

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

TO BE HELD TELEPHONICALLY
July 12, 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: 895 0096 4724
Password: 650035

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.
- 4) Selection of Chair and Vice-Chair of the Board of Commissioners for the Housing Authority of the County of San Bernardino.
(Page 1-7)

CLOSED SESSION

- 5) **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)

- 6) Receive the Executive Director's Report for July 12, 2022.
(Page 8)
- 7) Receive the board building presentation for July 12, 2022, an overview of the Housing Authority of the County of San Bernardino's scholarship program and presentation of the 2022-2023 scholarship awards.
(Page 9)
- 8) Adopt Resolution No. 154 to approve and adopt:
a. The Fiscal Year 2022-23 Consolidated Annual Budget including operating transfers in/out.
b. The Fiscal Year 2022-23 Public Housing Annual Budget including operating transfers in/out.
c. Any changes to the Consolidated Annual Budget or the Public Housing Annual Budget that the Board of Commissioners may direct.
(Page 10-16)
- 9) Adopt a Resolution No. 153 to:
a. Approving the Housing Authority of the County of San Bernardino's Annual Moving to Work Plan for Fiscal Year 2022-2023.
b. Approving the Annual Moving to Work Plan Certifications of Compliance to Regulations with the United States Department of Housing and Urban Development.
(Pages 17-25)
- 10) Adopt Resolution No. 155 approving revisions to the Housing Authority of the County of San Bernardino's Salary Schedule effective August 5, 2022.
(Pages 26-34)
- 11) Adopt Resolution No. 156 approving revisions to the Employee Compensation Philosophy and Administrative Guidelines.
(Pages 35-42)
- 12) 1 – Authorize the Housing Authority of the County of San Bernardino to enter into a Loan Agreement in an amount not-to-exceed \$2,398,401 and to execute related documents with Desert Haven Victorville, L.P., to serve as permanent financing for a development known as the Desert Haven Apartments, said agreements and documents to be executed in substantially the form attached, such approval to be evidenced conclusively by the execution and delivery thereof.

2 – Authorize the Executive Director of the Housing Authority of the County of San Bernardino, upon consultation with Legal Counsel, to make modifications to the Loan Agreement and the documents or exhibits attached to the Agreement in order to conform to the transaction and funding for the Desert Haven Apartments permanent supportive housing project and to execute all documents or certificates which are necessary or appropriate to carry out and close the transaction as contemplated in the Agreement. (Pages 43-51)

- 13) 1 – Authorize the Executive Director of the Housing Authority of the County of San Bernardino (HACSB) to enter into a Subordination Agreement that allows the lien of the Permanent Mortgage provided by PNC Bank to be superior to the lien of the HACSB's Regulatory Agreement for the Vista del Sol Senior Housing site in Redlands, and to execute said agreement in substantially the form attached, such approval to be evidenced conclusively by the execution and delivery thereof.
2 – Authorize the Housing Successor Agency of the former Redevelopment Agency of the City of Redlands (the RDA) to enter into a Subordination Agreement that allows the lien of the Permanent Mortgage provided by PNC Bank to be superior to the lien of the RDA's Affordable Housing Development Incentive and Restrictive Covenant Agreement and Declaration of Restrictive Covenants for the Vista del Sol Senior Housing site in Redlands, and to execute said agreement in substantially the form attached, such approval to be evidenced conclusively by the execution and delivery thereof.
3 – Authorize the Executive Director of HACSB, upon consultation with Legal Counsel, to make modifications to the Subordination Agreement(s) and the documents or exhibits attached to the Agreement(s) as deemed necessary by Legal Counsel and to execute all documents or certificates which are necessary or appropriate to facilitate affiliate nonprofit Housing Partners I, Inc. (HPI) refinance of the Permanent Mortgage provided by PNC Bank. (Pages 52-80)
- 14) 1 – Approve Contract No. PC1277, effective August 1, 2022, for on-call architect services with Albert Group Architects, Architerra Design Group, Onyx Architects, Inc., RRM Design Group, and Sillman Wright Architects exercising a two-year base period with three single-year options to extend the contract through July 31, 2027.

2 – Approve an appropriation in an amount not to exceed \$500,000 for on-call architect services through July 31, 2027.

3 – Authorize and direct the Executive Director to execute and deliver the contracts to Albert Group Architects, Architerra Design Group, Onyx Architects, Inc., RRM Design Group, and Sillman Wright Architects and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction. (Pages 81-153)
- 15) 1 – Award contract No. PC1253, effective July 13, 2022, to J. Cardenas Inc. for concrete and masonry repairs at the 7th Street, Public Housing community in the city of Barstow, in an amount not to exceed \$343,201.
2 – Authorize and direct the Executive Director to execute and deliver the contract to J. Cardenas Inc., upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction. (Pages 154-174)

- 16) 1 – Award contract No. PC1256, effective July 13, 2022, to Shipley Construction and Plumbing for replacement of entry doors and windows at the 7th Street Complex, Public Housing community in the city of Barstow, in an amount not to exceed \$610,352.89.
2 – Authorize and direct the Executive Director to execute and deliver the contract to Shipley Construction and Plumbing, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.
(Pages 175-195)

CONSENT CALENDAR

APPROVAL OF CONSENT ITEMS: # 17 - 21

- 17) Approve the meeting minutes for the Board of Commissioner of the Housing Authority of the County of San Bernardino Regular Meeting held on June 14, 2022.
(Pages 196-202)
- 18) Approve and file Agency-wide Financial Statements through March 2022.
(Pages 203-205)
- 19) Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of April 2022.
(Pages 206-210)
- 20) Receive update from staff on Emergency Housing Vouchers implementation.
(Pages 211-212)
- 21) Adopt Resolution No. 157 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 July 16, 2022 through August 15, 2022.
(Pages 213-218)
- 21) Individual Board member Comments
- 22) 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

July 12, 2022

FROM

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

SUBJECT

Selection of Chair and Vice-Chair of the Board of Commissioners for the Housing Authority of the County of San Bernardino

RECOMMENDATION(S)

Select a Chair and Vice-Chair from among the Board of Commissioners of the Housing Authority of the County of San Bernardino to serve until January 11, 2023.
(Presenter: Maria Razo, Executive Director, 332-6305)

GOALS & OBJECTIVES

HACSB communication is open, honest and consistent.

FINANCIAL IMPACT

The proposed amendment has no budgetary impact on the Housing Authority of the County of San Bernardino's (Housing Authority) annual budget.

BACKGROUND INFORMATION

The Chair and Vice-Chair shall be selected from among the Board of Commissioners (Board) of the Housing Authority. It is recommended that the following procedure be followed to accomplish the selection of Chair and Vice-Chair.

Procedure:

1. The Housing Authority General Counsel calls for nominations for the office of Chair.
2. Nominations are made by one Commissioner and seconded by another Commissioner.
3. After a nomination is made and seconded, the Housing Authority Secretary calls for the vote for the nominated Commissioner. Each Commissioner may cast one verbal vote. The nomination is confirmed by a majority vote of the Board. If a nomination fails to be confirmed, the Housing Authority General Counsel repeats the process of calling for nominations until a nomination is confirmed by a majority vote of the Board.
4. The Housing Authority Secretary then calls for nominations for the office of Vice-Chair.
5. After a nomination is made and seconded, the Housing Authority General Counsel calls for the vote for the nominated Commissioner. Each Commissioner may cast one verbal vote. The nomination is confirmed by a majority vote of the Board. If a nomination fails to be confirmed, the Housing Authority General Counsel repeats the process of calling for nominations until a nomination is confirmed by a majority vote of the Board.

REVIEW BY OTHERS

This item has been prepared by General Legal Counsel, Fred Galante on June 17, 2022.

BYLAWS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

ARTICLE I THE AUTHORITY; OFFICE; SEAL

Section 1. NAME OF AUTHORITY - The name of the organization shall be the Housing Authority of the County of San Bernardino ("Authority").

Section 2. SEAL AUTHORITY - The official seal of the Authority shall be in the form of a circle and shall bear the name of the Authority and the year of its organization.

Section 3. PRINCIPAL OFFICE - The principal office of the Authority shall be 715 East Brier Drive, San Bernardino, California, or such other location in the County of San Bernardino as the Authority may from time to time designate.

ARTICLE II OFFICERS AND PERSONNEL

Section 1. OFFICERS - The officers of the Authority shall be a Chairperson and a Vice Chairperson. The Board of Commissioners of the Authority ("Board") may establish such other officers as it considers either necessary or convenient to carry out the purposes of the Authority.

Section 2. CHAIRPERSON - The Chairperson of the Board shall preside at all meetings of the Authority. The Chairperson shall sign all contracts, deeds and other instruments made by the Authority, in the name of the Authority, as required by the Department of Housing and Urban Development, the Housing Authorities Law as set forth in Section 34200 et seq. of the California Health and Safety Code, or other applicable federal or state laws. The Chairperson shall be elected at the first meeting of the Authority each calendar year from among the members of the Board, and shall hold office for one (1) year or until the Chairperson's successor is elected and qualified.

Section 3. VICE-CHAIRPERSON - The Vice-Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson; and in case of the resignation or death of the Chairperson, the Vice-Chairperson shall perform such duties as are imposed on the Chairperson until such time as the Authority shall select a successor Chairperson. The Vice-Chairperson shall be elected at the first meeting of the Authority each calendar year from among the members of the Board, and shall hold office for one (1) year or until the Vice-Chairperson's successor is elected and qualified.

Section 4. SECRETARY - The Executive Director of the Authority, who shall serve at the pleasure of the Board, shall be the Secretary. The Secretary shall attend all meetings of the Authority, record all votes, maintain a full and thorough record of all proceedings of the Authority, including all resolutions of the Board, in a journal of proceedings to be kept for such purposes.

The Secretary shall keep all official records of the Authority, maintain custody of the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Board, and perform all other duties incident to the Office of Secretary.

Section 5. TREASURER - The Executive Director of the Authority, who shall serve at the pleasure of the Board, shall be the Treasurer. The Treasurer shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Authority may select. The Treasurer may sign all orders and checks for the payment of money and shall pay out and disburse such monies under the direction of the Board. Except as otherwise authorized by resolution of the Board, all such orders and checks shall be countersigned by the Deputy Executive Director or other designated staff during the absence of the Deputy Executive Director. The Treasurer shall keep regular books of accounts showing receipts and expenditures and shall render to the Board on a monthly basis, or more often when requested by any member of the Board, an account of transactions and of the financial condition of the Authority. The Treasurer may delegate such administrative duties and authority as are consistent with these Bylaws and such other rules and regulations as may from time to time be approved by the Board.

Section 6. EXECUTIVE DIRECTOR - The Executive Director shall serve at the pleasure of the Board and shall be responsible, subject to the policies and directions of the Board, for the general supervision over the administration of the business and affairs of the Authority and the execution of the Authority policies. The Executive Director shall be charged with the management of the housing developments owned and/or administered by the Authority. The Executive Director shall sign, on behalf of the Authority, all contracts and other documents approved by the Board unless federal or state regulations require otherwise; appoint, remove, discipline, and supervise the Authority's personnel; supply the Board with such information and recommendations as necessary or as may be requested by the Board; authorize and certify payrolls, requisitions, and other documents relating to the financial affairs of the Authority; and perform such other duties as may from time to time be prescribed for the Executive Director by the Board. The Executive Director may delegate such administrative duties and authority as are consistent with these Bylaws and such other rules and regulations as may from time to time be approved by the Board. The compensation of the Executive Director shall be determined by the Board.

Section 7. LEGAL COUNSEL – The Board of Commissioners of the Authority shall determine who shall serve as the Legal Counsel for the Authority.

Section 8. ADDITIONAL DUTIES - The officers and personnel of the Authority shall perform such other duties and functions as may from time to time be required by the Board or the Bylaws.

Section 9. NUMBER AND APPOINTMENT OF COMMISSIONERS; TERM

(a) Number and Appointment of Commissioners. All appointments to the Board shall be made by the County of San Bernardino Board of Supervisors ("Board of

Supervisors”) which shall appoint seven (7) persons as Commissioners to the Board in accordance with California Health and Safety Code Section 34271. The seven (7) Commissioners to the Board shall consist of five (5) Non-Tenant Commissioners (“Non-Tenant Commissioners”) and two (2) Tenant Commissioners (“Tenant Commissioners”). The two (2) Tenant Commissioners shall be tenants of the Authority, at least one (1) of whom shall also be over sixty-two (62) years of age. A Tenant Commissioner must meet the qualifications of Title 24 Code of Federal Regulations Sections 964.410 and 964.415, as they currently exist or may be amended in the future. A Tenant Commissioner shall have the same powers, duties, privileges, and immunities as any other Commissioner. If a Tenant Commissioner ceases to be an “eligible resident” as required by Federal Regulations, he or she shall be disqualified as Commissioner and another tenant shall be appointed by the Board of Supervisors to fill the unexpired term.

(b) Term. The initial terms of the Non-Tenant Commissioners are staggered in accordance with Health and Safety Code section 34272. The first three Non-Tenant Commissioners appointed by the Board of Supervisors shall be designated to serve for terms of one, two, and three years, respectively, from the date of their appointment. The other two Non-Tenant Commissioners shall be designated to serve for terms of four years from the date of their appointment. Successors of Non-Tenant Commissioners shall be appointed for a term of four years. The initial and successor terms for Tenant Commissioners shall be two years.

Section 10. CONFLICTS OF INTEREST; CODE OF CONDUCT - Commissioners and Authority staff are honored with the public’s trust, and shall conduct all Authority business in an impartial, objective manner not tainted by financial conflicts of interest. Commissioners and Authority staff shall abide by the disclosure and disqualification requirements of the Fair Political Practices Act and implementing regulations, the provisions of California Government Code 1090, conflict of interest requirements of the Federal Government including by the United States Department of Housing and Urban Development, and all other applicable rules regarding conflicts of interest. In addition, Commissioners shall abide by all rules of conduct duly adopted by the Board.

ARTICLE III MEETINGS

Section 1. PLACE FOR MEETINGS - Meetings of the Board shall be held at the principal office of the Authority, unless another place is stated in the notice of the meeting.

Section 2. ANNUAL MEETING - The annual meeting of the Board shall be held for the purpose of electing officers and the transacting of such other business as may properly be brought before the Board on the second Tuesday of the Month of January of each year, at 3:00 p.m. If the annual meeting time shall be a legal holiday, the annual meeting shall be held on the next succeeding business day.

Section 3. REGULAR MEETINGS - Regular meetings shall be held with notice on the second Tuesday of each month at 3:00 p.m. If the Chairperson deems it expedient, a special meeting of the Board may be called for the purpose of transacting business and/or performing site

visits. If a regular meeting time shall be a legal holiday, that regular meeting shall be held on the next succeeding business day.

Section 4. SPECIAL MEETINGS - The Chairperson or a majority of the Commissioners may call a special meeting of the Board for the purpose of transacting business of the Authority. The notice for a special meeting shall (a) be personally delivered to each member of the Board or mailed, by postal service or electronically, to the business or home address of each member of the Board, at least forty-eight (48) hours prior to the date of such special meeting, and (b) set forth the business to be transacted at the special meeting. At such special meeting, no business shall be considered other than the business designated in the notice.

Section 5. JOINT MEETING WITH THE BOARD OF SUPERVISORS – The Board will attempt to hold an annual joint meeting with the County of San Bernardino Board of Supervisors. One topic at the meeting will be the continued partnerships between the Authority and the County of San Bernardino.

Section 6. QUORUM - The powers of the Authority shall be vested in the Commissioners in office. A majority of the Commissioners empowered to vote shall constitute a quorum for the purpose of conducting the business and exercising the powers of the Authority, and for all other purposes, but a smaller number may recess or adjourn from time to time until a quorum is obtained.

