Bernardino County for an eight-person household.

The Borrower agrees to maintain affordability of the Project for a term of 55 years under a Tax Regulatory Agreement, and agrees to pay HACSB an annual fee to monitor compliance with such terms.

Affordable monthly rent amounts for the various unit types and income levels to continue to be assisted by HACSB are delineated in the following table:

Affordability and Monthly Estimated Rent Table (8 voucher units)

<i>UNIT TYPE</i>	<i>% AMI</i>	<i># OF UNITS</i>	<i>PROPOSED RENTS *</i>	<i>HACSB RENT SUBSIDY**</i>	<i>TOTAL RENT unit/mo.</i>	<i>TOTAL Collected RENT/Mo.</i>
1 Bedroom	80%	24	\$1,155	-	\$1,155	\$27,720
2 Bedroom	80%	51	\$1,372	-	\$1,372	\$69,972
3 Bedroom	80%	17	\$1,574	-	\$1,574	\$26,758
4 Bedroom	80%	3	\$1,744	-	\$1,744	\$ 5,232
	30%	8	\$ 597	\$2,363	\$2,960	\$23,680
3 Br-Mgr		1			0	0
*Rents are net of Utility Allowance: 1BR - \$30, 2BR - \$50, 3BR - \$70, 4BR - \$90 ** Project-Based Housing Choice Voucher subsidy for 8 units						\$153,362

Principal Parties in the Transaction

The Project is a development of Housing Partners I, Inc. (HPI - the nonprofit affiliate of HACSB) who will serve as managing member of the Borrower, and HACSB. This team has successfully completed the first phase of the revitalization of the Redlands Lugonia neighborhood, with 85 units at Phase I opening in March 2016. Total development cost of the first phase was approximately \$32 million, funded primarily through a combination of 4% tax credits and tax exempt bonds issued by HACSB.

Established by HACSB in 1991, HPI has developed over 1,200 affordable housing units across the county, often utilizing HOME funding awarded by the County of San Bernardino. Recent projects: In 2016 HACSB and HPI completed the Valencia Grove I project, an 85 unit affordable family development, which was the first phase of HACSB's redevelopment of the county's oldest (1941) public housing site at the corner of Orange and Lugonia in the City of Redlands. In 2017, they also completed a 50 unit senior affordable housing project in the City of Yucaipa. Both projects were funded with 4% tax credits and tax-exempt bonds issued by HACSB. The HACSB/HPI team has also been participating as a partner with National Community Renaissance in the first three (3) phases of the Arrowhead Gove project which to date has produced over 320 new housing units at (or adjacent to) the former Waterman Gardens public housing site in San Bernardino. The first phase completed in 2016, while the most recent (phase 3) was just completed in 2021.

Sources and Uses of Financing

The estimated total development cost (TDC) of Valencia Grove Phase II is \$32,410,000 for 104 units. The construction financing sources and uses are summarized below. Land value and other "sunk" costs, including predevelopment A&E and prepaid permits and fees that occurred prior to transfer of the land to the LLC have been excluded. The development team's detailed breakdown of complete use of funds is provided as Attachment D.

CONSTRUCTION SOURCES	AMOUNT	CONSTRUCTION USES	AMOUNT
Cathay Bank Letter of Credit (Tax-Exempt VRDO)	\$18,665,000	Direct Construction Costs	\$28,795,554
HACSB Capital Loan	\$11,745,000	Indirect Costs (A&E Construction Admin, Insurance, bonds & Misc. Fees)	\$ 1,890,140
HPI Capital Loan	\$ 2,000,000	Financing Costs	\$ 1,724,306
Total	\$32,410,000		\$32,410,000

With total development cost at \$32,410,000, The cost per unit for construction is therefore \$311,635 and includes the development of 104 units with related sitework on the Phase II parcel

only, as all offsite construction required by the City of Redlands to support the overall Valencia Grove development (retention basin, street improvements, etc.) was already completed with phase I.

Future Considerations as related to Permanent Financing after Project Stabilization

While it's difficult to project today, it is expected that multifamily housing rent will continue to trend upward for the foreseeable future, especially given the general lack of available rental housing in the Inland Empire region. Given that likelihood, it is reasonable to anticipate that after construction completion (2 years ahead), that potential cash flow from operating the new project will have increased from today's numbers to a point that additional debt can be supported. HACSB might also have received additional rental subsidy allocations that could potentially be added to the project at a future date. This is one of the reasons that the project team has pursued the specific type of financing proposed today. While a typical affordable housing financing is structured at the outset such that tax credit equity investors control all project rent revenues used to service the debt for an automatic 15 year compliance period (as mandated by the IRS), our proposed structure allows the opportunity to structure a new permanent loan after occupancy and stabilization that takes advantage of increased rent revenue to service a new loan that may partially pay down the capital contributions of HACSB/HPI. The following table describes how rent revenues might change based simply on increasing rents to more closely match the local voucher payment standard applicable to the City of Redlands.

Affordability and Monthly Estimated Rent Table

<i>UNIT TYPE</i>	<i># OF UNITS</i>	<i>TENANT PORTION @ 80% AMI</i>	<i>HACSB RENT SUBSIDY</i>	<i>TOTAL RENT unit/mo.</i>	<i>TOTAL Collected RENT/Mo.</i>
1 Bedroom	24	\$1,155	\$270	\$1,425	\$34,200
2 Bedroom	51	\$1,372	\$293	\$1,665	\$84,915
3 Bedroom	17	\$1,574	\$706	\$2,280	\$38,760
4 Bedroom	11	\$1,744	\$996	\$2,740	\$30,140
3 Br-Mgr	1			0	0
Total Collected Rent.....					\$188,015..
Original Projected Rents.....					\$153,362..

In the above scenario, rents would be projected to increase by approximately 22.5%. Therefore, an equivalent increase in loan amount would generate approximately \$4.2 million in additional loan proceeds available to pay down HACSB's capital loan. These funds could then be directed to future development projects in the pipeline.

Summary of Principal Bond Documents to be Approved by the Board

As described on page 2 under “Variable Rate Construction Financing”, the LLC’s proposed financing for the project utilizes a “Variable Rate Demand Obligation” (VRDO), which will be funded via the issuance and sale of bonds. The bonds may either be taxable or tax-exempt. If the development team deems it in the best interest of the project for the bonds to be tax-exempt, then HACSB will be the issuer of the bonds. In that event, the following principal bond documents are required to be executed on behalf of the Housing Authority: Bond Trust Indenture, Official Statement, Purchase Contract, Credit Enhancement Agreement, Reimbursement Agreement, Disclosure Agreement, Regulatory Agreement. Certain other miscellaneous documents and certificates are expected to be executed by HACSB in furtherance of the financing. At the time of docketing, the principal bond documents in substantially final form will be presented to HACSB. Any changes to the documents following HACSB approval will require the consent of HACSB counsel and bond counsel.

Bond/Trust Indenture.

The bond/trust indenture is a contract between a trustee, usually a bank, the bondholders, and the issuer. The bond/trust indenture is the most important of the bond documents and includes the form of the bonds. It establishes the security, interest rate, maturity, bondholder rights and remedies in case of a default. The issuer and the trustee each are bound by the terms of the bond/trust indenture. The issuer promises to pay principal and interest on the bonds. The trustee holds all funds under the bond/trust indenture; pays principal and interest to bondholders; and acts for the bondholders in the event of a default.

Official Statement.

The Official Statement (OS) contains the final terms of the bonds. Under federal securities laws, the issuer is obligated to disclose in this document all information that a “reasonable investor” would consider important in deciding whether to purchase a bond. A Preliminary Official Statement (POS) , complete except for interest rates and maturities, is used to market and pre-sell the bonds.

Purchase Contract.

This is the agreement between the issuer and the underwriter in which the issuer agrees to sell the bonds to the underwriter, and the underwriter agrees to purchase the bonds from the issuer at a specified purchase price, typically principal plus accrued interest from the date of the bonds to the date of closing. The purchase contract sets forth the terms and conditions under which the underwriter will purchase the bonds. These provisions include provisions for various documents and opinions to be provided by parties to the financing at the closing, including any expected bond rating.

Credit Enhancement Agreement. (LOC)

The credit enhancement agreement describes how a third party insures or guarantees either the bonds or the issuer’s mortgage repayment obligation. In this case, Cathay Bank is providing the LOC under which the bank guarantees to make the ongoing timely payment of interest and repayment of principal upon demand.

Reimbursement Agreement or Letter of Credit Reimbursement Agreement

The Reimbursement Agreement describes the terms under which the Bank providing the LOC is reimbursed funds advanced from it. It typically contains provisions indicating how bonds will be amortized and draws under the LOC for: interest, principal, liquidity, etc.

Disclosure Agreement.

The disclosure agreement provides for the borrower in a conduit financing (as is this case), to agree to provide ongoing disclosure as required by Securities and Exchange Commission Rule 15c2-12

Other Documents

The Housing Authority is expected to execute miscellaneous certificates and receipts required in furtherance of the principal bond documents and in connection with the closing of the transaction.

Regulatory Agreement

A Regulatory Agreement will be executed by the Housing Authority and the borrower, and will be recorded against the property in order to ensure the long term use of the project as affordable housing and to ensure that the project complies with all applicable federal and California laws.

Summary Principal Documents required for Construction Loan Closing

The following principal documents are required to be executed on behalf of HACSB: Ground Lease and Ground Lease Loan Agreements (between HACSB and the LLC in its respective capacities as Property Owner (Lessor) and Property Developer (Lessee); Development Loan Agreement (between HACSB and the LLC in its respective capacities as Lender and Borrower); Agreement to Enter Into a Housing Assistance Payments (AHAP) contract (between HACSB and the LLC in its respective capacities as Contract Administrator and Owner); Completion Guarantee (between HACSB and Cathay Bank in its respective capacities as Completion Guarantor and Lender); and Amended Disposition Agreement between HACSB and HUD. Certain other miscellaneous documents and certificates associated with the above Agreements are expected to be executed by HACSB in furtherance of the financing (Deeds of Trust, Regulatory Agreement, Subordinations, Assignments, etc.). At the time of docketing, the principal documents in substantially final form will be presented to HACSB. Any changes to the documents following HACSB approval will require the consent of HACSB Legal Counsel.

Ground Lease and Ground Lease Loan Agreements:

HACSB will lease approximately 9 acres of the former Redlands Lugonia public housing site in Redlands to the LLC developing Phase II (104 units) of the Valencia Grove rental housing development for a term of ninety (90) years. The lease shall be financed by a Ground Lease Loan in the amount of \$7,600,000 representing the current appraised value of the leased premises (including prepaid fees and permits).

Development Loan Agreement:

HACSB will provide a capital loan to the LLC in the amount of \$11.745 million for the purpose of assisting in the construction of the project. The loan will be a below market interest rate, residual receipts loan with a 55 year term and will be subordinate to the permanent tax-exempt bond loan. An associated Regulatory Agreement will be recorded requiring that the housing remain affordable to low-income (at or below 80% AMI) families over the term.

AHAP Contract:

HACSB will enter into an AHAP contract with the LLC, as required by the U.S. Department of Housing and Urban Development (HUD) to provide long-term rental assistance in the form of Project-based housing choice vouchers for 8 of the 104 housing units to be constructed. The AHAP contract provides the terms and conditions for receipt of HUD rental subsidies over a twenty (20) year term (renewable for an additional 20 years).

Completion Guarantee:

HACSB will execute a Completion Guaranty in favor of Cathay Bank whereupon HACSB will serve as guarantor that the project being financed is completed even upon default of the LLC (borrower).

Amended Disposition Agreement:

HACSB will amend the Disposition Agreement with HUD to revise the bedroom mix to reflect market demand, allow financing other than LIHTC, and revise terms of the ground lease to facilitate the transfer of the Valencia Grove Phase II property to the LLC via a lease valued at current appraised value.

Development Schedule

The development timeline has progressed and is projected as follows:

<i>Milestones</i>	<i>Dates</i>
• Housing Authority capital and bond commitments	May 10, 2022
• Bond issuance and escrow closing	June 2022
• Start of construction	July 2022
• Completion of construction	June 2024
• Stabilized occupancy achieved	August 2024
• Conversion to permanent loan	August 2025

Fiscal Considerations

HACSB is committing \$11,745,000 in unrestricted capital funding and through a loan at appraised value, is contributing the land. HPI is committing \$2,000,000 in unrestricted capital funding.. HACSB and HPI loan commitments will be payable from residual receipts and will be subordinate to the Bonds (VRDO) and the eventual permanent loan.

The proposed funding sources and uses do not impact the HACSB Fiscal Year (FY) 2022 budget, therefore approving this action will not change the HACSB FY 2022 budget. Approving this action will result in the development of 104 affordable housing units at a cost of \$11,745,000 (\$112,932 per unit) to HACSB.

There are no other fiscal impacts to the Housing Authority associated with the requested capital loan and bond action. The bonds will not constitute a debt of HACSB. When bonds are ultimately issued for the project, the bonds will not financially obligate the Housing Authority because security for the repayment of the bonds will be limited to the specific private revenue sources of the multifamily housing development. Neither the faith nor credit of the Housing Authority will be pledged to the payment of the bonds. The developer is responsible for the payment of all costs under the financing, including the Housing Authority's annual affordability compliance monitoring fees.

Respectfully Submitted,



Gustav Joslin
Deputy Executive Director
Housing Authority of the County of San Bernardino

Attachments:

- A) Project Summary Tables
- B) Aerial & Tract Maps
- C) Site Plan
- D) Breakdown of Use of Funds

ATTACHMENT A PROJECT SUMMARY

Table 1 – Development Details

Address	Lugonia Avenue and Orange Street, Redlands, CA
Supervisory District	3
Community Plan Area	Redlands Specific Plan 61
Development Type	New Construction
Construction Type	Type V
Parking Type	Surface
Housing Type	Multifamily
Parcel size	8.20 acres
Density	12.68 dwelling units per acre
Units	104 units
Unit Mix	24 – 1 br, 51 – 2 br, 18 – 3 br, 11 – 4 br
Gross Square Footage	148,388 square feet

Table 2 – Development Team Summary

ROLE	FIRM/CONTACT
Developer	Housing Partners I, Inc.
Owner	Valencia Grove II, LLC
Managing Member	Housing Partners I, Inc.
Member	Housing Authority of the County of San Bernardino
Architect	ONYX Architects
General Contractor	A & R Corporation
Property Management	Beacon Property Management
Construction Lender	Cathay Bank

Table 3 – Estimated Construction Sources & Uses

CONSTRUCTION SOURCES	AMOUNT	CONSTRUCTION USES	AMOUNT
Cathay Bank Letter of Credit (Tax-Exempt VRDO)	\$18,665,000	Direct Construction Costs	\$28,795,554
HACSB Capital Loan	\$11,745,000	Indirect Costs (A&E Construction Admin, Insurance, bonds & Misc. Fees)	\$ 1,890,140
HPI Capital Loan	\$ 2,000,000	Financing Costs	\$ 1,724,306
Total	\$32,410,000		\$32,410,000

Table 4 – Key Performance Indicators

Development Cost Per Unit	$\$32,410,000 \div 104 \text{ units} =$	\$311,635
HACSB Subsidy Per Unit	$\$11,745,000 \div 104 \text{ units} =$	\$112,932
HPI Subsidy Per Unit	$\$2,000,000 \div 104 \text{ units} =$	\$19,231
Gross Building Square Foot Hard Cost*	$\$28,795,554 \div 148,388 \text{ sq.ft.} =$	\$194/sf

*includes building related construction only (no demolition or offsites)

Table 5 – Comparable Development Projects

Project Name	Year	Units	Total Devt. Cost	Total Cost Per Unit	HACSB Subsidy per unit*	Residential Const Cost	Residential Const Cost per Unit
subject	2022	104	\$32,410,000	\$311,635	\$112,932	\$28,795,554	\$276,880
Crestview Terr.	2019	184	\$78,705,327	\$427,746	\$18,543	\$43,419,909	\$235,977
Olive Meadow	2017	62	\$25,689,938	\$414,354	\$22,984	\$12,843,721	\$207,156
Valencia Vista	2016	75	\$26,947,258	\$354,569	\$13,333	\$15,438,895	\$205,852

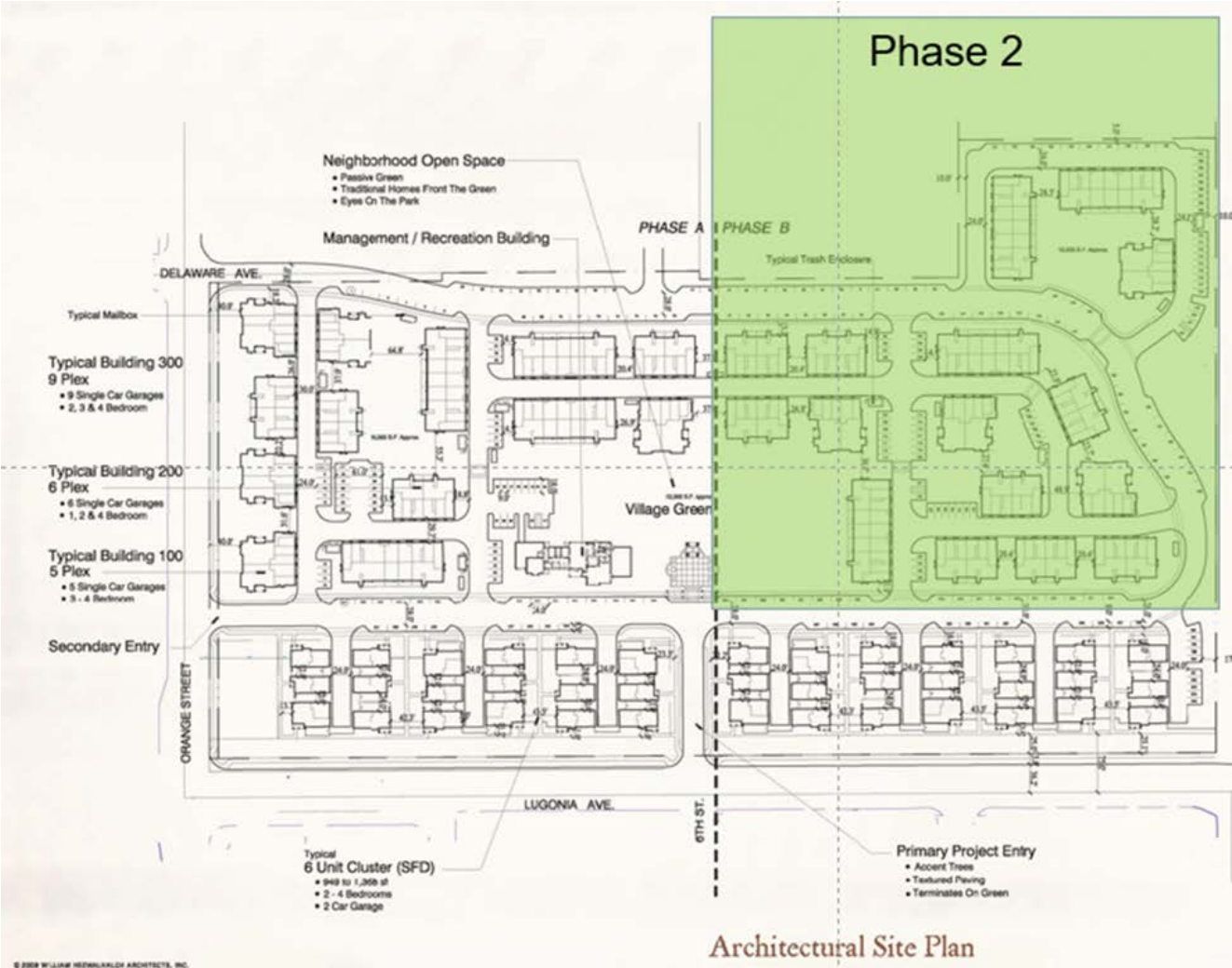
*capital commitment only (not including long term rental subsidies)

Table 6 –Affordability and Monthly Estimated Rent Table (8 voucher units)

UNIT TYPE	% AMI	# OF UNITS	PROPOSED RENTS *	HACSB RENT SUBSIDY**	TOTAL RENT unit/mo	TOTAL Collected RENT/Mo.
1 Bedroom	80%	24	\$1,155	-	\$1,155	\$27,720
2 Bedroom	80%	51	\$1,372	-	\$1,372	\$69,972
3 Bedroom	80%	17	\$1,574	-	\$1,574	\$26,758
4 Bedroom	80%	3	\$1,744	-	\$1,744	\$ 5,232
	30%	8	\$ 597	\$2,363	\$2,960	\$23,680
3 Br-Mgr		1			0	0
*Rents are net of Utility Allowance: 1BR - \$30, 2BR - \$50, 3BR - \$70, 4BR - \$90 ** Project-Based Housing Choice Voucher subsidy for 8 units						\$153,362

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ATTACHMENT 3: Phase II Site Plan



ATTACHMENT D: Breakdown of Use of Funds

DIRECT COSTS	
• Building Costs	\$ 24,051,077
• FF&E	28,080
• Construction Fee/Supervision	3,041,941
• Contingency – direct costs	1,674,456
Total Direct Costs	\$ 28,795,554
INDIRECT COSTS	
• Arch, Engineering, Consultants	\$ 895,000
• Permits & Fees	0
• Property Taxes	94,620
• Insurance & Bonds	652,670
• Marketing	97,850
• Miscellaneous	50,000
• Contingency – indirect Costs	100,000
Total Indirect Costs	\$ 1,890,140
FINANCING COSTS	
• Interest Reserve	\$ 769,185
• Bank Commitment Fee	94,522
• Bank Funding Control Fee	86,387
• Cost Review & Inspection Fees	19,800
• Credit Enhancement	680,000
• Hedge	50,000
• Title, escrow, closing	24,413
Total Financing Costs	\$ 1,724,306
TOTAL COSTS	\$ 32,410,000

**GROUND LEASE AGREEMENT
(Valencia Grove Phase II)**

THIS GROUND LEASE AGREEMENT ("Lease"), dated for reference purposes as of _____, 2022, is entered by and between the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body, corporate and politic ("Lessor"), and VALENCIA GROVE II, LLC, a California limited liability company ("Lessee").

RECITALS

A. Lessor owns that certain unimproved real property situated in Redlands, California, as more specifically described on Exhibit A attached to and incorporated in this Lease (the "Property").

B. The Leased Premises was formerly public housing as that term is defined in the United States Housing Act of 1937, 42. U.S.C.A. 1437 et seq.

C. Lessor applied to the United States Department of Housing and Urban Development ("HUD"), pursuant to Section 18 of the United States Housing Act of 1937 (42 U.S.C.A. 1437p) and its implementing regulations at 24 Code of Federal Regulation 970 et seq, for approval to dispose of the Leased Premises.

D. HUD granted the Lessor approval to dispose of the Leased Premises to the Lessee, on the condition that this Lease conforms to requirements contained in the disposition approval from HUD, as set forth in the approval letter from HUD dated March 2, 2012, as amended by a subsequent letter dated December 3, 2012 (the "HUD Approval Letters") and a Disposition Agreement between HUD and Lessor dated February 1, 2013 (the "Disposition Agreement"), and that Lessee operate the Development in accordance with the Use Agreement recorded against the Leased Premises and Lessor's Estate.

E. Lessee has agreed to construct a multifamily rental housing development on the Leased Premises to be known as Valencia Grove II Apartments.

F. Lessor desires to lease the Property to Lessee for a period of ninety-nine (99) years pursuant to the terms of this Lease.

G. Capitalized terms which are referred to and utilized throughout this Lease are defined in Article 1 of this Lease.

NOW, THEREFORE, for and in consideration of the foregoing premises, the covenants, representations, warranties and agreements set forth in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions.

For the purposes of this Lease, the following defined terms shall have the meanings ascribed to them in this Article 1:

(a) Acquisition Closing: The date on which the Memorandum of Lease is recorded against the Property and financing necessary for the construction of the Development is provided to Lessee, and any deeds of trust related to such financing, are recorded against the Development.

(b) Appraisal: That certain appraisal dated as of _____, prepared by _____, which, among other things, establishes the appraised value of the Leased Premises.

(c) Approved Development Plans: As defined in Section 3.2(a) of this Lease.

(d) Approved Financing: In addition to the Ground Lease Loan, the following loans, grants and equity obtained by Lessee and approved by Lessor for the purpose of financing the construction of the Development:

(1) A Variable Rate Demand Obligation (tax-exempt bonds) issued by Lessor and guaranteed by a Letter of Credit from Cathay Bank and enhanced by a Federal Home Loan Bank confirming Letter of Credit in the approximate amount of Eighteen Million Six Hundred Sixty Five Thousand Dollars (\$18,665,000), that is purchased by private investors and the sale proceeds of which are loaned to Lessee at interest only for an initial 4 year construction, lease-up and stabilization period converting to a fully amortizing permanent loan for an additional 11 year term;

(2) A below market interest rate loan from the Housing Authority of the County of San Bernardino in the approximate amount of Eleven Million Seven Hundred Thousand Dollars (\$11,745,000);

(3) A loan from Housing Partners I, Incorporated in the approximate amount of _____dollars_(\$__);

(4) A loan from HPI Property Acquisitions LLC in the approximate amount of Two Million dollars (\$2,000,000); and

(5)

(e) Casualty: As defined in Article 11 of this Lease.

(f) City: City of Redlands, California, a municipal corporation.

(g) Construction Contract: As defined in Section 3.2(c) of this Lease.

(h) Commencement Date: The date of the Acquisition Closing.

(i) Development: The Improvements and Lessee's Estate.

(j) Event of Default: As described in Article 12 of this Lease.

(k) Governmental Authorities: Any applicable federal, state or local governmental or quasi-governmental entities, subdivisions, agencies, authorities or instrumentalities having jurisdiction over the Leased Premises, the Improvements, Lessor or Lessee.

(l) Ground Lease Loan: That certain loan in the amount of Seven Million Six Hundred Thousand Dollars (\$7,600,000) provided by Lessor to Lessee to finance this Lease, evidenced by the Ground Lease Note, a deed of trust, and a regulatory agreement.

(m) Ground Lease Note: The promissory note evidencing Lessee's obligation to repay the Ground Lease Loan.

(n) Hazardous Materials or Hazardous Substances: Any oil or any fraction thereof or petroleum products or "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14) or Section 25281(h) or 25316 of the California Health and Safety Code at such time; any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time; any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.), at such time; and any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Leased Premises, but excluding any substances or materials used in the construction, development, maintenance or operation of the Improvements, so long as the same are used in accordance with all applicable laws.

(o) Hazardous Materials Law: All federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Leased Premises or any portion of the Leased Premises.

(p) Housing Improvements: The one hundred four (104) multifamily housing units including one (1) manager unit to be constructed on Lessee's Estate in sixteen (16) buildings, and related ancillary facilities including but not limited to parking and common spaces.

(q) HUD: As defined in Recital C.

(r) Impositions: All taxes including property taxes, assessments, water and sewer charges, charges for public utilities, excises, levies, license and permit fees and other charges that shall or may be assessed, levied or imposed during the Term by any Governmental Authorities upon the Leased Premises or any part of the Leased Premises, including the buildings or improvements now or later located on the Leased Premises; provided, however, that the term "Impositions" shall not include any income tax, capital levy, estate, succession, inheritance, transfer or similar taxes of Lessor, or any franchise tax imposed upon any owner of the fee of the Leased Premises, or any income, profits or revenue

tax, assessment or charge imposed upon the rent or other benefit received by Lessor under this Lease by any Governmental Authorities.

(s) Improvements: The Housing Improvements and any other improvements constructed by Lessee on the Leased Premises during the Term together with any and all replacements or substitutions or modifications to them.

(t) Leased Premises: That certain leasehold interest in the Property, together with all rights, easements, licenses, privileges and appurtenances attaching or in any way belonging to the Property.

(u) Lease Year: The initial Lease Year shall begin on the Commencement Date and shall end of December 31 of the calendar year in which the Commencement Date occurs. All subsequent Lease Years begin on January 1 and end on December 31.

(v) Legal Requirements: The Regulatory Agreements and all laws, statutes, codes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities and the appropriate agencies, officers, departments, boards and commissions, whether now or later in force, applicable to Lessor, Lessee, the Leased Premises, the Improvements, or any portion of them, to the extent so applicable.

(w) Lessee's Estate: Lessee's interest in the Leased Premises acquired pursuant to this Lease and any other interest in the Leased Premises later acquired by Lessee.

(x) Lessor's Estate: Lessor's fee estate in the Property.

(y) Maintenance Notice: As defined in Section 7.2(b) of this Lease.

(z) Management Agent: The Person designated from time to time as "Management Agent" of all or any portion of the Improvements under any management agreement entered into from time to time with Lessee.

(aa) Memorandum of Lease. The memorandum of the Lease to be recorded against the Leased Premises in the form attached hereto as Exhibit B.

(bb) Mortgage: Any mortgage, deed of trust, security agreement or collateral assignment executed in connection with Approved Financing for the Development, encumbering Lessee's Estate.

(cc) Mortgagee: The holder, mortgagee, grantee or secured party under any Mortgage and its successors and assigns.

(dd) Net Condemnation Award: The net amounts owed or paid to the Parties or to which either of the Parties may be or become entitled by reason of any Taking or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by the Parties in collecting such award or payment.

(ee) Official Records: The official land records of the County of San Bernardino.

- (ff) Offsite Improvements: As defined in 3.6 of this Lease.
- (gg) Operating Agreement: The agreement among Lessee's members that governs the operation and organization of Lessee as a California limited liability company.
- (hh) Option: The purchase option and right of first refusal anticipated to be set forth in a Purchase Option Agreement and Right of First Refusal Agreement between Lessor or an affiliate of Lessor, and Lessee, with respect to the Development.
- (ii) Party: Lessor or Lessee, as applicable. Lessor and Lessee shall be referred to collectively as the "Parties."
- (jj) Person: An individual, partnership, corporation, limited liability company, trust, unincorporated association, or other entity or association.
- (kk) Property: That certain tract of real property located in the City, upon which the Development is to be located and which is being leased to Lessee pursuant to this Lease, as described in the attached Exhibit A.
- (ll)
- (mm) Reciprocal Easement Agreement: As described in Section 3.7 of this Lease.
- (nn) Regulatory Agreements: Any recorded restrictions related to Approved Financing, and any regulatory or use agreement with HUD, and the Use Agreement, setting forth certain terms and conditions under which the Development will be operated.
- (oo) Rent: As described in Section 4.1 of this Lease.
- (pp) Taking: A taking during the Term of all or any part of the Leased Premises and/or the Improvements, or any interest in the Leased Premises and/or the Improvements or right accruing to the Leased Premises and/or the Improvements as a result of the exercise of the right of condemnation or eminent domain materially affecting the Leased Premises or any part of the Leased Premises. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking.
- (qq) Tenant(s): Any tenant, sublessee or licensee of Lessee under any Tenant Lease(s).
- (rr) Tenant Lease(s): Any lease or license agreement entered into by Lessee with residents of the Units.
- (ss) Term: The period of time described in Section 2.3 of this Lease.

(tt) Transfer: Any sale, assignment, transfer, conveyance, encumbrance, mortgage, or hypothecation, in any manner or form or any agreement to do any of the foregoing.

(uu) Unit(s): The one hundred four (104) residential units to be constructed on the Leased Premises.

(vv) Use Agreement: The Use Agreement dated _____, between Lessor and Lessee regarding the Development.

Section 1.2 Exhibits. The Exhibits referred to in this Agreement and attached to and incorporated in this Lease are:

Exhibit A: Legal description of the Property

Exhibit B: Memorandum of Lease

ARTICLE 2. LEASE OF THE LEASED PREMISES

Section 2.1 Leased Premises. Subject to the terms of this Lease and in consideration of the covenants of payment and performance stipulated in this Lease, beginning on the Commencement Date, Lessor does lease the Leased Premises to Lessee, and in consideration thereof, Lessee does take, hire and lease the Leased Premises from Lessor pursuant to the terms of this Lease.

Section 2.2 Possession. Lessor agrees to and shall provide possession of the Leased Premises to Lessee on the Commencement Date.

Section 2.3 Term. Unless sooner terminated pursuant to the provisions hereof, this Lease shall continue in full force and effect for a term ("Term"), commencing on the Commencement Date and expiring on the ninety-ninth (99th) anniversary of the Commencement Date.

Section 2.4 Memorandum of Lease. The Parties shall execute and acknowledge the Memorandum of Lease, in the form attached hereto as Exhibit B, which Lessee shall cause to be immediately recorded in the Official Records at Lessee's expense.

Section 2.5 Use of Development.

(a) Housing Improvements. Lessee shall, throughout the Term, continuously the Development only for the construction, development, operation, marketing for lease and leasing of the Housing Improvements, and such other uses as are reasonably and customarily attendant to such uses, subject to the Legal Requirements and this Lease. Further, Lessee agrees:

(1) not to use, or permit the use of, the Development for any

improper, immoral, unlawful or objectionable or offensive purpose, nor shall Lessee cause, maintain or suffer or permit any nuisance in, on or about the Development;

(2) at its sole cost and expense, to comply, and use commercially reasonable efforts to cause all Tenants to comply, in all material respects with all Legal Requirements, all Hazardous Materials Laws, this Lease and all insurance requirements, to the extent applicable, in their use and occupation of the Development; upon reasonable prior notice from Lessor, to take reasonable action, if necessary, to abate any action by any Tenant that would cause Lessee to violate this Lease; and

(3) subject to the rights of Tenants, to permit Lessor and its agents upon not less than forty-eight (48) hours' prior written notice to inspect the Leased Premises or any part of the Leased Premises at any reasonable time during the Term.

(b) Operating Budget. At or prior to the beginning of each year of the Term, Lessee shall provide to Lessor an annual budget for the maintenance and operation of the Property and the Improvements, which shall include the cost of insurance required to be maintained by this Lease. Unless rejected by Lessor in writing within thirty (30) days after receipt of the budget, the budget will be deemed accepted. If rejected by Lessor in whole or in part, Lessee shall submit a new or corrected budget within thirty (30) calendar days after notification of Lessor's rejection and the reasons therefor. Unless rejected by Lessor in writing within fifteen (15) days after receipt of the budget, the revised budget will be deemed accepted. During any period in which no approved budget is in effect, Lessee shall operate in accordance with the prior year's budget adjusted for inflation, except for non-discretionary matters such as taxes or insurance.

Section 2.6 Non-Discrimination.

(a) Lessee shall not discriminate against, or segregate any person or group of persons on the grounds of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, disability, medical condition, age, familial status, or source of income in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Leased Premises nor shall Lessee, or any person claiming under or through Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Tenants, lessees, subtenants, sublessees or vendees of the Leased Premises. Lessee shall otherwise comply with all applicable local, state, and federal laws concerning discrimination. The foregoing covenant shall run with the land.

(b) Lessor shall be entitled to invoke any remedies available at law or in equity to redress any breach of Subsection (a) or to compel compliance therewith by Lessee.

ARTICLE 3. THE IMPROVEMENTS

Section 3.1 Title to Improvements.

(a) Title to Improvements During the Term. As of the Commencement Date, Lessor grants to Lessee, without warranty express or implied, any right, title, or interest

that Lessor has or may have in the Improvements now or later located on the Leased Premises which Improvements are and shall remain real property. Notwithstanding any provision in this Lease to the contrary, the Improvements and all alterations, additions, equipment and fixtures built, made or installed by Lessee in, on, under or to the Leased Premises or Improvements shall be the sole property of Lessee until the expiration of the Term or other termination of this Lease; provided, however, that Lessee shall have no right to destroy, demolish or remove the Improvements except as specifically provided for in this Lease or as approved in writing by Lessor. It is the intent of the parties hereto that this Lease shall create a constructive notice of severance of the Improvements from the Leased Premises without the necessity of a deed from Lessor after the Improvements have been constructed.

(b) Title to Improvements After the termination of Lease. Upon the expiration of the Term or other termination of the Lease, the Improvements and all alterations, additions, equipment and fixtures shall be deemed to be and shall automatically become the property of Lessor, without cost or charge to Lessor. Lessor agrees that Lessee, at any time prior to the sixtieth (60th) day after the expiration or other termination of this Lease, may remove from the Leased Premises any and all equipment which Lessee has furnished for maintenance purposes or for the use of the Management Agent, provided that Lessee shall repair any physical damage to the Leased Premises caused by the removal of such equipment and property. Lessee agrees to execute, at the request of Lessor at the end of the Term, a quitclaim deed of the Improvements to Lessor to be recorded at Lessor's option and expense and any other documents that may be reasonably required by Lessor or Lessor's title company to provide Lessor title to the Leased Premises and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by Lessor.

Section 3.2 Construction of the Improvements.

(a) The construction plans and specifications attached as Exhibit E to the Construction Contract, and that have been approved by Lessor (the "Approved Development Plans"), set out the requirements for the Improvements. Lessee shall pay all costs of construction of the Improvements.

(b) Lessee shall cause the commencement of construction of the Improvements on or before _____, 2022. Lessee shall cause the Improvements to be constructed in substantial compliance with the Approved Development Plans. Lessee shall cause construction of the Improvements to be completed by _____, 2024 which date will be reasonably extended for casualty or other force majeure events beyond the reasonable control of Tenant, or if an extension of the completion date is given pursuant to the terms of a Mortgage pursuant to Approved Financing, in which event the date described here shall be extended by the same period. Lessee shall take no action to effectuate any material amendments, modifications or alterations to the Approved Development Plans or undertake any demolition, construction or rehabilitation work not called out in the Approved Development Plans unless Lessor has approved such, in writing and in advance.

(c) Lessee shall construct the Improvements pursuant to the construction contract between Lessee and _____ as the general contractor (the "Construction Contract") that has been reviewed and approved by Lessor. Lessee shall

not materially amend, modify or alter the responsibilities of the general contractor under the construction contract without Lessor's prior written consent.

(d) Lessee is solely responsible for the quality and suitability of the Approved Development Plans, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants in the construction of the Improvements. Lessor shall have the right to inspect the construction of the Improvements. Lessee shall promptly correct any work identified by Lessor as not in compliance with the terms of this Lease. Any review or inspection undertaken by Lessor is solely for the purpose of determining whether Lessee is properly discharging its obligations to Lessor, and may not be relied upon by Lessee or by any third parties as a warranty or representation by Lessee as to the quality of the design or construction of the Improvements. Lessor owes no duty of care to protect Lessee or any other party against, or to inform Lessee or any other party of, any negligent or defective design or construction of the Improvements.

(e) Any and all Improvements constructed by or on behalf of Lessee shall be constructed in a good and worker-like manner, in compliance with all applicable Legal Requirements, including, without limitation, Chapters 11A and 11B of Title 24 of the California Code of Regulations which relate to disabled persons access, the requirements of the Approved Financing and any mitigation measures imposed under environmental reviews conducted under state or federal law. Lessee acknowledges that the Legal Requirements require the Improvements to be constructed in compliance with the laws, regulations and administrative requirements including (but not limited to) the following:

(f) Lessee shall provide Lessor notice upon substantial completion of construction of the Improvements so that Lessor may inspect the Improvements for compliance with the terms of this Lease. Within thirty (30) days of completion of construction of the Improvements, Lessee shall provide Lessor at Lessee's expense, a set of "As-Built" plans for the Improvements.

(g) If Lessee fails to construct the Improvements in accordance with the terms of this Lease, Lessor may, at its option, enforce the payment and performance bonds, letter of credit, or other form of security provided by Lessee and approved by Lessor in its sole discretion.

Section 3.3 No Liens. Lessee shall not have any right, authority or power to bind Lessor, Lessor's Estate or any other interest of Lessor in the Leased Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto except as set forth in Section 8.1(a). Lessee shall not have any right to encumber Lessee's Estate without the written consent of Lessor, except as set forth in in Section 8.1(a) and for utility easements and other customary easements necessary and incidental to the development, construction and operation of the Improvements, which easements are subject to the approval of Lessor, which shall not be unreasonably withheld.

Lessee shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Lessee and shall keep the Leased Premises

free and clear of all mechanics' and materialmen's liens in connection therewith. If any claim of lien is filed against the Leased Premises or a stop notice is served on Lessor or other third party in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto, then Lessee shall, within thirty (30) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to Lessor a surety bond in sufficient form and amount, or provide Lessor with other assurance reasonably satisfactory to Lessor that the claim of lien or stop notice will be paid or discharged, provided that Lessor provides written notice of such claim of lien or stop notice to Lessee promptly upon receipt by Lessor.

If Lessee fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, Lessor may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Lessee's expense and, Lessee shall pay to Lessor as Additional Rent any such amounts expended by Lessor within thirty (30) days after written notice is received from Lessor of the amount expended. Alternately, Lessor may require Lessee to immediately deposit with Lessor the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. Lessor may use such deposit to satisfy any claim or lien that is adversely determined against Lessee.

Lessee shall file a valid notice of cessation or notice of completion upon cessation of construction of the Improvements for a continuous period of thirty (30) days or more, except in the event such cessation of construction is caused by adverse weather conditions, and shall take all other reasonable steps to forestall the assertion of claims of lien against the Leased Premises. The Lessor shall have the right to post or keep posted on the Leased Premises, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Leased Premises by Lessee. Lessee authorizes the Lessor, but without any obligation, to record any notices of completion or cessation of labor, or any other notice that the Lessor deems necessary or desirable to protect its interest in the Leased Premises.

Section 3.4 Permits, Licenses and Easements. Lessee shall be responsible for obtaining any and all permits, licenses, easements and other authorizations required by any Governmental Authority with respect to any construction or other work to be performed on the Leased Premises and to grant or cause to be granted all permits, licenses, easements and other governmental authorizations that are necessary or helpful for electric, telephone, gas, cable television, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the construction or operation of the Improvements. Lessee shall be entitled, without separate payment to Lessor for tap or connection fees, to tap into the existing lines, facilities and systems of applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Leased Premises, provided Lessee remains responsible for payment of such fees as are required by the City.

Lessor agrees to use Lessor's reasonable efforts to assist Lessee to obtain waiver, reduction or deferral, as applicable, of all fees and other charges otherwise payable in connection with obtaining any permits, licenses, easements and other authorizations required by any Governmental Authority with respect to any construction or other work to be

performed on the Leased Premises in connection with the Improvements and also agrees to enter into any grants of easements for utilities and related documents, useful or necessary to construct the Improvements.

Section 3.5 Benefits of Improvements During Term. Lessee shall be deemed the sole owner of the Improvements and the sole party entitled to all of the tax attributes of ownership of the Improvements during the Term. Lessor acknowledges and agrees that any and all depreciation, amortization and tax credits for federal or state tax purposes relating to the Improvements located on the Leased Premises and any and all additions to the Leased Premises, substitutions for the Leased Premises, fixtures on the Leased Premises and other property relating to the Leased Premises shall be deducted or credited exclusively to Lessee during the Term and for the tax years during which the Term begins and ends.

Section 3.6 Reserved.

Section 3.7 Reciprocal Easement Agreement. The Property is encumbered by a Declaration Providing for Reciprocal Easements (the "Reciprocal Easement Agreement") that governs the use and maintenance of streets, utilities, and public areas of benefit to the Development and other adjacent projects. During the Term Lessee shall comply with the terms of the Reciprocal Easement Agreement as such pertain to the Development.

Section 3.8 Restrictions Applicable to Units. Lessee shall, at all times throughout the Term, comply with all applicable requirements of the Regulatory Agreements that are then encumbering Lessee's Estate.

Section 3.9 Reserved.

ARTICLE 4. RENTS

Section 4.1 Ground Rent. Lessee shall pay to Lessor rent in the amount of Seven Million Six Hundred Thousand Dollars (\$7,600,000) ("Rent") which amount reflects the appraised value of the Leased Premises as set forth in the Appraisal. Lessee shall pay Rent through the execution and delivery of the Ground Lease Note on the Commencement Date. No other base or annual rent shall be payable throughout the Term.

Section 4.2 Additional Rents. In addition to the Rent specified in Section 4.1, any and all of the payments that Lessee is required to make under this Lease to or for the benefit of Lessor shall be deemed to be "Additional Rents." All such Additional Rents shall be payable in accordance with the provisions of the Sections of this Lease specifying the payment of such Additional Rents. The Rent specified in Section 4.1 and Additional Rents payable under this Lease shall be deemed "Rents" reserved by Lessor, and any remedies now or later given to Lessor under the laws of the State of California for collection of the Rents shall exist in favor of Lessor, in addition to any and all other remedies specified in this Lease.

Section 4.3 Payments. All Rents or other sums, if any, due Lessor under this Lease shall be paid by Lessee to Lessor at the address of Lessor set forth in this Lease for notices, or to such other person and/or at such other address as Lessor may direct by written

notice to Lessee, without notice or demand, and without abatement, deduction or set off.

ARTICLE 5.
TAXES AND OTHER IMPOSITIONS; UTILITIES

Section 5.1 Payment of Impositions. Lessee shall be obligated, at all times from and after the Commencement Date, prior to delinquency, to pay all Impositions except that if any Imposition that Lessee is obligated to pay in whole or in part is permitted by law to be paid in installments, Lessee may pay or cause to be paid such Imposition (or its proportionate part of such Imposition) in installments prior to delinquency, and that Lessor shall have no obligation to perform or pay any Imposition with respect to the Development. Upon the written request of Lessor, Lessee shall exhibit and deliver to Lessor evidence satisfactory to Lessor of payment of all Impositions. During the first and last years of the Term, all Impositions that shall become payable during each calendar, fiscal, tax or Lease Year, as applicable, shall be ratably adjusted on a per diem basis between Lessor and Lessee in accordance with the respective portions of such calendar, fiscal, tax, assessment or Lease Year during the Term. If any special assessments or taxes are payable in installments, Lessee shall pay only those installments that are due and for which the delinquency date occurs during the Term for periods occurring during the Term. The parties acknowledge that Lessee intends to apply for an exemption from real property taxes under Section 214(g) of the California Revenue and Taxation Code.

Section 5.2 Contested Taxes and Other Impositions. Lessee, at its sole cost and expense, in its own name or in the name of Lessor, may contest the validity or amount of any Imposition relating to all or any portion of the Leased Premises, in which event the payment of the Imposition may be deferred during the pendency of such contest, if diligently prosecuted.

(a) As may be necessary or desirable, Lessor or Lessee, as applicable, upon the request of the other party, shall use its best reasonable efforts to assist in any such proceeding to contest the validity or amount of any Imposition.

(b) Nothing contained in this Section 5.2, however, shall be construed to allow any such contested Imposition to remain unpaid for a length of time which shall permit the Leased Premises, or any part of the Leased Premises, to be sold by any Governmental Authorities for the non-payment of such Imposition. Lessee shall promptly furnish Lessor copies of all notices, appeals, pleadings, motions and orders in any proceedings commenced with respect to such contested Imposition. During such contest, Lessee shall (by the payment of such disputed taxes, assessments, or charges, if necessary) prevent any advertisement of tax sale, any foreclosure of, or any divesting of Lessor's title, reversion or other interest in or to the Leased Premises and the Improvements.

Section 5.3 Valuation Assessment. If applicable, Lessee, at its expense, may attempt to obtain a lowering of the assessed valuation of the Leased Premises for any year for the purpose of reducing taxes on the Leased Premises. In such event, upon Lessee's request, Lessor shall use its reasonable efforts to assist Lessee in such endeavor.

Section 5.4 Failure to Pay Impositions. If Lessee fails to pay any Impositions

before the same become delinquent, or as otherwise required pursuant to Section 5.2, Lessor, at its election, may pay such Impositions (but shall not be obligated to pay same), together with any interest and penalties due on them, and the amount so paid by Lessor shall be repayable to Lessor by Lessee within forty-five (45) days after Lessor's demand therefor.

Section 5.5 Utilities. Lessee shall pay all utilities used, rendered or supplied upon or in connection with the Improvements and the construction, maintenance, and operation of the Improvements including, but not limited to, all charges for gas, electricity, light, heat or power, all telephone and other communications services, all water rents and sewer service charges, and all sanitation fees or charges levied or charged against the Leased Premises during the Term; provided, however, that Lessee shall have no responsibility for the payment of utilities supplied by the respective providers directly to Tenants for such Tenants' use in connection with the occupancy of their respective Units. Lessor shall have no responsibility for the payment of utility costs.

ARTICLE 6. INSURANCE

Section 6.1 Lessee's Insurance. During the Term, Lessee shall keep and maintain in force, at no cost or expense to Lessor, the following insurance, all of which shall be provided by companies and/or agencies licensed to do business in the State of California:

(a) Leased Premises Insurance. "All risk" insurance covering all risks of physical loss or damage to any of the Improvements, with liability limits of not less than one hundred percent (100%) of the "full replacement value" of the Improvements. Such policies shall be broad form and shall include, but shall not be limited to, coverage for fire, extended coverage, vandalism, malicious mischief and storm. Perils customarily excluded from all risk insurance, e.g., earthquake and flood, may be excluded. The term "full replacement value" shall exclude the cost of excavation, foundations and footings. The amount of such insurance shall be adjusted by reappraisal of the Development by the insurer or its designee not more than once every five (5) years during the Term, if requested in writing by Lessor.

(b) General Liability and Automobile Insurance.

(1) Commercial general liability covering loss or damage resulting from accidents or occurrences on or about or in connection with the Improvements or any work, matters or things under, or in connection with, or related to this Lease, with personal injury, death and property damage with limits of liability not less than Five Million Dollars (\$5,000,000) Each Occurrence, and Five Million (\$5,000,000) General Aggregate, and upon completion of construction, Five Million (\$5,000,000) Products/Completed Operations. Coverage under any such comprehensive policy shall be broad form and shall include, but shall not be limited to, operations, contractual, elevators, owner's interest as respects construction operations and products and completed operations.

(2) Automobile Liability Insurance covering the use of all owned, non-owned and hired vehicles, covering loss or damage resulting from accidents or occurrences with personal injury, death and property damage combined single limit liability of not less than Two Million Dollars (\$2,000,000) Each Occurrence.

(3) Limits of insurance may be achieved by placement of an Umbrella/Excess Liability policy that follows-form with the primary General Liability and Automobile Liability policies terms and conditions.

(c) Workers' Compensation Insurance. In the event Lessee has employees, Lessee shall carry or cause to be carried Workers' Compensation insurance with limits as required by the State of California and Employer's Liability limits of One Million Dollars (\$1,000,000) for bodily injury by accident and One Million Dollars (\$1,000,000) per person and in the annual aggregate for bodily injury by disease covering all persons employed by Lessee in connection with the Improvements and with respect to whom death, bodily injury, or sickness insurance claims could be asserted against Lessor or Lessee.

(d) Builders' Risk Insurance. During the course of any alteration, construction or reconstruction of the Improvements, the cost of which exceeds Fifty Thousand Dollars (\$50,000) (escalating at three percent (3%) per year), Lessee shall provide builders' risk insurance for not less than the value of the construction contract, combined single limit for bodily injury or property damage insuring the interests of Lessor, Lessee and any contractors and subcontractors.

Section 6.2 General Requirements.

(a) All policies described in Section 6.1 shall include Lessor and Lessee, together with Mortgagees, as named insureds, as their respective interests may appear.

(b) All policies described in Section 6.1 shall contain: (i) the agreement of the insurer to give Lessor at least ten (10) days' notice prior to cancellation for non-payment of premium, and thirty (30) days' notice prior to cancellation for any other change or cancellation in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by Lessor; (iii) a provision that no act or omission of Lessee shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (iv) a waiver by the insurer of all rights of subrogation against Lessor and its authorized parties in connection with any loss or damage insured against; and (v) terms providing that any loss covered by such insurance may be adjusted with Lessor and Lessee, but shall be payable to the holder of a Mortgage, who shall agree to receive and disburse all proceeds of such insurance, subject to the duty of Lessee to repair or restore, as set forth in Sections 11.1 and 11.2.

Section 6.3 Evidence of Insurance. Certificates of insurance for all insurance required to be maintained by Lessee under this Article 6 shall be furnished by Lessee to Lessor on or before the date of this Lease. Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by this Lease at any time.

Section 6.4 Failure to Maintain. If Lessee fails to maintain such insurance, Lessor, at its election, may procure such insurance as may be necessary to comply with the above requirements (but shall not be obligated to procure same), and Lessee agrees to repay to Lessor as Additional Rent the cost of such insurance.

ARTICLE 7.

MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS

Section 7.1 Management Agent. As of the Acquisition Closing, Lessor has approved _____ as the initial Management Agent for the Development. Any replacement Management Agent is subject to the consent of Lessor.

Section 7.2 Maintenance of Leased Premises.

(a) During the Term, at Lessee's sole cost and expense, Lessee shall keep and maintain the Leased Premises, all Improvements, and all appurtenances, in good and safe order, condition and repair. In addition, all maintenance and repair of the Improvements shall conform and comply with the Legal Requirements affecting the Leased Premises.

(b) Lessor reserves the right to conduct an annual (or more frequent, if deemed reasonably necessary by Lessor) review of the management and maintenance of the Improvements. The purpose of each periodic review will be to enable Lessor to determine if the Improvements are being operated and managed in accordance with the requirements and standards of this Lease. Lessee shall cooperate with Lessor in such reviews. In the event Lessor submits to Lessee a written notice (the "Maintenance Notice") that the Improvements are not being maintained as required by this Lease, such Maintenance Notice shall specify with particularity the manner in which said maintenance is inadequate including if the Management Agent has failed to operate and maintain the Improvements in accordance with this Lease. Lessee shall comply with all reasonable requests of Lessor contained in said Maintenance Notice. In the event that Lessor reasonably determines Lessee's actions within thirty (30) days of the Maintenance Notice are insufficient in kind or unreasonably delayed, Lessor may (a) direct the performance of the maintenance work on such terms and conditions as it shall reasonably determine and in such event Lessee shall promptly cause the maintenance work to be accomplished at no expense to Lessor, or (b) cause the necessary maintenance to be performed under its own auspices in the name of, for the account of, and at the sole cost and expense of Lessee, in which event Lessee shall fully reimburse Lessor for all reasonably necessary costs and expenses (including, without limitation, reasonable attorneys' fees and costs of litigation) incurred by Lessor in connection with such maintenance work within thirty (30) days after Lessee's receipt of Lessor's written demand for reimbursement.

Section 7.3 Alterations to Leased Premises. Following construction of the Improvements, Lessee may make any additions, alterations or changes (sometimes collectively referred to as "Alterations") in or to the Improvements subject, however, to the following conditions:

(a) No Alterations may be made that are likely to impair the structural soundness of the Improvements;

(b) No Alterations of the Leased Premises may be undertaken which have a cost greater than One Hundred Thousand Dollars (\$100,000), or demolition of any portion thereof, without first presenting to Lessor complete plans and specifications therefor and obtaining Lessor's written consent thereto (which consent shall not unreasonably be withheld so long as, in Lessor's judgment, such Alterations will not violate the Legal Requirements, this Lease, the Regulatory Agreements, or impair the value of the Improvements);

(c) No Alterations may be undertaken until Lessee shall have procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable Governmental Authorities, all required consents of Mortgagees, and the consent of Lessor if required pursuant to subsection (b), above, if applicable. Lessor shall join in the application for such permits or authorizations whenever such action is necessary or helpful and is requested by Lessee, and shall use Lessor's reasonable efforts to obtain such permits or authorizations; and

(d) Any Alterations shall be performed in good and worker-like manner using new materials of the same or better quality as the original Improvements, and in compliance with the Regulatory Agreements, all applicable Legal Requirements and the insurance requirements of this Lease.

Section 7.4 Indemnifications.

(a) Notwithstanding any other provision of this Lease to the contrary, Lessee agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) Lessor, its commissioners, officers, directors, affiliates, agents and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses (collectively "claims"), arising from or relating to Lessee's obligations under this Lease and the construction or operations of the Improvements, except to the extent caused by the gross negligence or willful misconduct of Lessor, or any of its commissioners, officers, directors, affiliates, agents or employees.

(b) In addition, if any contractor or subcontractor which performed any construction work for Lessee or Lessee's affiliates on the Improvements shall assert any claim against Lessor on account of any damage alleged to have been caused by reason of acts of negligence or willful misconduct of Lessee or Lessee's affiliates, their members, partners, officers, directors, affiliates, agents or employees, or their construction contractors, Lessee shall defend at its own expense any suit based upon such claim; and if any judgment or claim against Lessor shall be allowed, Lessee shall pay or cause to be paid or satisfied such judgment or claim and pay all costs and expenses in connection therewith.

(c) This indemnity shall survive the termination of this Lease.

ARTICLE 8. PERMITTED MORTGAGES

Section 8.1 Right to Encumber.

(a) Lessee's Estate. Lessee shall have the right during the Term to encumber, through a Mortgage pursuant to Approved Financing and the Regulatory Agreements, all of Lessee's right, title and interest in the Leased Premises subject to the provisions of this Lease; provided, however, that after the "Conversion Date" occurs under the [Cathay Bank loan documents], the same shall be in all respects subordinate and inferior

to Lessor's right, title and interest as provided in this Lease, and that such Mortgagee shall be subject to all of the rights and obligations of Lessor contained in this Lease. Any Mortgage is in all respects subordinate and inferior to the Use Agreement. Other than a Mortgage pursuant to Approved Financing, the Regulatory Agreements, and as set forth in Section 3.3, Lessee shall not encumber Lessee's right, title and interest in the Leased Premises in any manner whatsoever.

(b) Lessor's Estate. Other than the Use Agreement, the Regulatory Agreements, and, prior to the Conversion Date the Deed of Trust associated with the [financing by _____ Bank (the "_____ Deed of Trust")], Lessor's Estate shall not be subject to and Lessor shall have no obligation to consent to any subordination agreement required to secure any financing or Mortgage of Lessee. Notwithstanding the encumbrance of Lessor's Estate with the [Bank Deed of Trust], Lessor shall not be personally liable for repayment of the debt secured by the Bond Deed of Trust or performance of Lessee's obligations under the Bond Deed of Trust. Lessor agrees not to encumber or convey any interest in Lessor's Estate with any deed to secure debt, mortgage, deed of trust or other instrument in the nature of a mortgage as security for any debt which is not expressly subordinate to Lessee's Estate under this Lease. Lessor and Lessee acknowledge that Lessor's Estate will be encumbered by the Use Agreement [and the Regulatory Agreements], and this Lease shall at all times remain subordinate to the Use Agreement and the Regulatory Agreements.

Section 8.2 Notice to Mortgagee. During any period in which a Mortgage is in place, Lessor shall give any such Mortgagee of which Lessor has received notice from Lessee a duplicate copy of all notices of default or other notices that Lessor may give to or serve in writing upon Lessee pursuant to the terms of this Lease. The address of the Mortgagee originally designated in the Mortgage may be changed upon written notice delivered to Lessor in the manner specified in Section 17.12 below. Lessor's failure to give any such notice to any such Mortgagee shall not render such notice ineffective, nor shall any such failure constitute an Event of Default hereunder. Lessor agrees that the Mortgagees listed in Section 17.12 below shall be given the notices required under this Lease to be given to Mortgagees.

Section 8.3 Right of Mortgagee to Cure. Notwithstanding any default by Lessee under this Lease, Lessor shall have no right to terminate this Lease unless Lessor shall have given each Mortgagee written notice of such default and such Mortgagees shall have failed to remedy such default or acquire Lessee's leasehold estate created by this Lease or commence foreclosure, removal, or other appropriate proceedings as set forth in, and within the time specified, by this Section.

Any Mortgagee which has an outstanding Mortgage shall have the right, but not the obligation, at any time to pay any or all of the rental due pursuant to the terms of this Lease, and do any other act or thing required of Lessee by the terms of this Lease, to prevent termination of this Lease. Each Mortgagee shall have sixty (60) days after receipt of notice from Lessor describing such default to cure the default. All payments so made and all things so done shall be as effective to prevent a termination of this Lease as the same would have been if made and performed by Lessee instead of by a Mortgagee.

In addition to the cure period provided in this Section 8.3 above, if the default is such that possession of the Leased Premises or removal of the Lessee's general partner may be

reasonably necessary to remedy the default, any Mortgagee shall have a reasonable time after the expiration of such sixty (60) day period within which to remedy such default, provided that (i) such Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease within such sixty (60) day period and shall continue to pay currently such monetary obligations when the same are due and (ii) such Mortgagee shall have acquired Lessee's leasehold estate hereunder or commenced foreclosure, removal, or other appropriate proceedings prior to or within such period, and shall be diligently prosecuting the same.

Any default under this Lease which by its nature cannot be remedied by any Mortgagee shall be deemed to be remedied (and such Mortgagee shall not have liability for any claims Lessor has against Lessee for indemnification or damages) if (i) within sixty (60) days after receiving written notice from Lessor describing the default, or prior thereto, any Mortgagee shall have acquired Lessee's leasehold estate, removed the Lessee's general partner, or commenced foreclosure or other appropriate proceedings, (ii) Mortgagee shall diligently prosecute any such proceedings to completion, (iii) Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee hereunder which does not require possession of the Leased Premises or removal of the Lessee's general partner, and (iv) after gaining possession of the Leased Premises or removal of the Lessee's general partner, the Mortgagee shall cure all non-monetary defaults of Lessee hereunder capable of cure by Mortgagee.

If any Mortgagee is prohibited, stayed or enjoined by any bankruptcy, insolvency or other judicial proceedings involving Lessee from removing the Lessee's general partner, commencing or prosecuting foreclosure or other appropriate proceedings, the times specified for removal of the Lessee's general partner, commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that any Mortgagee shall have fully cured any default in the payment of any monetary obligations of Lessee under this Lease and shall continue to pay currently such monetary obligations when the same fall due; provided, further, that such Mortgagee shall not interfere with Lessor's efforts to seek compliance by Lessee with any non-monetary obligation under this Lease.

Section 8.4 Limitation on Liability of Mortgagee. No Mortgagee shall be or become liable to Lessor as an assignee of this Lease or otherwise unless it expressly assumes by written instrument executed by Lessor and Mortgagee such liability (in which event the Mortgagee's liability shall be limited to the period of time during which it is the owner of the leasehold estate created by this Lease) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature of a foreclosure or as the result of any other action or remedy provided for by such Mortgage or other instrument or from a conveyance from Lessee pursuant to which the purchaser at foreclosure or grantee shall acquire the rights and interest of Lessee under the terms of this Lease.

Section 8.5 Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time upon not less than twenty (20) days' prior written notice by the other Party, or upon request from any Mortgagee or a permitted assignee or other interested party, Lessor or Lessee will execute, acknowledge and deliver to the other Party or to such Mortgagee a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rents have been paid; and (c) that, to the knowledge of the

certifier (if such be the case), there is no default, set-off, defense or other claim against Lessor or Lessee, as applicable, other than those, if any, so specified under the provisions of this Lease. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Lessor, Lessee or any Mortgagee, as the case may be, in this Lease or by any prospective Mortgagee or permitted assignee of any Mortgagee.

Section 8.6 Registration of Mortgages. Lessee shall provide written notice to Lessor of the name and address of each Mortgagee under this Lease. Lessor acknowledges the names and addresses of Mortgagees in Section 17.12 below.

Section 8.7 New Lease. In the event of the termination of this Lease prior to the natural expiration of the Term of this Lease due to a default of Lessee, by rejection in bankruptcy, operation of law, or for any other reason, Lessor, upon written request from the holder of a Mortgage, made within sixty (60) days of the Mortgagee receiving notice of termination, shall enter into a new lease with such holder or its designee, as such designee is approved by Lessor in its reasonable discretion, in accordance with and upon the same terms and conditions as set forth herein, for the remainder of the Term. The Mortgagee shall pay all reasonable costs and expenses of Lessor related to entering into the new lease. Notwithstanding anything stated to the contrary herein, if more than one Mortgagee requests a new lease, the Mortgagee who holds the most senior (in lien priority) Mortgage shall be entitled to enter into the new lease. Simultaneous to the execution and delivery of such new lease, Lessor shall convey title to the Improvements to the new lessee and the Mortgagees shall be entitled to encumber the Improvements and the Leased Premises with Mortgages. Any new lease made pursuant to this Section 8.7 shall be prior to any lien, charge or encumbrance on Lessor's Estate and Lessor's interest in the Improvements, except as previously approved in writing by the Mortgagees, provided, however, any new Lease shall be subject to the Use Agreement.

In the event of the filing of a petition in bankruptcy by Lessee, and Lessee rejects this Lease under the then applicable provisions of the Bankruptcy Code, Lessor shall, upon the request of the holder of a Mortgage, affirm this Lease, and Lessor will enter into a new lease on the same terms and conditions set forth herein with such holder or its designee, as such designee is approved by Lessor in its reasonable discretion, immediately upon Lessee's rejection of this Lease. In the event of the filing of a petition in bankruptcy by Lessor, and Lessor rejects this Lease and Lessee does not affirm it, the holder of the Mortgage will have the authority to affirm this Lease on behalf of Lessee and to keep the Lease in full force and effect.

The terms of this Section 8.7 survive termination of this Lease and Mortgagees prior to such termination shall continue to be considered Mortgagees for purposes of this Section notwithstanding the effect of termination on the Mortgages.

Section 8.8 Consent to Termination of Lease. Lessor shall not voluntarily modify, amend, cancel, terminate or surrender the Lease without the prior written consent of Mortgagees which consent shall not be unreasonably withheld or delayed, except in the event of default by Lessee as to which Mortgagees shall have been provided with written notice and opportunity to cure such default and such Mortgagees shall have failed to remedy such default as set forth in Section 8.3 above and Section 8.9 below.

Section 8.9 Reserved.

ARTICLE 9.
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 9.1 Representations, Warranties and Covenants of Lessee. As an inducement to Lessor to enter into and to proceed under this Lease, Lessee warrants and represents to Lessor as follows, which warranties, representations and covenants are true and correct as of the Commencement Date:

(a) Lessee has the right, power and authority to enter into this Lease and the right, power and authority to comply with the terms, obligations, provisions and conditions contained in this Lease;

(b) The entry by Lessee into this Lease and the performance of all of the terms, provisions and conditions contained herein will not, or with the giving of notice or the passage of time, or both, would not, violate or cause a breach or default under any other agreements to which Lessee is a party or by which it is bound;

(c) Lessee (i) shall not cause or permit any Hazardous Materials to be placed, held, located or disposed of on, under or at the Development or any part thereof, except in commercially reasonable amounts used in the construction and operation of the Improvements and in accordance with Legal Requirements, and (ii) shall not cause or permit any Hazardous Materials contamination of the Development or any part thereof; provided, however, that Lessee shall not be in violation of this Subsection 9.1(c) or otherwise be liable or obligated hereunder for any of the foregoing occasioned solely by reason of the existence of soils, water or materials already located on the Development as of the Commencement Date; and

(d) Lessee has and at all times shall have obtained all permits, licenses, and approvals necessary to construct, occupy, operate and maintain the Improvements, and shall maintain compliance with all governmental requirements applicable to the Property and Improvements.

(e) At all times during the Term, Lessee or its authorized representative shall use, maintain and operate the Leased Premises and the Improvements thereon in accordance with all Legal Requirements and Regulatory Agreements.

Section 9.2 Hazardous Materials.

(a) Certain Covenants and Agreements. Lessee hereby covenants and agrees that:

(1) Lessee shall not knowingly permit the Development or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Development in violation of any Hazardous Materials Laws;

(2) Lessee shall keep and maintain the Development and each portion thereof in compliance with, and shall not cause or permit the Development or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same Lessee shall immediately advise Lessor in writing of:

(A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Lessee or the Development pursuant to any applicable Hazardous Materials Laws;

(B) any and all claims made or threatened by any third party against Lessee or the Development relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); or

(C) the presence of any Hazardous Materials in, on or under the Development in such quantities which require reporting to a government agency.

If Lessor reasonably determines that Lessee is not adequately responding to a Hazardous Material Claim or any condition in Sections 9.2(a)(3)(A) or (B), Lessor shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by Lessee.

(4) Without Lessor's prior written consent, which shall not be unreasonably withheld or delayed, Lessee shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Development (other than in emergency situations or as required by governmental agencies having jurisdiction), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claims.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 7.3 above, Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to Lessor) Lessor, its commissioners, officers, agents, successors, assigns and employees (the "Indemnitees") from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of:

(1) The failure of Lessee or any other person or entity on or after the Commencement Date to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Development;

(2) Any release or discharge of any Hazardous Materials into, on, under or from the Development, arising on or after the Commencement Date, or the presence

in, on, or under the Development of any Hazardous Materials that occurs on the Development after the Commencement Date; or

(3) Any activity or omission of activity carried on or undertaken on the Development, on or after the Commencement Date and whether by Lessee or any employees, agents, contractors or subcontractors of Lessee or any successor in title that is related to Lessee occupying or present on the Development, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials located or present on or under the Development.