Section 7. CONDUCT OF MEETINGS - Notwithstanding any other provision in these Bylaws, all regular and special meetings of the Board shall be held in compliance with the requirements of the Housing Authorities Law, the Ralph M. Brown Act as set forth in Section 54950 et seq. of the California Government Code, and acceptable business meeting practices. The Board shall consider all appropriate business matters to come before the Board.

Section 8. MANNER OF VOTING - The voting on all matters coming before the Board shall be by voice vote or roll call, and the ayes and nays shall be entered upon the minutes of such meeting.

Section 9. ATTENDANCE AT MEETINGS - Commissioners shall attend all regular and special meetings of the Board unless there is good cause for the Commissioner's absence. In the event a Commissioner ceases to discharge the duties of his or her office for the period of three (3) consecutive months, except when prevented from discharging such duties due to sickness, the remaining Commissioners may request that the Board of Supervisors terminate the term of the absent Commissioner for inefficiency or neglect of duty, in accordance with California Health and Safety Code Section 34282.

Section 10. PUBLIC MEETINGS; NOTICES - All meetings of the Board shall be open and public, and all persons shall be permitted to attend any meeting of the Board, except as otherwise provided in the Ralph M. Brown Act and other applicable laws. The Authority shall comply with all public noticing required by the Ralph M. Brown Act and other applicable law.

Section 11. PUBLIC COMMENT; REASONABLE LIMITATIONS - The Board encourages and welcomes public comment on all items on the Board's agenda and, during the public comment period, on any matters not on the Board's agenda but within the subject matter jurisdiction of the Board. For reasons of efficiency, speakers will be limited to three (3) minutes each. No action shall be taken on any item not appearing on the agenda unless otherwise authorized by law.

Section 12. USE OF TELECONFERENCING FOR MEETINGS

(a) As authorized by Government Code Section 54953(b), as may be amended from time to time, the Board may use teleconferencing in connection with any meeting or proceeding authorized by law and within the subject matter jurisdiction of the Board. Any and all costs associated with facilitating teleconferencing for any meeting or proceeding of the Board authorized by law shall be borne by the Authority. As defined by Government Code Section 54953(b)(4), "teleconference" means "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."

(b) In accordance with any provision of applicable Federal or State law or regulation to the contrary, as such may be amended from time to time, teleconferencing is available to all members of the Board so long as a quorum of the members of the Board participate in the Board meeting from the same or different locations within the geographic boundaries of the Authority. As set forth in Government Code Section 54953(b), as may be amended from time to time, each teleconference location must meet all of the following requirements:

- (1) Be accessible to the public.
- (2) Be identified in the Board meeting notice and agenda.
- (3) Be posted with the Board meeting agenda.
- (4) Allow members of the public, including but not limited to, residents of the Authority, to address the Board.
- (5) Take all Board votes by roll call.

(c) The Board shall conduct teleconference meetings in accordance with the Ralph M. Brown Act and any other applicable provisions of law.

ARTICLE IV AMENDMENTS

Section 1. AMENDMENTS TO BYLAWS - The Bylaws of the Authority shall be amended only with the approval of a majority of the Commissioners empowered to vote at a regular

or a special meeting, but no amendment shall be considered unless at least five (5) days written notice thereof has been previously given to all members of the Board.

ARTICLE V MISCELLANEOUS

Section 1. INDEMNIFICATION - To the fullest extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a member of the Board, officer, employee or other agent of the Board, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member of the Board, officer, employee or other agent of the Authority, against expenses, judgments, fines settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Adopted: January 14, 2020

Resolution No. 2020-75

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

July 12, 2022

FROM

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

SUBJECT

Executive Director's Report for July 12, 2022

RECOMMENDATION(S)

Receive the Executive Director's Report for July 12, 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 June 20, 2022.

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

July 12, 2022

FROM

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

SUBJECT

Board Building Presentation for July 12, 2022

RECOMMENDATION(S)

Receive the board building presentation for July 12, 2022, an overview of the Housing Authority of the County of San Bernardino's scholarship program and presentation of the 2022-2023 scholarship awards.

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

This month's board building presentation will include an overview of HACSB's scholarship program and presentation of the 2022-2023 scholarship awards.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on June 17, 2022.

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

July 12, 2022

FROM

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

SUBJECT

Fiscal Year 2022-23 Consolidated Annual Budget

RECOMMENDATION(S)

Adopt Resolution No. 154 to approve and adopt:

- a. The Fiscal Year 2022-23 Consolidated Annual Budget including operating transfers in/out.
- b. The Fiscal Year 2022-23 Public Housing Annual Budget including operating transfers in/out.
- c. Any changes to the Consolidated Annual Budget or the Public Housing Annual Budget that the Board of Commissioners may direct.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

BACKGROUND INFORMATION

The Fiscal Year (FY) 2022-2023 budget of the Housing Authority of the County of San Bernardino (HACSB) is recommended for approval. This proposed budget continues to support the vision and mission of the agency and is in line with its 30-year Strategic Plan and Moving to Work (MTW) Annual Plans as approved by the United States Department of Housing and Urban Development (HUD). Despite increases in costs across all rental assistance programs, we are recommending for approval a balanced budget.

FINANCIAL IMPACT

The chart below summarizes the HACSB Consolidated Budget for the Fiscal Year 2022-2023 (October 1, 2022 - September 30, 2023) into two major funding sources:

1. MTW Block Grant sources include Public Housing Operating Funds; Public Housing Capital Funds; Housing Choice Voucher (HCV) Housing Assistance Payments; and HCV Administrative Fees.
2. Non-eligible MTW Block Grant funds including local and central office cost center funds, other non-MTW special purpose voucher programs (Continuum of Care, Veterans Affairs Supportive Housing, and Housing for Persons with AIDS), the Authority Owned Portfolio, and the Project-Based Voucher Rental Assistance Demonstration (RAD) properties.

Approximately 72% of the total revenue is comprised of funds received from HUD to administer the HCV, Public Housing, Emergency Housing Voucher (EHV), Special Purpose Rental Assistance and the Capital Fund programs. The remaining revenue is derived primarily from rental income from the Public Housing, Project-Based Voucher RAD, and Authority Owned portfolios.

DESCRIPTION OF MAJOR CHANGES IN 2022-2023:

Housing Authority of the County of San Bernardino
FY 2022-2023 Proposed Consolidated Budget

Moving To Work						
Program	Revenue	Expenses	Net	FY 2022 Budgeted		
				Net Income	Increase/(Decrease)	
MTW Fund	\$ 235,449	\$ 845,869	\$ (610,420)	(559,522)	(50,898)	
Public Housing	10,141	10,437	(296)	(582,247)	581,951	
Capital Funds	-	-	-	-	-	
Housing Choice Vouchers	119,916,461	123,548,236	(3,631,776)	7,941,339	(11,573,115)	
Total Moving To Work	\$ 120,162,051	\$ 124,404,542	\$ (4,242,492)	\$ 6,799,570	\$ (11,042,062)	
Other Programs - Non Moving To Work						
Program	Revenue	Expenses	Net	FY 2022 Budgeted		
				Net Income	Increase/(Decrease)	
Central Office	\$ 4,622,486	\$ 4,768,654	\$ (146,167)	(306,238)	160,070	
Other Vouchers	18,792,520	18,450,043	342,477	29,912	312,565	
Authority Owned Portfolio	29,103,740	24,870,577	4,233,163	3,777,847	455,316	
Local Funds	9,780,979	10,405,862	(624,882)	197,547	(822,430)	
Total Non-Moving To Work	\$ 62,299,725	\$ 58,495,135	\$ 3,804,590	3,699,068	\$ 105,522	
Grand Totals	\$ 182,461,776	\$ 182,899,678	\$ (437,902)	10,498,638	(10,936,540)	
VASH Reserve Drawdown <Buildup>			(434,944)	(63,722)	(371,222)	
Reserve < Buildup>-MTW Pension Pre Funding			-	(4,500,000)	4,500,000	
Reserve < Buildup>-Other Pension Pre Funding			-	(1,500,000)	1,500,000	
Reserve Drawdown/< Buildup>-MTW:			4,242,492	(2,299,570)	6,542,062	
Reserve Drawdown/< Buildup>-Other:			(3,369,646)	(2,135,346)	(1,234,300)	
Adjusted Residual Profit:			-	-	-	

In comparison to the prior fiscal year's budget, total income has increased by over \$12.2 million; however, total expenses increased by \$23.2 million for a total decrease in net income of \$11 million. The most significant changes occurred in the MTW HCV program. It is important to note that the net income in the MTW HCV program is specifically tied to Housing Assistance Payment (HAP) funding. These funds are held with HUD as restricted reserves for housing assistance payments in compliance with the HCV program.

MTW PROGRAMS

The primary increase in revenue is due to an increase in HAP subsidy funding for the calendar year (CY) 2022. For CY 2022, HACSB received an inflationary rate of almost 5%, in contrast to an average inflation rate of 1.45% over the last 9 years.

Even though the higher than usual inflation rate in CY 2022 provided much needed additional HAP funding, we continue to see and expect continued increases in the HAP per unit costs in the upcoming fiscal year. Historically, the HAP annual inflation factor does not provide sufficient funding to cover the increasing costs; and unfortunately, receiving an annual inflation factor by HUD is not guaranteed, which if not, exacerbates the loss in funding. Because of this, the Authority views the inflationary rate received for CY 2022 as a "one-time" occurrence to the HCV MTW program. The recommended budget also includes the use of HAP restricted reserves for housing navigation services to assist the hundreds of families with a voucher experiencing

difficulties leasing units in this tight housing market (approved by HUD as MTW activity 28: Leasing Success Strategies). This has contributed to a net loss in the MTW budget in the amount of \$4.2 million, which will be covered by a reserve drawdown from restricted HAP reserves. This request is included in the FY 2021 MTW Annual Plan to HUD.

As a result of continued funding cuts to the Administrative Fees for the HCV program, and due to increasing costs, we are continuously challenged in providing a balanced budget for the HCV administrative budget. The calendar year 2022 funding cut percentage was 8%, resulting in \$1.9 million less in appropriated funding. As a result, the budget includes an expected net loss of \$267,081, which is balanced by a “one time” reserve drawdown from restricted HAP reserves exercising MTW fungibility. This request is included in the FY 2021 MTW Annual Plan to HUD.

Even with the reduced HCV administrative funding, we are still expected to increase our leasing within the HCV MTW program. The program size decreased over the past year due to the pandemic; however, we started pulling families from the HCV waiting list in May of 2021.

In addition, pension costs and other post-employment benefits (OPEB) continue to rise. The unfunded liability for the Authority’s pension fund is over \$15 million and the pension costs for FY 2021 are estimated to be \$1.9 million (net of interest, costs, and income from investments). In order to offset expected future annual increases in the pension costs and lower the unfunded liability in the MTW program, it is important to be able to continue to set aside funds.

We are projecting having approximately 2 months of restricted MTW HAP HUD reserves at the end of FY 2022. We recommend maintaining these levels if higher than expected proration levels occur in the voucher program.

NON-MTW PROGRAMS

The non MTW programs budget includes a total net income of \$3.8 million, which is largely due to an increase in rental income and grant income for special purpose vouchers, including the new Emergency Housing Voucher program and new VASH and Mainstream vouchers. The corresponding expenses are included in the budget and reflected below.

Below are some of the significant budgeted items in these programs:

- \$28.9 million in Rental Income. This is an expected increase of \$2.7 million compared to the prior year’s budget.
- \$4.2 million in anticipated extraordinary maintenance expenses needed for repair and replacement work at many authority-owned housing developments. This is an increase of \$1 million when compared to the prior year budget which is primarily due to an increase in the Physical Needs Assessment work required within this fiscal year. This maintenance work is primarily funded by operational property income.
- \$146 thousand will cover a gap in administrative funding due to an increase of \$207k in pension and OPEB cost increases. All budgets have experienced increases in benefit costs, mainly pension and OPEB related increases.
- An increase in the Veterans Affairs Supportive Housing (VASH) program HAP HUD held reserves is budgeted in the amount of \$434 thousand.

The budget does not include any changes to staffing for the non-MTW programs; however, there is an overall increase in salaries, taxes, and benefits of \$326,043, mostly attributed to the increases to CalPERS pension and retiree medical.

CONCLUSION:

It is important to note that, despite increases in costs across all rental assistance programs, we are recommending for approval a balanced budget, which includes the following:

- Funding for all families on HACSB's rental assistance programs to continue receiving housing assistance, with the exception of families exiting the Term-Limited Lease Assistance program.
- Funding for repair and replacement capital needs for our Authority Owned developments, our Project-Based Voucher RAD housing developments and Administrative office buildings.
- Funding for our Family Empowerment Services department to continue to achieve positive outcomes that result in career-abled families prospering and transitioning through the agency's Term-Limited Lease Assistance and Family Self-Sufficiency programs.
- Maintenance of adequate reserve levels within our MTW and non-MTW programs.

We will continue our advocacy efforts to ensure that our elected officials are aware of the impacts that funding cuts, specifically to HCV Administrative fees, and increased program costs are having on our agency, but most importantly on the families that we serve. Simultaneously, as good stewards of taxpayer dollars, we will continue to be prudent in our spending.

Adoption of the Fiscal Year 2022-2023 agency-wide budget as shown is recommended. Monthly updates will continue to be provided to the Board and at least one budget revision is expected upon approval of the FY 2023 federal budget.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 1, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-154

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO APPROVING THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO'S FISCAL YEAR 2022-23 CONSOLIDATED ANNUAL BUDGET

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino was created pursuant to Section 34200 of the California Health and Safety Code to provide housing for low and moderate income families; and

WHEREAS, the Housing Authority of the County of San Bernardino administers a variety of local, State and Federal Programs in pursuit of its mission; and

WHEREAS, the Housing Authority of the County of San Bernardino operates the Public Housing, Housing Choice Voucher, and related programs authorized by the United States Department of Housing and Urban Development (HUD); and

WHEREAS, attached as Exhibit A is the Consolidated Annual Budget, including the Public Housing Annual Budget, that has been prepared in accordance with and is consistent with all applicable laws and guidelines;

OPERATIVE PROVISIONS

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

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

Section 2. The Board of Commissioners hereby approves the proposed Fiscal Year 2022-23 Consolidated Annual Budget including the Public Housing Annual Budget attached as Exhibit A.

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

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

AYES: COMMISSIONER:

NOES: COMMISSIONER:

ABSENT: COMMISSIONER:

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

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

Secretary

FY 2022-2023 Consolidated Annual Budget

	Moving to Work							Other Programs - Non Moving to Work					HACSB	
	HOUSING SERVICES													
	MTW Fund	Affordable Housing	Capital Funds	Administration	Housing Assistance Payments	Total Housing Services	Total							
											Central Office	Other Vouchers	Authority Owned	Local Funds
INCOME														
Grants	-	2,088	-		108,626,270	108,626,270	108,628,358	-	17,073,088	70,536	8,552,310	25,695,934	134,324,292	
Administrative Fees	-	-	-	10,893,318		10,893,318	10,893,318	4,264,435	1,719,170	3,700	-	5,987,305	16,880,623	
Rental Income	-	6,614	-			-	6,614	-	-	28,854,235	-	28,854,235	28,860,849	
Developer Fee	-	-	-			-	-	-	-	-	213,333	213,333	213,333	
Investment Income	7,075	-	-			-	7,075	-	-	1,265	9,975	11,240	18,315	
Residual Receipt/Partnership Contribution	-	-	-			-	-	-	-	-	752,018	752,018	752,018	
Interest Income	228,374	1,439	-	7,673		7,673	237,486	15,690	262	76,158	125,818	217,928	455,414	
Fees for Service revenues	-	-	-			-	-	342,361	-	-	-	342,361	342,361	
Miscellaneous Income	-	-	-	389,200		389,200	389,200	0	-	97,845	127,526	225,371	614,571	
TOTAL INCOME	235,449	10,141	-	11,290,191	108,626,270	119,916,461	120,162,051	4,622,486	18,792,520	29,103,740	9,780,979	62,299,725	182,461,776	
EXPENSES														
Administrative Salaries	509,201	-	-	5,292,398		5,292,398	5,801,600	3,700,395	729,678	4,410,212	1,412,450	10,252,736	16,054,336	
Administrative Expenses	298,678	2,084	-	5,316,145		5,316,145	5,616,907	837,822	932,891	2,916,305	645,386	5,332,404	10,949,311	
Total Tenant Services	24,550	-	-		12,774,200	12,774,200	12,798,750	-	-	112,940	16,200	129,140	12,927,890	
Total Grant Specific Expenses	-	-	-			-	-	-	-	-	8,214,219	8,214,219	8,214,219	
Utilities	-	-	-	79,283		79,283	79,283	53,878	-	3,937,845	-	3,991,723	4,071,006	
O & M Labor Costs	-	-	-			-	-	-	-	3,088,481	-	3,088,481	3,088,481	
O&M Materials	-	775	-	8,532		8,532	9,307	5,500	-	881,885	575	887,960	897,267	
O&M Contracts	-	5,650	-	715,483		715,483	721,133	77,840	-	2,833,401	23,750	2,934,991	3,656,124	
General Expenses	13,439	928	-	130,431		130,431	144,798	58,218	5,092	1,227,592	20,668	1,311,570	1,456,368	
Debt Service Interest	-	-	-			-	-	-	-	1,400,713	-	1,400,713	1,400,713	
Extraordinary Maintenance	-	1,000	-			-	1,000	35,000	-	4,061,203	72,614	4,168,817	4,169,817	
Depreciation	-	-	-			-	-	-	-	-	-	-	-	
Housing Assistance Payments	-	-	-	15,000	99,216,765	99,231,765	99,231,765	-	16,782,382	-	-	16,782,382	116,014,147	
TOTAL EXPENSES	845,869	10,437	-	11,557,271	111,990,965	123,548,236	124,404,542	4,768,654	18,450,043	24,870,577	10,405,862	58,495,135	182,899,678	
RESIDUAL RECEIPTS/(DEF)	(610,420)	(296)	-	(267,081)	(3,364,695)	(3,631,776)	(4,242,492)	(146,167)	342,477	4,233,163	(624,882)	3,804,590	(437,902)	
Operating Transfer In - Subsidy	119,521,676	2,384	-			123,151,364	242,675,424	146,167	61,341	-	686,223	893,732	243,569,156	
Operating Transfer Out - Subsidy	(123,153,748)	(2,088)	-			(119,519,588)	(242,675,424)	-	-	(832,391)	(61,341)	(893,732)	(243,569,156)	
Operating Transfer In / (Out) - Other														
RAD Required Replacement Reserve	-	-	-			-	-	-	-	-	-	-	-	
Capital Fund Draw for Affordable Housing Projects			-			-	-					-	-	
Reserve for Pension Pre Funding						-	-					-	-	
HUD Drawdowns	-	-	-			-	-	-	-	-	-	-	-	
Portfolio Sustainability Reserves						-	-			(3,400,772)		(3,400,772)	(3,400,772)	
Reserve Drawdown/(Buildup) - MTW (RESTRICTED)	4,242,492					-	4,242,492	-	-	-	-	-	4,242,492	
Reserve Drawdown/(Buildup) - Non MTW	-	-	-			-	-	-	(403,818)	-	-	(403,818)	(403,818)	
Net Income/(Loss)	-	-	-			-	-	-	-	-	-	-	-	



FY 2022-2023 Public Housing Annual Budget

	Affordable Housing						
	UHA 204142	AMP 205	AMP 206	AMP 207	AMP 208	AMP 209	Total
INCOME							
Grants	-				2,088	-	2,088
Administrative Fees					-	-	-
Rental Income	-				6,614	-	6,614
Repayment Agreement Income	-				-	-	-
Investment Income	-				-	-	-
Residual Receipt/Partnership Contribu	-				-	-	-
Interest Income	-				1,439	-	1,439
Miscellaneous Income	-				-	-	-
TOTAL INCOME	-	-	-	-	10,141	-	10,141
EXPENSES							
Administrative Salaries	-				-	-	-
Administrative Expenses	-				2,084	-	2,084
Total Tenant Services	-				-	-	-
Total Grant Specific Expenses	-				-	-	-
Utilities	-				-	-	-
O & M Labor Costs	-				-	-	-
O&M Materials	-				775	-	775
O&M Contracts	-				5,650	-	5,650
General Expenses	-				928	-	928
Debt Service Interest	-				-	-	-
Extraordinary Maintenance	-				1,000	-	1,000
Depreciation	-	-	-	-	-	-	-
Housing Assistance Payments	-	-	-	-	-	-	-
TOTAL EXPENSES	-	-	-	-	10,437	-	10,437
RESIDUAL RECEIPTS/(DEF)	-	-	-	-	(296)	-	(296)
Operating Transfer In - Subsidy	-	-	-	-	3,823	-	3,823
Operating Transfer Out - Subsidy	-	-	-	-	(2,088)	-	(2,088)
Net Income/(Loss)	-	-	-	-	1,439	-	1,439

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

July 12, 2022

FROM

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

SUBJECT

Fiscal Year 2022-2023 Annual Moving to Work Plan

RECOMMENDATION(S)

Adopt Resolution No. 153:

- a. Approving the Housing Authority of the County of San Bernardino's Annual Moving to Work Plan for Fiscal Year 2022-2023.
- b. Approving the Annual Moving to Work Plan Certifications of Compliance to Regulations with the United States Department of Housing and Urban Development.

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

GOALS & OBJECTIVES

No eligible family waits longer than 10 days for housing.

HACSB has secured the resources needed for accomplishing its mission.

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

FINANCIAL IMPACT

Approval of the proposed resolution will not have a significant financial impact on the Housing Authority of the County of San Bernardino (HACSB). Sufficient appropriation to perform this action has been included in the HACSB 2021-2022 annual budget and will be included in subsequent fiscal year budgets.

BACKGROUND INFORMATION

On March 14, 2008, HACSB was designated by the United States Department of Housing and Urban Development (HUD) as a Moving to Work (MTW) agency. The objectives of the MTW designation are to achieve greater cost effectiveness, provide incentives to families working toward self-sufficiency, and increase housing choices for low-income families. To accomplish these objectives, the MTW designation allows Public Housing Authorities (PHA) to develop and implement programs to design and test innovative local housing and self-sufficiency initiatives by waiving certain statutes and HUD regulations. In accordance with the MTW Agreement which outlines the requirements and authorizations of the MTW designation, each year HACSB is required to prepare and submit an Annual MTW Plan that describes previously approved, proposed and/or revised MTW activities for the coming year, as well as other related information.

The proposed 2022-2023 Annual MTW Plan (Plan) includes information regarding 28 previously approved MTW activities and one proposed new activity. "Activities" are defined as HUD-approved initiatives developed and adopted by HACSB that a traditional Housing Authority cannot implement.

HACSB MTW activities are listed below:

No.	Activity Name	Plan Year	Status
1	Single Fund Budget	2009	Ongoing
2	Strategic Investment Policies	2009	Closed Out
3	Alternate Assessment Program	2009	On Hold
4	Biennial and Triennial Re-Certifications	2009	Ongoing
5	Simplified Income Determination (formerly Local Verification Policies)	2009	Ongoing
6	Elimination of Assets	2009	Closed Out
7	Controlled Program Moves	2009	Closed Out
8	Local Policies for Portability	2009	Ongoing
9	Elimination of Earned Income Disallowance	2009	Closed Out
10	Minimum Rent	2009	Ongoing
11	Local Project Based Voucher Program	2009	Ongoing
12	Local Payment Standards	2009	Ongoing
13	Local Inspection Policies	2010	Ongoing
14	Local Asset Management Program	2010	Ongoing
15	Pilot Work Requirement	2010	Closed Out
16	Operating Subsidy for Vista del Sol	2010	Closed Out
17	Local Income Inclusions	2011	Closed Out
18	Property Management Innovation	2011	Ongoing
19	Pilot Local FSS Program	2011	Ongoing
20	Term-Limited Lease Assistance Program	2011	Ongoing
21	Utility Allowance Reform	2012	Closed Out
22	Streamlined Lease Assistance Program	2013	Ongoing
23	No Child Left Unsheltered	2014	Ongoing
24	Transition for Over Income Public Housing/Housing Choice Voucher Families	2014	Ongoing
25	Project-Based Voucher Flexibility for Horizons Yucaipa Senior Housing	2016	Ongoing
26	Local Disaster Short-Term Rental Assistance Program	2017	Ongoing
27	Local Project-Based Voucher Subsidy for Developments Using Tax Credit Rents	2019	Ongoing
28	Leasing Success Strategies	2022	Ongoing
29	Moving On Strategy	2023	Proposed

The Plan includes the proposed new activity #29 – Moving On Strategy. This activity was developed and is proposed in alignment with HUD’s encouragement of housing agencies and communities to explore strategies to promote the transition of families in permanent supportive housing (PSH) programs who no longer need or want the intensive services of those programs into housing assistance programs that do not include those services, such as the Housing Choice Voucher and Public Housing programs. Through this activity, HACSB will allow families participating in the Continuum of Care (CoC) programs administered by HACSB to voluntarily

transfer into HACSB's tenant-based MTW voucher program. Families will be evaluated for readiness to transition from the CoC program, which includes supportive services such as case management, employment assistance, and job training, housing search and counseling services, life skills training, mental health services, outpatient health services, and other services provided by the San Bernardino County Department of Behavioral Health (DBH), into tenant-based MTW housing assistance without those services. This activity will allow HACSB to ensure housing stability while also providing families the opportunity to take their next step toward housing independence. Additionally, HACSB will be able to serve new chronically homeless families in need of the supportive services and housing assistance offered through the CoC program as families voluntarily transition into the tenant-based MTW voucher program. This activity was originally proposed in HACSB's 2021 Annual MTW Plan, Amendment 1, however, during HUD's review process, they requested confirmation from DBH for the provision of aftercare services. To address this request, in 2021, language was added to each of the CoC Memorandum of Understandings (MOU) with DBH. Per the MOU for the provision of aftercare services, DBH will provide aftercare services to participants for at least 24 months following the transition from the CoC program. Aftercare services may include, but are not limited to, a variety of supports around health care management, medication assistance, connection to social services, independent living skills coaching, housing stabilization, and assistance with housing program compliance.

The Plan also includes changes to the following existing MTW activities.

Activity 11 – Local Project-Based Voucher (PBV) Program: HACSB intends to allow all PBV units to remain on the PBV contract even if the unit is not leased or no housing assistance payment (HAP) is paid for more than 180 days. During the term of the HAP contract, HACSB will not temporarily remove units from the contract that are vacant for over 120 days or in which no HAP has been paid for 180 days. Unit substitutions may occur when possible. HACSB may permanently remove units during the term of the HAP contract if the owner has failed to make good faith efforts to fill vacancies or is in violation of Housing Quality Standards. Regulations currently require units to be removed from the PBV contract if no HAP has been paid for more than 180 days. This modification will allow an increase in accessibility to housing for some of our most vulnerable population, such as No Child Left Unsheltered (NCLU) customers, by allowing HACSB to keep units under PBV contract that will in turn allow rapid housing options for these customers, rather than removing and re-adding units numerous times through a time-consuming process and the PBV unit remaining vacant during that process.

Activity 12 – Local Payment Standards and Alternative Flat Rents: HACSB is proposing to conduct mid-year revisions to the Local Payment Standard (LPS) amounts, if necessary. Over the last several years, especially during the COVID-19 pandemic, the leasing success rate for the Housing Choice Voucher program has declined, primarily due to the impact of significantly rising market rents and low vacancy rates throughout San Bernardino County. To combat this challenge, HACSB has implemented several strategies to help increase the leasing success rate. However, rental prices continue to rise rapidly and outpace our Local Payment Standards, which are updated only once per year and function as the maximum rent of the HCV program. With this proposed change, HACSB will monitor rental market changes and revise the LPS mid-year, if necessary.

The HUD-required Certifications of Compliance with Regulations: Board Resolution to Accompany the Annual Moving to Work Plan is included in the 2022-2023 Annual MTW Plan. The Certifications of Compliance authorizes HACSB to submit the Annual MTW Plan to HUD and certifies that HACSB has complied or will comply with requirements related to the submission and implementation of the Plan, including public notice requirements, Civil Rights Act and Fair Housing Act requirements, records retention, and other requirements.

A legal notice regarding the Plan was published in seven local newspapers on May 19 and May 20, 2022. The notice and the proposed plan were also made available on HACSB's website and at all HACSB offices throughout San Bernardino County beginning May 20, 2022. The required public comment period ran from May 20, 2022 to June 20, 2022, and three public hearings on the matter were held. In-person hearings were held on May 31, 2022, at 10:00 a.m. and June 9, 2022, at 1:00 p.m. A virtual public hearing was held June 15, 2022, at 10:00 a.m. via Zoom. No members of the public attended the public hearings and no public comments were received.

A complete copy of the 2022-2023 Annual MTW Plan can be found at <https://hacsb.com/moving-to-work/>.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 1, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-153

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO APPROVING THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO'S ANNUAL MOVING TO WORK PLAN FOR FISCAL YEAR 2022-2023

RECITALS

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

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

WHEREAS, as a MTW agency, the HACSB is required to and has prepared an Annual MTW Plan which describes its operations and activities as an MTW agency; and

WHEREAS, the HACSB desires to develop a new MTW activity and modify certain previously approved MTW activities; and

WHEREAS, the HACSB has developed its Fiscal Year 2022-2023 Annual MTW Plan, to include the proposed modifications to those MTW activities and in accordance with HUD requirements.

OPERATIVE PROVISIONS

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

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

Section 2. The Board of Commissioners hereby approves the proposed Fiscal Year 2022-2023 HACSB Annual MTW Plan, on July 12, 2022.

Section 3. A complete copy of the 2022-2023 Annual MTW Plan can be found at <https://hacsb.com/moving-to-work/>.

Section 4. The Board of Commissioners hereby approves the HUD-required Certifications of Compliance with Regulations form authorizing HACSB to submit the proposed Fiscal Year 2022-2023 Annual MTW Plan to HUD and certifies that HACSB has complied or will comply with requirements related to the submission and implementation of the Plan.

Section 5. This resolution shall take effect immediately upon its adoption.