The provisions of this section shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect. This indemnity obligation shall not extend to any claim arising from Lessor's negligence or willful misconduct.

(c) No Limitation. Lessee hereby acknowledges and agrees that Lessee's duties, obligations and liabilities under this Lease, including, without limitation, under subsection (b) above, are in no way limited or otherwise affected by any information Lessor may have concerning the Development and/or the presence on the Development of any Hazardous Materials, whether Lessor obtained such information from Lessee or from its own investigations.

Section 9.3 As-Is Conveyance.

(a) Condition of Leased Premises. This Lease is made "AS IS," with no warranties or representations by Lessor concerning the condition of the Leased Premises, including the presence or absence of any Hazardous Materials except as expressly set forth in this Lease. Lessee hereby agrees and acknowledges that except in the event of any fraud, misrepresentation, or withholding of information by Lessor: (i) neither Lessor, nor anyone acting for or on behalf of Lessor, has made any representation, statement, warranty or promise to Lessee concerning the development potential or condition of the Leased Premises; (ii) in entering into this Lease, Lessee has not relied on any representation, statement or warranty of Lessor, or anyone acting for or on behalf of Lessor, other than as may expressly be contained in writing in this Lease; (iii) all matters concerning the Leased Premises have been or shall be independently verified by Lessee and that Lessee shall purchase or lease the Leased Premises on Lessee's own prior examination thereof; and (iv) IN ENTERING INTO THIS LEASE LESSEE IS LEASING THE LEASED PREMISES AND ACQUIRING THE IMPROVEMENTS, AS APPLICABLE, IN AN "AS IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR.

(b) General Release. Subject to Section 9.3(a) above, Lessee and its owners, employees, agents, assigns and successors agree that upon the Acquisition Closing, Lessee shall be deemed conclusively to have released and discharged Lessor and its agents, employees, trustees, assigns and successors, from any and all damages, losses, demands, claims, debts, liabilities, obligations, causes of action and rights, whether known or unknown, by Lessee regarding the Leased Premises and Improvements, including, but not limited to, the environmental condition of the Leased Premises and Improvements.

(c) Waiver of Civil Code § 1542. Lessee agrees that, with respect to the General Release contained in Section 9.3(b) above, the General Release extends to all

matters regarding the Leased Premises and Improvements, whether or not claimed or suspected, to and including the date of execution hereof, and constitutes a waiver of each and all the provisions of the California Civil Code § 1542, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Lessee herein acknowledges that the effect and import of the provisions of Civil Code § 1542 have been explained to it by its own counsel. Lessee understands and acknowledges the significance and the consequence of such specific waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, losses or liabilities that it may hereinafter incur from the waiver of these unknown claims.

Section 9.4 Environmental Work. Lessee shall be responsible for performing the work of any investigation and remediation on the Leased Premises which may be required in order to develop the Leased Premises. The determination as to whether any such remediation is needed, and as to the scope and methodology thereof, shall be made by mutual agreement of the governmental agency with responsibility for monitoring such remediation, Lessor and Lessee. Lessee shall notify Lessor promptly upon discovery of any actionable levels of Hazardous Substances, and upon any release thereof, and shall consult with Lessor in order to establish the extent of remediation to be undertaken and the procedures by which remediation thereof shall take place. Lessee shall comply with, and shall cause its agents and contractors to comply with, all laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Substances. The investigation and remediation work shall be carried out in accordance with all applicable laws (including Hazardous Materials Laws) and such other procedures and processes as may be described in this.

Section 9.5 Notices. Lessee shall promptly notify Lessor in writing of any and all of the following:

- (a) Any litigation known to Lessee materially affecting Lessee, or the Property;
- (b) Any written communication Lessee receives from any governmental, judicial, or legal authority giving notice that the Property or Improvements fail in any respect to comply with any applicable governmental law;
- (c) Any material adverse change in the physical condition of the Property (including any damage suffered as a result of fire, earthquakes, or floods);
- (d) Any material adverse change in Lessee's financial condition, any material adverse change in Lessee's operations, or any change in the management of Lessee;

(e) Any Event of Default or event which, with the giving of notice or the passage of time or both, would constitute an Event of Default; and

(f) Any other circumstance, event, or occurrence that results in a material adverse change in Lessee's ability to timely perform any of its obligations under this Lease.

ARTICLE 10. EMINENT DOMAIN

Section 10.1 Termination of Lease. Lessor and Lessee agree that, in the event of a Taking such that Lessee, with the consent of all Mortgagees, reasonably determines that the Leased Premises cannot continue to be operated, at reasonable cost, for its then-current use, then, subject to the rights and with the prior consent of Mortgagees, this Lease shall, at Lessee's sole option, terminate as of the date of the Taking.

Section 10.2 Continuation of Lease and Presumption of Restoration. Lessor and Lessee agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to Section 10.1 above, this Lease shall continue in effect as to the remainder of the Leased Premises, and the Net Condemnation Award will be disbursed in accordance with Section 10.4 below to Lessee and/or to any Mortgagee if the terms of the applicable Mortgage so require, and shall be used so as to make the same a complete, unified and efficient operating unit as nearly as reasonably possible to the condition existing prior to the Taking, subject to any applicable requirements of the Mortgagee.

Section 10.3 Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Leased Premises or of Lessee's interest in this Lease, then the Term shall not be reduced and Lessee shall continue to pay all Rents, Impositions, and other charges required in this Lease, without reduction or abatement at the times specified; provided, however, that Lessee shall not be required to perform such obligations that Lessee is prevented from performing by reason of such temporary Taking.

Section 10.4 Award. After the Acquisition Closing, subject to the rights of Mortgagees, if there is a Taking, whether whole or partial, Lessor and Lessee shall be entitled to pursue and receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration the fact that Lessor's interest in the Leased Premises is limited to the Property as encumbered by this Lease, and a reversionary interest in the Leased Premises upon the expiration of the Term. If the Leased Premises is restored as is contemplated in Section 10.2 above, Lessee shall be entitled to recover the costs and expenses incurred in such restoration out of any Net Condemnation Award, subject to a Mortgagee's right to elect to have such Net Condemnation Award paid directly to Mortgagee, as set forth in the applicable financing documents for such Mortgage. Thereafter, if the condemning authority does not make separate awards, and the Parties are unable to agree as to the exact amount to be allocated to the respective interests of each Party, then each Party shall select an independent M.A.I. real estate appraiser (an "Appraiser"). Each Appraiser shall separately determine the amount of the balance of the Net Condemnation Award that is to be allocated to the interests of each Party. If the percentage of the balance of the Net

Condemnation Award each Appraiser allocates to Lessor (a) are within ten percent (10%) of each other, the two allocations shall be averaged, and such average shall be the final allocation of the Net Condemnation Award, or (b) are not within ten percent (10%) of each other, the two Appraisers shall then select a third Appraiser, who shall independently allocate the Net Condemnation Award between Lessor and Lessee, and the middle of such three allocations shall be the final allocation of the Net Condemnation Award. Notwithstanding anything to the contrary contained herein, any Net Condemnation Award recovered by or allocated to Lessor shall in no event be greater than the value of Lessor's fee interest in the Property and any Net Condemnation Award recovered by or allocated to Lessee or Mortgagee shall in no event be less than the total Net Condemnation Award minus the value of Lessor's fee interest in the Property.

Section 10.5 Joinder. If a Mortgage exists, the Mortgagees, to the extent permitted by law, shall be made a party to any Taking proceeding.

ARTICLE 11. DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction to Leased Premises. Lessee shall give prompt written notice to Lessor after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Leased Premises, the Improvements or any portion of them (a "Casualty"). Subject to Section 11.2 below, and the rights of any Mortgagees, if during the Term the Improvements shall be damaged or destroyed by Casualty, Lessee shall repair or restore the Improvements, so long as Lessee determines, in its sole discretion, that it is feasible to do so and in such event Lessee provides or causes to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration. Upon the occurrence of any such Casualty, Lessee, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty. In the event that Lessee shall determine, subject to the rights and with the consent of the Mortgagees, by notice to Lessor given within thirty (30) days after receipt by Lessee of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Leased Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Lessee may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Lessee terminates this Lease pursuant to this Section 11.1 with the consent of all Mortgagees, Lessee shall surrender possession of the Leased Premises to Lessor immediately and assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Leased Premises, subject to the prior rights of any Mortgagee.

Section 11.2 Damage or Destruction Near End of Term. If, during the last seven (7) years of the Term, the Improvements shall be damaged by Casualty, then Lessee shall have the option, to be exercised within one hundred twenty (120) days after such Casualty:

- (a) to repair or restore the Improvements as provided in this Article 11; or
- (b) subject to the rights of Mortgagees, to terminate this Lease by notice to Lessor, which termination shall be deemed to be effective as of the date of the Casualty. If

Lessee terminates this Lease pursuant to this Section 11.2, Lessee shall surrender possession of the Leased Premises to Lessor immediately and assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Leased Premises, subject to the prior rights of any Mortgagee therein.

Section 11.3 Distribution of Insurance Proceeds. In the event that this Lease is terminated pursuant to Sections 11.1 or 11.2 of this Lease, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) first, if a Mortgage is in place to the Mortgagee to the extent of any indebtedness then owed to such Mortgagee; (b) second, the balance, if any, of such insurance proceeds shall be paid to Lessee or, as applicable pursuant to Sections 11.1 and 11.2 above, assigned or paid over to Lessor.

ARTICLE 12. EVENTS OF DEFAULT

Section 12.1 Events of Default. Each of the following shall be an "Event of Default" by Lessee under this Lease:

(a) failure by Lessee to pay any Rent when due or to pay or cause to be paid any Impositions, insurance premiums or other liquidated sums of money stipulated to be paid by Lessee, if such failure shall continue for a period of fifteen (15) days after notice has been given by Lessor to Lessee;

(b) failure by Lessee to perform or observe any of the provisions of this Lease stipulated in this Lease to be observed and performed by Lessee (other than as set forth in subsection (a) above), if such failure shall continue for a period of thirty (30) days after written notice thereof has been given by Lessor to Lessee; provided, however, that if any such failure cannot reasonably be cured within such thirty (30)-day period, then Lessor shall not have the right to terminate this Lease or Lessee's right to possession under this Lease so long as Lessee promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time; provided, however, that such period shall not extend for more than ninety (90) days after the date of Lessor's written notice to Lessee;

(c) the subjection of any right or interest of Lessee in this Lease to attachment, execution or other levy, or to seizure under legal process, if not released within sixty (60) days; provided that the foreclosure of any Mortgage shall not be construed as an Event of Default within the meaning of this Subsection 12.1(c);

(d) the appointment of a receiver, not including receivership pursuant to any Mortgage, to take possession of Lessee's Estate or of Lessee's operations on the Leased Premises for any reason, if such receivership is not terminated, dismissed or vacated within ninety (90) days after the appointment of the receiver;

(e) the filing by Lessee of a petition for voluntary bankruptcy under the Bankruptcy Code of the United States or any similar law, state or Federal, now or hereafter in effect;

(f) the filing against Lessee of any involuntary proceedings under such Bankruptcy Code or similar law, if such proceedings have not been vacated or stayed within ninety (90) days of the date of filing;

(g) the appointment of a trustee or receiver for Lessee or for all or the major part of Lessee's property or the Leased Premises, in any involuntary proceeding, not including pursuant to any Mortgage, or taking of jurisdiction by any court over all or the major part of Lessee's property or the Leased Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Lessee, if such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ninety (90) days; or

(h) a general assignment by Lessee for the benefit of creditors or Lessee's admittance in writing of its insolvency or inability to pay its debts generally as they become due or Lessee's consent to the appointment of a receiver or trustee or liquidator for Lessee, all or the major part of its property, or the Leased Premises.

Section 12.2 Rights and Remedies.

(a) At any time after the occurrence of an Event of Default, subject in all respects to the provisions of this Lease with respect to Lessor's rights to cure defaults by Lessee and subject to the rights of any Mortgagees as set forth in Article 8, in addition to any other remedies available to Lessor at law or in equity, Lessor may terminate this Lease by giving Lessee written notice thereof (with a copy of such notice to the Mortgagees), setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and Lessee's Estate and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 for the expiration of the Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Leased Premises (including all buildings and other Improvements comprising any part of the Leased Premises) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants; provided that Lessor shall not be entitled to disturb possession of any Tenants or others in possession pursuant to Tenant Leases with Lessee so long as such Tenants or others are not in default under the Tenant Leases, and attorn to Lessor as their lessor. Upon the exercise of Lessor's remedies pursuant to this Section 12.2, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request in order to accurately set forth of record the then current status of Lessee's Estate and Lessee's rights under this Lease.

Section 12.3 Default by Lessor.

(a) Events of Default. Lessor shall be in default of this Lease if it fails to perform any provision of this Lease that it is obligated to perform or if any of Lessor's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty is not cured within thirty (30) days after written notice of the default has been given to Lessor. If the default cannot

reasonably be cured within thirty (30) days, Lessor shall not be in default of this Lease if Lessor commences to cure the default within such thirty (30)-day period and diligently and in good faith continues to cure the default until completion.

(b) Right to Cure; Lessee's Remedies. If Lessor shall have failed to cure a default by Lessor after expiration of the applicable time for cure of a particular default, Lessee, at its election, but without obligation (i) may seek specific performance of any obligation of Lessor, after which Lessee shall retain, and may exercise and enforce, any and all rights that Lessee may have against Lessor as a result of such default, (ii) from time to time without releasing Lessor in whole or in part from the obligations to be performed by Lessor under this Lease, may cure the default at Lessor's cost, (iii) may terminate this Lease, and/or (iv) may exercise any other remedy given under this Lease or now or later existing at law or in equity. Any reasonable costs incurred by Lessee in order to cure such a default by Lessor shall be due immediately from Lessor, together with interest, and may be offset against any amounts due from Lessee to Lessor.

Section 12.4 Notices. Notices given by Lessor under Section 12.1 or by Lessee under Section 12.3 shall specify the alleged default and the applicable Lease provisions, and shall demand that Lessee or Lessor, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice.

ARTICLE 13. QUIET ENJOYMENT AND POSSESSION; INSPECTIONS

Section 13.1 Quiet Enjoyment. Lessor covenants and warrants that Lessee, upon payment of all sums provided in this Lease and upon performance and observance of all of its covenants contained in this Lease, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Leased Premises during the Term, subject only to the provisions of this Lease and all applicable Legal Requirements.

Section 13.2 Lessor's Right of Inspection. Notwithstanding Section 13.1 above, Lessor, in person or through its agents, upon reasonable prior notice to Lessee, shall have the right, subject to the rights of Tenants, to enter upon the Development for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by Lessee with its obligations under this Lease. In addition to the aforementioned inspection rights, Lessee grants a right of access to Lessor, or any of its authorized representatives, with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

ARTICLE 14. VACATION OF LEASED PREMISES

Section 14.1 Surrender of Leased Premises. Lessee covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained in this Lease, Lessee will peaceably and quietly yield and surrender

possession of the Leased Premises to Lessor. The foregoing, however, will be subject to the rights of Tenants or others in possession pursuant to Tenant Leases with Lessee, provided that such Tenants are not in default under such Tenant Leases and attorn to Lessor as their lessor. An action of forcible detainer shall lie if Lessee holds over after a demand for possession is made by Lessor.

Section 14.2 No Right to Possession after Termination. Lessee has no right to retain possession of the Development or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over by Lessee (or any successor-in-interest to Lessee) after the expiration or earlier termination of this Lease shall be construed to be a tenancy at sufferance on all of the terms and conditions set forth herein to the extent not inconsistent with a tenancy at sufferance. Acceptance by Lessor of rent or any other sum payable hereunder after such expiration or earlier termination shall not result in an extension or renewal of this Lease. If Lessee fails to surrender the Development upon the expiration or earlier termination of this Lease, Lessee shall indemnify, defend and hold harmless Lessor from and against all loss, damage, cost, liability or expense (including, without limitation, attorneys' fees and expenses) resulting from or relating to such failure to surrender the Development including, without limitation, any claim made by any succeeding lessee.

ARTICLE 15. NON-MERGER

Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth in this Lease, there shall be no merger of either this Lease or Lessee's Estate created under this Lease with the fee estate of the Property or any part of the Property by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Lease, Lessee's Estate created under this Lease or any interest in this Lease or Lessee's Estate (including the Improvements), and (b) the fee estate in the Property or any part of the Property or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Lessor, having an interest in (i) this Lease or Lessee's Estate created under this Lease, and (ii) the fee estate in the Property or any part of the Property, shall join in a written instrument effecting such merger and shall duly record the same, and shall have obtained the prior written consent of all Mortgagees.

ARTICLE 16. ASSIGNMENTS AND TRANSFERS

Section 16.1 Consent Required. Except as expressly provided herein, Lessee shall not, without the prior written consent of Lessor, assign this Lease or any interest therein ("Transfer"). A Transfer shall be deemed to include any attempt by Lessee to (a) demolish all or any portion of the Leased Premises after construction of the Improvements; (b) make or permit any voluntary or involuntary, total or partial, sale, lease, assignment, conveyance, mortgage, pledge, encumbrance, or other transfer of any or all of the Leased Premises, the Improvements; or (c) transfer, convey or assign (i) any interest of a managing member, general partner, or controlling affiliate or stockholder (any such interest being referred to as a "Controlling Interest") in Lessee or (ii) a Controlling Interest in any entity which has a Controlling Interest in Lessee, or (iii) any other interest in Lessee, or in any partner or

member thereof. Any person to whom any Transfer is attempted without the consent of Lessor (if applicable) shall have no claim, right or remedy whatsoever hereunder against Lessor, and Lessor shall have no duty to recognize any person claiming under or through the same.

Section 16.2 Limitations on Consent Requirement. Notwithstanding the foregoing, and subject to the limitations set forth in Section 17.19, the consent of Lessor shall not be required for:

(a) a lease of any Unit at the Leased Premises, subject to Lessor's prior approval of the form of Tenant Lease;

(b) mortgage of Lessee's interest in the Leased Premises and Improvements to any approved Mortgagee, and transfer of the Leased Premises and Improvements to such Mortgagee by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or the first transfer of the Leased Premises and the Improvements by such Mortgagee to an unrelated third party following a foreclosure or deed in lieu of foreclosure so long as such transferee or its third-party property management agent is qualified to manage and operate affordable housing projects similar to the Leased Premises;

(c) grants and easements for the establishment, operation, and maintenance of utility services; and

(d) the encumbrance of the Leased Premises with the Regulatory Agreements.

Section 16.3 Subsequent Assignment. In cases where Lessor's consent is required, Lessor's consent to one assignment will not waive the requirement of its consent to any subsequent assignment.

Section 16.4 Request for Consent. If Lessee requests Lessor's consent to a specific assignment, Lessee shall provide to Lessor such information as may reasonably be required by Lessor.

Section 16.5 Grant of Purchase Option to Lessor or Affiliate. Notwithstanding anything to the contrary set forth in any other provision of this Lease, nothing shall prohibit (i) the granting of a purchase option and/or right of first refusal to purchase Lessee's Estate as provided in the Option and/or (ii) the exercise of such Option in accordance with the Option.

ARTICLE 17. MISCELLANEOUS PROVISIONS

Section 17.1 Entire Agreement: Modifications. This Lease supersedes all prior discussions and agreements between the Parties with respect to the leasing of the Leased Premises. This Lease contains the sole and entire understanding between the parties with respect to the leasing of the Leased Premises pursuant to this Lease, and all promises, inducements, offers, solicitations, agreements, representations and warranties made between

the Parties, if any, are merged into this Lease. This Lease may be amended by mutual agreement of the Parties provided that any such amendment must be in writing and signed by both Parties.

Section 17.2 Amendments. Lessor shall not unreasonably withhold its consent to any amendments to this Lease that are reasonably requested by a Mortgagee; provided, however, Lessor may, in its sole and absolute discretion, refuse to consent to any proposed amendments to the description of the Leased Premises, the Term, Rent or any other amendments which would materially change the rights and/or obligations of Lessor under this Lease.

Section 17.3 Governing Law. This Lease, and the rights and obligations of the Parties under this Lease, shall be governed by and construed in accordance with the substantive laws of the State of California.

Section 17.4 Binding Effect. This Lease shall inure to the benefit of and be binding upon the Parties, their heirs, successors, administrators, executors and permitted assigns.

Section 17.5 Severability. In the event any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder of this Lease, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part of this Lease, except to the extent the rights and obligations of the parties have been materially altered by such unenforceability.

Section 17.6 Further Assurances. From and after the date of this Lease, Lessor and Lessee, at the request of the other Party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Lease.

Section 17.7 Captions. All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions of this Lease. All references to particular articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Lease.

Section 17.8 Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

Section 17.9 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

Section 17.10 References. All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Lease.

Section 17.11 Rights Cumulative. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred under this Lease shall be cumulative and not restrictive of those provided at law or in equity.

Section 17.12 Notices. All notices, requests, demands, or other communications required or permitted to be given under this Lease shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by Federal Express, or by hand delivery by a recognized, reputable courier, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Party any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

Lessor: Housing Authority of the County of San Bernardino
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

Lessee: Valencia Grove II, LLC
c/o Housing Partners I, Incorporated
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

Mortgagees: _____

Attn: _____

And

Attn: _____

Section 17.13 Counterparts. This lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

Section 17.14 Time of Essence. Time is and shall be of the essence in this Lease.

Section 17.15 Attorneys' Fees. If any collection proceeding (whether or not arising to the level of an action) or if any action is brought by Lessor to recover any Rent or Additional Rent due and unpaid hereunder or to recover possession of the Development, or in the event any action between Lessor and Lessee to enforce or interpret any of the terms of this Lease, including any action or proceeding in a bankruptcy case, the prevailing party shall be entitled to recover costs of suit and expenses including, without limitation, reasonable attorneys' fees, which shall include fees and costs of any appeal.

Section 17.16 Relationship of Parties. It is understood that, subject to the limitations contained in this Lease, Lessee shall have control of the operation of the Improvements. Nothing in this Lease shall create or be construed to create a partnership or joint venture between Lessor, its successors and assigns, on the one hand, and Lessee, its successors and assigns, on the other hand.

Section 17.17 Conflicts with Mortgage. In the event of a default under a Mortgage, such Mortgagee may exercise with respect to the Leased Premises any right, power or remedy under the Mortgage which is not in conflict with the provisions of this Lease.

Section 17.18 Reserved.

Section 17.19 Reserved.

ARTICLE 18. HUD USE REQUIREMENTS

Section 18.1 Compliance with HUD Requirements.

(a) This Lease is made subject to the terms of the Use Agreement, HUD Approval Letters, and Disposition Agreement (the "HUD Documents").

(b) Lessee shall comply with HUD Documents in developing, using and operating the Development, for a period of fifty-five (55) years beginning on the date Lessee receives a certificate of occupancy for the eighty-fifth (104th) Unit (the "Restricted Period"), subject to the rights granted Lender (as defined in the Use Agreement), set forth in Section 9 of the Use Agreement.

(c) Lessor shall provide notice to Lessee of a failure to comply with the HUD Documents and shall also provide notice to Leasehold Mortgagees pursuant to Section 8.2 above, with concurrent written notice to HUD.

(d) If Lessee fails to correct a violation under the HUD Documents within the period set forth in Section 12.1(b) above (subject to the cure rights of Mortgagees set forth in Section 8.3 above), such failure shall be an Event of Default under the Lease.

Section 18.2 Termination of Lease. At any time after Lessee's failure to correct a violation of the HUD Documents as set forth in Section 18.1(d) above, Lessor, subject to the

rights of any Mortgagees and HUD, shall terminate this Lease pursuant to Section 12.2 above.

Section 18.3 Transfers Subject to Use Agreement. If Lessee's interest in the Leased Premises and the Improvements is transferred during the Restricted Period, any transferee shall expressly assume the Use Agreement pursuant to [Section 14(c) of the Use Agreement]. Lessor shall not unreasonably withhold its consent to any amendments to this Lease that are reasonably requested by a Mortgagee; provided, however, Lessor may, in its sole and absolute discretion, refuse to consent to any proposed amendments to the description of the Leased Premises, the Term, Rent or any other amendments which would materially change the rights and/or obligations of Lessor under this Lease.

[signatures on following page]

IN WITNESS WHEREOF, this Lease is made and entered into as of Commencement Date.

LESSOR:

HOUSING AUTHORITY OF THE COUNTY
OF SAN BERNARDINO, a public body,
corporate and politic

By: _____
Maria Razo, Executive Director

LESSEE:

VALENCIA GROVE II, LLC, a California limited
liability company

By: Housing Partners I, Incorporated, a California
nonprofit public benefit corporation, its
Managing Member

By: _____
Anthony Perez, Executive Director

EXHIBIT A

PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

[TO BE INSERTED]

EXHIBIT B

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Housing Authority of the County of San Bernardino
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

Mail Tax Statements As Directed Above

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (the "Memorandum") is made as of _____, 2022, by and between Housing Authority of the County of San Bernardino, a public body, corporate and politic, ("Lessor"), and Valencia Grove II, LLC, a California limited liability company ("Lessee") with respect to that certain Ground Lease dated as of _____, 2022 (the "Lease"), between Lessor and Lessee.

Pursuant to the Lease, Lessor hereby leases to Lessee and Lessee leases from Lessor that certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein, (the "Property") and Lessor grants to Lessee, all the improvements constructed or to be constructed on the Property for the term of the Lease which improvements are and shall remain real property. The Lease commences on the date of recordation of this Memorandum, and shall continue from such date until the ninety-ninth (99th) anniversary of the date of recordation of this Memorandum, unless sooner terminated pursuant to the terms of the Lease.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease, of which this is a memorandum.

This Memorandum shall be subject to that certain Use Agreement by and among Lessor and sublessee recorded concurrently herewith.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LESSOR:

HOUSING AUTHORITY OF THE COUNTY
OF SAN BERNARDINO, a public body,
corporate and politic

By: _____
Maria Razo, Executive Director

LESSEE:

VALENCIA GROVE II, LLC, a California limited
liability company

By: Housing Partners I, Incorporated, a California
nonprofit public benefit corporation, its
Managing Member

By: _____
Anthony Perez, Executive Director

[SIGNATURES MUST BE NOTARIZED]

GROUND LEASE AGREEMENT

Between

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO,
a public body, corporate and politic ("Lessor")

and

VALENCIA GROVE II, LLC,
a California limited liability company ("Lessee")

(Valencia Grove II Apartments)

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hereunder or to recover possession of the Development, or in the event any action between Lessor and Lessee to enforce or interpret any of the terms of this Lease, including any action or proceeding in a bankruptcy case, the prevailing party shall be entitled to recover costs of suit and expenses including, without limitation, reasonable attorneys' fees, which shall include fees and costs of any appeal.	33
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PROMISSORY NOTE
(Ground Lease Loan)
(Valencia Grove Apartments, Phase II)

\$5,700,000

San Bernardino, California
April ____, 2022

FOR VALUE RECEIVED, the undersigned VALENCIA GROVE II, LLC, a California limited liability company ("Borrower") hereby promises to pay to the order of the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body corporate and politic organized under the laws of California ("Holder"), the principal amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000) plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to repay Holder the principal amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000) with interest for the funds loaned to Borrower by Holder (the "Loan") to finance the long term lease of certain real property located east of Orange Street and North of E. Lugonia Avenue in the City of Redlands (the "Property"), upon which Borrower intends to construct one hundred four (104) units of rental housing, one hundred percent of which units will be affordable for families at or below 80% of the Area Median Income (the "Improvements"). The Property and the Improvements are collectively referred to as the "Development". Concurrently herewith Borrower as lessee and Holder as Lessor are entering into a Ground Lease Agreement with a term of ninety-nine (99) years (the "Ground Lease"). All capitalized terms used but not defined in this Note have the meanings set forth in the Ground Lease.

2. Interest.

(a) Subject to the provisions of Subsection (b) below, the outstanding principal balance of this Note bears interest from the date of this Note until full repayment of the principal balance of the Loan at _____% which is the Applicable Federal Rate applicable to long-term loans with annual compounding, as calculated in accordance with Internal Revenue Code Section 1274(d) as of the date of this Note.

(b) If a Default occurs (defined in Section 9 below), interest on the principal balance will begin to accrue, as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured or waived by Holder, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

3. Loan Documents. This Note is secured by a Deed of Trust, Fixture Filing, Assignment of Rents and Security Agreement (the "Deed of Trust"), of even date herewith, wherein Borrower is the Trustor and Holder is the Beneficiary, covering Borrower's leasehold interest in the Property and fee interest in the Improvements, to be recorded in the Official Records of San Bernardino County (the "Official Records"). The terms of the Deed of Trust are hereby incorporated into this Note and made a part hereof. The Loan is also evidenced by a

Regulatory Agreement and Declaration of Restrictive Covenants by and between Borrower and Holder, of even date herewith, and recorded against the Property in the Official Records (the "Regulatory Agreement"). This Note, the Deed of Trust, and the Regulatory Agreement are collectively referred to as the "Loan Documents".

4. Term and Repayment Requirements.

(a) Term. The term of this Note (the "Term"), commences with the date of this Note and expires fifty-five (55) years after the date a final certificate of occupancy, or equivalent document is issued by the City of San Bernardino to certify that the Development may be legally occupied (the "Completion Date"), provided, however, if a record of the Completion Date cannot be located or established, the Loan is due and payable on the fifty-seventh (57th) anniversary of the date of this Note.

(b) Annual Payments. Commencing on April 1, 2024, and on April 1 of each year thereafter for the Term, Borrower shall make repayments of the outstanding principal and accrued interest on the Loan in an amount equal to the sum of (i) the Authority Prorata Percentage of Lenders' Share of Residual Receipts, and (ii) the Authority Portion of Residual Receipts (each, an "Annual Payment"). Holder shall apply all Annual Payments as follows: (1) first, to accrued interest, and (2) second, to principal.

Notwithstanding the above, payments on this Note shall be payable only from 75% of Surplus Cash or from non-Project Assets as the terms "Surplus Cash" and "Project Assets" are defined in the Regulatory Agreement for Multifamily Projects between Holder and Borrower to be recorded against the Property. The restrictions on payment imposed by the previous sentence shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by this Note.

(c) Payment in Full. All principal and accrued interest on the Loan is due and payable upon the earlier to occur of: (i) the date of any Default, (ii) the expiration of the Term and, (iii) any sale, transfer, assignment, or conveyance of the Development except as provided in the Ground Lease.

(d) Right to Prepay. Borrower may prepay the Loan at any time without premium or penalty. However, the Regulatory Agreement will remain in effect for the entire term of the Regulatory Agreement, regardless of any prepayment.

(e) Special Definitions. The following definitions shall apply for purposes of this Section 4 and Section 5:

(i) "Annual Operating Expenses" with respect to a particular calendar year, means the following costs reasonably and actually incurred for operation and maintenance of the Development: (1) property taxes and assessments imposed on the Development; (2) debt service and associated fees currently due on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Development) on Approved Financing; (3) bond monitoring fee, issuer fees, trustee's fees and other fees and cost payable to a trustee and/or issuer in connection with tax-exempt bonds issued as part of Approved Financing; (4) property

management fees and reimbursements (including deferred payments of previously approved property management fees), on-site property management office expenses, and salaries of property management and maintenance personnel payable to a property manager approved by the Holder pursuant to the Regulatory Agreement, not to exceed amounts that are standard in the industry and pursuant to a management contract approved by the Holder pursuant to the Regulatory Agreement; (5) fees payable to a service provider for the provision of on-site social services for tenants; (6) premiums for property damage and liability insurance; (7) utility services not paid for directly by tenants, including water, sewer, and trash collection; (8) maintenance and repair; (9) any annual license or certificate of occupancy fees required for operation of the Development; (10) security services; (11) advertising and marketing; (12) cash deposited into reserves for capital replacements of the Development in an amount required in connection with the permanent debt or equity financing for the Development; (13) cash deposited into an operating reserve in an amount required in connection with the permanent debt or equity financing; (14) partnership management fees, incentive management fees, and investor services fees payable to any partner of Borrower in the amount set forth in Borrower's Partnership Agreement; (15) fees for accounting, audit, and legal services incurred by Borrower's general partner in the management of the Development, not to exceed amounts that are standard in the industry; (16) payment of any previously unpaid portion of developer fee; (17) extraordinary operating costs specifically approved by the Holder; and (18) payments of deductibles in connection with casualty insurance claims not normally paid from reserves, the amount of uninsured losses actually replaced, repaired or restored, and not normally paid from reserves, and other ordinary and reasonable operating expenses approved by the Holder and not listed above. Annual Operating Expenses do not include the following: depreciation, amortization, depletion or other non-cash expenses, any withdrawal from a reserve account, and any capital cost associated with the Development as determined by the accountant for Borrower.

(ii) "Authority" means the Housing Authority of the County of San Bernardino.

(iii) "Authority Development Loan" means the loan from the Authority to Borrower in the approximate amount of _____ Dollars (\$_____).

(iv) "Authority Portion of Residual Receipts" means _____ percent (___%) of Residual Receipts.

(v) "Authority Prorata Percentage" means the result, expressed as a percentage, obtained by dividing the Loan by the sum of the Loan, the Authority Development Loan, and the HPI Loan, to the extent of the amount of such funds disbursed to Borrower.

(vi) "Gross Revenue" with respect to a particular calendar year, means all revenue, income, receipts, and other consideration actually received from operation and leasing of the Development. "Gross Revenue" shall include, but not be limited to: (1) all rents, fees and charges paid by tenants; (2) Section 8 payments or other rental subsidy payments received for the dwelling units; (3) deposits forfeited by tenants; (4) all cancellation fees; (5) price index adjustments and any other rental adjustments to leases or rental agreements resulting in actual income; (6) net proceeds from vending and laundry room machines; (7) proceeds of business interruption or similar insurance not paid to lenders of Approved Financing with liens senior to the Deed of Trust; (8) subject to the rights of senior lenders of the Development, the

proceeds of casualty insurance to the extent not utilized to repair or rebuild the Development (or applied toward the cost of recovering such proceeds); and (9) condemnation awards for a taking of part or all of the Development for a temporary period. "Gross Revenue" does not include tenants' security deposits, loan proceeds, capital contributions or similar advances.

(vii) "Lenders' Share" means _____ Percent (___%).

(viii) "Residual Receipts" with respect to a particular calendar year, means the amount by which Gross Revenue exceeds Annual Operating Expenses.

5. Reports and Accounting of Residual Receipts. In connection with the Annual Payment, Borrower shall furnish to Holder:

(a) An itemized statement of Residual Receipts for the relevant period. The first statement of Residual Receipts will cover the period that begins on January 1, 2024 and ends on December 31st of that same year. Subsequent statements of Residual Receipts will cover the twelve-month period that ends on December 31 of each year;

(b) A statement from the independent public accountant that audited the Borrower's financial records for the relevant period, which statement must confirm that Borrower's calculation of the Lenders' Share of Residual Receipts is accurate based on Gross Revenue and Annual Operating Expenses;

(c) An annual budget for the operation of the Development beginning with 2024; and

(d) Any additional documentation reasonably required by Holder to substantiate Borrower's calculation of Lenders' Share of Residual Receipts.

The receipt by Holder of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the Authority of any Loan repayment for any period does not bind Holder as to the correctness of such statement or payment. Holder may audit the Residual Receipts and all books, records, and accounts pertaining thereto pursuant to Section 13.2 of the Ground Lease.

6. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of Holder, except as provided in Article 16 of the Ground Lease, concurrent with a transfer of the Ground Lease.

7. Nonrecourse. The Loan is nonrecourse to the Borrower. Neither Borrower, nor any partner of Borrower, has any direct or indirect personal liability for payment of the principal of, and interest on, the Loan. Following recordation of the Deed of Trust, the sole recourse of Holder with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust.

8. Terms of Payment.

(a) Borrower shall make all payments due under this Note in currency

of the United States of America to Holder at 715 East Brier Drive, San Bernardino, CA 92408-2841, Attn: Executive Director, or to such other place as Holder may from time to time designate.

(b) All payments on this Note are without expense to Holder. Borrower shall pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(c) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Borrower under this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest that exceeds the amount that Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate will automatically be deducted from the principal balance owing on this Note, so that in no event is Borrower obligated under the terms of this Note to pay any interest that would exceed the lawful rate.

9. Event of Default; Acceleration.

(a) Any of the following constitutes an event of default under this Note (each, a "Default"):

(i) Any failure to pay, in full, any payment required under this Note when due;

(ii) Other than the failure addressed above in subsection (i), failure of Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Note, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from Holder to Borrower or, if the failure cannot be cured within thirty (30) days, Borrower shall not be in default so long as Borrower is diligently undertaking to cure such failure and such cure is commenced within thirty (30) days of such failure;

(iii) The occurrence of any event of default under Regulatory Agreement or Deed of Trust, or other instrument securing the obligations of the Borrower under this Note or under any other promissory notes hereafter issued by Borrower to Holder pursuant to the Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of a Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust will, at the option of Holder, become immediately due and payable without further demand. So long as Cathay Bank or his/her successor or assigns, are the holders of the first mortgage on the Valencia Grove Apartments, Phase II, any acceleration of this Note is subject to Cathay Bank approval.

(c) Holder's failure to exercise the remedy set forth in Subsection 9(a) above or any other remedy provided by law upon the occurrence of a Default does not constitute

a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Default. The acceptance by Holder of any payment that is less than the total of all amounts due and payable at the time of such payment does not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

(d) The Authority agrees to provide Cathay Bank, (the "Mortgagee") a duplicate copy of all notices of default that the Authority may give to or serve in writing upon Borrower pursuant to the terms of this Note, at the address set forth in Section 17.12 of the Ground Lease, provided, the Authority shall have no liability to the Mortgagee for its failure to do so. The Mortgagee shall have the right, but not the obligation, to cure any Default of Borrower set forth in such notice, during any applicable cure period described in this Note, and the Authority will accept tender of such cure as if delivered by Borrower. If the Mortgagee is unable to cure a Default because Borrower's managing member is in bankruptcy and/or because the cure requires removal of the managing member of Borrower and the Mortgagee is proceeding diligently to remove the managing member of Borrower in order to effect a cure of the Default, the cure period shall be extended for such reasonable time as is necessary for the Mortgagee to effect a cure of the Default, but in no event longer than sixty (60) days after the date of receipt by the Mortgagee of written notice of the Default.

10. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note must not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note are absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

11. Miscellaneous Provisions.

(a) All notices to Holder or Borrower are to be given in the manner and at the addresses set forth in the Ground Lease, or to such addresses as Holder and Borrower may therein designate.

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note is governed by the laws of the State of California.

(d) The times for the performance of any obligations hereunder are to be strictly construed, time being of the essence.

(e) The Loan Documents, of which this Note is a part, contain the entire agreement between the parties as to the Loan. This Note may not be modified except upon the written consent of the parties.

(signature continues on following page)

IN WITNESS WHEREOF, Borrower is executing this Promissory Note as of the day and year first above written.

VALENCIA GROVE II, LLC, a California limited liability company

By: HOUSING PARTNERS I, INCORPORATED, a California nonprofit public benefit corporation, its managing member

By: _____
Anthony Perez
Executive Director

COMPLETION GUARANTY

THIS COMPLETION GUARANTY is made as of _____, 20__ by _____ ("Guarantor"), in favor of EAST WEST BANK, a California banking corporation ("Lender").

RECITAL

A. Lender is the payee under the Promissory Note of this date in the principal amount of \$_____ (the "Note") made by _____ ("Borrower"). The Note evidences a loan from Lender to Borrower in the maximum principal amount of the Note (the "Loan"). The Loan is being disbursed pursuant to the terms of the Construction Loan Agreement of this date between Borrower and Lender (the "Loan Agreement"). Borrower's performance under the Note is secured by the Construction Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing of this date executed by Borrower for the benefit of Lender (the "Deed of Trust"). The Deed of Trust encumbers the "Property" (as defined in the Deed of Trust). The Note, Loan Agreement, Deed of Trust and all other documents, agreements and instruments evidencing, securing or otherwise delivered in connection with the Loan are referred to as the "Loan Documents."

B. Guarantor's execution and delivery of this Guaranty is a condition precedent to Lender's making the Loan. Guarantor has an interest in Borrower and will benefit from Lender's making the Loan to Borrower. Guarantor is therefore willing to enter into this Guaranty to induce Lender to make the Loan to Borrower.

C. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the Loan Agreement.

AGREEMENT

1. Guaranty of Completion.

(a) Guarantor unconditionally and irrevocably guarantees Borrower's completion of the Project in accordance with the Plans and Specifications and all of the other requirements of the Loan Documents by the Completion Date. The foregoing guaranty includes, without limitation: (a) the completion of the Project within the times and in the manner set forth in the Loan Agreement and the Plans and Specifications, and all modifications, amendments and supplements to either of them; (b) the payment of all costs and expenses of such performance; (c) the payment, satisfaction or discharge of all liens, charges and claims that are or may be imposed upon or asserted against the Project; (d) the defense and indemnification of Lender against all such liens, charges and claims, whether arising from the furnishing of labor, materials, supplies or equipment, from taxes, assessments, fees or other charges, from injuries or damage to persons or property, or otherwise; and (e) to cause all operating and carrying costs of the Project,

including, without limitation, the payment of taxes, assessments, utilities, insurance and maintenance expenses, to be paid as they become due.

(b) Guarantor acknowledges that he has received copies of and is familiar with the Plans and Specifications and the Loan Documents, and understands that the obligations guaranteed under this Guaranty may require the expenditure of more than the original principal amount of the Loan.

2. Procedures for Completion.

(a) Lender may give notice to Guarantor of the occurrence of any of the following: (i) Borrower's failure to (A) complete the Project by the Completion Date, (B) prosecute with diligence and continuity the construction of the Project, (C) construct the Project in accordance with the Loan Documents and the Plans and Specifications, or (ii) an Event of Default.

(b) Within ten days after the date on which Lender gives any such notice to Guarantor, Guarantor, at his sole cost, shall commence to complete the construction of the Project and diligently prosecute such construction to completion in accordance with the Loan Documents and the Plans and Specifications, free of liens and fully paid for, and shall defend, indemnify and hold Lender harmless from all losses, costs, liabilities and expenses, including attorneys' fees, incurred in connection with such completion.

(c) If Guarantor fails to commence to complete the construction of the Project or diligently to prosecute such construction to timely completion as provided in Section 2(b) above, then in addition to all other rights and remedies that may be available to Lender under this Guaranty, under the Loan Documents, at law or in equity, including, without limitation, the right and remedy of specific performance, Lender may, but shall not be obligated to, exercise any one or more of the following rights and remedies:

(i) without undertaking to complete the construction of the Project or proceeding to foreclose on the collateral described in the Loan Documents, recover damages from Guarantor in an amount equal to all costs, other than interest on the Loan, which Lender would have to incur in connection with the lien-free completion of the Project (irrespective of the amounts set forth in the Budget);

(ii) without undertaking to complete the construction of the Project, proceed to foreclose on all of the collateral described in the Loan Documents;

(iii) undertake to complete the construction of the Project (either by itself or through any agent, contractor or subcontractor of its selection). If Lender shall so elect to undertake to complete the construction of the Project, then Lender shall be entitled to recover damages from Guarantor in an amount equal to the sum of all costs incurred by Lender in connection with the construction of the Project; and

(iv) in any action or proceeding by Lender to recover damages from Guarantor, Lender may exercise any and all remedies available under the laws of the State of California applicable to an action on a matured contractual indebtedness.

(d) The remedy of specific performance, the recovery of damages and all other rights and remedies under this Guaranty, under the Loan Documents, at law or in equity are intended to be non-exclusive and cumulative. The parties recognize that the choice of remedies by Lender will necessarily and properly be a matter of business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Lender at the lowest cost to Guarantor. Nevertheless, the choice of alternatives by Lender shall not be subject to question or challenge by Guarantor or any other person, nor shall any such choice be asserted as a defense, set-off or basis for any claim of failure to mitigate damages in any action or proceeding arising from this Guaranty.

(e) Guarantor acknowledges that if Lender selects the remedy specified in Section 2(c)(i) above, the measure of damages for breach of this Guaranty shall be based on the costs of completing the Improvements, not the extent to which completing Improvements would increase the value of the Property.

3. Changes Do Not Affect Liability. Guarantor agrees that Lender may without notice to Guarantor and without limiting Guarantor's liability under, or affecting the enforceability of, this Guaranty:

(a) grant extensions of time, renewals or other indulgences and modifications to Borrower or any other party under the Loan Documents;

(b) change the rate of interest under the Note;

(c) change, amend or modify the Loan Documents;

(d) authorize the sale, exchange, release or subordination of any security or collateral in which Lender has an interest or fail to create, perfect or maintain the priority of any security interest in any such collateral;

(e) take additional security for any obligation in connection with the Loan;

(f) discharge or release any party or parties liable under the Loan Documents;

(g) accept or make compositions or other arrangements or file or refrain from filing a claim in any bankruptcy proceeding of Borrower, any other guarantor of the Loan, any pledgor of collateral for any person's obligations to Lender or any other person related to the Loan;

(h) make other or additional loans to Borrower in such amounts and at such times as Lender may determine;

(i) credit payments in such manner and order of priority to principal, interest or other obligations as Lender may determine; and

(j) otherwise deal with Borrower, any other guarantor of the Loan, any pledgor of collateral for any person's obligations to Lender or any other person related to the Loan as Lender may determine in its discretion.

4. Additional Waivers.

(a) Guarantor waives all benefits and defenses it may have under California Civil Code Section 2809 and agrees that Guarantor's liability may be larger in amount and more burdensome than that of Borrower. Guarantor's liability under this Guaranty shall continue until all sums due under the Loan Documents have been paid in full and shall not be limited or affected in any way by any impairment or any diminution or loss of value of any security or collateral for the Loan, from whatever cause, including, without limitation, Lender's failure to perfect a security interest in any such security or collateral or any disability or other defense of Borrower, any other guarantor of the Loan, any pledgor of collateral for any person's obligations to Lender or any other person related to the Loan.

(b) Guarantor agrees that its liability under, and the enforceability of, this Guaranty are absolute and are not contingent upon the genuineness, validity or enforceability of any of the Loan Documents or the availability of any defense to Borrower, any other guarantor of the Loan, any pledgor of collateral for any person's obligations to Lender or any other person related to the Loan. Guarantor waives all benefits and defenses it may have under California Civil Code Section 2810 and agrees that Guarantor shall be liable even if Borrower, any other guarantor of the Loan, any pledgor of collateral for any person's obligations to Lender or any other person related to the Loan had no liability at the time of execution of the Note or later ceases to be liable.

(c) Guarantor waives its rights under California Civil Code Section 2815 and agrees that by doing so Guarantor has no right to revoke this Guaranty until all obligations under the Loan Documents have been fully satisfied.

(d) Guarantor waives its rights under California Civil Code Section 2819 and agrees that by doing so Guarantor's liability and the enforceability of this Guaranty shall continue even if Lender alters any obligations under the Note or any of the other Loan Documents in any respect.

(e) Guarantor waives its rights under California Civil Code Section 2839 and agrees that by doing so (i) its obligations under this Guaranty shall not be deemed satisfied by a mere offer of payment by Borrower or any other person of the principal obligations under the Loan Documents and (ii) Guarantor's liability under and the enforceability of this Guaranty shall continue until all obligations under the Loan Documents have been fully satisfied.

(f) Guarantor waives all benefits and defenses it may have under California Civil Code Sections 2845, 2849 and 2850, including, without limitation, the right to require Lender to (i) proceed against Borrower, any other guarantor of the Loan, any pledgor of collateral for any person's obligations to Lender or any other person related to the Loan, (ii) proceed against or exhaust any other security or collateral Lender may hold, or (iii) pursue any other right or remedy for any Guarantor's benefit, and agrees that Lender may foreclose against

all or a part of the Property or any other security Lender may hold without taking any action against Borrower, any other guarantor of the Loan, any pledgor of collateral for any person's obligations to Lender or any other person related to the Loan, and without proceeding against or exhausting any security or collateral Lender holds.

(g) Guarantor waives its rights under California Civil Code Sections 2899 and 3433 and agrees that by doing so Lender has no obligation regarding the order in which it exercises its remedies against the Property or any other collateral security encumbered pursuant to any of the Loan Documents.

(h) Guarantor waives diligence and all demands, protests, presentments and notices of every kind or nature, including notices of protest, dishonor, nonpayment, acceptance of this Guaranty and creation, renewal, extension, modification or accrual of any of the obligations under the Note or the other Loan Documents. Guarantor also waives the right to plead all statutes of limitation as a defense to Guarantor's liability under, or the enforceability of, this Guaranty.

(i) Guarantor waives any rights or benefits it may have by reason of California Code of Civil Procedure Section 580a which could limit the amount which Lender could recover in a foreclosure of the Property to the difference between the amount owing under the Note and the fair value of the Property or other real property sold at a nonjudicial foreclosure sale or sales of any other real property held by Lender as security for the obligations under the Note.

(j) Guarantor waives all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure of the Property or any other real property given to secure the loan, may destroy Guarantor's rights of subrogation and reimbursement against Borrower by the operation of Section 580d of the California Code of Civil Procedure or otherwise.

5. Guarantor Informed of Borrower's Condition. Guarantor acknowledges that it has had an opportunity to review the Loan Documents, the Plans and Specifications, the Budget, the Construction Schedule, the value of the security for the Loan and Borrower's financial condition and ability to repay the Loan and Borrower's ability to complete the Project in accordance with the Loan Documents and the Plans and Specifications. Guarantor agrees to keep itself fully informed of all aspects of Borrower's financial condition and the performance of Borrower's obligations under the Loan Documents and that Lender has no duty to disclose to Guarantor any information pertaining to Borrower, any security for the Loan or any matters relating to the construction and completion of the Project.

6. Subrogation, Reimbursement and Contribution Rights. Guarantor agrees that its rights of subrogation and reimbursement against Borrower, its right of subrogation against any other collateral or security for the Loan or the pledgor of such collateral or security and its right of contribution from any guarantor of the Loan shall be subordinate to Lender's rights against Borrower, in such collateral or security, against any such pledgor and against any such guarantor. Guarantor shall have no such rights of subrogation, reimbursement or contribution until all amounts due under the Loan Documents have been paid in full and Lender

has released, transferred or disposed of all of its rights in any collateral or security. Guarantor waives its rights under California Civil Code Sections 2847, 2848 and 2849 to the extent inconsistent with the foregoing.

7. Confirmation of Waivers; Borrower's Obligations are Secured by Real Property.

(a) Guarantor is aware that it is waiving all rights and defenses that it may have because Borrower's obligations are secured by real property. This means, among other things:

(i) Lender may collect from Guarantor without first foreclosing on the Property or any other real or personal property collateral for Borrower's obligations pledged by Borrower or any other person; and

(ii) if Lender forecloses on the Property:

(A) the amount of Borrower's obligations outstanding may be reduced only by the price for which the Property is sold at the foreclosure sale, even if the Property is worth more than the sale price; and

(B) Lender may collect from Guarantor even if Lender, by foreclosing on the Property, has destroyed any right Guarantor may have to collect from Borrower.

(b) These are unconditional and irrevocable waivers of any rights and defenses Guarantor may have because Borrower's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

8. Guaranty Continues if Payments Are Avoided or Recovered from Lender. If all or any portion of the obligations guaranteed under this Guaranty are paid or performed, Guarantor's obligations under this Guaranty shall continue and remain in full force and effect if all or any part of such payment or performance is avoided or recovered directly or indirectly from Lender as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, and (b) payment in full of the Loan.

9. Representations and Warranties.

[include representations and warranties if not included in payment guaranty]

10. Financial Reporting.

[include reporting and other covenants if not included in payment guaranty]

11. Borrower. As used in this Guaranty, "Borrower" shall include any successor to Borrower with respect to the Loan and any estate created by the commencement of a case under the Bankruptcy Code or any other insolvency, bankruptcy, reorganization or liquidation proceeding, or by any trustee under the Bankruptcy Code, liquidator, sequestrator or receiver of Borrower or Borrower's property or similar person duly appointed pursuant to any law generally governing any insolvency, bankruptcy, reorganization, liquidation, receivership or like proceeding.

12. Opportunity to Review. Guarantor acknowledges that it has had the opportunity to review the matters discussed and contemplated by the Loan Documents, including the remedies Lender may pursue against Borrower upon the occurrence of an Event of Default, the value of the security or collateral for the Loan and Borrower's financial condition and ability to perform its payment and completion obligations under the Loan Documents. Guarantor further has had the opportunity to review this Guaranty with its counsel.

13. Miscellaneous.

(a) Notices. Any notice, demand or request required under this Guaranty shall be given in writing at the addresses set forth below by personal service; telecopy; overnight courier; or registered or certified, first class mail, return receipt requested.

If to Guarantor:

Attention: _____
Fax No.: _____

If to Lender:

East West Bank
135 N. Los Robles, 2nd Floor
Pasadena, California 91101
Attention: _____
Fax No.: (626) 817-8862

Such addresses may be changed by notice to the other parties given in the same manner as required above. Any notice, demand or request shall be deemed received as follows: (i) if sent by personal service, at the time such personal service is effected; (ii) if sent by telecopy, upon the sender's receipt of a confirmation report indicating receipt by the recipient's telecopier; (iii) if sent by overnight courier, on the business day immediately following deposit with the overnight courier; and (iv) if sent by mail, there business days following deposit in the mail.

(b) Governing Law. All questions with respect to the construction of this Guaranty and the rights and liabilities of the parties to this Guaranty shall be governed by the laws of the State of California.

(c) Binding on Successors. This Guaranty shall inure to the benefit of, and shall be binding upon, the successors and assigns of each of the parties to this Guaranty. Lender may assign this Guaranty with one or more of the Loan Documents, without in any way affecting Guarantor's liability under it or them.

(d) Attorneys' Fees.

(i) Guarantor shall reimburse Lender for all reasonable attorneys' fees, costs and expenses, incurred by Lender in connection with the enforcement of Lender's rights under this Guaranty and each of the other Loan Documents, including, without limitation, reasonable attorneys' fees, costs and expenses for trial, appellate proceedings, out-of-court negotiations, workouts and settlements or for enforcement of rights under any state or federal statute, including, without limitation, reasonable attorneys' fees, costs and expenses incurred to protect Lender's security and attorneys' fees, costs and expenses incurred in bankruptcy and insolvency proceedings such as (but not limited to) seeking relief from stay in a bankruptcy proceeding. The term "expenses" means any expenses incurred by Lender in connection with any of the out-of-court, or state, federal or bankruptcy proceedings referred to above, including, without limitation, the fees and expenses of any appraisers, consultants and expert witnesses retained or consulted by Lender in connection with any such proceeding.

(ii) Lender shall also be entitled to its attorneys' fees, costs and expenses incurred in any post-judgment proceedings to collect and enforce the judgment. This provision is separate and several and shall survive the merger of this Guaranty into any judgment on this Guaranty.

14. Counterparts. This Guaranty may be executed in any number of original counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one instrument. The original signature page of any counterpart may be detached from such counterpart and attached to any other counterpart identical to such counterpart (except having additional signature pages executed by other parties to this Guaranty) without impairing the legal effect of any such signature(s).

15. Entire Agreement. This Guaranty constitutes the entire agreement and understanding between the parties in respect of the subject matter of this Guaranty and supersedes all prior agreements and understandings with respect to such subject matter, whether oral or written.

16. Waivers. Waiver by Lender of any term, covenant or condition under this Guaranty or the Loan Documents, or of any default by Guarantor under this Guaranty or the Loan Documents, or any failure by Lender to insist upon strict performance by Guarantor of any term, covenant or condition contained in this Guaranty or the Loan Documents, shall be effective or binding on Lender only if made in writing by Lender; no such waiver shall be implied from any omission by Lender to take action with respect to any such term, covenant, condition or default. No express written waiver by Lender of any term, covenant, condition or default shall affect any other term, covenant, condition or default or cover any other time period than the application of any such term, covenant or condition to the matter as to which a waiver has been

given or the default or time period specified in such express waiver. This Guaranty may be amended only by an instrument in writing signed by the parties to this Guaranty.

17. Severability. If any part of this Guaranty is declared invalid for any reason, such shall not affect the validity of the rest of the Guaranty. The other parts of this Guaranty shall remain in effect as if this Guaranty had been executed without the invalid part. The parties declare that they intend and desire that the remaining parts of this Guaranty continue to be effective without any part or parts that have been declared invalid.

18. Joint and Several Liability. If more than one person has signed this Guaranty, it shall be the joint and several obligation of all such persons.

19. Waiver of Trial by Jury. **EACH OF LENDER AND GUARANTOR WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS GUARANTY OR THE OTHER LOAN DOCUMENTS OR THE CONDUCT OF THE RELATIONSHIP BETWEEN LENDER AND GUARANTOR. BOTH LENDER AND GUARANTOR HAVE OBTAINED THE ADVICE OF THEIR RESPECTIVE LEGAL COUNSEL BEFORE SIGNING THIS GUARANTY AND ACKNOWLEDGE THAT THEY VOLUNTARILY AGREED TO THIS WAIVER OF THEIR RIGHT TO TRIAL BY JURY WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND LEGAL CONSEQUENCE.**

(Signatures on next page)

VALENCIA GROVE II

Description of Development Loan Agreement

Below Market Interest Rate (BMIR) Loan from HACSB

Anticipated Loan Documents

Permanent BMIR Loan:

1. Loan Agreement – states the loan terms, including the permitted use of the loan funds, any conditions for disbursing loan funds, requirements for repayment, representations of borrower, and remedies in case of borrower default. May include whether or under what conditions the loan can be subordinated to another loan, such as a private construction lender.
2. Promissory Note – states the basic loan terms and evidences borrower's promise to repay.
3. Deed of Trust – recorded in the public land records, helps to establish HACSB's priority with respect to other lenders, provides security for the repayment of the loan through certain remedies (including foreclosure) in the event of borrower default.
4. Regulatory Agreement [for both Permanent and Gap Loan] – recorded in the public land records to restrict the use of the property to affordable housing, at a minimum it will restrict at least 40% of the units at less than 80 AMI for at least 20 years.

Gap BMIR Loan:

1. Loan Agreement – same explanation as above (NOTE: Both the Permanent and Gap loans might be addressed in one loan agreement.)
2. Promissory Note – same explanation as above for Permanent BMIR Loan.
3. Deed of Trust – same explanation as above for Permanent BMIR Loan.
[NOTE: the same Regulatory Agreement document can address both the Permanent and Gap Loans]

**U.S. Department Of Housing And Urban Development
Office of Public and Indian Housing**

SECTION 8 PROJECT-BASED VOUCHER PROGRAM

**PBV AGREEMENT TO ENTER INTO
HOUSING ASSISTANCE PAYMENTS CONTRACT**

NEW CONSTRUCTION OR REHABILITATION

PART I

This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number. Assurances of confidentiality are not provided under this collection.

1.1 Parties

This Agreement to Enter into Housing Assistance Payments Contract (“Agreement”) is entered into between: _____ (“PHA”) and
_____. (“owner”).

1.2 Purpose

The owner agrees to develop the Housing Assistance Payments Contract (“HAP contract”) units to in accordance with Exhibit B to comply with Housing Quality Standards (“HQS”), and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner of the contract units.

1.3 Contents of Agreement

This Agreement consists of Part I, Part II and the following Exhibits:

EXHIBIT A: The approved owner’s PBV proposal. (Selection of proposals must be in accordance with 24 CFR 983.51.)

EXHIBIT B: Description of work to be performed under this Agreement, including:

- if the Agreement is for rehabilitation of units, this exhibit must include the rehabilitation work write-up and, where the PHA has determined necessary, specifications and plans.
- if the Agreement is for new construction of units, the work description must include the working drawings and specifications.
- any additional requirements beyond HQS relating to quality, design and architecture that the PHA requires.
- work items resulting from compliance with the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements under section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.22 and 8.23.

EXHIBIT C: Description of housing, including:

- project site.
- total number of units in project covered by this Agreement.
- location of contract units on site.
- number of contract units by area (size) and number of bedrooms and bathrooms.
- services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner.
- utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant.
- estimated initial rent to owner for the contract units.

EXHIBIT D: The HAP contract.

1.4 Significant Dates

- A. Effective Date of the Agreement: The Agreement must be executed promptly after PHA notice of proposal selection to the owner has been given. The PHA may not enter this Agreement with the owner until any required subsidy layering review has been performed and an environmental review has been satisfactorily completed in accordance with HUD requirements.
- B. A project may either be a single-stage or multi-stage project. A single-stage project will have the same Agreement effective date for all contract units. A multi-stage project will have separate effective dates for each stage.

_____ **Single-stage project**

- i. Effective Date for all contract units: _____
- ii. Date of Commencement of the Work: The date for commencement of work is not later than _____ calendar days after the effective date of this Agreement.
- iii. Time for Completion of Work: The date for completion of the work is not later than _____ calendar days after the effective date of this Agreement.

_____ **Multi-Stage Project**

Enter the information for each stage upon execution of the Agreement for the corresponding stage.

STAGE	NUMBER OF UNITS	EFFECTIVE DATE	DATE OF COMMENCEMENT OF WORK	TIME FOR COMPLETION OF WORK

1.5 Nature of the Work

_____ This Agreement is for **New Construction** of units to be assisted by the project-based voucher program.

_____ This Agreement is for **Rehabilitation** of units to be assisted by the project-based voucher program.

1.6 Schedule of Completion

- A. **Timely Performance of Work:** The owner agrees to begin work no later than the date for commencement of work as stated in section 1.4. In the event the work is not commenced, diligently continued and completed as required under this Agreement, the PHA may terminate this Agreement or take other appropriate action. The owner agrees to report promptly to the PHA the date work is commenced and furnish the PHA with progress reports as required by the PHA.
- B. **Time for Completion:** All work must be completed no later than the end of the period stated in section 1.4. Where completion in stages is provided for, work related to units included in each stage shall be completed by the stage completion date and all work on all stages must be completed no later than the end of the period stated in section 1.4.
- C. **Delays:** If there is a delay in the completion due to unforeseen factors beyond the owner's control as determined by the PHA, the PHA agrees to extend the time for completion for an appropriate period as determined by the PHA in accordance with HUD requirements.

1.7 Changes in Work

- A. The owner must obtain prior PHA approval for any change from the work specified in Exhibit B which would alter the design or quality of the rehabilitation or construction. The PHA is not required to approve any changes requested by the owner. PHA approval of any change may be conditioned on establishment of a lower initial rent to owner as determined by PHA in accordance with HUD requirements.
- B. If the owner makes any changes in the work without prior PHA approval, the PHA may establish lower initial rents to owner as determined by the PHA in accordance with HUD requirements.
- C. The PHA may inspect the work during rehabilitation or construction to ensure that work is proceeding on schedule, is being accomplished in accordance with the terms of the Agreement, meets the level of material described in Exhibit B and meets typical levels of workmanship for the area.

1.8 Work Completion

- A. Conformance with Exhibit B: The work must be completed in accordance with Exhibit B. The owner is solely responsible for completion of the work.
- B. Evidence of Completion: When the work is completed, the owner must provide the PHA with the following:
1. A certification by the owner that the work has been completed in accordance with the HQS and all requirements of this Agreement.
 2. A certification by the owner that the owner has complied with labor standards and equal opportunity requirements in the development of the housing. (See 24 CFR 983.155(b)(1)(ii).)
 3. Additional Evidence of Completion: At the discretion of the PHA, or as required by HUD, the owner may be required to submit additional documentation as evidence of completion of the housing. Check the following that apply:
 - _____ A certificate of occupancy or other evidence that the contract units comply with local requirements.
 - _____ An architect or developer's certification that the housing complies with:
 - _____ the HQS;
 - _____ State, local or other building codes;
 - _____ Zoning;
 - _____ The rehabilitation work write-up for rehabilitated housing;
 - _____ The work description for newly constructed housing; or
 - _____ Any additional design or quality requirements pursuant to this Agreement.

1.9 Inspection and Acceptance by the PHA of Completed Contract Units

- A. Completion of Contract Units: Upon receipt of owner notice of completion of contract units, the PHA shall take the following steps:
 - 1. Review all evidence of completion submitted by owner.
 - 2. Inspect the units to determine if the housing has been completed in accordance with this Agreement, including compliance with the HQS and any additional requirements imposed by the PHA under this Agreement.
- B. Non-Acceptance: If the PHA determines the work has not been completed in accordance with this Agreement, including non-compliance with the HQS, the PHA shall promptly notify the owner of this decision and the reasons for the non-acceptance. The parties must not enter into the HAP contract at this point. However, work deficiencies may be corrected in accordance with Section 1.10 of this Agreement.
- C. Acceptance: If the PHA determines that the work has been completed in accordance with this Agreement, and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

1.10 Acceptance Where Work Deficiencies Exist

- A. If the PHA determines that work deficiencies exist, the PHA shall determine whether and to what extent the deficiencies are correctable, whether the units will be accepted after correction of the deficiencies, and the requirements and procedures (consistent with HUD requirements) for such correction and acceptance of contract units. The PHA shall notify the owner of the PHA's decision.
- B. Completion in Stages: When the units will be completed in stages, the procedures of this section shall apply to each stage.

1.11 Execution of HAP Contract

- A. Time and Execution: Upon acceptance of the units by the PHA, the owner and the PHA execute the HAP contract.

- B. Completion in Stages: When the units will be completed in stages, the number and types of units in each stage, and the initial rents to owner for such units, shall be separately shown in the HAP contract for each stage. Upon acceptance of the first stage, the owner shall execute the HAP contract and the signature block provided in the HAP contract for that stage. Upon acceptance of each subsequent stage, the owner shall execute the signature block provided in the HAP contract for such stage.
- C. Form of HAP contract: The terms of the HAP contract shall be provided in Exhibit D of this Agreement. There shall be no change in the terms of the HAP contract unless such change is approved by HUD headquarters. Prior to execution by the owner, all blank spaces in the HAP contract shall be completed by the PHA.
- D. Survival of Owner Obligations: Even after execution of the HAP contract, the owner shall continue to be bound by all owner obligations under the Agreement.

1.12 Initial Determination of Rents

- A. The estimated initial rent to owner shall be established in Exhibit C of this Agreement.
- B. The initial rent to owner is established at the beginning of the HAP contract term.
- C. The estimated and initial contract rents for each unit may in no event exceed the amount authorized in accordance with HUD requirements. Where the estimated or the initial rent to owner exceeds the amount authorized under HUD requirements, the PHA shall establish a lower estimated or initial rent to owner (as applicable), in accordance with HUD requirements.

1.13 Uniform Relocation Act

- A. A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.
- B. The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Payment of relocation assistance must be in accordance with HUD requirements.

- C. The acquisition of real property for a project to be assisted under the project-based voucher program is subject to the URA and 49 CFR part 24, subpart B.
- D. The PHA must require the owner to comply with the URA and 49 CFR part 24.
- E. In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of the Agreement between the owner and the PHA.

1.14 Protection of In-Place Families

- A. In order to minimize displacement of in-place families, if a unit to be placed under HAP contract is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA’s waiting list (if it is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized unit in the project.
- B. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.
- C. The term “in-place family” means an eligible family residing in a proposed contract unit on the proposal selection date.
- D. Assistance to in-place families may only be provided in accordance with HUD requirements.

1.15 Termination of Agreement and HAP Contract

The Agreement or HAP contract may be terminated upon at least 30 days notice to the owner by the PHA or HUD if the PHA or HUD determines that the contract units were not eligible for selection in conformity with HUD requirements.

1.16 Rights of HUD if PHA Defaults Under Agreement

If HUD determines that the PHA has failed to comply with this Agreement, or has failed to take appropriate action, to HUD’s satisfaction or as directed by HUD, for enforcement of the PHA’s rights under this Agreement, HUD may assume the PHA’s rights and obligations under the Agreement, and may perform the obligations and enforce the rights of the PHA under the Agreement. HUD will, if it determines that the owner is not in

default, pay annual contributions for the purpose of providing housing assistance payments with respect to the dwelling unit(s) under this Agreement for the duration of the HAP contract.