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

AYES:

NOES:

ABSENT:

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

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

Secretary

CERTIFICATIONS OF COMPLIANCE**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF PUBLIC AND INDIAN HOUSING****Certifications of Compliance with Regulations:
Board Resolution to Accompany the Annual Moving to Work Plan**

Acting on behalf of the Board of Commissioners of the Moving to Work Public Housing Agency (MTW PHA) listed below, as its Chair or other authorized MTW PHA official if there is no Board of Commissioners, I approve the submission of the Annual Moving to Work Plan for the MTW PHA Plan Year beginning (10/01/2022), hereinafter referred to as "the Plan", of which this document is a part and make the following certifications and agreements with the Department of Housing and Urban Development (HUD) in connection with the submission of the Plan and implementation thereof:

- (1) The MTW PHA published a notice that a hearing would be held, that the Plan and all information relevant to the public hearing was available for public inspection for at least 30 days, that there were no less than 15 days between the public hearing and the approval of the Plan by the Board of Commissioners, and that the MTW PHA conducted a public hearing to discuss the Plan and invited public comment.
- (2) The MTW PHA took into consideration public and resident comments (including those of its Resident Advisory Board or Boards) before approval of the Plan by the Board of Commissioners or Board of Directors in order to incorporate any public comments into the Annual MTW Plan.
- (3) The MTW PHA certifies that the Board of Directors has reviewed and approved the budget for the Capital Fund Program grants contained in the Capital Fund Program Annual Statement/Performance and Evaluation Report, form HUD-50075.1 (or successor form as required by HUD).
- (4) The MTW PHA will carry out the Plan in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990.
- (5) The Plan is consistent with the applicable comprehensive housing affordability strategy (or any plan incorporating such strategy) for the jurisdiction in which the PHA is located.
- (6) The Plan contains a certification by the appropriate state or local officials that the Plan is consistent with the applicable Consolidated Plan.
- (7) The MTW PHA will affirmatively further fair housing by fulfilling the requirements set out in HUD regulations found at Title 24 of the Code of Federal Regulations, including regulations in place at the time of this certification, and any subsequently promulgated regulations governing the obligation to affirmatively further fair housing. The MTW PHA is always responsible for understanding and implementing the requirements of HUD regulations and policies, and has a continuing obligation to affirmatively further fair housing in compliance with the 1968 Fair Housing Act, the Housing and Community Development Act of 1974, The Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998. (42 U.S.C. 3608, 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), and 1437C-1(d)(16)). The MTW PHA will affirmatively further fair housing by fulfilling the requirements at 24 CFR 903.7(o) and 24 CFR 903.15, which means that it will take meaningful actions to further the goals identified in its Analysis of Impediments to Fair Housing Choice(AI),Assessment of Fair Housing (AFH), and/or other fair housing planning documents conducted in accordance with the requirements of 24 CFR Part 5, that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing, and that it will address fair housing issues and contributing factors in its programs, in accordance with 24 CFR 903.7(o), and will address impediments to fair housing choice identified in its AI, AFH, and/or other fair housing planning documents associated with any applicable Consolidated or Annual Action Plan under 24 CFR Part 91.
- (8) The MTW PHA will comply with the prohibitions against discrimination on the basis of age pursuant to the Age Discrimination Act of 1975 and HUD's implementing regulations at 24 C.F.R. Part 146.
- (9) In accordance with 24 CFR 5.105(a)(2), HUD's Equal Access Rule, the MTW PHA will not make a determination of eligibility for housing based on sexual orientation, gender identity, or marital status.
- (10) The MTW PHA will comply with the Architectural Barriers Act of 1968 and 24 CFR Part 41, Policies and Procedures for the Enforcement of Standards and Requirements for Accessibility by the Physically Handicapped.
- (11) The MTW PHA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, Employment Opportunities for Low-or Very-Low Income Persons, and with its implementing regulation at 24 CFR Part 75.

- (12) The MTW PHA will comply with requirements with regard to a drug free workplace required by 24 CFR Part 24, Subpart F.
- (13) The MTW PHA will comply with requirements with regard to compliance with restrictions on lobbying required by 24 CFR Part 87, together with disclosure forms if required by this Part, and with restrictions on payments to influence Federal Transactions, in accordance with the Byrd Amendment and implementing regulations at 49 CFR Part 24.
- (14) The MTW PHA will comply with acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR Part 24 as applicable.
- (15) The MTW PHA will take appropriate affirmative action to award contracts to minority and women's business enterprises under 24 CFR 5.105(a).
- (16) The MTW PHA will provide HUD or the responsible entity any documentation needed to carry out its review under the National Environmental Policy Act and other related authorities in accordance with 24 CFR Part 58. Regardless of who acts as the responsible entity, the MTW PHA will maintain documentation that verifies compliance with environmental requirements pursuant to 24 Part 58 and 24 CFR Part 50 and will make this documentation available to HUD upon its request.
- (17) With respect to public housing and applicable local, non-traditional development the MTW PHA will comply with Davis-Bacon or HUD determined wage rate requirements under section 12 of the United States Housing Act of 1937 and the Contract Work Hours and Safety Standards Act.
- (18) The MTW PHA will keep records in accordance with 24 CFR 85.20 and facilitate an effective audit to determine compliance with program requirements.
- (19) The MTW PHA will comply with the Lead-Based Paint Poisoning Prevention Act and 24 CFR Part 35.
- (20) The MTW PHA will comply with the policies, guidelines, and requirements of 2 CFR Part 225 (Cost Principles for State, Local and Indian Tribal Governments) and 2 CFR Part 200.
- (21) The MTW PHA must fulfill its responsibilities to comply with and ensure enforcement of Housing Quality Standards, as defined in 24 CFR Part 982 or as approved by HUD, for any Housing Choice Voucher units under administration.
- (22) The MTW PHA will undertake only activities and programs covered by the Plan in a manner consistent with its Plan and will utilize covered grant funds only for activities that are approvable under the Moving to Work Agreement and Statement of Authorizations and included in its Plan.
- (23) All attachments to the Plan have been and will continue to be available at all times and all locations that the Plan is available for public inspection. All required supporting documents have been made available for public inspection along with the Plan and additional requirements at the primary business office of the PHA and at all other times and locations identified by the MTW PHA in its Plan and will continue to be made available at least at the primary business office of the MTW PHA.

Housing Authority of the County of San Bernardino

CA019

MTW PHA NAME**MTW PHA NUMBER/HA CODE**

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct.

WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802).

NAME OF AUTHORIZED OFFICIAL**TITLE****SIGNATURE****DATE**

* *Must be signed by either the Chair or Secretary of the Board of the MTW PHA's legislative body. This certification cannot be signed by an employee unless authorized by the MTW PHA Board to do so. If this document is not signed by the Chair or Secretary, documentation such as the by-laws or authorizing board resolution must accompany this certification.*

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

July 12, 2022

FROM

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

SUBJECT

Salary Schedule Revisions

RECOMMENDATION(S)

Adopt Resolution No. 155 approving revisions to the Housing Authority of the County of San Bernardino's Salary Schedule effective August 5, 2022.
(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 resolution will have an initial financial impact in an amount not expected to exceed \$58,000 for the remainder of Fiscal Year (FY) 2021/2022. This amount is not included in the Housing Authority of the County of San Bernardino (HACSB) FY 2021/2022 approved budget; however, through savings related to vacant positions, the FY 2021/2022 budget is able to absorb this amount. The annual financial impact for Fiscal Year 22/23 is \$348,000. This amount is not included in the proposed FY 22/23 budget that is being presented for recommended approval today; however, changes to the budget will be discussed that will allow for the agency to be able to move forward with the additional costs, such as continuing to hold currently vacant positions in the Housing Services department. This will need to be done until the federal Fiscal Year 2022/2023 budget amounts are released. The financial impact for subsequent proposed fiscal year budgets will be incorporated into those budgets.

BACKGROUND INFORMATION

In July 2009, HACSB contracted with Koff & Associates Inc. to conduct a comprehensive total compensation study for all HACSB classifications to ensure that positions were appropriately benchmarked within the labor market. At that time, a formal compensation philosophy was developed and approved transitioning HACSB to a pay for performance system rather than a traditional five-step pay system.

The employee compensation program is designed to attract and retain a qualified and diverse workforce, as well as to fairly compensate each employee at a salary that is determined by the competitive job market for comparable positions based on the job responsibilities and required level of expertise, but also incorporates merit increases, when the level of funding allows for them, for individual performance. , In order to continue to be a competitive employer, HACSB conducts a compensation study every two to three years to ensure our compensation package continues to be reflective of work our employees perform and representative of similar work in similar workplace industries.

In October 2021, Public Sector Personnel Consultants (PSPC) was contracted to perform a compensation study consistent with the HACSB Pay for Performance Philosophy. As part of the study, eleven (11) comparator agencies were used including both local city and county governments and Housing Authorities within the state of California of similar size. In addition, data from the private sector was also included wherever job matches existed using Economic Research Institute's (ERI) Salary Assessor. PSPC reviewed HACSB's individual job descriptions and all benefits provided to HACSB staff and using the approved 11 comparator agencies and ERI, where applicable, were able to make comparisons to HACSB positions. PSPC compared the HACSB salary midpoints to the same found in the market in preparing their recommendations.

In previous compensation studies and consistent with the HACSB compensation philosophy in place, total compensation including salary and benefits were reviewed to determine where a position fit on the salary ranges. Positions were placed at median of the market + 10% using both salary and benefits. As part of this most recent study, PSPC found that quantifying the benefits piece was difficult and not completely accurate in placing positions at market median + 10%. Based on this, the range proposal from PSPC focuses on looking at base salary and not total compensation in determining where positions would fit on the salary ranges. While looking at base salary, the proposal by PSPC was to move our positions to median of the market and increase the spread of the range from 30% to 35%.

Benefits were compared to the comparator agencies and overall PSPC found that the benefits provided by HACSB were greater in a few key areas and similar in others. For example, the HACSB contributes 85% of the premium for employee's medical plan choice and contributes 100% for the employee only on dental and vision. Based on 2022 numbers, the HACSB may contribute up to \$26,077/year per employee for this coverage. In comparison, the average of 10 other agencies is \$18,413. This equates to HACSB paying 41% higher than the average of the comparator agencies.

The other piece of benefits where HACSB is above market is with retiree medical. The HACSB currently pays up to 85% of the premium for medical insurance for retirees. The actual percentage does depend on the number of years the employee has been employed and when they were hired. Although several of the other agencies offer retiree medical benefits, only one of the agencies provide a comparable benefit to HACSB. These two key areas of current medical costs and retirement medical costs help keep us above market on benefits offered to our employees.

Comparable benefits offered by HACSB and the comparator agencies are the CalPERS Pension, vacation, sick time and tuition reimbursement.

As part of the compensation study, 59 separate job titles were reviewed and placed accordingly on the proposed ranges. Out of the 59 positions, 18 positions resulted in no change in salary and 41 positions resulted in a higher salary range than current.

Based on the proposed updates to the Compensation Philosophy and the new proposed salary ranges, as provided herein, the HACSB is looking to provide all employees with a minimum of 2.5% increase to their pay. Considering the current volatility of the market and continued unknown movement, the 2.5% increase would be the minimum. Any further salary changes would be based on the range change of a position.

Salary Schedule Revisions
July 12, 2022

With the approval of the proposed salary schedule, approximately 61 employees would receive a 2.5% increase to their pay, 72 staff would receive a 5% increase consistent with a two range movement, 7 staff would receive a 7.5% increase consistent with a three range movement, 6 staff would receive a 10% increase consistent with a 4 range movement and 1 staff member would receive a 12.5% increase consistent with a 5 range movement. The total cost for these changes within the new ranges would be approximately \$348,000/year.

Attachment A: The new proposed salary schedule ranges from Salary Range 9 to 84 with 2.5% between each range. The spread of the range as proposed by PSPC was increased from a 30% spread to a 35% spread with the control point of the range at 25%.

Attachment B: The compensation study results show the difference between the current minimum hourly rate versus the new proposed minimum hourly rate per position.

If approved, the proposed salary schedule would be effective August 5, 2022. Any changes to salary would be effective August 5, 2022, consistent with the start of the first pay period in August 2022. The proposed salary schedule has been reviewed and approved by Teamsters Local 1932 for represented employees.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on June 29, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-155

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE
COUNTY OF SAN BERNARDINO APPROVING REVISIONS TO THE SALARY SCHEDULE**

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino was created pursuant to Section 34200 of the California Health and Safety Code to provide housing for low and moderate income families; and

WHEREAS, the Housing Authority of the County of San Bernardino Salary Schedule was established in April 2010; and

WHEREAS, the Housing Authority of the County of San Bernardino desires to amend the current Salary Schedule consistent with a recent agency-wide compensation study to be effective August 5, 2022.

OPERATIVE PROVISIONS

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

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

Section 2. The Board of Commissioners hereby approves the proposed Salary Schedule revisions attached as Exhibit A, which revised Salary Schedule shall replace all previously approved Salary Schedules.

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

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

AYES: COMMISSIONER:

NOES: COMMISSIONER:

ABSENT: COMMISSIONER:

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

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

Secretary

Housing Authority of the County of San Bernardino
Salary Schedule

Exhibit A

Range #	Job Titles	Minimum	Control Point	Maximum	Minimum	Control Point	Maximum
9		30,435	38,044	41,087	14,632	18,290	19,753
10	Resident Manager	31,196	38,995	42,114	14,998	18,748	20,247
11		31,976	39,970	43,167	15,373	19,216	20,754
12		32,775	40,969	44,246	15,757	19,697	21,272
13		33,595	41,993	45,353	16,151	20,189	21,804
14	Leasing Consultant Porter	34,434	43,043	46,486	16,555	20,694	22,349
15		35,295	44,119	47,649	16,969	21,211	22,908
16		36,178	45,222	48,840	17,393	21,741	23,481
17		37,082	46,353	50,061	17,828	22,285	24,068
18		38,009	47,511	51,312	18,274	22,842	24,669
19	Administrative Services Specialist	38,959	48,699	52,595	18,730	23,413	25,286
20		39,933	49,917	53,910	19,199	23,998	25,918
21		40,932	51,165	55,258	19,679	24,598	26,566
22		41,955	52,444	56,639	20,171	25,213	27,230
23	Data Specialist HR Assistant Lead Admin Services Specialist	43,004	53,755	58,055	20,675	25,844	27,911
24	Accounting Specialist	44,079	55,099	59,507	21,192	26,490	28,609
25		45,181	56,476	60,994	21,722	27,152	29,324
26	Community Manager Housing Services Specialist Maintenance Technician	46,310	57,888	62,519	22,265	27,831	30,057
27	Help Desk Technician	47,468	59,335	64,082	22,821	28,527	30,809
28	Affordable Housing Specialist Homeownership Specialist Portability Specialist Self Sufficiency Specialist I	48,655	60,819	65,684	23,392	29,240	31,579
29	Executive Assistant Real Estate Services Specialist	49,871	62,339	67,326	23,977	29,971	32,368
30	Compliance & Admissions Specialist Compliance Coordinator Lead Housing Services Specialist	51,118	63,898	69,009	24,576	30,720	33,178
31		52,396	65,495	70,735	25,190	31,488	34,007
32	Resident Services Coordinator Self Sufficiency Specialist II	53,706	67,132	72,503	25,820	32,275	34,857
33	Accountant I Human Resources Generalist Information Systems Support Analyst	55,049	68,811	74,316	26,466	33,082	35,729

Housing Authority of the County of San Bernardino
Salary Schedule

Range #	Job Titles	Minimum	Control Point	Maximum	Minimum	Control Point	Maximum
34	Admin Services Supervisor	56,425	70,531	76,173	27.127	33.909	36.622
35	Maintenance Supervisor	57,835	72,294	78,078	27.805	34.757	37.537
36		59,281	74,102	80,030	28.501	35.626	38.476
37	Accountant II	60,763	75,954	82,030	29.213	36.516	39.438
38		62,282	77,853	84,081	29.943	37.429	40.424
39	Sr. Human Resources Generalist Procurement Officer Training & Development Specialist	63,839	79,799	86,183	30.692	38.365	41.434
40		65,435	81,794	88,338	31.459	39.324	42.470
41	Sr. Accountant	67,071	83,839	90,546	32.246	40.307	43.532
42	Management Analyst Property Compliance Coordinator Rehab Project Coordinator	68,748	85,935	92,810	33.052	41.315	44.620
43	Accounting Supervisor Housing Services Supervisor Property Manager	70,467	88,084	95,130	33.878	42.348	45.736
44	Procurement & Contracts Supervisor	72,228	90,286	97,508	34.725	43.407	46.879
45		74,034	92,543	99,946	35.593	44.492	48.051
46	Application & Database Administrator Assistant Regional Communities Manager	75,885	94,856	102,445	36.483	45.604	49.252
47	Rehab Project Manager Sr. Management Analyst	77,782	97,228	105,006	37.395	46.744	50.484
48		79,727	99,658	107,631	38.330	47.913	51.746
49	Assistant Finance Manager Sr. Regional Communities Manager	81,720	102,150	110,322	39.288	49.111	53.039
50	Systems Administrator	83,763	104,704	113,080	40.271	50.338	54.365
51	Housing Services Manager Family Empowerment Services Manager	85,857	107,321	115,907	41.277	51.597	55.724
52		88,003	110,004	118,805	42.309	52.887	57.118
53	Real Estate Project Manager	90,203	112,754	121,775	43.367	54.209	58.546
54		92,459	115,573	124,819	44.451	55.564	60.009
55		94,770	118,463	127,940	45.563	56.953	61.509
56		97,139	121,424	131,138	46.702	58.377	63.047
57		99,568	124,460	134,417	47.869	59.836	64.623
58		102,057	127,571	137,777	49.066	61.332	66.239
59		104,608	130,761	141,221	50.293	62.866	67.895
60	Assistant Director of Housing Services IT Manager	107,224	134,030	144,752	51.550	64.437	69.592