1.17 Owner Default and PHA Remedies

A. Owner Default

Any of the following is a default by the owner under the Agreement:

1. The owner has failed to comply with any obligation under the Agreement.
2. The owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
3. The owner has committed any fraud or made any false statement to the PHA or HUD in connection with the Agreement.
4. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any Federal housing assistance program.
5. If the property where the contract units are located is subject to a lien or security interest securing a HUD loan or a mortgage insured by HUD and:
 - A. The owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or
 - B. The owner has committed fraud, bribery or any other corrupt or criminal act in connection with the HUD loan or HUD-insured mortgage.
6. The owner has engaged in any drug-related criminal activity or any violent criminal activity.

B. PHA Remedies

1. If the PHA determines that a breach has occurred, the PHA may exercise any of its rights or remedies under the Agreement.

2. The PHA must notify the owner in writing of such determination. The notice by the PHA to the owner may require the owner to take corrective action (as verified by the PHA) by a time prescribed in the notice.
3. The PHA's rights and remedies under the Agreement include, but are not limited to: (i) terminating the Agreement; and (ii) declining to execute the HAP contract for some or all of the units.

C. PHA Remedy is not Waived

The PHA's exercise or non-exercise of any remedy for owner breach of the Agreement is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

1.18 PHA and Owner Relation to Third Parties

A. Selection and Performance of Contractor

1. The PHA has not assumed any responsibility or liability to the owner, or any other party for performance of any contractor, subcontractor or supplier, whether or not listed by the PHA as a qualified contractor or supplier under the program. The selection of a contractor, subcontractor or supplier is the sole responsibility of the owner and the PHA is not involved in any relationship between the owner and any contractor, subcontractor or supplier.
2. The owner must select a competent contractor to undertake rehabilitation or construction. The owner agrees to require from each prospective contractor a certification that neither the contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in contracts by any Federal department or agency or the Comptroller General. The owner agrees not to award contracts to, otherwise engage in the service of, or fund any contractor that does not provide this certification.

- B. Injury Resulting from Work under the Agreement: The PHA has not assumed any responsibility for or liability to any person, including a worker or a resident of the unit undergoing work pursuant to this Agreement, injured as a result of the work or as a result of any other action or failure to act by the owner, or any contractor, subcontractor or supplier.

- C. Legal Relationship: The owner is not the agent of the PHA and this Agreement does not create or affect any relationship between the PHA and any lender to the owner or any suppliers, employees, contractor or subcontractors used by the owner in the implementation of the Agreement.
- D. Exclusion of Third Party Claims: Nothing in this Agreement shall be construed as creating any right of any third party (other than HUD) to enforce any provision of this Agreement or the HAP contract, or to assert any claim against HUD, the PHA or the owner under the Agreement or the HAP contract.
- E. Exclusion of Owner Claims against HUD: Nothing in this Agreement shall be construed as creating any right of the owner to assert any claim against HUD.

1.19 PHA-Owned Units

Notwithstanding Section 1.18 of this Agreement, a PHA may own units assisted under the project-based voucher program, subject to the special requirements in 24 CFR 983.59 regarding PHA-owned units.

1.20 Conflict of Interest

- A. Interest of Members, Officers, or Employees of PHA, Members of Local Governing Body, or Other Public Officials
 - 1. No present or former member or officer of the PHA (except tenant-commissioners), no employee of the PHA who formulates policy or influences decisions with respect to the housing choice voucher program or project-based voucher program, and no public official or member of a governing body or State or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in the Agreement or HAP contract.
 - 2. HUD may waive this provision for good cause.

- B. Disclosure

The owner has disclosed to the PHA any interest that would be a violation of the Agreement or HAP contract. The owner must fully and promptly update such disclosures.

1.21 Interest of Member or Delegate to 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 the Agreement or HAP contract or to any benefits arising from the Agreement or HAP contract.

1.22 Transfer of the Agreement, HAP Contract or Property

A. PHA Consent to Transfer

The owner agrees that the owner has not made and will not make any transfer in any form, including any sale or assignment, of the Agreement, HAP contract or the property without the prior written consent of the PHA. A change in ownership in the owner, such as a stock transfer or transfer of the interest of a limited partner, is not subject to the provisions of this section. Transfer of the interest of a general partner is subject to the provisions of this section.

B. Procedure for PHA Acceptance of Transferee

Where the owner requests the consent of the PHA for a transfer in any form, including any sale or assignment, of the Agreement, the HAP contract or the property, the PHA must consent to a transfer of the Agreement or HAP contract if the transferee agrees in writing (in a form acceptable to the PHA) to comply with all the terms of the Agreement and HAP contract, and if the transferee is acceptable to the PHA. The PHA's criteria for acceptance of the transferee must be in accordance with HUD requirements.

C. When Transfer is Prohibited

The PHA will not consent to the transfer if any transferee, or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

1.23 Exclusion from Federal Programs

A. Federal Requirements

The owner must comply with and is subject to requirements of 2 CFR part 2424.

B. Disclosure

The owner certifies that:

1. The owner has disclosed to the PHA the identity of the owner and any principal or interested party.
2. Neither the owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation or otherwise excluded under 2 CFR part 2424.

1.24 Lobbying Certifications

A. The owner certifies, to the best of owner's knowledge and belief, that:

1. No Federally appropriated funds have been paid or will be paid, by or on behalf of the owner, to 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 the awarding of the Agreement or HAP contract, or the extension, continuation, renewal, amendment, or modification of the HAP contract.
2. If any funds other than Federally appropriated funds have been paid or will be paid to 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 the Agreement or HAP contract, the owner must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification by the owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

1.25 Subsidy Layering

A. Owner Disclosure

The owner must disclose to the PHA, in accordance with HUD requirements, information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

B. Limit of Payments

Housing assistance payments under the HAP contract must not be more than is necessary, as determined in accordance with HUD requirements, to provide affordable housing after taking account of such related assistance. The PHA will adjust in accordance with HUD requirements the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

1.26 Prohibition of Discrimination

A. The owner may not refuse to lease contract units to, or otherwise discriminate against, any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.

B. The owner must comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.* ; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* ; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–

1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

- C. The PHA and the owner must cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

1.27 PHA and HUD Access to Premises and Owner Records

- A. The owner must furnish any information pertinent to this Agreement as may be reasonably required from time to time by the PHA or HUD. The owner shall furnish such information in the form and manner required by the PHA or HUD.
- B. The owner must permit the PHA or HUD or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the owner to the extent necessary to determine compliance with the Agreement.

1.28 Notices and Owner Certifications

- A. Where the owner is required to give any notice to the PHA pursuant to this Agreement, such notice shall be in writing and shall be given in the manner designated by the PHA.
- B. Any certification or warranty by the owner pursuant to the Agreement shall be deemed a material representation of fact upon which reliance was placed when this transaction was entered into.

1.29 HUD Requirements

- A. The Agreement and the HAP contract shall be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements. The owner agrees to comply with all such laws and HUD requirements
- B. HUD requirements are requirements that apply to the project-based voucher program. HUD requirements are issued by HUD Headquarters as regulations, Federal Register notices or other binding program directives.

1.30 Applicability of Part II provisions – Check all that apply

- ☐ Training, Employment and Contracting Opportunities
Section 2.1 applies if the total of the contract rents for all units under the proposed HAP contract, over the maximum term of the contract, is more than \$200,000.
- ☐ Equal Employment Opportunity
Section 2.2 only applies to construction contracts of more than \$10,000.
- ☐ Labor Standards Requirements
Sections 2.4, 2.8 and 2.10 apply when this Agreement covers nine or more units.
- ☐ Flood Insurance
Section 2.11 applies if units are located in areas having special flood hazards and in which flood insurance is available under the National Flood Insurance Program.

EXECUTION OF THE AGREEMENT

PUBLIC HOUSING AGENCY

Name (Print)_____

By:_____
Signature of Authorized Representative

Official title (Print):_____

Date:_____

OWNER

Name (Print)_____

By:_____
Signature of Authorized Representative

Official Title (Print): _____

Date: _____

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

May 10, 2022

FROM

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

SUBJECT

Sale of Three Single-Family Homes

RECOMMENDATION(S)

1. Authorize the sale of real property owned by the Housing Authority of the County of San Bernardino at 12797 9th Street, Yucaipa, 14463 Welsh Court, Hesperia, and 14469 Welsh Court, Hesperia.
2. Adopt Resolution No. 150 finding the sale of the properties to be exempt from the California Surplus Land Act insofar as the properties are to be transferred with affordability restrictions pursuant to Government Code Section 25539.4.
3. Authorize the Executive Director or her designee to negotiate the sale to income-qualified households at an affordable sales price of three Single Family Homes owned by the Housing Authority of the County of San Bernardino located at:
 - a. 12797 9th Street Yucaipa, CA 92399 for a price not to exceed \$436,000
 - b. 14463 Welsh Court Hesperia, CA 92345 for a price not to exceed \$357,000
 - c. 14469 Welsh Court Hesperia, CA 92345 for a price not to exceed \$345,000
4. Authorize the Executive Director to execute silent second mortgages, if required to effectuate the sale of each home to eligible family(s), to be recorded against the properties with 45-year affordability covenants prepared in a form approved by Legal Counsel.
5. Authorize the Executive Director to approve decreases to the total sales prices, not to exceed 5% of the asking price for each home, if required to effectuate the sale to eligible family(s)
6. Authorize the Executive Director to upon consultation with Legal Counsel, to make any necessary changes, and to execute all agreements and documents required for the sale of the real properties listed above, and to close escrow on the sale of each.

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

GOALS & OBJECTIVES

Clients have achieved their own personal level of stability and economic independence.

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

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

FINANCIAL IMPACT

The Housing Authority of the County of San Bernardino (HACSB) will incur no out-of-pocket costs in order to sell the homes, as all costs will be covered by proceeds of the sales. The fair market value of each home is estimated to be \$345,000 for 14469 Welsh Court, \$357,000 for 14463 Welsh Court and \$436,000 for 12797 9th Street. The total funds generated by the sale of the homes is therefore estimated not to exceed \$1,138,000. To further the mission of HACSB, the proposal is to sell the homes at a sales price affordable to low-income households, as established by the California Health and Safety Code Section 50052.5 (Affordable Sales Price). The income that is generated by the sale of the homes will be allocated toward the development of phase II of the

Valencia Grove multifamily affordable rental site in Redlands. Health and Safety Code Section 34312.3(b) grants housing authorities the power to sell, lease or otherwise dispose of real property without complying with any provision of law concerning disposition of surplus property if the proceeds of the sale or lease, net of the cost of sale, are used directly to assist a housing project for persons of low income. There will be a minimal reduction in annual rental income revenue to HACSB, which will be partly offset by a reduction in staff time and expenses that are currently required to manage and administer these scattered site properties.

BACKGROUND INFORMATION

The sale of these homes will be to families that are either served by HACSB or whose income is at or below 120% of the Area Median Income (AMI) and will further HACSB's mission by providing three families with the opportunity to achieve the dream of homeownership. Funds generated through the sale of the homes will be reinvested in additional affordable housing such as the 2nd Phase of the Valencia Grove Community in Redlands. Two out of the three homes are currently vacant, and the family that currently occupies 14469 Welsh Court Hesperia, CA 92345 has been determined to be a qualified purchaser, desires to purchase the home, and is now going through the loan approval process with HACSB staff assistance. Furthermore, a Residential Purchase Agreement is in place with a qualified buyer for 14463 Welsh Court Hesperia, CA 92345 and another prospective buyer has been identified for 12797 9th Street Yucaipa, CA 92399. Because HACSB homeownership staff is working directly with existing HACSB homeownership program participants, real estate brokerage services are not required for either HACSB or the buyers.

The California Surplus Land Act (SLA) was amended effective January 2020 by Assembly Bill (AB) 1486 and AB 1255 to promote affordable housing development on unused or underutilized public land throughout the state to respond to the existing affordable housing crisis. The SLA generally requires all California public agencies, including housing authorities, to provide notices of availability of surplus land for lease or purchase to local public entities and housing sponsors as required by Government Code Section 54222. The SLA has several exemptions to its requirement that housing authorities first offer surplus properties to other public entities and housing sponsors. One such exemption provides that a governing board of a housing authority may declare property to be "exempt surplus land" at a regular public meeting and the declaration is supported by written findings demonstrating that the land will be transferred for development or maintenance affordable housing with restrictions as described in Government Code Section 25539.4. In turn, Government Code Section 25539.4 provides that property may be sold without complying with its provisions if, in relevant part, a resolution is approved making findings that it will be available to persons and families of moderate or low income as defined by Health & Safety Code, § 50093 or by the United States Department of Housing and Urban Development. The resolution provided with this memo makes those relevant findings.

The final Affordable Sales Price to be paid by qualified purchasers depends on the prospective buyers' combined gross annual household income. Based on such income, the Affordable Sales Price to be paid by the qualified buyer must be within the amounts established for San Bernardino County, as published by the California Housing and Community Development Department (HCD). These income limits are subject to change on an annual basis. The applicant's income level must meet the requirement at the time the Program Interest Form is submitted and continue to qualify at the time of purchase of the Property. Below are the amounts of the various annual income limits for each category of households listed by HCD for 2021:

Sale of Three Single-Family Homes
May 10, 2022

Number of Persons in Household:	1	2	3	4	5	6	7	8
Extremely Low	16600	19000	21960	26500	31040	35580	40120	44660
Very Low Income	27650	31600	35550	39500	42700	45850	49000	52150
Low Income	44250	50600	56900	63200	68300	73350	78400	83450
Median Income	54250	62000	69750	77500	83700	89900	96100	102300
Moderate Income	65100	74400	83700	93000	100450	107900	115300	122750
San Bernardino County Area Median Income: \$77,550								

Per State Health and Safety Code section 5052.5(b), the Affordable Sales Price is the maximum annual amount a household may pay for a mortgage, property taxes, insurance, etc., and generally may not exceed 30% of the above numbers. For example, for a Moderate Income household of 4 members, the total amount to be paid for housing annually may not exceed \$27,900 (\$93,000 from the above chart X 30%).

HACSB will prioritize the sale of the homes to existing HACSB participants. These participants' incomes do not exceed 80% AMI (Low Income per the above table), therefore the maximum loan that they may qualify for may fall below the current market value of the home that they are purchasing. In this event, HACSB will place a "silent second" mortgage on the property, to bring the final sales price up to market value. Although payment toward that second mortgage will be deferred and forgiven if the homeowner meets certain conditions, it is necessary to ensure that HACSB can recoup the fair market value of each home should unforeseen circumstances require the participant to sell before the end of the term.

PROCUREMENT

Not Applicable

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on May 4, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-150

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, FINDING THE SALE OF THREE SINGLE-FAMILY HOUSING PARCELS TO BE EXEMPT FROM THE CALIFORNIA SURPLUS LAND ACT AT GOVERNMENT CODE SECTION 54221(e)(1)

WHEREAS, the Housing Authority of the County of San Bernardino (HACSB) owns three (3) properties located at 12797 9th Street, in the City of Yucaipa, 14463 Welsh Court, in the City of Hesperia, and 14469 Welsh Court, in the City of Hesperia, California (Properties);

WHEREAS, the HACSB wishes to sell the Properties subject to affordability covenants pursuant to Government Code Section 25539.4 at affordable housing prices; and

WHEREAS, the California Surplus Land Act (SLA), as amended by Assembly Bill (AB) 1486 and AB 1255, to promote affordable housing development on unused or underutilized public land throughout the state to respond to the existing affordable housing crisis generally requires California public agencies to provide notices of availability of surplus land for lease or purchase to local public entities and housing sponsors as required by Government Code Section 54222;

WHEREAS, the SLA has several exemptions to its requirement that public agencies, including housing authorities, first offer surplus properties to other public entities and housing sponsors;

WHEREAS, one exemption from the requirements of the SLA pursuant to Government Code Section 54222(e)(1) provides that a governing board of a housing authority may declare the property to be “exempt surplus land” at a regular public meeting and the declaration is supported by written findings demonstrating that the land will be transferred for development or maintenance affordable housing with restrictions as described in Government Code Section 25539.4;

WHEREAS, Government Code Section 25539.4 allows property to be sold without complying with the SLA if, in relevant part, a resolution is approved making findings that it will be available to persons and families of moderate or low income as defined by Health & Safety Code, § 50093 or by the United States Department of Housing and Urban Development; and

WHEREAS, the HACSB wishes to sell the properties to households meeting the requirements of Government Code Section 25539.4 and hereby makes such findings as necessary to be exempt from the SLA pursuant to Government Code section 54221(e)(1).

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, CALIFORNIA, DOES HEREBY FIND, DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct, and are incorporated herein by reference.

SECTION 2. The HACSB hereby finds that the Properties will be sold to households meeting the requirements of Government Code Section 25539.4. To that end, the sale of the Properties will be subject to affordability covenants recorded against the title of each of the Properties requiring them to remain affordable to families meeting the requirements of of Government Code Section 25539.4.

SECTION 3. The HACSB Board of Commissioners hereby finds that the sale of the Properties with the aforementioned affordability covenants meets the requirements for exemption from the provisions of the SLA pursuant to Government Code section 54221(e)(1).

SECTION 4. In accordance with Government Code Section 25539.4, the Clerk of the Board of Commissioners provided notice of this public meeting concerning the adoption of this resolution.

SECTION 5. The Executive Director of the Successor Agency is authorized to execute all documents necessary to effectuate the transfer of the Property in accordance with the terms of the PSA.

SECTION 6. This Resolution shall be effective 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 this 10th day of May, 2022.

Secretary



DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)
(C.A.R. Form AD, Revised 12/21)

☐ (If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(j), (k), and (l).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salespersons and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation.

Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE SECOND PAGE.**

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ Date _____

☐ Buyer ☐ Seller ☐ Landlord ☐ Tenant _____ Date _____

Agent _____ DRE Lic. # _____

Real Estate Broker (Firm)

By _____ DRE Lic. # _____ Date _____

(Salesperson or Broker-Associate, if any)



CIVIL CODE SECTIONS 2079.13 – 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

CONFIRMATION: (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

Seller's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is the broker of (check one): <input type="checkbox"/> the seller; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Seller's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is (check one): <input type="checkbox"/> the Seller's Agent. (salesperson or broker associate) <input type="checkbox"/> both the Buyer's and Seller's Agent. (dual agent)		
Buyer's Brokerage Firm	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is the broker of (check one): <input type="checkbox"/> the buyer; or <input type="checkbox"/> both the buyer and seller. (dual agent)		
Buyer's Agent	DO NOT COMPLETE. SAMPLE ONLY	License Number
Is (check one): <input type="checkbox"/> the Buyer's Agent. (salesperson or broker associate) <input type="checkbox"/> both the Buyer's and Seller's Agent. (dual agent)		

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller.

(b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered.

(d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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AD REVISED 12/21 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

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FAIR HOUSING & DISCRIMINATION ADVISORY

(C.A.R. Form FHDA, 10/20)

1. **EQUAL ACCESS TO HOUSING FOR ALL:** All housing in California is available to all persons. Discrimination as noted below is prohibited by law. Resources are available for those who have experienced unequal treatment under the law.
2. **FEDERAL AND STATE LAWS PROHIBIT DISCRIMINATION AGAINST IDENTIFIED PROTECTED CLASSES:**
 - A. **FEDERAL FAIR HOUSING ACT ("FHA")** Title VIII of the Civil Rights Act; 42 U.S.C. §§ 3601-3619; Prohibits discrimination in sales, rental or financing of residential housing against persons in protected classes;
 - B. **CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA")** California Government Code ("GC") §§12900-12996, 12955; 2 California Code of Regulations ("CCR") §§12005-12271; Prohibits discrimination in sales, rental or financing of housing opportunity against persons in protected classes by providers of housing accommodation and financial assistance services as related to housing;
 - C. **CALIFORNIA UNRUH CIVIL RIGHTS ACT ("Unruh")** California Civil Code ("CC") §51; Prohibits business establishments from discriminating against, and requires full and equal accommodation, advantages, facilities, privileges, and services to persons in protected classes;
 - D. **AMERICANS WITH DISABILITIES ACT ("ADA")** 42 U.S.C. §§12181-12189; Title III of the ADA prohibits discrimination based on disability in public accommodations; and
 - E. **OTHER FAIR HOUSING LAWS:** Section 504 of Rehabilitation Act of 1973 29 U.S.C. §794; Ralph Civil Rights Act CC §51.7.; California Disabled Persons Act; CC §§54-55.32; any local city or county fair housing ordinances, as applicable.
3. **POTENTIAL LEGAL REMEDIES FOR UNLAWFUL DISCRIMINATION: Violations of fair housing laws may result in monetary civil fines, injunctive relief, compensatory and/or punitive damages, and attorney fees and costs.**
4. **PROTECTED CLASSES/CHARACTERISTICS:** Whether specified in Federal or State law or both, discrimination against persons if based on that person's belonging to, association with, or perceived membership to, any of the following classes or categories is prohibited.

Race	Color	Ancestry	National Origin	Religion
Sex	Sexual Orientation	Gender	Gender Identity	Gender Expression
Marital Status	Familial Status (family with a child or children under 18)	Source of Income (e.g., Section 8 Voucher)	Disability (Mental & Physical)	Medical Condition
Citizenship	Primary Language	Immigration Status	Military/Veteran Status	Age
Criminal History (non-relevant convictions)			Any arbitrary characteristic	

5. **THE CALIFORNIA DEPARTMENT OF REAL ESTATE REQUIRES TRAINING AND SUPERVISION TO PREVENT HOUSING DISCRIMINATION BY REAL ESTATE LICENSEES:**
 - A. California Business & Professions Code ("B&PC") §10170.5(a)(4) requires 3 hours of training on fair housing for DRE license renewal; Real Estate Regulation §2725(f) requires brokers who oversee salespersons to be familiar with the requirements of federal and state laws relating to the prohibition of discrimination.
 - B. Violation of DRE regulations or real estate laws against housing discrimination by a real estate licensee may result in the loss or suspension of the licensee's real estate license. B&PC §10177(l)(1); 10 CCR §2780
6. **REALTOR® ORGANIZATIONS PROHIBIT DISCRIMINATION:** NAR Code of Ethics Article 10 prohibits discrimination in employment practices or in rendering real estate license services against any person because of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity by REALTORS®.
7. **WHO IS REQUIRED TO COMPLY WITH FAIR HOUSING LAWS?**
Below is a non-exclusive list of providers of housing accommodations or financial assistance services as related to housing who are most likely to be encountered in a housing transaction and who must comply with fair housing laws.
 - Sellers
 - Real estate licensees
 - Mobilehome parks
 - Insurance companies
 - Landlords
 - Real estate brokerage firms
 - Homeowners Associations ("HOAs");
 - Government housing services
 - Sublessors
 - Property managers
 - Banks and Mortgage lenders
8. **EXAMPLES OF CONDUCT THAT MAY NOT BE MOTIVATED BY DISCRIMINATORY INTENT BUT COULD HAVE A DISCRIMINATORY EFFECT:**
 - A. Prior to acceptance of an offer, asking for or offering buyer personal information or letters from the buyer, especially with photos. Those types of documents may inadvertently reveal, or be perceived as revealing, protected status information thereby increasing the risk of (i) actual or unconscious bias, and (ii) potential legal claims against sellers and others by prospective buyers whose offers were rejected.
 - B. Refusing to rent (i) an upper level unit to an elderly tenant out of concern for the tenant's ability to navigate stairs or (ii) a house with a pool to a person with young children out of concern for the children's safety.
9. **EXAMPLES OF UNLAWFUL OR IMPROPER CONDUCT BASED ON A PROTECTED CLASS OR CHARACTERISTIC:**
 - A. Refusing to negotiate for a sale, rental or financing or otherwise make a housing opportunity unavailable; failing to present offers due to a person's protected status;
 - B. Refusing or failing to show, rent, sell or finance housing; "channeling" or "steering" a prospective buyer or tenant to or away from a particular area due to that person's protected status or because of the racial, religious or ethnic composition of the neighborhood;
 - C. "Blockbusting" or causing "panic selling" by inducing a listing, sale or rental based on the grounds of loss of value of property, increase in crime, or decline in school quality due to the entry or prospective entry of people in protected categories into the neighborhood;
 - D. Making any statement or advertisement that indicates any preference, limitation, or discrimination;



- E. Inquiring about protected characteristics (such as asking tenant applicants if they are married, or prospective purchasers if they have children or are planning to start a family);
- F. Using criminal history information before otherwise affirming eligibility, and without a legally sufficient justification;
- G. Failing to assess financial standards based on the portion of the income responsible by a tenant who receives government subsidies (such as basing an otherwise neutral rent to income ratio on the whole rent rather than just the part of rent that is the tenant's responsibility);
- H. Denying a home loan or homeowner's insurance;
- I. Offering inferior terms, conditions, privileges, facilities or services;
- J. Using different qualification criteria or procedures for sale or rental of housing such as income standards, application requirements, application fees, credit analyses, sale or rental approval procedures or other requirements;
- K. Harassing a person;
- L. Taking an adverse action based on protected characteristics;
- M. Refusing to permit a reasonable modification to the premises, as requested by a person with a disability (such as refusing to allow a wheel chair bound tenant to install, at their expense, a ramp over front or rear steps, or refusing to allow a physically disabled tenant from installing, at their own expense, grab bars in a shower or bathtub);
- N. Refusing to make reasonable accommodation in policies, rules, practices, or services for a person with a disability (such as the following, if an actual or prospective tenant with a disability has a service animal or support animal):
 - (i) Failing to allow that person to keep the service animal or emotional support animal in rental property,
 - (ii) Charging that person higher rent or increased security deposit, or
 - (iii) Failing to show rental or sale property to that person who is accompanied by the service animal or support animal, and;
- O. Retaliating for asserting rights under fair housing laws.

10. EXAMPLES OF POSITIVE PRACTICES:

- A. Real estate licensees working with buyers or tenants should apply the same objective property selection criteria, such as location/neighborhood, property features, and price range and other considerations, to all prospects.
- B. Real estate licensees should provide complete and objective information to all clients based on the client's selection criteria.
- C. Real estate licensees should provide the same professional courtesy in responding to inquiries, sharing of information and offers of assistance to all clients and prospects.
- D. Housing providers should not make any statement or advertisement that directly or indirectly implies preference, limitation, or discrimination regarding any protected characteristic (such as "no children" or "English-speakers only").
- E. Housing providers should use a selection process relying on objective information about a prospective buyer's offer or tenant's application and not seek any information that may disclose any protected characteristics (such as using a summary document, e.g. C.A.R. Form SUM-MO, to compare multiple offers on objective terms).

11. FAIR HOUSING RESOURCES: If you have questions about your obligations or rights under the Fair Housing laws, or you think you have been discriminated against, you may want to contact one or more of the sources listed below to discuss what you can do about it, and whether the resource is able to assist you.

- A. Federal: https://www.hud.gov/program_offices/fair_housing_equal_opp
- B. State: <https://www.dfeh.ca.gov/housing/>
- C. Local: local Fair Housing Council office (non-profit, free service)
- D. DRE: <https://www.dre.ca.gov/Consumers/FileComplaint.html>
- E. Local Association of REALTORS®. List available at: <https://www.car.org/en/contactus/rosters/localassociationroster>.
- F. Any qualified California fair housing attorney, or if applicable, landlord-tenant attorney.

12. LIMITED EXCEPTIONS TO FAIR HOUSING REQUIREMENTS: No person should rely on any exception below without first seeking legal advice about whether the exception applies to their situation. Real estate licensees are not qualified to provide advice on the application of these exceptions.

- A. Legally compliant senior housing is exempt from FHA, FEHA and Unruh as related to age or familial status only;
- B. An owner of a single-family residence who resides at the property with one lodger may be exempt from FEHA for rental purposes, PROVIDED no real estate licensee is involved in the rental;
- C. An owner of a single-family residence may be exempt from FHA for sale or rental purposes, PROVIDED (i) no real estate licensee is involved in the sale or rental and (ii) no discriminatory advertising is used, and (iii) the owner owns no more than three single-family residences. Other restrictions apply;
- D. An owner of residential property with one to four units who resides at the property, may be exempt from FHA for rental purposes, PROVIDED no real estate licensee is involved in the rental; and
- E. Both FHA and FEHA do not apply to roommate situations. See, *Fair Housing Council v Roommate.com LLC*, 666 F.3d 1216 (2019).
- F. Since both the 14th Amendment of the U.S. Constitution and the Civil Rights Act of 1866 prohibit discrimination based on race; the FHA and FEHA exemptions do not extend to discrimination based on race.

Buyer/Tenant and Seller/Landlord have read, understand and acknowledge receipt of a copy of this Fair Housing & Discrimination Advisory.

Buyer/Tenant _____	Date _____
Buyer/Tenant _____	Date _____
Seller/Landlord _____	Date _____
Seller/Landlord _____	Date _____

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 525 South Virgil Avenue, Los Angeles, California 90020





POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, Revised 12/21)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the buyer's or seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the seller's willingness to accept a price less than the listing price or the buyer's willingness to pay a price greater than the price offered; and except as set forth above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the Property to both parties.


Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller _____	Date _____
Seller _____	Date _____
Buyer _____	Date _____
Buyer _____	Date _____
Buyer's Brokerage Firm _____	DRE Lic # _____ Date _____
By _____	DRE Lic # _____ Date _____
Seller's Brokerage Firm _____	DRE Lic # _____ Date _____
By _____	DRE Lic # _____ Date _____

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PRBS REVISED 12/21 (PAGE 1 OF 1)



POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)



**WIRE FRAUD AND ELECTRONIC FUNDS
TRANSFER ADVISORY**
(C.A.R. Form WFA, Revised 12/21)

Property Address: _____ ("Property").

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFERS ADVISORY:

The ability to communicate and conduct business electronically is a convenience and reality in nearly all parts of our lives. At the same time, it has provided hackers and scammers new opportunities for their criminal activity. Many businesses have been victimized and the real estate business is no exception.

While wiring or electronically transferring funds is a welcome convenience, we all need to exercise extreme caution. Emails attempting to induce fraudulent wire transfers have been received and have appeared to be legitimate. Reports indicate that some hackers have been able to intercept emailed transfer instructions, obtain account information and, by altering some of the data, redirect the funds to a different account. It also appears that some hackers were able to provide false phone numbers for verifying the wiring or funds transfer instructions. In those cases, the victim called the number provided to confirm the instructions, and then unwittingly authorized a transfer to somewhere or someone other than the intended recipient.

ACCORDINGLY, YOU ARE ADVISED:

1. Obtain phone numbers and account numbers only from Escrow Officers, Property Managers, or Landlords at the beginning of the transaction.
2. DO NOT EVER WIRE OR ELECTRONICALLY TRANSFER FUNDS PRIOR TO CALLING TO CONFIRM THE TRANSFER INSTRUCTIONS. ONLY USE A PHONE NUMBER YOU WERE PROVIDED PREVIOUSLY. Do not use any different phone number or account number included in any emailed transfer instructions.
3. Orally confirm the transfer instruction is legitimate and confirm the bank routing number, account numbers and other codes before taking steps to transfer the funds.
4. Avoid sending personal information in emails or texts. Provide such information in person or over the telephone directly to the Escrow Officer, Property Manager, or Landlord.
5. Take steps to secure the system you are using with your email account. These steps include creating strong passwords, using secure WiFi, and not using free services.

If you believe you have received questionable or suspicious wire or funds transfer instructions, immediately notify your bank, and the other party, and the Escrow Office, Landlord, or Property Manager. The sources below, as well as others, can also provide information:

Federal Bureau of Investigation: <https://www.fbi.gov/>; the FBI's IC3 at www.ic3.gov; or 310-477-6565

National White Collar Crime Center: <http://www.nw3c.org>

On Guard Online: <https://www.onguardonline.gov/>

NOTE: There are existing alternatives to electronic and wired fund transfers such as cashier's checks. By signing below, the undersigned acknowledge that each has read, understands and has received a copy of this Wire Fraud and Electronic Funds Transfer Advisory.

Buyer/Tenant _____ Date _____

Buyer/Tenant _____ Date _____

Seller/Landlord _____ Date _____

Seller/Landlord _____ Date _____

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WFA REVISED 12/21 (PAGE 1 OF 1)

WIRE FRAUD AND ELECTRONIC FUNDS TRANSFER ADVISORY (WFA PAGE 1 OF 1)



CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(C.A.R. FORM RPA, 12/21)

Date Prepared: _____

1. OFFER:

- A. **THIS IS AN OFFER FROM** _____ ("Buyer").
- B. **THE PROPERTY** to be acquired is _____, situated
in _____ (City), _____ (County), California, _____ (Zip Code),
Assessor's Parcel No(s). _____ ("Property").
(Postal/Mailing address may be different from city jurisdiction. Buyer is advised to investigate.)
- C. **THE TERMS OF THE PURCHASE ARE SPECIFIED BELOW AND ON THE FOLLOWING PAGES.**
- D. Buyer and Seller are referred to herein as the "Parties." Brokers and Agents are **not** Parties to this Agreement.

2. AGENCY:

- A. **DISCLOSURE:** The Parties each acknowledge receipt of a "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD) if represented by a real estate licensee. Buyer's Agent is not legally required to give to Seller's Agent the AD form Signed by Buyer. Seller's Agent is not legally obligated to give to Buyer's Agent the AD form Signed by Seller.
- B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction.

Seller's Brokerage Firm _____ License Number _____

Is the broker of (check one): ☐ the Seller; or ☐ both the Buyer and Seller (Dual Agent).

Seller's Agent _____ License Number _____

Is (check one): ☐ the Seller's Agent. (Salesperson or broker associate) ☐ both the Buyer's and Seller's Agent (Dual Agent).

Buyer's Brokerage Firm _____ License Number _____

Is the broker of (check one): ☐ the Buyer; or ☐ both the Buyer and Seller (Dual Agent).

Buyer's Agent _____ License Number _____

Is (check one): ☐ the Buyer's Agent. (Salesperson or broker associate) ☐ both the Buyer's and Seller's Agent (Dual Agent).

- C. ☐ More than one Brokerage represents ☐ Seller, ☐ Buyer. See, Additional Broker Acknowledgement (C.A.R. Form ABA).

D. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. **TERMS OF PURCHASE AND ALLOCATION OF COSTS:** The items in this paragraph are contractual terms of the Agreement. Referenced paragraphs provide further explanation. This form is 16 pages. The Parties are advised to read all 16 pages.

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
A	5, 5B (cash)	Purchase Price	\$ _____	<input type="checkbox"/> All Cash
B		Close of Escrow (COE)	<input type="checkbox"/> _____ Days after Acceptance OR on <input type="checkbox"/> _____ (date)	
C	32A	Expiration of Offer	3 calendar days after all Buyer Signature(s) or _____ (date), at 5PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM	
D(1)	5A(1)	Initial Deposit Amount	\$ _____ (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	within 3 (or _____) business days after Acceptance by wire transfer OR <input type="checkbox"/> _____
D(2)	5A(2)	<input type="checkbox"/> Increased Deposit (Money placed into escrow after the initial deposit. Use form DID at time increased deposit is made.)	\$ _____ (% of purchase price) (% number above is for calculation purposes and is not a contractual term)	Upon removal of all contingencies OR <input type="checkbox"/> _____ (date) OR <input type="checkbox"/> _____
E(1)	5C(1)	Loan Amount(s): First Interest Rate Points If FHA or VA checked, Deliver list of lender required repairs	\$ _____ (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate not to exceed _____ % Buyer to pay zero points or up to _____ % of the loan amount 17 (or _____) Days after Acceptance	Conventional or, if checked, <input type="checkbox"/> FHA <input type="checkbox"/> VA (CAR Forms FVAC, HID attached) <input type="checkbox"/> Seller Financing <input type="checkbox"/> Other: _____
E(2)	5C(2)	Additional Financed Amount Interest Rate Points	\$ <u>0</u> _____ (% of purchase price) Fixed rate or <input type="checkbox"/> Initial adjustable rate not to exceed _____ % Buyer to pay zero points or up to _____ % of the loan amount	Conventional or, if checked, <input type="checkbox"/> Seller Financing <input type="checkbox"/> Other: _____
E(3)	7A	Occupancy Type	Primary, or if checked, <input type="checkbox"/> Secondary <input type="checkbox"/> Investment	
F	5D	Balance of Down Payment	\$ _____	
		PURCHASE PRICE TOTAL	\$ _____	

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RPA 12/21 (PAGE 1 OF 16)

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 1 OF 16)



Property Address:

Date:

	Paragraph #	Paragraph Title or Contract Term	Terms and Conditions	Additional Terms
G(1)	5E	Seller Credit, if any, to Buyer	<input type="checkbox"/> \$ _____ (% number above is for calculation purposes and is not a contractual term)	Seller credit to be applied to closing costs OR <input type="checkbox"/> Other: _____
G(2)	ADDITIONAL FINANCE TERMS: _____			
H(1)	5B	Verification of All Cash (sufficient funds)	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(2)	6A	Verification of Down Payment and Closing Costs	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
H(3)	6B	Verification of Loan Application	Attached to the offer or <input type="checkbox"/> 3 (or _____) Days after Acceptance	
I	Intentionally Left Blank			
J	16	Final Verification of Condition	5 (or _____) Days prior to COE	
K	23	Assignment Request	17 (or _____) Days after Acceptance	
L	8	CONTINGENCIES	TIME TO REMOVE CONTINGENCIES	CONTINGENCY REMOVED
L(1)	8A	Loan(s)	17 (or _____) Days after Acceptance	<input type="checkbox"/> No loan contingency
L(2)	8B	Appraisal: Appraisal contingency based upon appraised value at a minimum of purchase price or <input type="checkbox"/> \$ _____	17 (or _____) Days after Acceptance	<input type="checkbox"/> No appraisal contingency Removal of appraisal contingency does not eliminate appraisal cancellation rights in FVAC.
L(3)	8C, 12	Investigation of Property Informational Access to Property Buyer's right to access the Property for informational purposes is NOT a contingency, does NOT create cancellation rights, and applies even if contingencies are removed.	17 (or _____) Days after Acceptance 17 (or _____) Days after Acceptance	REMOVAL OR WAIVER OF CONTINGENCY: Any contingency in L(1)-L(7) may be removed or waived by checking the applicable box above or attaching a Contingency Removal (C.A.R. Form CR) and checking the applicable box therein. Removal or Waiver at time of offer is against Agent advice. See paragraph 8H . <input type="checkbox"/> CR attached
L(4)	8D, 14A	Review of Seller Documents	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(5)	8E, 13A	Preliminary ("Title") Report	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(6)	8F, 11F(1)	Common Interest Disclosures required by Civil Code § 4525 or this Agreement	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(7)	8G, 9B(6)	Review of leased or liened items (Such as for solar panels or propane tanks or PACE or HERO liens)	17 (or _____) Days after Acceptance, or 5 Days after receipt, whichever is later	
L(8)	8J	Sale of Buyer's Property Sale of Buyer's property is not a contingency, UNLESS checked here: <input type="checkbox"/> C.A.R. Form COP attached		
M		Possession	Time for Performance	Additional Terms
M(1)		Time of Possession	Upon notice of recordation, OR <input type="checkbox"/> 6 PM or <input type="checkbox"/> AM/ <input type="checkbox"/> PM on date specified, as applicable, in 3M(2) or attached TOPA.	
M(2)	7C	Seller Occupied or Vacant units	COE date or, if checked below, <input type="checkbox"/> _____ days after COE (29 or fewer days) <input type="checkbox"/> _____ days after COE (30 or more days)	C.A.R. Form SIP attached if 29 or fewer days. C.A.R. Form RLAS attached if 30 or more days.
M(3)		Tenant Occupied units	See Tenant Occupied Property Addendum (C.A.R. form TOPA)	If tenant occupied <input type="checkbox"/> TOPA or <input type="checkbox"/> Other, attached
N		Documents/Fees/Compliance	Time for Performance	
N(1)	14A	Seller Delivery of Documents	7 (or _____) Days after Acceptance	
N(2)	19B	Sign and return Escrow Holder Provisions and Instructions	5 (or _____) Days after receipt	
N(3)	11K(2)	Time to pay fees for ordering HOA Documents	3 (or _____) Days after Acceptance	
N(4)	10B(1)	Install smoke alarm(s), CO detector(s), water heater bracing	7 (or _____) Days after Acceptance	
N(5)	28	Evidence of representative authority	3 Days after Acceptance	
O	Intentionally Left Blank			



P	Items Included and Excluded			
P(1)	9	Items Included - All items specified in Paragraph 9B are included and the following, if checked: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input checked="" type="checkbox"/> Stove(s), oven(s), stove/oven combo(s); <input type="checkbox"/> Refrigerator(s); <input type="checkbox"/> Wine Refrigerator(s); <input type="checkbox"/> Washer(s); <input type="checkbox"/> Dryer(s); <input type="checkbox"/> Dishwasher(s); <input type="checkbox"/> Microwave(s); Additional Items included: <input type="checkbox"/> _____ <input type="checkbox"/> _____ </div> <div style="width: 33%;"> <input type="checkbox"/> Video doorbell(s); <input type="checkbox"/> Security camera equipment; <input type="checkbox"/> Security system(s)/alarm(s), other than separate video doorbell and camera equipment; <input type="checkbox"/> Smart home control devices; <input type="checkbox"/> Wall mounted brackets for video or audio equipment; <input type="checkbox"/> _____ <input type="checkbox"/> _____ </div> <div style="width: 33%;"> <input type="checkbox"/> Above-ground pool(s) / <input type="checkbox"/> spa(s); <input checked="" type="checkbox"/> Bathroom mirrors, unless excluded below; <input type="checkbox"/> Electric car charging systems and stations; <input type="checkbox"/> Potted trees/shrubs; <input type="checkbox"/> _____ <input type="checkbox"/> _____ </div> </div>		
P(2)	9	Excluded Items: <input type="checkbox"/> _____; <input type="checkbox"/> _____; <input type="checkbox"/> _____;		
Q	Allocation of Costs			
	Paragraph #	Item Description	Who Pays (if Both is checked, cost to be split equally unless Otherwise Agreed)	Additional Terms
Q(1)	10A, 11A	Natural Hazard Zone Disclosure Report, including tax information	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Provided by: _____	<input type="checkbox"/> Environmental <input type="checkbox"/> Other _____
Q(2)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(3)		_____ Report	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(4)	10B(1)	Smoke alarms, CO detectors, water heater bracing	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(5)	10A 10B(2)(A)	Government Required Point of Sale inspections, reports	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(6)	10B(2)(A)	Government Required Point of Sale corrective/remedial actions	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(7)	19B	Escrow Fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Each to pay their own fees	Escrow Holder: _____
Q(8)	13	Owner's title insurance policy	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Title Company (If different from Escrow Holder): _____
Q(9)		Buyer's Lender title insurance policy	Buyer	Unless Otherwise Agreed, Buyer shall purchase any title insurance policy insuring Buyer's lender.
Q(10)		County transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(11)		City transfer tax, fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(12)	11K(2)	HOA fee for preparing disclosures	Seller	
Q(13)		HOA certification fee	Buyer	
Q(14)		HOA transfer fees	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	Unless Otherwise Agreed, Seller shall pay for separate HOA move-out fee and Buyer shall pay for separate move-in fee. Applies if separately billed or itemized with cost in transfer fee.
Q(15)		Private transfer fees	Seller, or if checked, <input type="checkbox"/> Buyer <input type="checkbox"/> Both _____	
Q(16)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(17)		_____ fees or costs	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____	
Q(18)	10C	Home warranty plan: _____ _____	<input type="checkbox"/> Buyer <input type="checkbox"/> Seller <input type="checkbox"/> Both _____ <input type="checkbox"/> Buyer waives home warranty plan Issued by: _____	Cost not to exceed \$ _____.
R	OTHER TERMS:			
	Sale contingent upon Housing Authority County of San Bernardino's Board of Commissioners approval. _____			



4. PROPERTY ADDENDA AND ADVISORIES: (check all that apply)**A. PROPERTY TYPE ADDENDA:** This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Probate Agreement Purchase Addendum (C.A.R. Form PA-PA)
☐ Manufactured Home Purchase Addendum (C.A.R. Form MH-PA)
☐ Tenant Occupied Property Addendum (C.A.R. Form TOPA) (Should be checked whether current tenants will remain or not.)
☐ Tenancy in Common Purchase Addendum (C.A.R. Form TIC-PA)
☐ Stock Cooperative Purchase Addendum (C.A.R. Form COOP-PA)
☐ Other _____

B. OTHER ADDENDA: This Agreement is subject to the terms contained in the Addenda checked below:

- ☐ Addendum # _____ (C.A.R. Form ADM) ☐ Short Sale Addendum (C.A.R. Form SSA)
☐ Back Up Offer Addendum (C.A.R. Form BUO) ☐ Court Confirmation Addendum (C.A.R. Form CCA)
☐ Septic, Well, Property Monument and Propane Addendum (C.A.R. Form SWPI)
☐ Buyer Intent to Exchange Addendum (C.A.R. Form BXA) ☐ Seller Intent to Exchange Addendum (C.A.R. Form SXA)
☐ Other _____ ☐ Other _____

C. BUYER AND SELLER ADVISORIES: (Note: All Advisories below are provided for reference purposes only and are not intended to be incorporated into this Agreement.)

- ☒ Buyer's Inspection Advisory (C.A.R. Form BIA) ☒ Fair Housing and Discrimination Advisory (C.A.R. Form FHDA)
☒ Wire Fraud Advisory (C.A.R. Form WFA) ☒ Cal. Consumer Privacy Act Advisory (C.A.R. Form CCPA)
 (Parties may also receive a privacy disclosure from their own Agent.)
☐ Wildfire Disaster Advisory (C.A.R. Form WDFDA) ☐ Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
☐ Trust Advisory (C.A.R. Form TA) ☐ Short Sale Information and Advisory (C.A.R. Form SSIA)
☐ REO Advisory (C.A.R. Form REO) ☐ Probate Advisory (C.A.R. Form PA)
☐ Other _____ ☐ Other _____

5. ADDITIONAL TERMS AFFECTING PURCHASE PRICE: Buyer represents that funds will be good when deposited with Escrow Holder.**A. DEPOSIT:**

- (1) **INITIAL DEPOSIT:** Buyer shall deliver deposit directly to Escrow Holder. If a method other than wire transfer is specified in **paragraph 3D(1)** and such method is unacceptable to Escrow Holder, then upon notice from Escrow Holder, delivery shall be by wire transfer.
 (2) **INCREASED DEPOSIT:** Increased deposit specified in **paragraph 3D(2)** is to be delivered to Escrow Holder in the same manner as the Initial Deposit. If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount by signing a new liquidated damages clause (C.A.R. Form DID) at the time the increased deposit is delivered to Escrow Holder.
 (3) **RETENTION OF DEPOSIT: Paragraph 29, if initiated by all Parties or otherwise incorporated into this Agreement, specifies a remedy for Buyer's default. Buyer and Seller are advised to consult with a qualified California real estate attorney before adding any other clause specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase. Any such clause shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.**

B. ALL CASH OFFER: If an all cash offer is specified in **paragraph 3A**, no loan is needed to purchase the Property. This Agreement is NOT contingent on Buyer obtaining a loan. Buyer shall, within the time specified in **paragraph 3H(1)**, Deliver written verification of funds sufficient for the purchase price and closing costs.**C. LOAN(S):**

- (1) **FIRST LOAN:** This loan will provide for conventional financing **UNLESS** FHA, VA, Seller Financing (C.A.R. Form SFA), or Other is checked in **paragraph 3E(1)**.
 (2) **ADDITIONAL FINANCED AMOUNT:** If an additional financed amount is specified in **paragraph 3E(2)**, that amount will provide for conventional financing **UNLESS** Seller Financing (C.A.R. Form SFA), or Other is checked in **paragraph 3E(2)**.
 (3) **BUYER'S LOAN STATUS:** Buyer authorizes Seller and Seller's Authorized Agent to contact Buyer's lender(s) to determine the status of any Buyer's loan specified in **paragraph 3E**, or any alternate loan Buyer pursues, whether or not a contingency of this Agreement. If the contact information for Buyer's lender(s) is different from that provided under the terms of **paragraph 6B**, Buyer shall Deliver the updated contact information within 1 Day of Seller's request.
 (4) **FHA/VA: If FHA or VA is checked in paragraph 3E(1)**, a FHA/VA amendatory clause (C.A.R. Form FVAC) shall be incorporated and Signed by all Parties. Buyer shall, within the time specified in **paragraph 3E(1)**, Deliver to Seller written notice (C.A.R. Form RR or AEA) (i) of any lender requirements that Buyer requests Seller to pay for or otherwise correct or (ii) that there are no lender requirements. Notwithstanding Seller's agreement that Buyer may obtain FHA or VA financing, Seller has no obligation to pay or satisfy any or all lender requirements unless agreed in writing.

D. BALANCE OF PURCHASE PRICE (DOWN PAYMENT, paragraph 3F) (including all-cash funds) to be deposited with Escrow Holder pursuant to Escrow Holder instructions.**E. LIMITS ON CREDITS TO BUYER:** Any credit to Buyer as specified in **paragraph 3G(1)** or Otherwise Agreed, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender, if any, and made at Close Of Escrow. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit from Seller shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.**6. ADDITIONAL FINANCING TERMS:****A. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Written verification of Buyer's down payment and closing costs, within the time specified in **paragraph 3H(2)** may be made by Buyer or Buyer's lender or loan broker pursuant to **paragraph 6B**.**B. VERIFICATION OF LOAN APPLICATIONS:** Buyer shall Deliver to Seller, within the time specified in **paragraph 3H(3)** a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in **paragraph 3E**. If any loan specified in **paragraph 3E** is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate.

- C. BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including, but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price, and to sell to Buyer in reliance on Buyer's specified financing. Buyer shall pursue the financing specified in this Agreement, even if Buyer also elects to pursue an alternative form of financing. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement but shall not interfere with closing at the purchase price on the COE date (**paragraph 3B**) even if based upon alternate financing. Buyer's inability to obtain alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.
- 7. CLOSING AND POSSESSION:**
- A. OCCUPANCY:** Buyer intends to occupy the Property as indicated in **paragraph 3E(3)**. Occupancy may impact available financing.
- B. CONDITION OF PROPERTY ON CLOSING:**
- (1) Unless Otherwise Agreed: (i) the Property shall be delivered "**As-Is**" in its PRESENT physical condition as of the date of Acceptance; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow or at the time possession is delivered to Buyer, if not on the same date. If items are not removed when possession is delivered to Buyer, all items shall be deemed abandoned. Buyer, after first Delivering to Seller written notice to remove the items within **3 Days**, may pay to have such items removed or disposed of and may bring legal action, as per this Agreement, to receive reasonable costs from Seller.
- (2) **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller and Agents may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had all required permits issued and/or finalized.**
- C. SELLER REMAINING IN POSSESSION AFTER CLOSE OF ESCROW:** If Seller has the right to remain in possession after Close Of Escrow pursuant to **paragraph 3M(2)** or as Otherwise Agreed, (i) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; (ii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan; and (iii) consult with a qualified California real estate attorney where the Property is located to determine the ongoing rights and responsibilities of both Buyer and Seller with regard to each other, including possible tenant rights, and what type of written agreement to use to document the relationship between the Parties.
- D. At Close Of Escrow:** (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Agents cannot and will not determine the assignability of any warranties.
- E.** Seller shall, on Close Of Escrow unless Otherwise Agreed and even if Seller remains in possession, provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems, intranet and Internet-connected devices included in the purchase price, garage door openers, and all items included in either **paragraph 3P** or **paragraph 9**. If the Property is a condominium or located in a common interest development, Seller shall be responsible for securing or providing any such items for Association amenities, facilities, and access. Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.
- 8. CONTINGENCIES AND REMOVAL OF CONTINGENCIES:**
- A. LOAN(S):**
- (1) This Agreement is, **unless otherwise specified in paragraph 3L(1) or an attached CR form**, contingent upon Buyer obtaining the loan(s) specified. If contingent, Buyer shall act diligently and in good faith to obtain the designated loan(s). **If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan and Buyer is able to satisfy lender's non-appraisal conditions for closing the loan.**
- (2) Buyer is advised to investigate the insurability of the Property as early as possible, as this may be a requirement for lending. Buyer's ability to obtain insurance for the Property, including fire insurance, is part of Buyer's Investigation of Property contingency. Failure of Buyer to obtain insurance may justify cancellation based on the Investigation contingency but not the loan contingency.
- (3) Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement, unless Otherwise Agreed.
- (4) If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
- (5) **NO LOAN CONTINGENCY:** If "No loan contingency" is checked in **paragraph 3L(1)**, obtaining any loan specified is NOT a contingency of this Agreement. If Buyer does not obtain the loan specified, and as a result is unable to purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
- B. APPRAISAL:**
- (1) This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2)**, without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the Investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall Deliver a Copy of the written appraisal to Seller, upon request by Seller.
- (2) **NO APPRAISAL CONTINGENCY:** If "No appraisal contingency" is checked in **paragraph 3L(2)**, then Buyer may not use the loan contingency specified in **paragraph 3L(1)** to cancel this Agreement if the sole reason for not obtaining the loan is that the appraisal relied upon by Buyer's lender values the property at an amount less than that specified in **paragraph 3L(2)**. If Buyer is unable to obtain the loan specified solely for this reason, Seller may be entitled to Buyer's deposit or other legal remedies.
- C. INVESTIGATION OF PROPERTY:** This Agreement is, as specified in **paragraph 3L(3)**, contingent upon Buyer's acceptance of the condition of, and any other matter affecting, the Property. See **paragraph 12**.
- D. REVIEW OF SELLER DOCUMENTS:** This Agreement is, as specified in **paragraph 3L(4)**, contingent upon Buyer's review of Seller's documents required in **paragraph 14A**.



E. TITLE:

- (1) This Agreement is, as specified in **paragraph 3L(5)**, contingent upon Buyer's ability to obtain the title policy provided for in **paragraph 13G** and on Buyer's review of a current Preliminary Report and items that are disclosed or observable even if not on record or not specified in the Preliminary Report, and satisfying Buyer regarding the current status of title. Buyer is advised to review all underlying documents and other matters affecting title, including, but not limited to, any documents or deeds referenced in the Preliminary Report and any plotted easements.
- (2) Buyer has **5 Days** after receipt to review a revised Preliminary Report, if any, furnished by the Title Company and cancel the transaction if the revised Preliminary Report reveals material or substantial deviations from a previously provided Preliminary Report.

F. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES (IF APPLICABLE): This Agreement is, as specified in **paragraph 3L(6)**, contingent upon Buyer's review of Common Interest Disclosures required by Civil Code § 4525 and under **paragraph 11K** ("CI Disclosures").

G. BUYER REVIEW OF LEASED OR LIENED ITEMS CONTINGENCY: Buyer's review of and ability and willingness to assume any lease, maintenance agreement or other ongoing financial obligation, or to accept the Property subject to any lien, disclosed pursuant to **paragraph 9B(6)**, is, as specified in **paragraph 3L(7)**, a contingency of this Agreement. Any assumption of the lease shall not require any financial obligation or contribution by Seller. Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement if Buyer, by the time specified in **paragraph 3L(7)**, refuses to enter into any necessary written agreements to accept responsibility for all obligations of Seller-disclosed leased or lienied items.

H. REMOVAL OR WAIVER OF CONTINGENCIES WITH OFFER: Buyer shall have no obligation to remove a contractual contingency unless Seller has provided all required documents, reports, disclosures, and information pertaining to that contingency. If Buyer does remove a contingency without first receiving all required information from Seller, Buyer is relinquishing any contractual rights that apply to that contingency. **If Buyer removes or waives any contingencies without an adequate understanding of the Property's condition or Buyer's ability to purchase, Buyer is acting against the advice of Agent.**

I. REMOVAL OF CONTINGENCY OR CANCELLATION:

- (1) **For any contingency specified in paragraph 3L or 8, Buyer shall, within the applicable period specified, remove the contingency or cancel this Agreement.**
- (2) For the contingencies for review of Seller Documents, Preliminary Report, and Condominium/Planned Development Disclosures, Buyer shall, within the time specified in **paragraph 3L** or **5 Days** after receipt of Seller Documents or CI Disclosures, whichever occurs later, remove the applicable contingency in writing or cancel this Agreement.
- (3) If Buyer does not remove a contingency within the time specified, Seller, after first giving Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), shall have the right to cancel this Agreement.

J. SALE OF BUYER'S PROPERTY: This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer unless the Sale of Buyer's Property (C.A.R. Form COP) is checked as a contingency of this Agreement in **paragraph 3L(8)**.

9. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the Multiple Listing Service (MLS), flyers, marketing materials, or disclosures are NOT included in the purchase price or excluded from the sale unless specified in this paragraph or **paragraph 3P** or as Otherwise Agreed. Any items included herein are components of the home and are not intended to affect the price. All items are transferred without Seller warranty.

B. ITEMS INCLUDED IN SALE:

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances and appliances for which special openings or encasements have been made (whether or not checked in **paragraph 3P**), window and door screens, awnings, shutters, window coverings (which includes blinds, curtains, drapery, shutters or any other materials that cover any portion of the window), attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment (including, but not limited to, any cleaning equipment such as motorized/automatic pool cleaners, pool nets, pool covers), garage door openers/remote controls, mailbox, in-ground landscaping, water features and fountains, water softeners, water purifiers, light bulbs (including smart bulbs) and all items specified as included in **paragraph 3P**, if currently existing at the time of Acceptance.
Note: If Seller does not intend to include any item specified as being included above because it is not owned by Seller, whether placed on the Property by Agent, stager or other third party, the item should be listed as being excluded in **paragraph 3P** or excluded by Seller in a counter offer.
- (3) Security System includes any devices, hardware, software, or control units used to monitor and secure the Property, including but not limited to, any motion detectors, door or window alarms, and any other equipment utilized for such purpose. If checked in **paragraph 3P**, all such items are included in the sale, whether hard wired or not.
- (4) Home Automation (Smart Home Features) includes any electronic devices and features including, but not limited to, thermostat controls, kitchen appliances not otherwise excluded, and lighting systems, that are connected (hard wired or wirelessly) to a control unit, computer, tablet, phone, or other "smart" device. Any Smart Home devices and features that are physically affixed to the real property, and also existing light bulbs, are included in the sale. Buyer is advised to use **paragraph 3P(1)** or an addendum to address more directly specific items to be included. Seller is advised to use a counter offer to address more directly any items to be excluded.
- (5) Non-Dedicated Devices: If checked in **paragraph 3P**, all smart home and security system control devices are included in the sale, except for any non-dedicated personal computer, tablet, or phone used to control such features. Buyer acknowledges that a separate device and access to wifi or Internet may be required to operate some smart home features and Buyer may have to obtain such device after Close Of Escrow. Buyer is advised to change all passwords and ensure the security of any smart home features.
- (6) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller, within the time specified in **paragraph 3N(1)**, shall (i) disclose to Buyer if any item or system specified in **paragraph 3P** or **9B** or otherwise included in the sale is leased, or not owned by Seller, or is subject to any maintenance or other ongoing financial obligation, or specifically subject to a lien or other encumbrance or loan, and (ii) Deliver to Buyer all written materials (such as lease, warranty, financing, etc.) concerning any such item.
- (7) Seller represents that all items included in the purchase price, unless Otherwise Agreed, (i) are owned by Seller and shall be transferred free and clear of liens and encumbrances, except the items and systems identified pursuant to **paragraph 9B(6)**, and (ii) are transferred without Seller warranty regardless of value. Seller shall cooperate with the identification of any software or applications and Buyer's efforts to transfer any services needed to operate any Smart Home Features or other items included in this Agreement, including, but not limited to, utilities or security systems.



C. ITEMS EXCLUDED FROM SALE: Unless Otherwise Agreed, the following items are excluded from sale: **(i)** All items specified in **paragraph 3P(2)**; **(ii)** audio and video components (such as flat screen TVs, speakers and other items) if any such item is not itself attached to the Property, even if a bracket or other mechanism attached to the component or item is attached to the Property; **(iii)** furniture and other items secured to the Property for earthquake or safety purposes. **Unless otherwise specified in paragraph 3P(1), brackets attached to walls, floors or ceilings for any such component, furniture or item will be removed and holes or other damage shall be repaired, but not painted.**

10. ALLOCATION OF COSTS:

A. INSPECTIONS, REPORTS AND CERTIFICATES: Paragraphs **3Q(1), (2), (3), and (5)** only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; **it does not determine who is to pay for any work recommended or identified in the Report. Agreements for payment of required work should be specified elsewhere in paragraph 3Q, or 3R, or in a separate agreement (such as C.A.R. Forms RR, RRRR, ADM or AEA).**

B. GOVERNMENT REQUIREMENTS AND CORRECTIVE OR REMEDIAL ACTIONS:

(1) LEGALLY REQUIRED INSTALLATIONS AND PROPERTY IMPROVEMENTS: Any required installation of smoke alarm or carbon monoxide device(s) or securing of water heater shall be completed within the time specified in **paragraph 3N(4)** and paid by the Party specified in **paragraph 3Q(4)**. If Buyer is to pay for these items, Buyer, as instructed by Escrow Holder, shall deposit funds into escrow or directly to the vendor completing the repair or installation. Prior to Close Of Escrow, Seller shall Deliver to Buyer written statement(s) of compliance in accordance with any Law, unless Seller is exempt. If Seller is to pay for these items and does not fulfill Seller's obligation in the time specified, and Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for Buyer's costs.

(2) POINT OF SALE REQUIREMENTS:

(A) Point of sale inspections, reports and repairs refer to any such actions required to be completed before or after Close Of Escrow that are required in order to close under any Law and paid by Party specified in **paragraphs 3Q(5) and 3Q(6)**. Unless Parties Otherwise Agree to another time period, any such repair, shall be completed prior to final verification of Property. If Buyer agrees to pay for any portion of such repair, Buyer, shall **(i)** directly pay to the vendor completing the repair or **(ii)** provide an invoice to Escrow Holder, deposit funds into escrow sufficient to pay for Buyer's portion of such repair and request Escrow Holder pay the vendor completing the repair.

(B) Buyer shall be provided, within the time specified in **paragraph 3N(1)**, unless Parties Otherwise Agree to another time period, a Copy of any required government-conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of this sale of the Property.

(3) REINSPECTION FEES: If any repair in **paragraph 10B(1)** is not completed within the time specified and the lender requires an additional inspection to be made, Seller shall be responsible for any corresponding reinspection fee. If Buyer incurs costs to comply with lender requirements concerning those items, Seller shall be responsible for those costs.

(4) INFORMATION AND ADVICE ON REQUIREMENTS: Buyer and Seller are advised to seek information from a knowledgeable source regarding local and State mandates and whether they are point of sale requirements or requirements of ownership. Agents do not have expertise in this area and cannot ascertain all of the requirements or costs of compliance.

C. HOME WARRANTY:

(1) Buyer shall choose the coverages, regardless of any optional coverages indicated, of the home warranty plan and Buyer shall pay any cost of that plan, chosen by Buyer, that exceeds the amount allocated to Seller in **paragraph 3Q(18)**. Buyer is informed that home warranty plans have many optional coverages, including but not limited to, coverages for Air Conditioner and Pool/Spa. Buyer is advised to investigate these coverages to determine those that may be suitable for Buyer.

(2) If Buyer waives the purchase of a home warranty plan in paragraph 3Q(18), Buyer may still purchase a home warranty plan, at Buyer's expense, prior to Close Of Escrow.

11. STATUTORY AND OTHER DISCLOSURES (INCLUDING LEAD-BASED PAINT HAZARD DISCLOSURES) AND CANCELLATION RIGHTS:

A. TDS, NHD, AND OTHER STATUTORY AND SUPPLEMENTAL DISCLOSURES:

(1) Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer: unless exempt, fully completed disclosures or notices required by §§ 1102 et. seq. and 1103 et. seq. of the Civil Code ("Statutory Disclosures"). Statutory Disclosures include, but are not limited to, a Real Estate Transfer Disclosure Statement (C.A.R. Form TDS), Natural Hazard Disclosure Statement ("NHD"), notice or actual knowledge of release of illegal controlled substance, notice of special tax and/or assessments (or, if allowed, substantially equivalent notice regarding the Mello-Roos Community Facilities Act of 1982 and Improvement Bond Act of 1915) and, if Seller has actual knowledge, of industrial use and military ordnance location (C.A.R. Form SPQ or ESD), and, if the Property is in a high or very high fire hazard severity area, the information, notices, documentation, and agreements required by §§ 1102.6(f) and 1102.19 of the Civil Code (C.A.R. Form FHDS).

(2) The Real Estate Transfer Disclosure Statement required by this paragraph is considered fully completed if Seller has completed the section titled Coordination with Other Disclosure Forms by checking a box (Section I), and Seller has completed and answered all questions and Signed the Seller's Information section (Section II) and the Seller's Agent, if any, has completed and Signed the Seller's Agent's section (Section III), or, if applicable, an Agent Visual Inspection Disclosure (C.A.R. Form AVID). Section V acknowledgment of receipt of a Copy of the TDS shall be Signed after all previous sections, if applicable, have been completed. Nothing stated herein relieves a Buyer's Agent, if any, from the obligation to **(i)** conduct a reasonably competent and diligent visual inspection of the accessible areas of the Property and disclose, on Section IV of the TDS, or an AVID, material facts affecting the value or desirability of the Property that were or should have been revealed by such an inspection or **(ii)** complete any sections on all disclosures required to be completed by Buyer's Agent.

(3) Seller shall, within the time specified in **paragraph 3N(1)**, provide "Supplemental Disclosures" as follows: **(i)** unless exempt from the obligation to provide a TDS, complete a Seller Property Questionnaire (C.A.R. Form SPQ) by answering all questions and Signing and Delivering a Copy to Buyer; **(ii)** if exempt from the obligation to provide a TDS, complete an Exempt Seller Disclosure (C.A.R. Form ESD) by answering all questions and Signing and Delivering a Copy to Buyer.

(4) In the event Seller or Seller's Agent, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer under this paragraph, Seller shall, in writing, promptly provide a subsequent or amended TDS, Seller Property Questionnaire or other document, in writing, covering those items. Any such document shall be deemed an amendment to the TDS or SPQ. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are discovered by Buyer or disclosed in reports or documents provided to or ordered and paid for by Buyer.**



B. LEAD DISCLOSURES:

- (1) Seller shall, within the time specified in **paragraph 3N(1)**, for any residential property built before January 1, 1978, unless exempted by Law, Deliver to Buyer a fully completed Federal Lead-Based Paint Disclosures (C.A.R. Form LPD) and pamphlet ("Lead Disclosures").
- (2) Buyer shall, within the time specified in **paragraph 3L(3)**, have the opportunity to conduct a risk assessment or to inspect for the presence of lead-based paint hazards.

C. HOME FIRE HARDENING DISCLOSURE AND ADVISORY: For any transaction where a TDS is required, the property is located in a high or very high fire hazard severity zone, and the home was constructed before January 1, 2010, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer: (i) a home hardening disclosure required by law; and (ii) a statement of features of which the Seller is aware that may make the home vulnerable to wildfire and flying embers; and (iii) a final inspection report regarding compliance with defensible space requirements if one was prepared pursuant to Government Code § 51182 (C.A.R. Form FHDS).

D. DEFENSIBLE SPACE DISCLOSURE AND ADDENDUM: For any transaction in which a TDS is required and the property is located in a high or very high fire hazard severity zone, Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer (i) a disclosure of whether the Property is in compliance with any applicable defensible space laws designed to protect a structure on the Property from fire; and (ii) an addendum allocating responsibility for compliance with any such defensible space law (C.A.R. Form FHDS).

E. WAIVER PROHIBITED: Waiver of Statutory, Lead, and other Disclosures in **paragraphs 11A(1), 11B, 11C, and 11D** are prohibited by Law.

F. RETURN OF SIGNED COPIES: Buyer shall, within the time specified in **paragraph 3L(3) OR 5 Days** after Delivery of any disclosures specified in paragraphs **11 A, B, C** or **D**, and defensible space addendum in **paragraph 11D**, whichever is later, return Signed Copies of the disclosures, and if applicable, addendum, to Seller.

G. TERMINATION RIGHTS:

(1) **Statutory and Other Disclosures:** If any disclosure specified in paragraphs **11A, B, C, or D**, or subsequent or amended disclosure to those just specified, is Delivered to Buyer after the offer is Signed, Buyer shall have the right to terminate this Agreement within **3 Days** after Delivery in person, or **5 Days** after Delivery by deposit in the mail, or by an electronic record or email satisfying the Uniform Electronic Transactions Act (UETA), by giving written notice of rescission to Seller or Seller's Authorized Agent. If Buyer does not rescind within this time period, Buyer has been deemed to have approved the disclosure and shall not have the right to cancel.