Housing Authority of the County of San Bernardino
Salary Schedule

Range #	Job Titles	Minimum	Control Point	Maximum	Minimum	Control Point	Maximum
61		109,904	137,380	148,371	52.839	66.048	71.332
62	Finance Manager	112,652	140,815	152,080	54.160	67.699	73.115
	Director of Development						
63		115,468	144,335	155,882	55.514	69.392	74.943
64	Director of Policy and Public Relations	118,355	147,944	159,779	56.901	71.127	76.817
65		121,314	151,642	163,773	58.324	72.905	78.737
66		124,347	155,433	167,868	59.782	74.727	80.706
67	Director of Human Resources	127,455	159,319	172,064	61.277	76.596	82.723
68		130,642	163,302	176,366	62.808	78.511	84.791
69		133,908	167,385	180,775	64.379	80.473	86.911
70		137,255	171,569	185,295	65.988	82.485	89.084
71		140,687	175,858	189,927	67.638	84.547	91.311
72	Director of Operations	144,204	180,255	194,675	69.329	86.661	93.594
73		147,809	184,761	199,542	71.062	88.827	95.934
74		151,504	189,380	204,531	72.839	91.048	98.332
75		155,292	194,115	209,644	74.660	93.324	100.790
76		159,174	198,968	214,885	76.526	95.657	103.310
77		163,153	203,942	220,257	78.439	98.049	105.893
78	Deputy Executive Director	167,232	209,040	225,764	80.400	100.500	108.540
79		171,413	214,266	231,408	82.410	103.013	111.254
80		175,698	219,623	237,193	84.470	105.588	114.035
81		180,091	225,114	243,123	86.582	108.228	116.886
82		184,593	230,741	249,201	88.747	110.933	119.808
83		189,208	236,510	255,431	90.965	113.707	122.803
84	Executive Director	193,938	242,423	261,816	93.239	116.549	125.873

Housing Authority of the County of San Bernardino Compensation Study Results

Position Title	Sorted by				
	<u>Current Min</u>		<u>Proposed Min</u>		<u>Range Change</u>
	<u>Current Range</u>	<u>Hrly Rate</u>	<u>Proposed Range</u>	<u>Hrly Rate</u>	
*Resident Manager	10	\$15.00	10	\$15.00	0
*Leasing Consultant	10	\$15.00	14	\$16.56	4
*Porter	10	\$15.00	14	\$16.56	4
Administrative Services Specialist	18	\$18.27	19	\$18.73	1
Data Specialist	22	\$20.17	23	\$20.68	1
HR Assistant	22	\$20.17	23	\$20.68	1
Lead Admin Services Specialist	22	\$20.17	23	\$20.68	1
Accounting Specialist	22	\$20.17	24	\$21.19	2
Community Manager	24	\$21.19	26	\$22.27	2
Housing Services Specialist	24	\$21.19	26	\$22.27	2
Maintenance Technician	24	\$21.19	26	\$22.27	2
Help Desk Technician	23	\$20.68	27	\$22.82	4
Affordable Housing Specialist	26	\$22.27	28	\$23.39	2
Homeownership Specialist	26	\$22.27	28	\$23.39	2
Portability Specialist	26	\$22.27	28	\$23.39	2
Self Sufficiency Specialist I	26	\$22.27	28	\$23.39	2
Executive Assistant	28	\$23.39	29	\$23.98	1
Realt Estate Services Specialist	28	\$23.39	29	\$23.98	1
Compliance & Admissions Specialist	28	\$23.39	30	\$24.58	2
Compliance Coordinator	28	\$23.39	30	\$24.58	2
Lead Housing Services Specialist	28	\$23.39	30	\$24.58	2
Resident Services Coordinator	30	\$24.58	32	\$25.82	2
Self Sufficiency Specialist II	30	\$24.58	32	\$25.82	2
Accountant I	31	\$25.19	33	\$26.47	2
Information Systems Support Analyst	31	\$25.19	33	\$26.47	2
Human Resources Generalist	28	\$23.39	33	\$26.47	5
Admin Services Supervisor	33	\$26.47	34	\$27.13	1
Maintenance Supervisor	32	\$25.82	35	\$27.81	3
Accountant II	35	\$27.81	37	\$29.21	2
*Procurement Officer	39	\$30.69	39	\$30.69	0
*Sr. Human Resources Generalist	39	\$30.69	39	\$30.69	0
Training & Development Specialist	39	\$30.69	39	\$30.69	0
Sr. Accountant	39	\$30.69	41	\$32.25	2
Management Analyst	42	\$33.05	42	\$33.05	0
Property Compliance Coordinator	42	\$33.05	42	\$33.05	0
Rehab Project Coordinator	40	\$31.46	42	\$33.05	2
Housing Services Supervisor	43	\$33.88	43	\$33.88	0
Property Manager	43	\$33.88	43	\$33.88	0
Accounting Supervisor	41	\$32.25	43	\$33.88	2
Prcurement & Contracts Supervisor	41	\$32.25	44	\$34.73	3
Assistant Regional Communities Mgr	46	\$36.48	46	\$36.48	0
App & Database Administrator	43	\$33.88	46	\$36.48	3
Sr. Management Analyst	46	\$36.48	47	\$37.40	1
Sr. Rehab Project Coord	46	\$36.48	47	\$37.40	1
Sr. Regional Communities Manager	49	\$39.29	49	\$39.29	0
Assistant Finance Mgr	46	\$36.48	49	\$39.29	3
***Systems Administrator		\$33.88	50	\$40.27	0
Family Empowerment Services Manager	51	\$41.28	51	\$41.28	0
Housing Services Manager	51	\$41.28	51	\$41.28	0
Real Estate Project Manager	52	\$42.31	53	\$43.37	1
Asistant Director of Housing Services	60	\$51.55	60	\$51.55	0
IT Manager	60	\$51.55	60	\$51.55	0
Finance Manager	60	\$51.55	62	\$54.16	2
**Director of Development	57	\$47.87	62	\$54.16	5

Director of Policy and Public Relations	60	\$51.55	64	\$56.90	4
Director of HR	65	\$58.32	67	\$61.28	2
Director of Operations	72	\$69.33	72	\$69.33	0
Deputy Executive Director	78	\$80.40	78	\$80.40	0
Executive Director	84	\$93.24	84	\$93.24	0

*Position ranges were moved prior to comp study consistent with Minimum Wage Increases in the State of California on January 1, 2022

**Upgrade from Real Estate Development Manager

*** New position, not on previous approved salary range.

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

July 12, 2022

FROM

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

SUBJECT

Employee Compensation Philosophy and Administrative Guidelines

RECOMMENDATION(S)

Adopt Resolution No. 156 approving revisions to the Employee Compensation Philosophy and Administrative Guidelines.

(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 resolution in conjunction with resolution 155 will have an initial financial impact in an amount not expected to exceed \$58,000 for the remainder of Fiscal Year (FY) 2021/2022. This amount is not included in the Housing Authority of the County of San Bernardino (HACSB) FY 2021/2022 approved budget; however, through savings related to vacant positions, the FY 2021/2022 budget is able to absorb this amount. The annual financial impact for Fiscal Year 22/23 is \$348,000. This amount is not included in the proposed FY 22/23 budget that is being presented for recommended approval today; however, changes to the budget will be discussed that will allow for the agency to be able to move forward with the additional costs, such as continuing to hold currently vacant positions in the Housing Services department. This will need to be done until the federal Fiscal Year 2022/2023 budget amounts are released. The financial impact for subsequent proposed fiscal year budgets will be incorporated into those budgets.

BACKGROUND INFORMATION

HACSB's Employee Compensation Philosophy and Administrative Guidelines describe the policies for the agency's employee compensation program. In August 2010, HACSB established the Employee Compensation Philosophy and Administrative Guidelines as a result of a full compensation study and performance management review completed by a contracted third party. The employee compensation program is designed to attract and retain a qualified and diverse workforce, as well as to fairly compensate each employee at a salary that is determined by the competitive job market for comparable positions based on the job responsibilities and required level of expertise but also incorporates merit increases, when the level of funding allows for them, for individual performance. In order to continue to be a competitive employer, HACSB conducts a compensation study every two to three years to ensure our compensation package continues to be reflective of work our employees perform and representative of similar work in similar workplace industries. As a result of a recent compensation study, HACSB desires to revise and

update language in its Employee Compensation Philosophy and Administrative Guidelines based on recommendations received from the study.

Attached to this item are the redline policy changes to the Employee Compensation Philosophy and Administrative Guidelines. The substantive revisions include:

- **Modifying the salary range market placement at median of the market based on salaries only, and comparing benefits separately.**
 - The current practice is placing positions at median of the market plus 10% for total compensation (salary and benefits). This change did not show to have a negative impact on salary ranges as current benefits provided by HACSB based on comparator agencies continue to show that HACSB benefits are in most cases, well above the market. It was important to differentiate the comparables between salaries and benefits to be able to obtain a comparator of each.
- **Widening the salary range from a 30% spread to a 35% spread.**
 - As a result of the recent compensation study, the compensation consultant recommended an increase to the current range spread based on market data. Within the market, the consultant found that with the current range spread, we were more competitive at the entry level employee and not as competitive for a tenured employee. By increasing the range by 5%, this allows us to be more competitive and also expands the employees earning potential.
- Providing employees with a market rate adjustment commensurate with the percentage change in range movement in the market.

This replaces the current roll out strategy of providing an employee who has been in their current position for three or more years with a 5% increase above minimum when a compensation study has been completed. The new methodology would provide for a salary increase consistent with the range movement in the market. For example, if an Administrative Services Specialist position moves up one range, the employee within that position would receive a 2.5% increase to their base pay. With this new methodology, all adjustments would be subject to budget availability. This new methodology would provide for staff range movement when a compensation study is completed. Without making such moves, our employees become compressed towards the bottom of the ranges, therefore not providing a competitive total compensation.

- **Adding in an option for a market rate adjustment for non-market study years.**
 - This change would provide staff with a market rate adjustment based on the Consumer Price Index (CPI) for the Riverside/San Bernardino area during every non-market study year. This would begin in October 2023 and would require HACSB to review the 12-month CPI for July and provide employees with the CPI number up to a maximum of 4%. If an employee is at the maximum of their approved range, they would not be eligible for the market rate adjustment. Any market rate adjustment would be contingent on budget availability.

If approved, the proposed Compensation Philosophy would be effective August 5, 2022. The HACSB has already received approval on these changes from Teamsters Local 1932 for represented employees.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on June 29, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-156

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE
COUNTY OF SAN BERNARDINO APPROVING REVISIONS TO THE EMPLOYEE
COMPENSATION PHILOSOPHY AND ADMINISTRATIVE GUIDELINES**

RECITALS

WHEREAS, the Housing Authority of the County of San Bernardino was created pursuant to Section 34200 of the California Health and Safety Code to provide housing for low and moderate income families; and

WHEREAS, the Housing Authority of the County of San Bernardino Employee Compensation Philosophy and Administrative Guidelines was established in August 2010; and

WHEREAS, the Housing Authority of the County of San Bernardino desires to revise and clarify the current Employee Compensation Philosophy and Administrative Guidelines.

OPERATIVE PROVISIONS

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

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

Section 2. The Board of Commissioners hereby approves the proposed Employee Compensation Philosophy and Administrative Guidelines revisions attached as Exhibit A.

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

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

AYES: COMMISSIONER:

NOES: COMMISSIONER:

ABSENT: COMMISSIONER:

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

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

Secretary

Housing Authority of the County of San Bernardino EMPLOYEE COMPENSATION PHILOSOPHY AND ADMINISTRATIVE GUIDELINES

The Housing Authority of the County of San Bernardino's employee compensation program is designed to attract, retain, motivate, and reward a qualified and diverse work force in an equitable manner. To accomplish this, the Authority has established the following plan, provisions, and standards for employee compensation.

The employee compensation program is designed to fairly compensate each employee at a salary that is determined by individual performance, funding, the competitive job market, job responsibilities, and the required level of expertise. The compensation program includes both base salary and a competitive benefit program.

SALARY RANGES:

Salary ranges will exist for all classifications. There shall be no specific or predetermined steps within the range, thus allowing for the flexibility of adjustment to recognize varying levels of performance. The salary ranges shall be established based on competitive market base salary median ~~plus 10%~~. Range placements are made based on the following calculation: using the market base salary median ~~plus 10%~~ findings, classifications are placed into the salary range whose ~~median~~ maximum is closest to the market median ~~plus 10%~~ number using ~~both base salary and benefits~~.

Each salary range will be ~~30~~5% wide with the control point set ~~23~~5% above the minimum of the range. The control point represents the value of each position assigned to the salary range at the fully competent level.

Title	Market-Top Step-Median + 10% <u>Market Median</u>	Range Minimum	Control Point	Range Maximum
Example Position	\$9,289 <u>\$8,474</u>	\$7,212	\$8,870 <u>\$9,015</u>	\$9,375 <u>\$736</u>

235%

305%

In order to maintain a competitive position within the labor market, the Authority shall consider a thorough review of the salary ranges every two to three years or sooner as needed. Adjustments to the ranges shall be based upon marketplace data and budget considerations. For positions that return insufficient market data, an internal equity will be established based on skills required, education needed and duties performed.

Upon completion of a full market study every two to three years, current employees ~~who have been in their current position for 3 or more years and are in good standing,~~ will receive a salary increase consistent with their range movement in the market. For example, if a position moves up one range, the employee within that position would receive a 2.5% increase to their base pay. to 5% above the minimum of the new approved range unless their salary is already higher. If a position moves more than 3 ranges, any further increase would be subject to budget available.

Adjustments to individual salaries based on range movement are not automatic. Salary adjustments consistent with range movement in the market to the minimum of any new range or 5% above the minimum as stated above will depend on budget available.

SALARY INCREASE BUDGET:

The salary increase budget will be determined annually within the context of overall Authority performance and budget dollars available and shall be fiscally prudent taking into account the Authority's financial condition, reserves, revenue growth, and competing budget priorities. The range of potential increases for the upcoming rating period will be announced to all employees by August each year.

EMPLOYEE MERIT INCREASES:

A designated supervisor shall be responsible for the annual review of each employee's performance which in turn provides a recommendation for employee merit increases. Merit increase recommendations shall be within the Authority's annual salary budget guidelines and based on the individual employee's performance.

Guidelines for recommending merit increases:

- **Range Minimum to the Control Point** is the portion of the range where a new or less experienced employee would be placed. Progress through the range would occur as an employee moves towards the fully competent level (control point). There may be circumstances, such as hiring a highly experienced individual, which would warrant salary placement near or at the control point.
- **The Control Point** is the position of the salary range where an employee may normally expect to progress. Most employees will achieve and maintain a salary at this point of the range (fully competent). The achievement of full competency is

determined by the ability to meet standards in the Authority's core competencies and achievement of individually determined goals for the review period.

- **The Control Point to the Range Maximum** is utilized for those employees whose performance over time consistently exceeds expectations as defined by the Authority's core competencies and individual goal achievement.

Annual Merit Increase Guidelines:

Adjustments to an employee's salary will be made based on the results of the performance evaluation. Salary adjustments shall be based on achievements in key areas weighted as follows:

Non Manager/Director level

- Core Competencies 80%
- Goals and Objectives 20%

Manager/Director level and above

- Core Competencies 60%
- Goals and Objectives 40%

During the annual performance review process, both performance ratings and the relative position of the individual within the salary range will be considered in recommending the salary increase. For example, using the matrix below, if an individual's performance "Exceeds Standards – 4.1 to 4.5", and current salary is above the control point but not yet at the maximum of the salary range, an increase of 2.5% could be expected.