(2) **Defensible Space Compliance:** If, by the time specified in **paragraph 11F**, Buyer does not agree to the terms regarding defensible space compliance Delivered by Seller, as indicated by mutual signatures on the FHDS, then Seller, after first Delivering a Notice to Buyer to Perform, may cancel this Agreement.

H. WITHHOLDING TAXES: Buyer and Seller hereby instruct Escrow Holder to withhold the applicable required amounts to comply with federal and California withholding Laws and forward such amounts to the Internal Revenue Service and Franchise Tax Board, respectively. However, no federal withholding is required if, prior to Close Of Escrow, Seller Delivers (i) to Buyer and Escrow Holder a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law (FIRPTA); **OR (ii)** to a qualified substitute (usually a title company or an independent escrow company) a fully completed affidavit (C.A.R. Form AS) sufficient to avoid withholding pursuant to federal withholding Law AND the qualified substitute Delivers to Buyer and Escrow Holder an affidavit signed under penalty of perjury (C.A.R. Form QS) that the qualified substitute has received the fully completed Seller's affidavit and the Seller states that no federal withholding is required; **OR (iii)** to Buyer other documentation satisfying the requirements under Internal Revenue Code § 1445 (FIRPTA). No withholding is required under California Law if, prior to Close Of Escrow, Escrow Holder has received sufficient documentation from Seller that no withholding is required, and Buyer has been informed by Escrow Holder.

I. MEGAN'S LAW DATABASE DISCLOSURE: Notice: Pursuant to § 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

J. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES: This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov/>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Website. (Neither Seller nor Agent are required to check this website. If Buyer wants further information, Agent recommends that Buyer obtain information from this website during Buyer's investigation contingency period. Agents do not have expertise in this area.)

K. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:

(1) Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer whether the Property is a condominium or is located in a planned development, other common interest development, or otherwise subject to covenants, conditions, and restrictions (C.A.R. Form SPQ or ESD).

(2) If the Property is a condominium or is located in a planned development or other common interest development with a HOA, Seller shall, within the time specified in **paragraph 3N(3)**, order from, and pay any required fee as specified in **paragraph 3Q(12)** for the following items to the HOA (C.A.R. Form HOA-IR): (i) Copies of any documents required by Law (C.A.R. Form HOA-RS); (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; (v) the names and contact information of all HOAs governing the Property; (vi) pet restrictions; and (vii) smoking restrictions ("CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Seller shall, as directed by Escrow Holder, deposit funds into escrow or direct to HOA or management company to pay for any of the above.

L. NATURAL AND ENVIRONMENTAL HAZARDS: Seller shall, within the time specified in **paragraph 3N(1)**, if required by Law: (i) Deliver to Buyer the earthquake guide and environmental hazards booklet, and for all residential property with 1-4 units and any manufactured or mobile home built before January 1, 1960, fully complete and Deliver the Residential Earthquake Risk Disclosure Statement; and (ii) even if exempt from the obligation to provide a NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.



M. KNOWN MATERIAL FACTS: Seller shall, within the time specified in **paragraph 3N(1)**, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including, but not limited to, known insurance claims within the past five years, or provide Buyer with permission to contact lender to get such information (C.A.R. Form ARC), and make any and all other disclosures required by Law.

12. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:

- A.** Buyer shall, within the time specified in **paragraph 3L(3)**, have the right, at Buyer's expense unless Otherwise Agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations").
- B.** Buyer Investigations include, but are not limited to:
- (1) Inspections regarding any physical attributes of the Property or items connected to the Property, such as:
 - (A) A general home inspection.
 - (B) An inspection for lead-based paint and other lead-based paint hazards.
 - (C) An inspection specifically for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2).
 - (D) Any other specific inspections of the physical condition of the land and improvements.
 - (2) All other Buyer Investigations, such as insurance, not specified above. See, Buyer's Inspection Advisory (C.A.R. Form BIA) for more.
 - (3) A review of reports, disclosures or information prepared by or for Seller and Delivered to Buyer pursuant to **paragraphs 3, 10, 11, and 14A**.
- C.** Without Seller's prior written consent, Buyer shall neither make nor cause to be made: **(i)** invasive or destructive Buyer Investigations, except for minimally invasive testing required to prepare a Pest Control Report, which shall not include any holes or drilling through stucco or similar material; or **(ii)** inspections by any governmental building or zoning inspector or government employee, unless required by Law.
- D.** Seller shall make the Property available for all Buyer Investigations. Seller is not obligated to move any existing personal property. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is delivered to Buyer. Buyer shall, **(i)** by the time specified in **paragraph 3L(3)**, complete Buyer Investigations and satisfy themselves as to the condition of the Property, and either remove the contingency or cancel this Agreement, and **(ii)** by the time specified in **paragraph 3L(3)** or **3 Days** after receipt of any Investigation report, whichever is later, give Seller at no cost, complete Copies of all such reports obtained by Buyer, which obligation shall survive the termination of this Agreement. This Delivery of Investigation reports shall not include any appraisal, except an appraisal received in connection with an FHA or VA loan.
- E. Buyer indemnity and Seller protection for entry upon the Property:** Buyer shall: **(i)** keep the Property free and clear of liens; **(ii)** repair all damage arising from Buyer Investigations; and **(iii)** indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

13. TITLE AND VESTING:

- A.** Buyer shall, within the time specified in **paragraph 3N(1)**, be provided a current Preliminary Report by the person responsible for paying for the title report in **paragraph 3Q(8)**. If Buyer is responsible for paying, Buyer shall act diligently and in good faith to obtain such Preliminary Report within the time specified. The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities.
- B.** Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: **(i)** monetary liens of record unless Buyer is assuming those obligations or taking the Property subject to those obligations; and **(ii)** those matters which Seller has agreed to remove in writing. For any lien or matter not being transferred upon sale, Seller will take necessary action to deliver title free and clear of such lien or matter.
- C.** Seller shall within **7 Days** after request, give Escrow Holder necessary information to clear title.
- D.** Seller shall, within the time specified in **paragraph 3N(1)**, disclose to Buyer all matters known to Seller affecting title, whether of record or not.
- E.** If Buyer is a legal entity and the Property purchase price is at least \$300,000 and the purchase price is made without a bank loan or similar form of external financing, a Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network, U.S. Department of the Treasury, requires title companies to collect and report certain information about the Buyer, depending on where the Property is located. Buyer agrees to cooperate with the title company's effort to comply with the GTO.
- F.** Buyer shall, after Close Of Escrow, receive a recorded grant deed or any other conveyance document required to convey title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's vesting instructions. The recording document shall contain Buyer's post-closing mailing address to enable Buyer's receipt of the recorded conveyance document from the County Recorder. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.



G. Buyer shall receive a "ALTA/CLTA Homeowner's Policy of Title Insurance" or equivalent policy of title insurance, if applicable to the type of property and buyer. Escrow Holder shall request this policy. If a ALTA/CLTA Homeowner's Policy of Title Insurance is not offered, Buyer shall receive a CLTA Standard Coverage policy unless Buyer has chosen another policy and instructed Escrow Holder in writing of the policy chosen and agreed to pay any increase in cost. Buyer should consult with the Title Company about the availability, and difference in coverage, and cost, if any, between a ALTA/CLTA Homeowner's Policy and a CLTA Standard Coverage policy and other title policies and endorsements. Buyer should receive notice from the Title Company on its Preliminary (Title) Report of the type of coverage offered. If Buyer is not notified on the Preliminary (Title) Report or is not satisfied with the policy offered, and Buyer nonetheless removes the contingency for Review of the Preliminary Report, Buyer will receive the policy as specified in this paragraph.

14. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. SELLER DELIVERY OF DOCUMENTS: Seller shall, within the time specified in **paragraph 3N(1)**, Deliver to Buyer all reports, disclosures and information ("Reports") for which Seller is responsible as specified in **paragraphs 9B(6), 10, 11A, 11B, 11C, 11D, 11H, 11K, 11L, 11M, 13A, and 13D.**

B. BUYER REVIEW OF DOCUMENTS; REPAIR REQUEST; CONTINGENCY REMOVAL OR CANCELLATION

- (1) Buyer has the time specified in **paragraph 3** to: (i) perform Buyer Investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to **paragraph 9B(6)**, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory and Other Disclosures Delivered by Seller in accordance with **paragraph 11.**
- (2) Buyer may, within the time specified in **paragraph 3L(3)**, request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests (C.A.R. Form RR or RRRR). If Seller does not agree or does not respond, Buyer is not contractually entitled to have the repairs or other requests made and may only cancel based on contingencies in this Agreement.
- (3) Buyer shall, by the end of the times specified in **paragraph 3L** (or as Otherwise Agreed), Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement (C.A.R. Form CR or CC). However, if any report, disclosure, or information for which Seller is responsible, other than those in **paragraph 11A** or **11B**, is not Delivered within the time specified in **paragraph 3N(1)**, then Buyer has **5 Days** after Delivery of any such items, or the times specified in **paragraph 3L**, whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement. If Delivery of any Report occurs after a contractual contingency pertaining to that Report has already been waived or removed, the Delivery of the Report does not revive the contingency but there may be a right to terminate for a subsequent or amended disclosure under **paragraph 11G.**
- (4) **Continuation of Contingency:** Even after the end of the time specified in **paragraph 3L** and before Seller cancels, if at all, pursuant to **paragraph 14C**, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to **paragraph 14C(1).**

C. SELLER RIGHT TO CANCEL:

- (1) **SELLER RIGHT TO CANCEL; BUYER CONTINGENCIES:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- (2) **SELLER RIGHT TO CANCEL; BUYER CONTRACT OBLIGATIONS:** Seller, after first Delivering to Buyer a Notice to Buyer to Perform, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by **paragraph 3D(1)** or **3D(2)** or if the funds deposited pursuant to **paragraph 3D(1)** or **3D(2)** are not good when deposited; (ii) Deliver updated contact information for Buyer's lender(s) as required by **paragraph 5C(3)**; (iii) Deliver a notice of FHA or VA costs or terms, if any, as specified by **paragraph 5C(4)** (C.A.R. Form RR); (iv) Deliver verification, or a satisfactory verification if Seller reasonably disapproves of the verification already provided, as required by **paragraph 5B** or **6A**; (v) Deliver a letter as required by **paragraph 6B**; (vi) In writing assume or accept leases or liens specified in **paragraph 8G**; (vii) Return Statutory and Other Disclosures as required by **paragraph 11F**; (viii) Cooperate with the title company's effort to comply with the GTO as required by **paragraph 13E**; (ix) Sign or initial a separate liquidated damages form for an increased deposit as required by **paragraphs 5A(2)** and **29**; (x) Provide evidence of authority to Sign in a representative capacity as specified in **paragraph 28**; or (xi) Perform any additional Buyer contractual obligation(s) included in this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer and other expenses already paid by Escrow Holder pursuant to this Agreement prior to Seller's cancellation.
- (3) **SELLER RIGHT TO CANCEL; SELLER CONTINGENCIES:** Seller may cancel this Agreement by good faith exercise of any Seller contingency included in this Agreement, or Otherwise Agreed, so long as that contingency has not already been removed or waived in writing.

D. BUYER RIGHT TO CANCEL:

- (1) **BUYER RIGHT TO CANCEL; SELLER CONTINGENCIES:** If, by the time specified in this Agreement, Seller does not Deliver to Buyer a removal of the applicable contingency or cancellation of this Agreement, then Buyer, after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer and other expenses already paid by Escrow Holder pursuant to this Agreement prior to Buyer's cancellation.
- (2) **BUYER RIGHT TO CANCEL; SELLER CONTRACT OBLIGATIONS:** If, by the time specified, Seller has not Delivered any item specified in **paragraph 3N(1)** or Seller has not performed any Seller contractual obligation included in this Agreement by the time specified, Buyer, after first Delivering to Seller a Notice to Seller to Perform, may cancel this Agreement.
- (3) **BUYER RIGHT TO CANCEL; BUYER CONTINGENCIES:** Buyer may cancel this Agreement by good faith exercise of any Buyer contingency included in **paragraph 8**, or Otherwise Agreed, so long as that contingency has not already been removed in writing.

- E. NOTICE TO BUYER OR SELLER TO PERFORM:** The Notice to Buyer to Perform or Notice to Seller to Perform shall: (i) be in writing; (ii) be Signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 Days** after Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform or Notice to Seller to Perform may not be Delivered any earlier than **2 Days** prior to the Scheduled Performance Day to remove a contingency or cancel this Agreement or meet an obligation specified in **paragraph 14**, whether or not the Scheduled Performance Day falls on a Saturday, Sunday or legal holiday. If a Notice to Buyer to Perform or Notice to Seller to Perform is incorrectly Delivered or specifies a time less than the agreed time, the notice shall be deemed invalid and void, and Seller or Buyer shall be required to Deliver a new Notice to Buyer to Perform or Notice to Seller to Perform with the specified timeframe.
- F. EFFECT OF REMOVAL OF CONTINGENCIES:**
- (1) **REMOVAL OF BUYER CONTINGENCIES:** If Buyer removes any contingency or cancellation rights, unless Otherwise Agreed, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for the non-delivery of any reports, disclosures or information outside of Seller's control and for any Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
 - (2) **REMOVAL OF SELLER CONTINGENCIES:** If Seller removes any contingency or cancellation rights, unless Otherwise Agreed, Seller shall conclusively be deemed to have: (i) satisfied themselves regarding such contingency, (ii) elected to proceed with the transaction; and (iii) given up any right to cancel this Agreement based on such contingency.
- G. DEMAND TO CLOSE ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a Demand to Close Escrow (C.A.R. Form DCE). The DCE shall: (i) be Signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 Days** after Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** prior to the Scheduled Performance Day for the Close Of Escrow. If a DCE is incorrectly Delivered or specifies a time less than the above timeframe, the DCE shall be deemed invalid and void, and Seller or Buyer shall be required to Deliver a new DCE.
- H. EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign and Deliver mutual instructions to cancel the sale and escrow and release deposits, if any, to the Party entitled to the funds, less (i) fees and costs paid by Escrow Holder on behalf of that Party, if required by this Agreement; and (ii) any escrow cancellation fee charged to that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. A release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to Sign cancellation instructions if no good faith dispute exists as to which Party is entitled to the deposited funds (Civil Code § 1057.3). Note: Neither Agents nor Escrow Holder are qualified to provide any opinion on whether either Party has acted in good faith or which Party is entitled to the deposited funds. Buyer and Seller are advised to seek the advice of a qualified California real estate attorney regarding this matter.**
- 15. REPAIRS:** Repairs shall be completed prior to final verification of condition unless Otherwise Agreed. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. Buyer acknowledges that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 16. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property condition within the time specified in **paragraph 3J**, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to **paragraph 7B**; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 17. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless Otherwise Agreed, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, Seller rental payments, HOA regular assessments due prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. Seller shall pay any HOA special or emergency assessments due prior to Close Of Escrow. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special or emergency assessments that are due after Close Of Escrow. Property will be reassessed upon change of ownership. Any supplemental tax bills delivered to Escrow Holder prior to closing shall be prorated and paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). Seller agrees all service fees, maintenance costs and utility bills will be paid current up and through the date of Close Of Escrow. **TAX BILLS AND UTILITY BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER.** Prorations shall be made based on a 30-day month.
- 18. BROKERS AND AGENTS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agree to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
 - B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Agent: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Agent; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.



19. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

- A.** The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: **paragraphs 1, 3A, 3B, 3D-G, 3N(2), 3Q, 3R, 4A, 4B, 5A(1-2) 5D, 5E, 10B(2)(A), 10B(3), 10C, 11H, 11K(2), 13 (except 13D), 14H, 17, 18A, 19, 23, 25, 27, 28, 32, 33, and paragraph 3 of the Real Estate Brokers Section.** If a Copy of the separate compensation agreement(s) provided for in **paragraph 18A or paragraph C of the Real Estate Brokers Section** is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned.
- B.** Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller shall Sign and return Escrow Holder's general provisions or supplemental instructions within the time specified in **paragraph 3N(2).** Buyer and Seller shall execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 Days**, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by **paragraphs 3, 8, 10, 11,** or elsewhere in this Agreement.
- C.** A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** after **Acceptance.** Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title Company when received from Seller, if a separate company is providing title insurance. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under **paragraph 11H,** Escrow Holder shall deliver to Buyer, Buyer's Agent, and Seller's Agent a Qualified Substitute statement that complies with federal Law. If Escrow Holder's Qualified Substitute statement does not comply with federal law, the Parties instruct escrow to withhold all applicable required amounts under **paragraph 11H.**
- D.** Agents are not a party to the escrow, except for Brokers for the sole purpose of compensation pursuant to **paragraph 18A and paragraph 3 of the Real Estate Brokers Section.** If a Copy of the separate compensation agreement(s) provided for in either of those paragraphs is deposited with Escrow Holder by Agent, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). Buyer and Seller irrevocably assign to Brokers compensation specified in **paragraph 18A,** and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- E.** Buyer and Seller acknowledge that Escrow Holder may require invoices for expenses under this Agreement. Buyer and Seller, upon request by Escrow Holder, within **3 Days** or within a sufficient time to close escrow, whichever is sooner, shall provide any such invoices to Escrow Holder.
- F.** Upon receipt, Escrow Holder shall provide Buyer, Seller, and each Agent verification of Buyer's deposit of funds pursuant to **paragraphs 5A(1) and 5A(2).** Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify each Agent: **(i)** if Buyer's initial or any additional deposit or down payment is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or **(ii)** if Buyer and Seller instruct Escrow Holder to cancel escrow.
- G.** A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.
- 20. SELECTION OF SERVICE PROVIDERS:** Agents do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Agent or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 21. MULTIPLE LISTING SERVICE ("MLS"):** Agents are authorized to report to the MLS that an offer has been accepted and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS. Buyer acknowledges that: **(i)** any pictures, videos, floor plans (collectively, "Images") or other information about the Property that has been or will be inputted into the MLS or internet portals, or both, at the instruction of Seller or in compliance with MLS rules, will not be removed after Close Of Escrow; **(ii)** California Civil Code § 1088(c) requires the MLS to maintain such Images and information for at least three years and as a result they may be displayed or circulated on the Internet, which cannot be controlled or removed by Seller or Agents; and **(iii)** Seller, Seller's Agent, Buyer's Agent, and MLS have no obligation or ability to remove such Images or information from the Internet.
- 22. ATTORNEY FEES AND COSTS:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in **paragraph 30A.**
- 23. ASSIGNMENT:** Buyer shall have the right to assign all of Buyer's interest in this Agreement to Buyer's own trust or to any wholly owned entity of Buyer that is in existence at the time of such assignment. Otherwise, Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the separate written consent of Seller to a specified assignee. Such consent shall not be unreasonably withheld. Prior to any assignment, Buyer shall disclose to Seller the name of the assignee and the amount of any monetary consideration between Buyer and assignee. Buyer shall provide assignee with all documents related to this Agreement including, but not limited to, the Agreement and any disclosures. If assignee is a wholly owned entity or trust of Buyer, that assignee does not need to re-sign or initial all documents provided. Whether or not an assignment requires seller's consent, at the time of assignment, assignee shall deliver a letter from assignee's lender that assignee is prequalified or preapproved as specified in **paragraph 6B.** Should assignee fail to deliver such a letter, Seller, after first giving Assignee an Notice to Buyer to Perform, shall have the right to terminate the assignment. Buyer shall, within the time specified in **paragraph 3K,** Deliver any request to assign this Agreement for Seller's consent. If Buyer fails to provide the required information within this time frame, Seller's withholding of consent shall be deemed reasonable. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless Otherwise Agreed by Seller (C.A.R. Form AOA).
- 24. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 25. DEFINITIONS and INSTRUCTIONS:** The following words are defined terms in this Agreement, shall be indicated by initial capital letters throughout this Agreement, and have the following meaning whenever used:
- A. "Acceptance"** means the time the offer or final counter offer is fully executed, in writing, by the recipient Party and is Delivered to the offering Party or that Party's Authorized Agent.



- B. **"Agent"** means the Broker, salesperson, broker-associate or any other real estate licensee licensed under the brokerage firm identified in **paragraph 2B**.
- C. **"Agreement"** means this document and any counter offers and any incorporated addenda or amendments, collectively forming the binding agreement between the Parties. Addenda and amendments are incorporated only when Signed and Delivered by all Parties.
- D. **"As-Is"** condition: Seller shall disclose known material facts and defects as specified in this Agreement. Buyer has the right to inspect the Property and, within the time specified, request that Seller make repairs or take other corrective action, or exercise any contingency cancellation rights in this Agreement. Seller is only required to make repairs specified in this Agreement or as Otherwise Agreed.
- E. **"Authorized Agent"** means an individual real estate licensee specified in the Real Estate Broker Section.
- F. **"C.A.R. Form"** means the most current version of the specific form referenced or another comparable form agreed to by the Parties.
- G. **"Close Of Escrow"**, including "COE", means the date the grant deed, or other evidence of transfer of title, is recorded for any real property, or the date of Delivery of a document evidencing the transfer of title for any non-real property transaction.
- H. **"Copy"** means copy by any means including photocopy, facsimile and electronic.
- I. **Counting Days** is done as follows unless Otherwise Agreed: (1) The first Day after an event is the first full calendar date following the event, and ending at 11:59 pm. For example, if a Notice to Buyer to Perform (C.A.R. form NBP) is Delivered at 3 pm on the 7th calendar day of the month, or Acceptance of a counter offer is personally received at 12 noon on the 7th calendar day of the month, then the 7th is Day "0" for purposes of counting days to respond to the NBP or calculating the Close Of Escrow date or contingency removal dates and the 8th of the month is Day 1 for those same purposes. (2) All calendar days are counted in establishing the first Day after an event. (3) All calendar days are counted in determining the date upon which performance must be completed, ending at 11:59 pm on the last day for performance ("Scheduled Performance Day"). (4) After Acceptance, if the Scheduled Performance Day for any act required by this Agreement, including Close Of Escrow, lands on a Saturday, Sunday, or legal holiday, the performing party shall be allowed to perform on the next day that is not a Saturday, Sunday or legal holiday ("Allowable Performance Day"), and ending at 11:59 pm. (5) For the purposes of COE, any day that the Recorder's office in the County where the Property is located is closed, the COE shall occur on the next day the Recorder's office in that County is open. (6) COE is considered Day 0 for purposes of counting days Seller is allowed to remain in possession, if permitted by this Agreement.
- J. **"Day" or "Days"** means calendar day or days. However, delivery of deposit to escrow is based on business days.
- K. **"Deliver", "Delivered" or "Delivery"** of documents, unless Otherwise Agreed, means and shall be effective upon personal receipt of the document by Buyer or Seller or their Authorized Agent. Personal receipt means (i) a Copy of the document, or as applicable, link to the document, is in the possession of the Party or Authorized Agent, regardless of the Delivery method used (i.e. e-mail, text, other), or (ii) an Electronic Copy of the document, or as applicable, link to the document, has been sent to any of the designated electronic delivery addresses specified in the Real Estate Broker Section on page 16. After Acceptance, Agent may change the designated electronic delivery address for that Agent by, in writing, Delivering notice of the change in designated electronic delivery address to the other Party. Links could be, for example, to DropBox or GoogleDrive or other functionally equivalent program. If the recipient of a link is unable or unwilling to open the link or download the documents or otherwise prefers Delivery of the documents directly, Recipient of a link shall notify the sender in writing, within **3 Days** after Delivery of the link (C.A.R. Form RFR). In such case, Delivery shall be effective upon Delivery of the documents and not the link. Failure to notify sender within the time specified above shall be deemed consent to receive, and Buyer opening, the document by link.
- L. **"Electronic Copy" or "Electronic Signature"** means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
- M. **"Law"** means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- N. **"Legally Authorized Signer"** means an individual who has authority to Sign for the principal as specified in **paragraph 32 or paragraph 33**.
- O. **"Otherwise Agreed"** means an agreement in writing, signed by both Parties and Delivered to each.
- P. **"Repairs"** means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- Q. **"Sign" or "Signed"** means either a handwritten or Electronic Signature on an original document, Copy or any counterpart.
26. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the terms and conditions herein. The individual Liquidated Damages and Arbitration of Disputes paragraphs are incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a Counter Offer or addendum. **If at least one but not all Parties initial, a Counter Offer is required until agreement is reached.** Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance and to market the Property for backup offers after Acceptance. The Parties have read and acknowledge receipt of a Copy of the offer and agree to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing. By signing this offer or any document in the transaction, the Party Signing the document is deemed to have read the document in its entirety.
27. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as Otherwise Agreed, this Agreement shall be interpreted, and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
28. **LEGALLY AUTHORIZED SIGNER:** Wherever the signature or initials of the Legally Authorized Signer identified in **paragraph 32 or 33** appear on this Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Legally Authorized Signer (i) represents that the entity for which that person is acting already exists and is in good standing to do business in California and (ii) shall Deliver to the other Party and Escrow Holder, within the time specified in **paragraph 3N(5)**, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code § 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).



29. LIQUIDATED DAMAGES (By initialing in the space below, you are agreeing to Liquidated Damages):

If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. If the Property is a dwelling with no more than four units, one of which Buyer intends to occupy, then the amount retained shall be no more than 3% of the purchase price. Any excess shall be returned to Buyer. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT THE TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM DID).**

Buyer's Initials _____ / _____

Seller's Initials _____ / _____

30. MEDIATION:

- A.** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. The mediation shall be conducted through the C.A.R. Real Estate Mediation Center for Consumers (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties **also agree to mediate any disputes or claims with Agents(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Agent.** Mediation fees, if any, shall be divided equally among the Parties involved, and shall be recoverable under the prevailing party attorney fees clause. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.**
- B. ADDITIONAL MEDIATION TERMS:** (i) Exclusions from this mediation agreement are specified in paragraph 31B; (ii) The obligation to mediate does not preclude the right of either Party to seek a preservation of rights under paragraph 31C; and (iii) Agent's rights and obligations are further specified in paragraph 31D. These terms apply even if the Arbitration of Disputes paragraph is not initialed.

31. ARBITRATION OF DISPUTES:

- A.** The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Agents(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Agent. The arbitration shall be conducted through any arbitration provider or service mutually agreed to by the Parties, OR ☐ _____. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of residential real estate Law experience, unless the Parties mutually agree to a different arbitrator. Enforcement of, and any motion to compel arbitration pursuant to, this agreement to arbitrate shall be governed by the procedural rules of the Federal Arbitration Act, and not the California Arbitration Act, notwithstanding any language seemingly to the contrary in this Agreement. The Parties shall have the right to discovery in accordance with Code of Civil Procedure § 1283.05. The arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction.
- B. EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) Any matter that is within the jurisdiction of a probate, small claims or bankruptcy court; (ii) an unlawful detainer action; and (iii) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code § 2985.
- C. PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- D. AGENTS:** Agents shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Agents(s) participating in mediation or arbitration shall not be deemed a party to this Agreement.
- E. "NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."**
- "WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."**

Buyer's Initials _____ / _____

Seller's Initials _____ / _____



32. BUYER'S OFFER

- A. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless by the date and time specified in **paragraph 3C**, the offer is Signed by Seller and a Copy of the Signed offer is Delivered to Buyer or Buyer's Authorized Agent. **Seller has no obligation to respond to an offer made.**
- B. ☐ ENTITY BUYERS:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)
- (1) One or more Buyers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
 - (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 28** for additional terms.
 - (3) The name(s) of the Legally Authorized Signer(s) is/are: _____.
 - (4) If a trust, identify Buyer as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____.
- C.** The RPA has 16 pages. Buyer acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.
- D. BUYER SIGNATURE(S):**

(Signature) By, _____ Date: _____

Printed name of BUYER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

(Signature) By, _____ Date: _____

Printed name of BUYER: _____

☐ Printed name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

33. ACCEPTANCE

- A. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions. Seller has read and acknowledges receipt of a Copy of this Agreement and authorizes Agent to Deliver a Signed Copy to Buyer.
- Seller's acceptance is subject to the attached Counter Offer or Back-Up Offer Addendum, or both, checked below.**
- Seller shall return and include the entire agreement with any response.
- ☐ **Seller Counter Offer** (C.A.R. Form SCO or SMO)
- ☐ **Back-Up Offer Addendum** (C.A.R. Form BUO)
- B. ☐ Entity Sellers:** (Note: If this paragraph is completed, a Representative Capacity Signature Disclosure form (C.A.R. Form RCSD) is not required for the Legally Authorized Signers designated below.)
- (1) One or more Sellers is a trust, corporation, LLC, probate estate, partnership, holding a power of attorney or other entity.
 - (2) This Agreement is being Signed by a Legally Authorized Signer in a representative capacity and not in an individual capacity. See **paragraph 28** for additional terms.
 - (3) The name(s) of the Legally Authorized Signer(s) is/are: _____.
 - (4) If a trust, identify Seller as trustee(s) of the trust or by simplified trust name (ex. John Doe, co-trustee, Jane Doe, co-trustee or Doe Revocable Family Trust). If the entity is a trust or under probate, the following is the full name of the trust or probate case, including case #: _____.

C. The RPA has 16 pages. Seller acknowledges receipt of, and has read and understands, every page and all attachments that make up the Agreement.

D. SELLER SIGNATURE(S):

(Signature) By, _____ Date: _____

Printed name of SELLER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

(Signature) By, _____ Date: _____

Printed name of SELLER: _____

☐ Printed Name of Legally Authorized Signer: _____ Title, if applicable, _____

☐ IF MORE THAN TWO SIGNERS, USE Additional Signature Addendum (C.A.R. Form ASA).

OFFER NOT ACCEPTED: _____ / _____ No Counter Offer is being made. This offer was not accepted by Seller _____ (date)
Seller's Initials



REAL ESTATE BROKERS SECTION:

1. **Real Estate Agents are not parties to the Agreement between Buyer and Seller.**
2. **Agency relationships are confirmed as stated in paragraph 2.**
3. **Cooperating Broker Compensation:** Seller's Broker agrees to pay Buyer's Broker and Buyer's Broker agrees to accept, out of Seller's Broker's proceeds in escrow, the amount specified in the MLS, provided Buyer's Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Seller's Broker and Buyer's Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.
4. **Presentation of Offer:** Pursuant to the National Association of REALTORS® Standard of Practice 1-7, if Buyer's Agent makes a written request, Seller's Agent shall confirm in writing that this offer has been presented to Seller.
5. **Agents' Signatures and designated electronic delivery address:**

A. Buyer's Brokerage Firm _____ Lic. # _____

By _____ Lic. # _____ Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Buyer. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.

☐ More than one brokerage firm represents Buyer. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.

Designated Electronic Delivery Address(es):

Email _____ Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address _____ City _____ State _____ Zip _____

B. Seller's Brokerage Firm _____ Lic. # _____

By _____ Lic. # _____ Date _____

By _____ Lic. # _____ Date _____

☐ More than one agent from the same firm represents Seller. Additional Agent Acknowledgement (C.A.R. Form AAA) attached.

☐ More than one brokerage firm represents Seller. Additional Broker Acknowledgement (C.A.R. Form ABA) attached.

Designated Electronic Delivery Address(es) (To be filled out by Seller's Agent):

Email _____ Text # _____

Alternate: _____

☐ if checked, Delivery shall be made to the alternate designated electronic delivery address only.

Address _____ City _____ State _____ Zip _____

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____), Counter Offer numbers _____ and _____, and agrees to act as Escrow Holder subject to **paragraph 19** of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised by _____ that the date of Acceptance of the Agreement is _____

Escrow Holder _____ Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

☐ Department of Financial Protection and Innovation, ☐ Department of Insurance, ☐ Department of Real Estate.

PRESENTATION OF OFFER: _____ / _____ Seller's Brokerage Firm presented this offer to Seller on _____ (date).

Agent or Seller Initials

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RPA 12/21 (PAGE 16 OF 16)

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (RPA PAGE 16 OF 16)

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Property Address _____

1. **IMPORTANCE OF PROPERTY INVESTIGATION:** The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.
2. **BROKER OBLIGATIONS:** Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.
3. **YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.**
 - A. **GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS:** Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and non-structural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
 - B. **SQUARE FOOTAGE, AGE, BOUNDARIES:** Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
 - C. **WOOD DESTROYING PESTS:** Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
 - D. **SOIL STABILITY:** Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
 - E. **WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL:** Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
 - F. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
 - G. **EARTHQUAKES AND FLOODING:** Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
 - H. **FIRE, HAZARD, AND OTHER INSURANCE:** The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
 - I. **BUILDING PERMITS, ZONING, GOVERNMENTAL REQUIREMENTS, AND ADDRESS:** Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size. Postal/mailling address and zip code may not accurately reflect the city which has jurisdiction over the property.
 - J. **RENTAL PROPERTY RESTRICTIONS:** The State, some counties, and some cities impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
 - K. **SECURITY AND SAFETY:** State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.

L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS: Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

By signing below, Buyers acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyers are encouraged to read it carefully.

Buyer _____ Date _____

Buyer _____ Date _____

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BIA REVISED 12/21 (PAGE 2 OF 2)

BUYER'S INVESTIGATION ADVISORY (BIA PAGE 2 OF 2)

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**CALIFORNIA CONSUMER PRIVACY ACT ADVISORY,
DISCLOSURE AND NOTICE**
(C.A.R. Form CCPA, Revised 12/21)

The California Consumer Privacy Act (commencing with Civil Code § 1798.100) ("CCPA") grants to California residents certain rights in their private, personal information ("PI") that is collected by companies with whom they do business. Under the CCPA, PI is defined broadly to encompass non-public records information that could reasonably be linked directly or indirectly to you, PI could potentially include photographs of, or sales information about, your property.

During the process of buying and selling real estate your PI will be collected and likely shared with others, including real estate licensees, a Multiple Listing Service, real estate internet websites, service providers, lenders, and title and escrow companies, to name several possibilities. Businesses that are covered by the CCPA are required to grant you various rights in your PI, including the right to know what PI is collected, "opt out" or stop the transfer of your PI to others, and the right to request that the business delete your PI entirely. You may get one or more notices regarding your CCPA rights from businesses you interact with in a real estate transaction. However, not all businesses that receive or share your PI are obligated to comply with the CCPA. Also, even businesses that are otherwise covered under the CCPA may have a legal obligation to maintain PI, notwithstanding your instruction to the contrary. For instance, regardless of whether they are covered by CCPA, under California law, brokers and Multiple Listing Services are required to maintain their records for 3 years. If you wish to exercise your rights under CCPA, where applicable, you should contact the respective business directly.