The following merit guidelines are an example of a 3% maximum increase or lump sum:

Overall Rating	<Control Point	>Control Point and <Max	> Max (lump sum)
Exemplary – 4.6 to 5	3%	3 %	3%
Exceeds Standards – 4.1 to 4.5	3%	2.5%	2.5%
Exceeds Standards – 3.6 to 4.0	3%	2%	1.5%
Fully Effective – 3.0 to 3.5	2%	0%	0%
Improvement Needed 2.0 to 2.9	0%	0%	0%
Does Not Meet Min Requirements – 1 to 1.99	0%	0%	0%

Merit Increase Guidelines:

- *If base pay is below the control point:* Employees with at least “Fully Effective” performance will have the opportunity to receive a pay increase up to the control point of their range, based on their performance. No increase will be given to those rated below “fully effective”.
- *If base pay is between the control point and maximum:* Employees with performance that either “Exceeds Standards” or is “Exemplary” will have the opportunity to receive an increase up to the maximum of their range. If an “Exemplary” increase exceeds the maximum, the portion above the maximum will be paid in a lump sum payment.
- *If base pay is above the maximum:* Employees who are frozen at or above the maximum of their range and perform at an “Exemplary” or “Exceeds Standards” level on their performance review, will receive a lump sum payment equal to the applicable percentage on the matrix above.

Timing of Increases. Merit increases will be considered on an annual basis, in conjunction with the Agency performance review cycle each year. Effective 2013, the review cycle will be from July 1 – June 30 each year with increases, if applicable, effective the **start of the** first pay period in October.

Start Salary. Human Resources, in collaboration with the hiring manager, will determine the start rate of pay within the established range for a newly hired employee. The Range Minimum to the Control Point is the portion of the range where a new or less experienced employee would be placed. Progress through the range would occur as an employee moves towards the fully competent level. There may be circumstances, such as hiring a highly experienced individual, which would warrant salary placement at or near the control point.

Employees assigned to a position within the Special Programs area for more than two (2) consecutive weeks will be eligible for a 3% incentive for their work. The incentive is meant to cover the complexity of working with multiple outside partners and funding programs which requires different rules, calculations and knowledge. Employees will be notified in writing if they qualify for this incentive. Except as required by law, any employee who is receiving this incentive and is placed on a leave of absence of more than three (3) consecutive days, will not be eligible for the incentive during the leave of absence.

New Hires.

- Individuals hired within the first 9 months of the rating period (July - March) will be eligible for a pro-rated merit increase the following Agency-wide annual performance review cycle, from their hire date forward.
- Individuals hired within the last three months of the rating period (April – June) will not receive an annual performance review nor be eligible for a merit increase. Their first performance review will occur on their six-month anniversary. They will be

eligible for a merit increase the following Agency-wide annual performance review cycle.

Promotions.

- If an individual is promoted within the review period, performance in both positions will be evaluated for merit increase purposes.
- If an individual is promoted to a new position, and placing the employee in the new range would result in a salary decrease, their pay will not be decreased. Their pay will be frozen at their old salary, and no increase will be awarded at the time of promotion.
- If an employee is receiving Project Incentive Pay for tasks related to a new promotion, their new pay will remain the same as that of Project Incentive Pay and/or to the minimum of the new range, whichever is greater for the employee.

Transfers.

- If an individual voluntarily applies for and is awarded a position within a lower salary range, and their current salary is higher than the salary range, the employee will be granted the maximum pay of the range of the new position.

Market Rate Adjustments

The Agency is committed to conducting a full market study every two to three years. In any off year where the agency is not conducting this study, the Agency will commit to reviewing a market rate adjustment for employees. This market rate adjustment would be effective the start of the first pay period in October of each year and would be consistent with the Consumer Price Index for Riverside-San Bernardino-Ontario area as follows:

- The CPI for this area would be pulled in July of each year looking at the 12 month CPI number.
- The market rate adjustment would be calculated at the 12-month CPI number for July of that year, up to a maximum of 4%.

Any market rate adjustment would be contingent upon budget available and would be effective the start of the first pay period in October of each nonmarket study year. If a market rate adjustment is granted, this adjustment would not affect the current board approved ranges. Employees who are at the maximum of their range would not be eligible for a market rate adjustment above the board approved range maximum.

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

July 12, 2022

FROM

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

SUBJECT

Permanent Residual Receipts Loan, Desert Haven Apartments Development

RECOMMENDATION(S)

1. Authorize the Housing Authority of the County of San Bernardino to enter into a Loan Agreement in an amount not-to-exceed \$2,398,401 and to execute related documents with Desert Haven Victorville, L.P., to serve as permanent financing for a development known as the Desert Haven Apartments, said agreements and documents to be executed in substantially the form attached, such approval to be evidenced conclusively by the execution and delivery thereof.
2. Authorize the Executive Director of the Housing Authority of the County of San Bernardino, upon consultation with Legal Counsel, to make modifications to the Loan Agreement and the documents or exhibits attached to the Agreement in order to conform to the transaction and funding for the Desert Haven Apartments permanent supportive housing project and to execute all documents or certificates which are necessary or appropriate to carry out and close the transaction as contemplated in the Agreement.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

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

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

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

FINANCIAL IMPACT

Approval of this action authorizes the Housing Authority of the County of San Bernardino (HACSB) to provide a permanent loan in an amount not-to-exceed \$2,398,401, to Desert Haven Victorville, L.P. Construction has been completed and stabilized occupancy of the Desert Haven Apartments permanent supportive housing project (the Project) has been achieved. HACSB acquired the former Queens Motel (the property) in March 2017 for the purchase price of \$1,500,000 (Authorized by the HACSB Board of Governors on 12/20/2016 – item 95). The acquisition and rehab. was funded utilizing City of Victorville Neighborhood Stabilization Program (NSP) funds, State of California Mental Health Services Act (MHSA) funds, Housing Partners I grant funds, along with HACSB designated reserves. On June 26, 2018, the Board of Governors authorized the sale of the property to Desert Haven Victorville, L.P., a partnership between HACSB and affiliate nonprofit Housing Partners I, Inc. (HPI) formed to develop the Project. HACSB's original \$1,500,000 investment was carried back to facilitate the sale. On February 11, 2020 the Board of Commissioners approved an additional construction and operating bridge loan in the amount of \$1,100,000 to see the Project through to completion, bringing the total cash

outlay by HACSB to \$2,600,000. The \$1,500,000 carry-back acquisition loan was also approved with this action to be converted to a construction bridge loan once City of Victorville funds in the amount of \$1,509,505 were received to cover the original acquisition cost of the property. The construction is now complete, and full occupancy and operational stabilization of the Project has been achieved. Staff is now returning for board approval to reconcile all project costs and convert the HACSB construction bridge loan(s) to a long-term permanent loan in an amount not-to-exceed \$2,398,401. The Loan will be at 3% interest, payable via residual payments, with a term of 20 years and subordinate to the Mental Health Services Act and Neighborhood Stabilization Program loans. The Sources and Uses of all funding comprising the total development costs for Acquisition and Rehab of the Project are as follows:

SOURCES: PERMANENT	AMOUNT	USES: PERMANENT	AMOUNT
City of Victorville NSP loan	\$ 1,509,505	Acquisition	\$ 1,509,505
State (CalHFA) MHSA loan	\$ 2,173,669	A&E, Permits & Fees	\$ 139,391
HPI Grant	\$ 253,461	Construction Costs	\$ 3,656,587
HACSB Post Construction Perm	\$ 2,398,401	Furniture, Fixtures, Equipment	\$ 113,700
		Security Costs	\$ 551,499
		Utilities	\$ 48,426
		Misc. taxes & legal	\$ 79,086
		Operating Reserve (MSHA req'd)	\$ 94,532
		Operations/Stabilization costs	\$ 142,310
TOTAL	\$ 6,335,036	TOTAL	\$ 6,335,036

Cost per unit for 31 units = \$204,356

BACKGROUND INFORMATION

The Project consists of three detached buildings with 61 rooms. The rehabilitation converted 61 existing motel rooms into 31 new permanent supportive housing units for the chronically homeless. The property also includes a large community space that is being used for on-site social services to better serve the various needs of the residents. Exterior renovations included asphalt resurfacing, ADA accessibility, landscaping, fencing, new lighting, wood and stucco repair, and exterior paint. The units consist of 24 one bedroom, one bathroom, kitchen and living area units, and 7 smaller efficiency units.

In early 2017, HACSB purchased the property, formally known as Queen's Motel, in the City of Victorville to house chronically homeless individuals as part of countywide efforts to address homelessness. As in the majority of our past affordable housing development projects, HACSB partnered with its affiliate non-profit, Housing Partners I, Inc. (HPI). As a 501c3 nonprofit, HPI has the ability to solicit and accept funding from local jurisdictions to support affordable housing development.

On October 1, 2019 the City approved (NSP) funds in the amount of \$1,509,505 to cover the acquisition costs of the Project. On December 17, 2019 the County of San Bernardino Board of Supervisors (item no. 18) approved an allocation of MHSA funding in the amount of \$2,173,669 for construction and development related costs. Both the City NSP and County/State MHSA funding are payable via residual payments. To develop the project, HACSB and HPI each formed

Permanent Residual Receipts Loan
Desert Haven Apartments
July 12, 2022

a Limited Liability Company (LLC) (Desert Haven HACSB, LLC and Desert Haven HPI, LLC), which in turn entered into a Limited Partnership called Desert Haven Victorville, L.P.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 1, 2022

**AUTHORITY PERMANENT LOAN
PROMISSORY NOTE
(Desert Haven Apartments)**

\$2,398,401

San Bernardino, California
July 12, 2022

FOR VALUE RECEIVED, Desert Haven Victorville, LP, a California limited partnership ("Borrower"), promises to pay to the order of the Housing Authority of the County of San Bernardino, a public body, corporate and politic ("Lender"), the principal sum of Two Million Three Hundred Ninety Eight Thousand, Four Hundred One Dollars (\$2,398,401), plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to pay Lender the principal amount of Two Million Three Hundred Ninety Eight Thousand, Four Hundred One Dollars (\$2,398,401) for the funds loaned to Borrower by Lender (the "Loan"). A portion of the Loan funds will be used to repay the outstanding principal balance on the loan provided by Lender to Borrower in the principal amount of One Million One Hundred Thousand Dollars (\$1,100,000) as evidenced by a Loan Agreement entered into as of February 12, 2020, by and between the Borrower and the Lender, to provide a line of credit to cover reimbursable expenses related to the development of the real property located at 16959 Stoddard Wells Road, Victorville, California 92394 (the "Property"), improved with a 31-unit apartment complex (the "Improvements"). The Property and the Improvements are collectively referred to as the "Development". The remainder of the Loan will be used to repay a portion of the outstanding principal balance on the loan provided by the Lender to Borrower in the principal amount of One Million Five Hundred Thousand Dollars (\$1,500,000) as authorized by action of the Lender's Board of Commissioners on February 12, 2020 to provide a line of credit to cover reimbursable expenses related to the development of the Property.

2. Interest. The outstanding principal balance of this Note bears simple interest from the date of disbursement at an annual rate of three percent (3%), until all amounts due hereunder have been paid in full; provided, however, if a Default occurs (defined in Section 7 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, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

3. Seller Carry-Back Loan. Lender made a loan to Borrower in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) to assist in the original acquisition of the Development (the "Seller Carry-Back Loan"). Pursuant to Section 4.12(b) of the Limited Partnership Agreement of Desert Haven Victorville, LP, a California limited partnership dated on or about July 12, 2018 (the "Partnership Agreement"), sixty percent (60%) of Excess Cash Flow (as defined in the Partnership Agreement) is allocated to be divided between the Authority Loan and the Other Soft Financing, and paid toward the Authority Loan and the Other Soft Financing, in the Authority Loan Prorata share and Other Soft Financing Prorata Share respectively, until paid in full, and thereafter is divided equally and paid to the partners. Borrower's limited partner is Desert Haven HACSB, LLC, a California limited liability

company, and is controlled by its sole member, Lender. As such, Lender is entitled under the Partnership Agreement to receive its 50% share of Excess Cash Flow after payment of the Authority Loan and Other Soft Financing, and will allocate those funds to repayment of the Loan.

4. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of the Lender.

5. Term and Repayment Requirements.

(a) Term. The term of this Note (the "Term"), commences with the date of this Note and expires thirty (30) years after the date of this Note.

(b) Annual Payments. Commencing on April 1 of the year following the closing of permanent financing for the Development under the Mental Health Services Act as administered by the California Housing Finance Agency, also known as the "SNHP Loan", 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 pursuant to Section 4.12(a) of the Partnership Agreement, in an amount equal to the Authority's Prorata Share of 60% of Excess Cash Flow (each, an "Annual Payment"). The Lender shall apply all Annual Payments as follows: (1) first, to accrued interest, and (2) second, to principal.

(c) Payment in Full. All principal and accrued interest on the Loan is due and payable upon the earlier to occur of: (i) the date of any Default, and (ii) the expiration of the Term.

(d) Right to Prepay. Borrower may prepay the Loan at any time without premium or penalty.

6. Terms of Payment.

(a) Borrower shall make all payments due under this Note in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note are to be paid to the Lender at the Housing Authority of the County of San Bernardino, 715 East Brier Drive, San Bernardino, CA 92408-2841, Attention: Executive Director, or to such other place as the Lender may from time to time designate.

(c) All payments on this Note are without expense to the Lender. The Borrower shall pay all costs and expenses, including re-conveyance fees and reasonable attorney's fees of the Lender, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the

payment of interest that exceeds the amount that the Lender 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.

(e) The Loan is an unsecured obligation of Borrower.

7. Default.

(a) Any of the following constitutes an event of default under this Note ("Default"):

(i) Any failure to pay, in full, any payment required under this Note within ten (10) days of written notice that such payment is 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 the Lender to Borrower.

(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 will at the option of the Lender become immediately due and payable without further demand.

(c) Lender's failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of 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 Lender hereof of any payment which 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 Lender, except as and to the extent otherwise provided by law.

8. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Lender 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 by Lender with any person now or hereafter liable for payment of this Note will 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 the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

(a) All notices to Lender or Borrower shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:

Lender:

Housing Authority of the County of San Bernardino
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

Borrower:

Desert Haven Victorville, LP
c/o Desert Haven HPI, LLC
715 East Brier Drive
San Bernardino, CA 92408-2841
Attn: Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by Lender in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note is governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder are strictly construed, time being of the essence.

(f) This Note contains the entire agreement between Lender and Borrower as to the Loan. This Note may not be modified except upon the written consent of Lender and Borrower.

[signature on following page]

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered on the date set forth above.

BORROWER:

DESERT HAVEN VICTORVILLE, LP,
a California limited partnership

By: Desert Haven HPI, LLC,
a California limited liability company,
its general partner

By: Housing Partners I, Incorporated,
a California nonprofit public benefit corporation,
its sole member

By: _____
Lee McDougal, President

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

July 12, 2022

FROM

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

SUBJECT

Approve Subordination Agreements to facilitate the refinance of the permanent loan for the Vista del Sol Senior Housing site owned and operated by Housing Partners I, Inc.

RECOMMENDATION(S)

1. Authorize the Executive Director of the Housing Authority of the County of San Bernardino (HACSB) to enter into a Subordination Agreement that allows the lien of the Permanent Mortgage provided by PNC Bank to be superior to the lien of the HACSB's Regulatory Agreement for the Vista del Sol Senior Housing site in Redlands, and to execute said agreement in substantially the form attached, such approval to be evidenced conclusively by the execution and delivery thereof.
2. Authorize the Housing Successor Agency of the former Redevelopment Agency of the City of Redlands (the RDA) to enter into a Subordination Agreement that allows the lien of the Permanent Mortgage provided by PNC Bank to be superior to the lien of the RDA's Affordable Housing Development Incentive and Restrictive Covenant Agreement and Declaration of Restrictive Covenants for the Vista del Sol Senior Housing site in Redlands, and to execute said agreement in substantially the form attached, such approval to be evidenced conclusively by the execution and delivery thereof.
3. Authorize the Executive Director of HACSB, upon consultation with Legal Counsel, to make modifications to the Subordination Agreement(s) and the documents or exhibits attached to the Agreement(s) as deemed necessary by Legal Counsel and to execute all documents or certificates which are necessary or appropriate to facilitate affiliate nonprofit Housing Partners I, Inc. (HPI) refinance of the Permanent Mortgage provided by PNC Bank.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

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

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

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

FINANCIAL IMPACT

Approval of this action will have no financial impact on HACSB's annual budget. Proceeds of the refinance ("cash-out" estimated up to \$2 million) will be utilized by HPI to contribute to the construction of the Valencia Grove Phase II development project.

BACKGROUND INFORMATION

Subordination Agreement to Facilitate the Refinance of the Permanent Loan for the Vista del Sol Senior Housing Site
July 12, 2022

On May 4, 2012, HPI, acting in its capacity as Managing Member of HPI VDS, LLC, the owner/operator of the 71 unit Vista del Sol Senior Housing site in Redlands, entered into a Permanent Mortgage Loan Agreement (the Loan) with PNC Bank. The Loan paid off construction financing provided by HACSB to complete the project. The former Redevelopment Agency of the City of Redlands also provided a \$4 million loan of Low and Moderate Income Housing Funds for construction of the project. The RDA's loan was forgiven once the project was completed and occupied. HACSB recorded a Regulatory Agreement upon entering into its loan which requires that the Vista del Sol site retain at least 49% occupancy by Seniors (at least 62 years old) with incomes at or below 80% of the Area Median Income (AMI) for a 55 year term. Similarly, the RDA recorded Restrictive Covenants requiring that Vista del Sol retain at least 42 units available to low-income seniors (at or below 80% AMI) and at least 11 units available to very low-income seniors (at or below 50% AMI) for a 55 year term. The balance of the units (18) can be unrestricted market-rate.

The Loan by PNC Bank has reached the end of its original 10 year term, and HPI is now working with PNC to renew it for another 10 years. The current balance of the Loan stands at approximately \$3.84 million. Upon refinancing, the new balance will be approximately \$6 million, as HPI will utilize \$2 million in "cash-out" proceeds to contribute to the Valencia Grove Phase II construction project. Subsequently, annual debt service required for the mortgage will increase from \$282K per year to \$374K per year, but cashflow at the property is sufficient to maintain a minimum 1.5 debt service coverage ratio. The only other debt on the property is a residual receipts HOME loan from the County of San Bernardino (\$1.7 million) which they have agreed to continue to subordinate to the permanent loan. All of HACSB's original construction and land loans were paid off when the original permanent Loan was placed in 2012. As with the original Loan, PNC requires that any Regulatory Agreements recorded against the property be subordinate to the new permanent mortgage. Staff is therefore recommending that the Board approve subordination of the HACSB Regulatory Agreement for Vista del Sol, and, because we now serve as the Housing Successor Agency for the former RDA, approve subordination of the former RDA's Restrictive Covenants for Vista del Sol.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 1, 2022

**RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:**

PNC Bank, National Association
26901 Agoura Rd., Suite 200
Calabasas Hills, California 91301
Attention: Linda Abrar
Re: Vista del Sol Senior Apartments
Fannie Mae No.: _____

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

**SUBORDINATION AGREEMENT GOVERNMENTAL ENTITY FOR REGULATORY
AGREEMENT
REGULATORY AGREEMENT ONLY/NO SUBORDINATE DEBT**

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT (this “**Agreement**”) is effective as of the ____ day of ____, 2022, by the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body, corporate and politic (“**Governmental Entity**”), and HPI VDS, LLC, a California limited liability company (“**Borrower**”), for the benefit of PNC BANK, NATIONAL ASSOCIATION, a national banking association, its successors and assigns (“**Lender**”).

RECITALS:

A. Simultaneously herewith Lender is making a loan to Borrower in the original principal amount of \$[_____] (“**Loan**”) pursuant to a Multifamily Loan and Security Agreement between Lender and Borrower (as supplemented or amended from time to time, the “**Loan Agreement**”) and evidenced by a Multifamily Note by Borrower to Lender (as supplemented or amended from time to time, the “**Note**”). The Loan is to be secured by a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing that will be recorded among the records of San Bernardino County, California (“**Official Records**”) (as supplemented or amended from time to time, the “**Mortgage**”) of certain improved real property located in Redlands, San Bernardino County, California, as more particularly described on Exhibit A attached hereto (“**Property**”). The Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the “**Loan Documents**”.

B. In connection with the construction and development of the Property, Borrower entered into a certain Regulatory Agreement and Declaration of Restrictive Covenants (Vista del Sol) dated as of August 1, 2008 (“**Regulatory Agreement**”) in favor of Governmental Entity, which was recorded on October 3, 2008, as Document No. 2008-0445119 in the Official Records, pursuant to which the Property was subjected to certain restrictions by Governmental Entity.

C. As a condition to making the Loan, Lender requires that the lien of the Mortgage be superior to the lien of the Regulatory Agreement. Lender will not make the Loan unless Governmental Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.

E. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.

2. Subordination. The Governmental Entity hereby agrees that the Regulatory Agreement is and shall at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief at any time in the event of a default under or breach of the terms of the Regulatory Agreement.

3. Financing and Encumbrance Approval. Governmental Entity hereby approves and acknowledges the financing evidenced by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure of the Mortgage or a deed in lieu thereof shall not require Governmental Entity's consent but shall require notice to Governmental Entity.

4. Satisfaction of Prior Indebtedness. Governmental Entity acknowledges and agrees that the "Loan" associated with and defined in the Regulatory Agreement, owed by Borrower to Governmental Entity has been satisfied in full and all liens and encumbrances related thereto have been, or will be, reconveyed.

5. Lender Notice of Default. In consideration of Governmental Entity's agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity shall be entitled to receive a copy of any notice of default given by Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrower.

6. Governmental Entity Notice of Default. Governmental Entity shall give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Regulatory Agreement, and agrees that Lender, at Lender's sole election, shall have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf. Governmental Entity hereby represents that, to the best of its knowledge, there is no current default under the Regulatory Agreement.

7. Governmental Entity's Rights. Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may be released but it may not be modified, amended, changed or otherwise altered without the prior written consent of Lender so long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower

nor Governmental Entity will, without Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) the collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Lender; (iii) appointment of a receiver for the Property; (iv) the application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan Documents; (v) the removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's security for the Loan.

8. Foreclosure by Lender. In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, no consent shall be required from Governmental Entity.

9. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with regard to the subordination of the Regulatory Agreement to the lien or charge of the Loan Documents, and shall supersede and cancel any prior agreements with regard to this subject matter.

10. Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. Notices. All notices required or permitted hereunder shall be deemed to have been received either (i) when delivered by hand and the party giving such notice has received a signed receipt thereof, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

If to Governmental Entity:

Housing Authority of the County of San Bernardino

If to Lender:

PNC Bank, National Association
26901 Agoura Road, Suite 200
Calabasas Hills, CA 91301

With a copy to:

Fannie Mae
Attention: Multifamily Asset Management
Drawer AM
1100 15th Street, NW
Washington, DC 20005

If to Borrower:

HPI VDS, LLC
420 N. Lemon Avenue
Ontario, CA 91764

14. Further Instruments. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

15. Valid Authorization. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

16. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which when taken together constitute one and the same instrument, binding on all of the parties. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year above written.

GOVERNMENTAL ENTITY:

HOUSING AUTHORITY OF THE COUNTY
OF SAN BERNARDINO,
a public body corporate and politic

By: _____
Name: _____
Title: _____

(Signatures Continue on Following Page)

BORROWER:

HPI VDS, LLC,
a California limited liability company

By: Housing Partners I, Incorporated,
a California nonprofit public benefit corporation
Its: Sole Member

By: _____
Name: Lee McDougal
Title: President

(Signatures Continue on Following Page)

LENDER:

PNC BANK, NATIONAL ASSOCIATION,
a national banking association

By: _____
Tara Suaya,
Senior Vice President

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A
Legal Description

The Land referred to herein below is situated in the City of Redlands, County of San Bernardino, State of California, and is described as follows:

PARCEL 1 AS SHOWN ON LOT LINE ADJUSTMENT NO. 509, AS EVIDENCED BY DOCUMENT RECORDED MAY 30, 2006 AS INSTRUMENT NO. 2006-0366483 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF REDLANDS, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF TRACT NO. 9876, RECORDED IN MAP BOOK 144, PAGE 84, RECORDS OF SAID COUNTY;

THENCE SOUTH 00° 34' 51" EAST ALONG THE EAST LINE OF SAID TRACT NO. 9876, A DISTANCE OF 500.66 FEET; THENCE NORTH 89° 28' 48" EAST, A DISTANCE OF 299.56 FEET;

THENCE SOUTH 00° 32' 59" EAST, A DISTANCE OF 121.00 FEET TO THE NORTH RIGHT-OF-WAY OF LUGONIA AVENUE (37.00 FEET, HALF WIDTH);

THENCE NORTH 89° 28' 48" EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 30.00 FEET TO THE EAST LINE OF WEST ONE-HALF OF THE WEST ONE-HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 22;

THENCE NORTH 00° 32' 59" WEST ALONG SAID EAST LINE, A DISTANCE OF 621.53 FEET TO THE NORTHEAST CORNER OF THE SOUTH ONE-HALF OF THE WEST ONE-HALF OF THE WEST ONE-HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 22;

THENCE SOUTH 89° 30' 09" WEST ALONG THE NORTH LINE OF SAID SOUTH ONE-HALF OF THE WEST ONE-HALF OF THE WEST ONE-HALF OF THE SOUTHEAST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SECTION 22, A DISTANCE OF 329.83 FEET TO THE POINT OF BEGINNING.

For conveyancing purposes only: APN 0167-201-68-0-000

**RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:**

PNC Bank, National Association
26901 Agoura Rd., Suite 200
Calabasas Hills, California 91301
Attention: Linda Abrar
Re: Vista del Sol Senior Apartments
Fannie Mae No.: _____

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

**SUBORDINATION AGREEMENT GOVERNMENTAL ENTITY FOR REGULATORY
AGREEMENT
REGULATORY AGREEMENT ONLY/NO SUBORDINATE DEBT**

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT (this “**Agreement**”) is effective as of the ____ day of _____, 2022, by the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO, a public body, corporate and politic, as successor-in-interest to the Redevelopment Agency of the City of Redlands, a public body, corporate and politic (“**Governmental Entity**”), and HPI VDS, LLC, a California limited liability company (“**Borrower**”), for the benefit of PNC BANK, NATIONAL ASSOCIATION, a national banking association, its successors and assigns (“**Lender**”).

RECITALS:

A. Simultaneously herewith Lender is making a loan to Borrower in the original principal amount of \$[_____] (“**Loan**”) pursuant to a Multifamily Loan and Security Agreement between Lender and Borrower (as supplemented or amended from time to time, the “**Loan Agreement**”) and evidenced by a Multifamily Note by Borrower to Lender (as supplemented or amended from time to time, the “**Note**”). The Loan is to be secured by a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing that will be recorded among the records of San Bernardino County, California (“**Official Records**”) (as supplemented or amended from time to time, the “**Mortgage**”) of certain improved real property located in Redlands, San Bernardino County, California, as more particularly described on Exhibit A attached hereto (“**Property**”). The Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the “**Loan Documents**”.

B. In connection with the construction and development of the Property, Borrower’s predecessor-in-interest, Housing Partners I, Incorporated, a California nonprofit public benefit corporation (“**HPI**”), entered into (i) the Affordable Housing Development Incentive and Restrictive Covenant Agreement dated September 5, 2006, by and between HPI and Governmental Entity and recorded in the Official Records on September 14, 2006, as Instrument No. 2006-0630389, as amended by that certain First Amendment to Affordable Housing Development Incentive and Restrictive Covenant Agreement and Subordination Agreement dated November 6, 2007, by and between HPI and Governmental Entity and recorded in the Official Records on November 21, 2007, as Instrument No. 2007-0661991 (as amended, the “**AHDI Restrictive Covenant Agreement**”), and (ii) the Declaration of Affordability Covenants, Conditions and Restrictions dated September 1, 2008, executed by and between HPI and Governmental Entity and recorded in the Official Records on October 3, 2008, as Instrument No. 2008-0445117 (the “**Declaration of Restrictive Covenants**”, and together with the AHDI Restrictive Covenant Agreement, referred to herein as the “**Regulatory Agreements**”), pursuant to which the Property was subjected to certain restrictions by Governmental Entity.

C. As a condition to making the Loan, Lender requires that the lien of the Mortgage be superior to the lien of the Regulatory Agreements. Lender will not make the Loan unless Governmental Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreements.

E. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreements on and subject to the terms, conditions and requirements set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.

2. Subordination. The Governmental Entity hereby agrees that the Regulatory Agreements are and shall at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreements are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief at any time in the event of a default under or breach of the terms of either Regulatory Agreement.

3. Financing and Encumbrance Approval. Governmental Entity hereby approves and acknowledges the financing evidenced by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure of the Mortgage or a deed in lieu thereof shall not require Governmental Entity's consent but shall require notice to Governmental Entity.

4. Satisfaction of Prior Indebtedness. Governmental Entity acknowledges and agrees that the "Agency Note" associated with and defined in the AHDI Restrictive Covenant Agreement, owed by Borrower to Governmental Entity has been satisfied in full and all liens and encumbrances related thereto have been, or will be, reconveyed.

5. Lender Notice of Default. In consideration of Governmental Entity's agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity shall be entitled to receive a copy of any notice of default given by Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrower.

6. Governmental Entity Notice of Default. Governmental Entity shall give Lender a concurrent copy of each material notice (including without limitation each notice of default) given

by Governmental Entity under or with respect to either Regulatory Agreement, and agrees that Lender, at Lender's sole election, shall have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf. Governmental Entity hereby represents that, to the best of its knowledge, there is no current default under the Regulatory Agreement.

7. Governmental Entity's Rights. Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreements; provided that, (A) the Regulatory Agreements may be released but they may not be modified, amended, changed or otherwise altered without the prior written consent of Lender so long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the Regulatory Agreements to the contrary, neither Borrower nor Governmental Entity will, without Lender's prior written consent, exercise or seek any right or remedy under either Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) the collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Lender; (iii) appointment of a receiver for the Property; (iv) the application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan Documents; (v) the removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's security for the Loan.

8. Foreclosure by Lender. In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, no consent shall be required from Governmental Entity.

9. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties hereto with regard to the subordination of the Regulatory Agreements to the lien or charge of the Loan Documents, and shall supersede and cancel any prior agreements with regard to this subject matter.

10. Binding Provisions. The covenants and agreements contained in this Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the respective parties to this Agreement.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

13. Notices. All notices required or permitted hereunder shall be deemed to have been received either (i) when delivered by hand and the party giving such notice has received a signed receipt thereof, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows (or addressed

in such other manner as the party being notified shall have requested by written notice to the other party):

If to Governmental Entity:

Housing Authority of the County of San Bernardino

If to Lender:

PNC Bank, National Association
26901 Agoura Road, Suite 200
Calabasas Hills, CA 91301

With a copy to:

Fannie Mae
Attention: Multifamily Asset Management
Drawer AM
1100 15th Street, NW
Washington, DC 20005

If to Borrower:

HPI VDS, LLC
420 N. Lemon Avenue
Ontario, CA 91764

14. Further Instruments. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

15. Valid Authorization. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

16. Counterparts. This Agreement may be executed in counterparts each of which shall be deemed an original and all of which when taken together constitute one and the same instrument, binding on all of the parties. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENTS BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year above written.