You can obtain more information about the CCPA and your rights under the law from the State of California Department of Justice (oag.ca.gov/privacy/ccpa).

I/we acknowledge receipt of a copy of this California Consumer Privacy Act Advisory, Disclosure and Notice.

Buyer/Seller/Landlord/Tenant _____ Date _____

Buyer/Seller/Landlord/Tenant _____ Date _____

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CCPA REVISED 12/21 (PAGE 1 OF 1)

CALIFORNIA CONSUMER PRIVACY ACT ADVISORY (CCPA PAGE 1 OF 1)



Property Address: _____ ("Property")

1. **INTRODUCTION:** Selling property in California is a process that involves many steps. From start to finish, it could take anywhere from a few weeks to many months, depending upon the condition of your Property, local market conditions and other factors. You have already taken an important first step by listing your Property for sale with a licensed real estate broker. Your broker will help guide you through the process and may refer you to other professionals, as needed. This advisory addresses many things you may need to think about and do as you market your Property. Some of these things are requirements imposed upon you, either by law or by the listing or sale contract. Others are simply practical matters that may arise during the process. Please read this document carefully and, if you have any questions, ask your broker or appropriate legal or tax advisor for help.
2. **DISCLOSURES:**
 - A. **General Disclosure Duties:** You must affirmatively disclose to the buyer, in writing, any and all known facts that materially affect the value or desirability of your Property. You must disclose these facts whether or not asked about such matters by the buyer, any broker, or anyone else. This duty to disclose applies even if the buyer agrees to purchase your Property in its present condition without requiring you to make any repairs. If you do not know what or how to disclose, you should consult a real estate attorney in California of your choosing. Broker cannot advise you on the legal sufficiency of any disclosures you make. If the Property you are selling is a residence with one to four units except for certain subdivisions, your broker also has a duty to conduct a reasonably competent and diligent visual inspection of the accessible areas and to disclose to a buyer all adverse material facts that the inspection reveals. If your broker discovers something that could indicate a problem, your broker must advise the buyer.
 - B. **Statutory Duties:** (For one-to-four Residential Units):
 - (1) You must timely prepare and deliver to the buyer, among other things, a Real Estate Transfer Disclosure Statement ("TDS"), and a Natural Hazard Disclosure Statement ("NHD"). You have a legal obligation to honestly and completely fill out the TDS form in its entirety. (Many local entities or organizations have their own supplement to the TDS that you may also be asked to complete.) The NHD is a statement indicating whether your Property is in certain designated flood, fire or earthquake/seismic hazard zones. Third-party professional companies can help you with this task.
 - (2) Depending upon the age and type of construction of your Property, you may also be required to provide and, in certain cases you can receive limited legal protection by providing, the buyer with booklets entitled "The Homeowner's Guide to Earthquake Safety," "The Commercial Property Owner's Guide to Earthquake Safety," "Protect Your Family From Lead in Your Home" and "Environmental Hazards: A Guide For Homeowners and Buyers." Some of these booklets may be packaged together for your convenience. The earthquake guides ask you to answer specific questions about your Property's structure and preparedness for an earthquake. If you are required to supply the booklet about lead, you will also be required to disclose to the buyer any known lead-based paint and lead-based paint hazards on a separate form. The environmental hazards guide informs the buyer of common environmental hazards that may be found in properties.
 - (3) If you know that your property is: (i) located within one mile of a former military ordnance location; or (ii) in or affected by a zone or district allowing manufacturing, commercial or airport use, you must disclose this to the buyer. You are also required to make a good faith effort to obtain and deliver to the buyer a disclosure notice from the appropriate local agency(ies) about any special tax levied on your Property pursuant to the Mello-Roos Community Facilities Act, the Improvement Bond Act of 1915, and a notice concerning the contractual assessment provided by section 5898.24 of the Streets And Highways Code (collectively, "Special Tax Disclosures").
 - (4) If the TDS, NHD, or lead, military ordnance, commercial zone or Special Tax Disclosures are provided to a buyer after you accept that buyer's offer, the buyer will have 3 days after delivery (or 5 days if mailed) to terminate the offer, which is why it is extremely important to complete these disclosures as soon as possible. There are certain exemptions from these statutory requirements; however, if you have actual knowledge of any of these items, you may still be required to make a disclosure as the items can be considered material facts.
 - C. **Death and Other Disclosures:** Many buyers consider death on real property to be a material fact in the purchase of property. In some situations, it is advisable to disclose that a death occurred or the manner of death; however, California Civil Code Section 1710.2 provides that you have no disclosure duty "where the death has occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property, or [regardless of the date of occurrence] that an occupant of that property was afflicted with, or died from, Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus." This law does not "immunize an owner or his or her agent from making an intentional misrepresentation in response to a direct inquiry from a transferee or a prospective transferee of real property, concerning deaths on the real property."
 - D. **Condominiums and Other Common Interest Subdivisions:** If the Property is a condominium, townhouse, or other property in a common interest subdivision, you must provide to the buyer copies of the governing documents, the most recent financial statements distributed, and other documents required by law or contract. If you do not have a current version of these documents, you can request them from the management of your homeowner's association. To avoid delays, you are encouraged to obtain these documents as soon as possible, even if you have not yet entered into a purchase agreement to sell your Property.
3. **CONTRACT TERMS AND LEGAL REQUIREMENTS:**
 - A. **Contract Terms and Conditions:** A buyer may request, as part of the contract for the sale of your Property, that you pay for repairs to the Property and other items. Your decision on whether or not to comply with a buyer's requests may affect your ability to sell your Property at a specified price.



Property Address: _____ Date: _____

- B. Withholding Taxes:** Under federal and California tax laws, a buyer is required to withhold a portion of the purchase price from your sale proceeds for tax purposes unless you sign an affidavit of non-foreign status and California residency, or some other exemption applies and is documented.
- C. Prohibition Against Discrimination:** Discriminatory conduct in the sale of real property against individuals belonging to legally protected classes is a violation of the law.
- D. Government Required Repairs, Replacements and Alterations:** Under State law, Property owners with limited exceptions, are required to: (1) install operable smoke alarms and brace water heaters and provide a Buyer with a statement of compliance. Existing operable smoke alarms, that met compliance standards when installed, do not have to be removed even if not up to current legal requirements. Smoke alarms that are added or that replace older versions must comply with current law; and (2) install carbon monoxide detection devices. Some city and county governments may impose additional requirements, including, but not limited to, installing low-flow toilets and showerheads, gas shut-off valves, tempered glass, and barriers around swimming pools and spas. You should consult with the appropriate governmental agencies, inspectors, and other professionals to determine which requirements apply to your Property, the extent to which your Property complies with such requirements, and the costs, if any, of compliance.
- E. EPA's LEAD-BASED PAINT RENOVATION, REPAIR AND PAINTING RULE:** The new rule requires that contractors and maintenance professionals working in pre-1978 housing, child care facilities, and schools with lead-based paint be certified; that their employees be trained; and that they follow protective work practice standards. The rule applies to renovation, repair, or painting activities affecting more than six square feet of lead-based paint in a room or more than 20 square feet of lead-based paint on the exterior. Enforcement of the rule begins October 1, 2010. See the EPA website at www.epa.gov/lead for more information.
- F. Legal, Tax and Other Implications:** Selling your Property may have legal, tax, insurance, title or other implications. You should consult an appropriate professional for advice on these matters.

4. MARKETING CONSIDERATIONS:

- A. Pre-Sale Inspections and Considerations:** You should consider doing what you can to prepare your Property for sale, such as correcting any defects or other problems, making cosmetic improvements, and staging. Many people are not aware of defects in or problems with their own Property. One way to make yourself aware is to obtain professional inspections prior to sale. Pre-sale inspections may include a general property inspection; an inspection for wood destroying pest and organisms (Structural Pest Control Report) and an inspection of the septic or well systems, if any, among others. By doing this, you then have an opportunity to make repairs before your Property is sold, which may enhance its marketability. Keep in mind, however, that any problems revealed by such inspection reports or repairs that have been made, whether or not disclosed in a report, should be disclosed to the buyer (see "Disclosures" in paragraph 2 above). This is true even if the buyer gets his/her own inspections covering the same area. Obtaining inspection reports may also assist you during contract negotiations with the buyer. For example, if a Structural Pest Control Report has both a primary and secondary recommendation for clearance, you may want to specify in the purchase agreement those recommendations, if any, for which you are going to pay.
- B. Post-Sale Protections:** It is often helpful to provide the buyer with, among other things, a home protection/warranty plan for the Property. These plans will generally cover problems, not deemed to be pre-existing, that occur after your sale is completed. In the event something does go wrong after the sale, and it is covered by the plan, the buyer may be able to resolve the concern by contacting the home protection company.
- C. Safety Precautions:** Advertising and marketing your Property for sale, including, but not limited to, holding open houses, placing a key safe/lockbox, erecting FOR SALE signs, and disseminating photographs, video tapes, and virtual tours of the premises, may jeopardize your personal safety and that of your Property. You are strongly encouraged to maintain insurance, and to take any and all possible precautions and safeguards to protect yourself, other occupants, visitors, your Property, and your belongings, including cash, jewelry, drugs, firearms and other valuables located on the Property, against injury, theft, loss, vandalism, damage, and other harm.
- D. Expenses:** You are advised that you, not the Broker, are responsible for the fees and costs, if any, to comply with your duties and obligations to the buyer of your Property.

5. OTHER ITEMS: _____

Seller has read and understands this Advisory. By signing below, Seller acknowledges receipt of a copy of this document.

Seller _____ Date _____
Print Name _____

Seller _____ Date _____
Print Name _____

Real Estate Broker (Listing Firm) _____ DRE Lic.#: _____
By _____ DRE Lic.# _____ Date _____
By _____ DRE Lic.# _____ Date _____
Address _____ City _____ State _____ Zip _____
Telephone _____ Fax _____ E-mail _____

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**CALIFORNIA CONSUMER PRIVACY ACT ADVISORY,
DISCLOSURE AND NOTICE**
(C.A.R. Form CCPA, Revised 12/21)

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You can obtain more information about the CCPA and your rights under the law from the State of California Department of Justice (oag.ca.gov/privacy/ccpa).

I/we acknowledge receipt of a copy of this California Consumer Privacy Act Advisory, Disclosure and Notice.

Buyer/Seller/Landlord/Tenant _____ Date _____

Buyer/Seller/Landlord/Tenant _____ Date _____

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CCPA REVISED 12/21 (PAGE 1 OF 1)

CALIFORNIA CONSUMER PRIVACY ACT ADVISORY (CCPA PAGE 1 OF 1)

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

May 10, 2022

FROM

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

SUBJECT

Agency-wide Financial Statements through December 2021

RECOMMENDATION(S)

Approve and file Agency-wide Financial Statements through December 2021.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

We have a healthy organization marked by financial stability and a culture of respect, empowerment, and passion for the mission.

FINANCIAL IMPACT

The Housing Authority of the County of San Bernardino's (HACSB) year-to-date agency-wide net income through December 2021 for Federal Fiscal Year (FFY) 2021-22 is \$130,518. The net income is currently lower than the anticipated \$3,216,236 budgeted net income, with a variance of \$3.1 million. The primary reasons for the budget variance are included below.

The primary reason for the budget variance is attributed to \$1.2 million in capital fund grant expenses that have not yet been incurred. There are also lower than anticipated costs in administrative expenses in the amount of \$1.2 million mainly due to timing related to the computer software annual costs, lower than anticipated vacancy turnover expenses and lower administrative salaries due to vacant positions. The variance is also due to physical needs work that was budgeted but will be completed later in the year in the amount of \$830 thousand (reflected in the extraordinary maintenance expenses line). Examples of extraordinary maintenance expenses budgeted include asphalt repairs, concrete repairs, roofing work and exterior painting. Overall, housing assistance payment revenue is \$4m less than expected due to a current lower lease rate accounting for \$2m along with a cash offset from HUD in the amount of \$2 million, which will be deposited in HACSB's HUD held reserves account. Depreciation expenses and other non-operating items are not budgeted and amount to \$1.6 million through December 2021.

Financial Summary	FY 2022 YTD
Revenues	\$36,680,585
Expenses	\$34,947,290
Operating Net Income/(Loss)	\$1,733,295
Operating Transfers/Non-Operating Items	\$1,602,777
Net Income/(Loss)	\$130,518

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 April 26, 2022.

HACSB Budget Comparison

Period = Oct 2021-Dec 2021

	YTD Actual	YTD Budget	Variance	% Var	Annual
INCOME					
TENANT INCOME					
Total Rental Income	6,727,172	6,523,335	203,837	3.12	26,093,339
Total Other Tenant Income	143,340	150,299	-6,959	-4.63	600,732
NET TENANT INCOME	6,870,512	6,673,634	196,878	2.95	26,694,072
GRANT INCOME					
TOTAL GRANT INCOME	28,482,704	34,205,170	-5,722,466	-16.73	136,820,678
OTHER INCOME					
TOTAL OTHER INCOME	1,327,369	2,677,800	-1,350,431	-50.43	6,918,012
TOTAL INCOME	36,680,585	43,556,604	-6,876,019	-15.79	170,432,762
EXPENSES					
GRANT EXPENSES					
TOTAL GRANT EXPENSES	1,377,026	2,595,257	1,218,232	46.94	10,381,030
ADMINISTRATIVE					
Total Administrative Salaries	3,261,901	3,569,341	307,440	8.61	14,891,275
Total Legal Expense	131,378	123,815	-7,563	-6.11	493,744
Total Other Admin Expenses	1,406,298	1,484,913	78,615	5.29	6,012,450
Total Miscellaneous Admin Expenses	578,018	943,681	365,662	38.75	2,799,577
TOTAL ADMINISTRATIVE EXPENSES	5,377,595	6,121,749	744,154	12.16	24,197,045
TENANT SERVICES					
TOTAL TENANT SERVICES EXPENSES	145,519	55,832	-89,687	-160.64	212,482
UTILITIES					
TOTAL UTILITY EXPENSES	857,763	935,625	77,862	8.32	3,883,825
MAINTENANCE AND OPERATIONS					
Total General Maint Expense	736,153	668,709	-67,443	-10.09	2,768,190
Total Materials	181,528	234,315	52,787	22.53	936,669
Total Contract Costs	547,266	1,010,606	463,340	45.85	4,048,806
TOTAL MAINTENANCE EXPENSES	1,464,946	1,913,630	448,684	23.45	7,753,664
GENERAL EXPENSES					
TOTAL GENERAL EXPENSES	371,729	321,190	-50,539	-15.74	1,218,695
EXTRAORDINARY MAINTENANCE EXPENSES					
TOTAL EXTRAORDINARY MAINTENANCE EXPENSES	425,089	1,252,938	827,849	66.07	3,710,753
HOUSING ASSISTANCE PAYMENTS					
TOTAL HOUSING ASSISTANCE PAYMENTS	24,567,191	26,780,236	2,213,045	8.26	107,120,942
FINANCING EXPENSE					
TOTAL FINANCING EXPENSES	360,432	363,911	3,479	0.96	1,455,642
TOTAL OPERATING EXPENSES	34,947,290	40,340,368	5,393,077	13.37	159,934,078
OPERATING NET INCOME	1,733,295	3,216,236	-1,482,941	-46.11	10,498,684
NET OPERATING TRANSFER IN/OUT	0	0	0	N/A	0
NON-OPERATING ITEMS					
TOTAL NON-OPERATING ITEMS	1,602,777	0	-1,602,777	N/A	0
NET INCOME	130,518	3,216,236	-3,085,719	-95.94	10,498,684

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

May 10, 2022

FROM

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

SUBJECT

Regular Meeting Minutes for Meeting Held on April 12, 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 April 12, 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 April 12, 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 May 4, 2022.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF
THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO
April 12, 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 830 0999 5649, Password 023450) at 3:00 p.m. on April 12, 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:

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

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; Perlle Liu, Asset Management Analyst; Evan Miles, Project Manager; Angie Lardapide, Procurement and Contracts Supervisor; Jesse Diaz, Finance Manager; Ronald Kennedy, Management Analyst; Kristin Maithonis, Assistant Director of Housing Services; Vivian Rivera-Law, Housing Services Specialist and Claudia Hurtado, Executive Assistant.

Also present, Fred Galante and Colin Tanner, Legal Counsel to the Housing Authority.

2) Additions or Deletions to the Agenda

The Chair called for additions or deletions to the April 12, 2022 agenda. There were none.

3) Presentation to outgoing Board member Cid Pinedo

Executive Director Razo and several board members shared words of gratitude regarding Cid Pinedo's contributions as a commissioner. Dr. Pinedo was also presented with a plaque as a thank you for his years of service.

4) General Public Comment

The Chair provided an opportunity for members of the public to address the Board of Commissioners. There was not public comment.

5) Closed Session

Closed Session described as follows was held by the HACSB Board of Commissioners, designated leadership team and Legal Counsel were present:

With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: Rishad Mitha, Director of Operations

6) Closed Session

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

7) Closed Session

With respect to every item of business to be discussed in closed session pursuant to Section 54957:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: Executive Director

8) Closed Session

With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: General Counsel, Fred Galante

Unrepresented employee: Executive Director

Following closed sessions numbers 5 & 6, General Counsel Fred Galante reported that the Board of Commissioners held a closed session to discuss the items, as listed on the agenda, and no reportable action was taken.

Following closed sessions numbers 7 & 8, General Counsel Fred Galante reported that the Board of Commissioners held a closed session to discuss the items, as listed on the agenda, discussion motioned by Commissioner Tarango and seconded by Commissioner Miller, carried 4 to 0, the Board approved a 3% merit increase for the Executive Director, consistent with the staff raises provided in 2021, adjustment being retroactive to October 1, 2021, consistent with when staff received the merit increase.

9) Executive Director's Report

The Executive Director's Report was requested.

Executive Director Razo gave the Executive Director's Report.

10) Board Building Presentation

The Board Building Presentation was requested.

Representative from Potomac Partners D.C., Dan Feliz, gave the Board Building Presentation which included an overview of the Housing Authority of the County of San Bernardino's legislative platform and advocacy preparation.

11) Emergency Housing Vouchers Implementation Update

Discussion calendar item number 11 to receive update from staff on Emergency Housing Vouchers implementation, was requested.

Executive Director Razo explained the item.

12) Resolution No. 141

Discussion Calendar item number 12 to Adopt Resolution No. 141 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 April 16, 2022 through May 16, 2022, was requested.

Executive Director Razo and Legal Counsel Fred Galante explained the item.

Discussion amongst the Board of Commissioners took place regarding Resolution No. 141.

Commissioner Tarango moved to approve the discussion calendar item number 12, as recommended by staff and Commissioner Miller seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

13) Resolution No. 143

Discussion calendar item number 13 to Adopt Resolution No. 143 approving revisions to the Housing Authority of the County of San Bernardino's Personnel Policy Handbook, was requested.

Executive Director Razo explained the item and also requested to exclude policies 2003-Nepotism and 3007-Dress Code from the motion, as the items are still pending review from the union.

Commissioner MacDuff moved to approve the discussion calendar item number 13, as recommended by staff, and Chair Johnson duly seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

14) Resolution No. 22-144

Discussion calendar item number 14 to Adopt Resolution No. 22-144, amending, restating, and replacing Resolution No. 21-108 of the Housing Authority of the County of San Bernardino (“Agency”) pertaining to communication and labor relations between the Agency, its employees, and its employee organizations, was requested.

Executive Director Razo explained the item.

Commissioner Tarango moved to approve discussion calendar item number 14, as recommended by staff, and Commissioner MacDuff duly seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

15) Resolution No. 142

Discussion calendar item number 15 to Adopt Resolution No. 142 approving the Housing Authority of the County of San Bernardino’s Annual Moving to Work Plan, Amendment 1, for Fiscal Year 2021-2022, was requested.

Executive Director Razo explained the item.

Commissioner MacDuff moved to approve the discussion calendar item number 15 as recommended by staff. The motion was duly seconded by Commissioner Miller, and upon roll call the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

16) Commitment of Four Project-Based Veteran Affairs Supportive Housing Vouchers for the City of Twentynine Palms Homekey Project

Discussion calendar item number 16 to 1) Approve the Commitment of four Project-Based Veterans Affairs Supportive Housing Vouchers to the City of Twentynine Palms Homekey project, for a renewable term of 20 years, subject to federal government appropriation, 2) Authorize the Executive Director of the Housing Authority of the County of San Bernardino, upon consultation with Legal Counsel, to execute and deliver all other documents or certificates which are necessary or appropriate to carry out the commitment and to satisfy program rules and regulations pursuant to federal requirements, was requested.

Executive Director Razo explained the item.

Commissioner MacDuff moved to approve the discussion calendar item number 16 as recommended by staff. The motion was duly seconded by Commissioner Miller, and Upon roll call the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

17) Amendment No. 2 to Memorandum of Understanding with Foothill AIDS Project for the Housing Opportunities for Persons with AIDS program

Discussion calendar item number 17 to 1) Approve Amendment No. 2 to Memorandum of Understanding with Foothill AIDS Project for the Housing Opportunities for Persons with AIDS program, modifying the annual funding amount for a total amount not to exceed \$606,328 and extending the term by one additional year, effective July 1, 2022 through June 30, 2023, 2) Authorize and direct the Executive Director to execute and deliver the contract amendment to Foothill AIDS Project and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, was requested.

Executive Director Razo explained the item.

Commissioner Tarango moved to approve the discussion calendar item number 17 as recommended by staff. The motion was duly seconded by Commissioner Miller, and Upon roll call the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

18) Memorandum of Understanding with San Bernardino County Workforce Development Board for America's Job Center of California System

Discussion calendar item number 18 to 1) Approve a Memorandum of Understanding with San Bernardino County Workforce Development Board as a Workforce Innovation & Opportunity Act One-Stop America's Job Centers of California Partner, effective July 1, 2022, through June 30, 2025, 2) Authorize and direct the Executive Director to execute and deliver the Memorandum of Understanding to the San Bernardino County Workforce Development Board and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, was requested.

Executive Director Razo explained the item.

Commissioner Tarango moved to approve the discussion calendar item number 18 as recommended by staff. The motion was duly seconded by Commissioner MacDuff, and Upon roll call the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

19) Memorandums of Understanding with the County of San Bernardino's Department of Behavioral Health for the Continuum of Care Grants

Discussion calendar item number 19 to 1) Approve two non-financial Memorandums of Understanding with the County of San Bernardino's Department of Behavioral Health for the Continuum of Care grants, which Memorandums of Understanding address the provision of in-kind case management services to participants in the following two separate programs:

- a. Project Gateway program
- b. Laurelbrook Estates program,

2) Authorize and direct the Executive Director to execute and deliver Memorandum of Understanding for each Continuum of Care grant to the County of San Bernardino, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, 3) Authorize and direct the Executive Director to execute and deliver annual renewals of the Memorandum of Understanding for each Continuum of Care grant upon grant renewal to the County of San Bernardino, and upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, was requested.

Executive Director Razo explained the item and also specifying Project Gateway program serving 12 households and Laurelbrook Estates program serving 27 households

Commissioner MacDuff moved to approve the discussion calendar item number 19 as recommended by staff. The motion was duly seconded by Commissioner Tarango, and Upon roll call the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

20) Contract Amendment with Spectrotel Holding Company, LLC, for Network Upgrade Services

Discussion calendar item number 20 to 1) Approve Amendment No. 4 to Contract No. PC1012, effective April 23, 2022, with Spectrotel Holding Company, LLC for network upgrade services, increasing the current contract amount by \$77,266.08 for a total contract amount not to exceed \$288,390.96, and extending the contract for the last option year through April 22, 2023, 2) Authorize and direct the Executive Director to execute and deliver the contract amendment to Spectrotel Holding Company, LLC and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction, was requested.

Executive Director Razo explained the item.

Commissioner Tarango moved to approve the discussion calendar item number 20 as recommended by staff. The motion was duly seconded by Commissioner MacDuff, and Upon roll call the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

21-23) Consent Items

Approval of the consent calendar agenda items numbers 21 - 23 was requested.

Discussion amongst the Board of Commissioners took place regarding board agenda item number 22. The Executive Director requested that item number 22 be pulled from the consent agenda items.

Board members approved the consent calendar agenda items with the exclusion of item 22.

Commissioner MacDuff moved to approve consent calendar agenda item numbers 21 & 23, to:
21) Approve the meeting minutes for the Board of Commissioners of the Housing Authority of the County of San Bernardino Regular Meeting held on March 8, 2022.

23) Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of January 2022.

The motion was duly seconded by Commissioner Tarango and upon roll call the Ayes and Nays were as follows:

Ayes

Chair Johnson
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

Chair Johnson provided an opportunity for individual Board member comments. Commissioner MacDuff congratulated the HACSB Team on receiving the NAHRO Excellent Awards.

There being no other business, Commissioner MacDuff moved for the regular meeting of Tuesday, April 12, 2022, to be adjourned, which motion was duly seconded by Commissioner Tarango. There being no objection to the call for adjournment, the meeting was adjourned by unanimous consent at 5:35 p.m.

Tim Johnson, Chair

Beau Cooper, Vice Chair

Cassie MacDuff

Sylvia Miller

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

May 10, 2022

FROM

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

SUBJECT

Agency-wide Financial Statements through January 2022

RECOMMENDATION(S)

Approve and file Agency-wide Financial Statements through January 2022.
(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 January 2022 for Federal Fiscal Year (FFY) 2021-22 is \$(181,350). The net loss is currently lower than the anticipated \$4,253,451 budgeted net income, with a variance of \$4.3 million. The primary reasons for the budget variance are included below.

The primary reason for the budget variance is attributed to \$1.5 million in capital fund grant expenses that have not yet been incurred. There are also lower than anticipated costs in administrative expenses in the amount of \$1.2 million mainly due to timing related to the computer software annual costs, lower than anticipated vacancy turnover expenses and lower administrative salaries due to vacant positions. The variance is also due to physical needs work that was budgeted but will be completed later in the year in the amount of \$920 thousand (reflected in the extraordinary maintenance expenses line). Examples of extraordinary maintenance expenses budgeted include asphalt repairs, concrete repairs, roofing work and exterior painting. Overall, housing assistance payment revenue is \$5.3m less than expected due to a current lower lease rate accounting for \$2.8m along with a cash offset from HUD in the amount of \$2 million, which will be deposited in HACSB's HUD held reserves account. Depreciation expenses and other non-operating items are not budgeted and amount to \$2.1 million through January 2022.

Financial Summary	FY 2022 YTD
Revenues	\$49,119,713
Expenses	\$47,254,097
Operating Net Income/(Loss)	\$1,865,617
Operating Transfers/Non-Operating Items	\$2,046,966
Net Income/(Loss)	\$(181,350)

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 April 26, 2022.

HACSB Budget Comparison

Period = Oct 2021-Jan 2022

	YTD Actual	YTD Budget	Variance	% Var	Annual
INCOME					
TENANT INCOME					
Total Rental Income	8,940,243	8,697,780	242,463	2.79	26,093,339
Total Other Tenant Income	248,182	200,412	47,770	23.84	600,732
NET TENANT INCOME	9,188,425	8,898,192	290,233	3.26	26,694,072
GRANT INCOME					
TOTAL GRANT INCOME	38,258,560	45,606,893	-7,348,333	-16.11	136,820,678
OTHER INCOME					
TOTAL OTHER INCOME	1,672,729	3,108,602	-1,435,873	-46.19	6,918,012
TOTAL INCOME	49,119,713	57,613,687	-8,493,973	-14.74	170,432,762
EXPENSES					
GRANT EXPENSES					
TOTAL GRANT EXPENSES	1,930,424	3,460,343	1,529,919	44.21	10,381,030
ADMINISTRATIVE					
Total Administrative Salaries	4,345,254	4,745,519	400,265	8.43	14,891,275
Total Legal Expense	175,362	164,936	-10,426	-6.32	493,744
Total Other Admin Expenses	1,895,877	1,977,571	81,694	4.13	6,012,450
Total Miscellaneous Admin Expenses	911,967	1,162,185	250,218	21.53	2,799,577
TOTAL ADMINISTRATIVE EXPENSES	7,328,461	8,050,211	721,750	8.97	24,197,045
TENANT SERVICES					
TOTAL TENANT SERVICES EXPENSES	244,364	72,744	-171,620	-235.92	212,482
UTILITIES					
TOTAL UTILITY EXPENSES	1,201,558	1,297,664	96,107	7.41	3,883,825
MAINTENANCE AND OPERATIONS					
Total General Maint Expense	997,176	890,087	-107,089	-12.03	2,768,190
Total Materials	253,452	312,885	59,433	19.00	936,669
Total Contract Costs	841,659	1,348,111	506,453	37.57	4,048,806
TOTAL MAINTENANCE EXPENSES	2,092,287	2,551,083	458,796	17.98	7,753,664
GENERAL EXPENSES					
TOTAL GENERAL EXPENSES	562,242	441,074	-121,168	-27.47	1,218,695
EXTRAORDINARY MAINTENANCE EXPENSES					
TOTAL EXTRAORDINARY MAINTENANCE EXPENSES	556,077	1,476,272	920,195	62.33	3,710,753
HOUSING ASSISTANCE PAYMENTS					
TOTAL HOUSING ASSISTANCE PAYMENTS	32,856,767	35,706,981	2,850,214	7.98	107,120,942
FINANCING EXPENSE					
TOTAL FINANCING EXPENSES	481,918	485,214	3,296	0.68	1,455,642
TOTAL OPERATING EXPENSES	47,254,097	53,541,586	6,287,489	11.74	159,934,078
OPERATING NET INCOME	1,865,617	4,072,101	-2,206,484	-54.19	10,498,684
NET OPERATING TRANSFER IN/OUT	0	0	0	N/A	0
NON-OPERATING ITEMS					
TOTAL NON-OPERATING ITEMS	2,046,966	0	-2,046,966	N/A	0
NET INCOME	-181,350	4,072,101	-4,253,451	-104.45	10,498,684

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

May 10, 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 February 2022

RECOMMENDATION(S)

Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of February 2022.

(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 February 28, 2022, is \$9,809.71. The Housing Authority of the County of San Bernardino (HACSB) projects and anticipates collection losses in its annual budget.

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. 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 February 2022 is \$9,809.71, as delineated in the following table. Attached is a worksheet that itemizes the individual accounts.

SUMMARY BY PROPERTY MANAGEMENT		
PROPERTY	NO. VACATED	TOTAL
402 – Summit Place – Redlands	0	-
407 – Sunset Pointe	2	\$577.00
408 – Sunrise Vista	1	\$8,234.00
418 – Grandview	1	(\$70.00)
423 – Mesa Gardens	1	\$306.00

Vacated Tenant Accounts for the Authority Owned Portfolio to be Written Off as Collection Loss
for the Month of February 2022
May 10, 2022

SUMMARY BY PROPERTY MANAGEMENT		
PROPERTY	NO. VACATED	TOTAL
467 – Hillcrest	2	(\$128.00)
Concessions Write Off	0	(\$3.00)
TOTAL RENT WRITE OFF	7	\$8,916.00
Miscellaneous Charges		\$199.00
Maintenance Charges		\$3,594.71
Legal Charges		-
Security Deposits Applied		(\$2,900.00)
NET TOTAL WRITE OFF		\$9,809.71

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on April 27, 2022.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End:

02/28/22

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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402 - Summit Place													
1	M.	J.							(716.13)		(716.13)		(716.13)
							-				-		-
TOTALS:						-	-	-	(716.13)	-	(716.13)	-	(716.13)

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	Collection on bad debt									

407 - Sunset Pointe													
2	M.	T.							(786.23)		(786.23)		(786.23)
3	M.	M.		V	725.00	(1.00)			184.00		183.00	100.00	83.00
4	K.	M.		S	750.00	578.00	(3.00)		1,060.11		1,635.11	975.00	660.11
							-				-		-
TOTALS:						577.00	(3.00)	-	457.88	-	1,031.88	1,075.00	(43.12)

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
2	Payment on bad debt									
3	60 Day Notice	12/1/2021								2/2/2022
4	Skip									02/03/22

408 - Sunrise Vista													
5	G.	C.							(120.00)		(120.00)		(120.00)
6	T.	A.		S	825.00	8,234.00		75.00	1,277.96		9,586.96	400.00	9,186.96
							-			-	-		-
TOTALS:						8,234.00	-	75.00	1,157.96	-	9,466.96	400.00	9,066.96

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	Collection on bad debt									
6	Skip									2/26/2022

*Reasons: E=Eviction D=Death S=Skip V=Voluntary T=Terminated Tenancy **Unpaid Misc. Stipulated agreements for rent, maintenance charges, late charges, etc.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End:

02/28/22

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
418 - Grandview													
7	S.	A.					-		(50.00)		(50.00)		(50.00)
8	C.	N.		D	700.00	(70.00)	-	49.00	289.00		268.00	200.00	68.00
TOTALS:						(70.00)	-	49.00	239.00	-	218.00	200.00	18.00
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		
7	Payment on bad debt												
8	Death										01/31/22		

423 - Mesa Gardens													
9	M.	L.		V	971.00	306.00	-	75.00	701.00		1,082.00	800.00	282.00
TOTALS:						306.00	-	75.00	701.00	-	1,082.00	800.00	282.00
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		
9	60 Day Notice	11/29/2021									2/11/2022		

467 - Hillcrest													
10	C.	R.		D	642.00	(128.00)			871.00		743.00	425.00	318.00
11	G.	A.		E					884.00		884.00		884.00
TOTALS:						(128.00)	-	-	1,755.00	-	1,627.00	425.00	1,202.00
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		
10	Death										01/24/22		
11	Adjustment to previous month write off												

ALL PROPERTY TOTALS:						8,919.00	(3.00)	199.00	3,594.71	-	12,709.71	2,900.00	9,809.71
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Submitted by: Lucy Leslie Date: 3.15.22 Reviewed by: Date:

*Reasons: E=Eviction S=Skip V=Voluntary T=Terminated Tenancy **Unpaid Misc.:

Stipulated agreements for rent, maintenance charges, late charges, etc.