GOVERNMENTAL ENTITY:

HOUSING AUTHORITY OF THE COUNTY
OF SAN BERNARDINO,
a public body corporate and politic

By: _____
Name: _____
Title: _____

(Signatures Continue on Following Page)

BORROWER:

HPI VDS, LLC,
a California limited liability company

By: Housing Partners I, Incorporated,
a California nonprofit public benefit corporation
Its: Sole Member

By: _____
Name: Lee McDougal
Title: President

(Signatures Continue on Following Page)

LENDER:

PNC BANK, NATIONAL ASSOCIATION,
a national banking association

By: _____
Tara Suaya,
Senior Vice President

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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COUNTY OF _____

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Signature _____

(Seal)

ACKNOWLEDGMENT

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STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A
Legal Description

The Land referred to herein below is situated in the City of Redlands, County of San Bernardino, State of California, and is described as follows:

PARCEL 1 AS SHOWN ON LOT LINE ADJUSTMENT NO. 509, AS EVIDENCED BY DOCUMENT RECORDED MAY 30, 2006 AS INSTRUMENT NO. 2006-0366483 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF REDLANDS, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF TRACT NO. 9876, RECORDED IN MAP BOOK 144, PAGE 84, RECORDS OF SAID COUNTY;

THENCE SOUTH 00° 34' 51" EAST ALONG THE EAST LINE OF SAID TRACT NO. 9876, A DISTANCE OF 500.66 FEET; THENCE NORTH 89° 28' 48" EAST, A DISTANCE OF 299.56 FEET;

THENCE SOUTH 00° 32' 59" EAST, A DISTANCE OF 121.00 FEET TO THE NORTH RIGHT-OF-WAY OF LUGONIA AVENUE (37.00 FEET, HALF WIDTH);

THENCE NORTH 89° 28' 48" EAST ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 30.00 FEET TO THE EAST LINE OF WEST ONE-HALF OF THE WEST ONE-HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 22;

THENCE NORTH 00° 32' 59" WEST ALONG SAID EAST LINE, A DISTANCE OF 621.53 FEET TO THE NORTHEAST CORNER OF THE SOUTH ONE-HALF OF THE WEST ONE-HALF OF THE WEST ONE-HALF OF THE SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER OF SECTION 22;

THENCE SOUTH 89° 30' 09" WEST ALONG THE NORTH LINE OF SAID SOUTH ONE-HALF OF THE WEST ONE-HALF OF THE WEST ONE-HALF OF THE SOUTHEAST ONE QUARTER OF THE NORTHWEST ONE QUARTER OF SECTION 22, A DISTANCE OF 329.83 FEET TO THE POINT OF BEGINNING.

For conveyancing purposes only: APN 0167-201-68-0-000

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

July 12, 2022

FROM

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

SUBJECT

Contracts with a pool of on-call contractors for on-call architect services.

RECOMMENDATION(S)

1. Approve Contract No. PC1277, effective August 1, 2022, for on-call architect services with Albert Group Architects, Architerra Design Group, Onyx Architects, Inc., RRM Design Group, and Sillman Wright Architects exercising a two-year base period with three single-year options to extend the contract through July 31, 2027.
2. Approve an appropriation in an amount not to exceed \$500,000 for on-call architect services through July 31, 2027.
3. Authorize and direct the Executive Director to execute and deliver the contracts to Albert Group Architects, Architerra Design Group, Onyx Architects, Inc., RRM Design Group, and Sillman Wright Architects and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.

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

GOALS & OBJECTIVES

HACSB has secured the resources needed for accomplishing its mission.

FINANCIAL IMPACT

This item is not expected to exceed the appropriation amount of \$500,000 for the two-year base period which is included within the Housing Authority of the County of San Bernardino's (HACSB) approved budget and will be included in the budget for subsequent fiscal years.

BACKGROUND INFORMATION

HACSB will be undertaking multiple projects over the next several years for various capital improvement projects within the existing housing portfolio as well as the continued redevelopment of our aging affordable housing stock. This work will require the professional services of architectural services firms. The professional services may include review of existing conditions, schematic design, design development, construction documents, construction procurement services, construction administration, and post completion/warranty.

PROCUREMENT

The Procurement and Contracts Department released a Request for Qualifications (RFQ) PC1277 on March 23, 2022. Outreach efforts included invitations to nine vendors and posting on the agency's website and to our eBidding site, Planet Bids. Twelve proposals were received in response to this RFQ. The evaluation of qualifications was conducted in accordance with the proposal specifications, and it was determined that the top five ranked firms; Albert Group Architects, Architerra Design Group, Onyx Architects, Inc., RRM Design Group, and Sillman Wright Architects be recommended to contract for on-call architect services.

Responses were received by the deadline from the following organizations:

<u>Contractors Name</u>	<u>Location</u>	<u>Score:</u>
Architerra Design Group	Rancho Cucamonga, CA	264
Onyx Architects, Inc.	Pasadena, CA	264
Sillman Wright Architects	Temecula, CA	262
Albert Group Architects	Los Angeles, CA	251
RRM Design Group	Santa Barbara, CA	249
SVA Architects, Inc.	Santa Ana, CA	236
GGLO	Marina Del Rey, CA	233
Arclogica, Inc.	Tustin, CA	230
Pacific Rim Architects	Huntington Beach, CA	229
BASIS Architecture & Consulting	San Rafael, CA	226
Westberg White Architecture	Tustin, CA	222
YNG Architects, Inc.	Santa Ana, CA	212

Based on the responses for these services, which were solicited to an adequate number of sources, staff recommends approval of a two-year base contract effective August 1, 2022 with three single year options to extend through July 31, 2027 to the following firms: Albert Group Architects, Architerra Design Group, Onyx Architects, Inc., RRM Design Group, and Sillman Wright Architects.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on July 1, 2022.

CONTRACT FOR ARCHITECTURE SERVICES

This is a contract between the Housing Authority of the County of San Bernardino ("HACSB") and Albert Group Architects (collectively, the "Parties") for On-Call Architect Services.

1. Term

Section 1.1 The term of this contract is on an as-needed basis effective August 1, 2022 through July 31, 2024 with three single year options to extend through July 31, 2027 or until it is terminated by either or both parties. Termination shall be by 30 days prior written notice. All amounts owing under the contract shall be due and payable upon termination. In the event that work paid by HACSB to ALBERT GROUP ARCHITECTS is contingent upon either bond issuance or developer advance of funds, such amounts shall remain due and payable until such time as developer advance is received and/or bond issuance has occurred, at such time HACSB shall pay all payable amounts associated therewith.

2. Services to be performed by Consultant

Section 2.1 ALBERT GROUP ARCHITECTS agrees to perform the professional services for HACSB and to deliver the work products to HACSB as described in the Scope of Services attached as Attachment A hereto.

Section 2.2 Any proposed changes in the Architecture Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to the Scope of Services attached as Attachment A.

Section 2.3 Nothing in this Agreement shall give the Architect possession of authority with respect to any HACSB decision beyond the rendition of information, advice, recommendation or counsel.

3. Compensation

Section 3.1 HACSB agrees to pay ALBERT GROUP ARCHITECTS for its Architecture Services a professional fee computed according to the Fee Schedule attached as Attachment A. In the event payment for work performed by ALBERT GROUP ARCHITECTS is contingent upon either bond issuance or developer deposit, such amounts shall remain due and payable until such time as the deposit is received or bonds are issued. At such time, HACSB shall pay all amounts owing associated therewith in full.

Section 3.2 Records of the ALBERT GROUP ARCHITECTS'S costs relating to (i) the Architecture Services performed under this Agreement and (ii) reimbursable expenses shall be kept and shall be available to HACSB or to HACSB's authorized representative at reasonable intervals during normal business hours.

4. Other Obligations of ALBERT GROUP ARCHITECTS

Section 4.1 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by ALBERT GROUP ARCHITECTS without the prior written consent of HACSB.

Section 4.2 In the performance of its Architecture Services hereunder, ALBERT GROUP ARCHITECTS is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of HACSB) under any and all laws, whether existing or future.

Section 4.3 Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of HACSB will cause ALBERT GROUP ARCHITECTS to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. HACSB and ALBERT GROUP ARCHITECTS agree that ALBERT GROUP ARCHITECTS is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. HACSB and ALBERT GROUP ARCHITECTS also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the ALBERT GROUP ARCHITECTS to be a "Public Official" or "participating in a governmental decision" as those terms are used in Section 87100.

5. Other Obligations of HACSB

Section 5.1 HACSB agrees to comply with all reasonable requests of ALBERT GROUP ARCHITECTS and provide access to all documents reasonably necessary to the performance of ALBERT GROUP ARCHITECTS'S duties under this Agreement.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by HACSB without the prior written consent of ALBERT GROUP ARCHITECTS.

6. Termination of Agreement

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Architecture Services set forth in Attachment "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following receipt of notice of same.

7. General Provisions

Section 7.1 Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

For Albert Group Architects:

Albert Group Architects
2032 Stoner Ave. Studio A
Los Angeles, CA 90025
Attn: Stephen Albert

For HACSB:

Housing Authority of the County of San Bernardino
715 E. Brier Dr.
San Bernardino, CA 92408
Attn: Gus Joslin

Section 7.2 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.3 This Agreement will be governed by and construed in accordance with the laws of the State of California.

Section 7.4 Indemnification and insurance requirements:

For “design professional services” as defined in Civil Code section 2782.8, the following indemnification paragraph applies: **“Albert Group Architects shall indemnify HACSB for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.”**

For all other consultant services, the following indemnification paragraph applies: “The Albert Group Architects agrees to indemnify, defend (with counsel reasonably approved by 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 Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the HACSB on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Albert Group Architects’s indemnification obligation applies to the HACSB’s “active” as well as “passive” negligence but does not apply to the HACSB’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.”

Insurance – Without in anyway affecting the indemnity herein provided and in addition thereto the ALBERT GROUP ARCHITECTS shall secure and maintain throughout the contract the following types of insurance with limits as shown:

Workers' Compensation – A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount or form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the consultant and all risks to such persons under this Agreement.

Comprehensive General and Automobile Liability Insurance – This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

Errors and Omission Liability Insurance – Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate or

Professional Liability – Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

Additional Named Insured – All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming HACSB and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.

Waiver of Subrogation Rights – Except for the Errors and Omissions Liability and Professional

Liability, Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against HACSB, its officers, employees, agents, volunteers, contractors and subcontractors. ,

Policies Primary and Non-Contributory – Except for Workers’ Compensation and Professional Liability policies. All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by HACSB.

Proof of Coverage – ALBERT GROUP ARCHITECTS shall immediately furnish certificates of insurance to HACSB administering the contract evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of service hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and ALBERT GROUP ARCHITECTS shall maintain such insurance form the time ALBERT GROUP ARCHITECTS commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the ALBERT GROUP ARCHITECTS shall furnish certified copies of the policies and all endorsements.

Insurance Review – The above insurance requirements are subject to periodic review by HACSB. HACSB is authorized, but not required, to reduce or waive any of the above insurance requirements whenever HACSB determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of HACSB. In addition, if HACSB determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, HACSB is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against HACSB, inflation, or any other item reasonably related to HACSB's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or high coverage limits must be made by amendment to this Agreement. ALBERT GROUP ARCHITECTS agrees to executive any such amendment within thirty (30) days of receipt.

8. Jury Trial Waiver

ALBERT GROUP ARCHITECTS and HACSB hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either ALBERT GROUP ARCHITECTS against HACSB, or HACSB against ALBERT GROUP ARCHITECTS, on any matter whatsoever arising out of, or in any way connected with, this Agreement.

Housing Authority of the County of San Bernardino

Albert Group Architects

Maria Razo

Name

Title: _____

Title: _____

Date: _____

Date: _____

Attachment A

Scope of Services

Required services may include but are not limited to:

- 1) Review of Existing Schematic Designs.
- 2) Design Development (all disciplines-as needed on an individual project basis)
 - Architectural Design, Structural Design, MEP Design, Civil Design, Landscape Design, Materials Research and Specifications.
- 3) Construction Documents -
Drawings, Specifications, Detailed Cost Estimates.
- 4) Construction Procurement Services -
 - Bidding/Proposal Documents, Reproduction and Distribution of Bidding and Proposal Documents, Pre-Bid Conference/Selection Interviews, Bidding/Negotiation, Bid/Proposal Evaluation.
- 5) Construction Administration -
 - General Administration, Submittal Services, Site Visitation, On-Site Project Representation, Payment Certification, Administration of Testing and Inspection, Supplemental Documentation, Administration of Changes in Work, Interpretations and Decisions, Project Close-out.
- 6) Post Completion / Warranty Phase -
 - Maintenance & Operational Programming, Record Drawings, Warranty Review, Facility Operations and Performance Meeting, submission of HUD/Funding Agency Forms.

Fee Schedule:

PERSONNEL POSITIONS	CONTRACT PERIOD	
	LOADED HOURLY RATES	
	Initial Term – 2 Years	Option Years 3-5
Principal	\$275	\$285
Directors (Design/Planning/Architecture/Senior Project Management)	\$250	\$260
Associate Directors (Design/Planning/Architecture/ Project Management)	\$185	\$195
Senior Professionals (Senior Designer/Planner/Architect)	\$185	\$195
Professionals (Project Designer/Planner/Architect)	\$165	\$175
Professional Staff (Designer/Planner/Job Captain)	\$145	\$155
Senior Staff (Designer/Planner/Senior CADD)	\$145	\$155
Technical Staff (Graphics/CADD)	\$130	\$140
Administrative Staff (Dept. Asst./Word Processing)	\$90	\$100
Clerical	\$75	\$85
Other (specify)		
Other (specify)		

Attachment B
General Conditions for Non-Construction Work
(HUD – 5370C)

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. 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-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 \$150,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

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/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

18. 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.

19. 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.

20. 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.

21. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

22. 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) 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
- (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

CONTRACT FOR ARCHITECTURE SERVICES

This is a contract between the Housing Authority of the County of San Bernardino ("HACSB") and Architerra Design Group (collectively, the "Parties") for On-Call Architect Services.

1. Term

Section 1.1 The term of this contract is on an as-needed basis effective August 1, 2022 through July 31, 2024 with three single year options to extend through July 31, 2027 or until it is terminated by either or both parties. Termination shall be by 30 days prior written notice. All amounts owing under the contract shall be due and payable upon termination. In the event that work paid by HACSB to ARCHITERRA DESIGN GROUP is contingent upon either bond issuance or developer advance of funds, such amounts shall remain due and payable until such time as developer advance is received and/or bond issuance has occurred, at such time HACSB shall pay all payable amounts associated therewith.

2. Services to be performed by Consultant

Section 2.1 ARCHITERRA DESIGN GROUP agrees to perform the professional services for HACSB and to deliver the work products to HACSB as described in the Scope of Services attached as Attachment A hereto.

Section 2.2 Any proposed changes in the Architecture Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to the Scope of Services attached as Attachment A.

Section 2.3 Nothing in this Agreement shall give the Architect possession of authority with respect to any HACSB decision beyond the rendition of information, advice, recommendation or counsel.

3. Compensation

Section 3.1 HACSB agrees to pay ARCHITERRA DESIGN GROUP for its Architecture Services a professional fee computed according to the Fee Schedule attached as Attachment A. In the event payment for work performed by ARCHITERRA DESIGN GROUP is contingent upon either bond issuance or developer deposit, such amounts shall remain due and payable until such time as the deposit is received or bonds are issued. At such time, HACSB shall pay all amounts owing associated therewith in full.

Section 3.2 Records of the ARCHITERRA DESIGN GROUP'S costs relating to (i) the Architecture Services performed under this Agreement and (ii) reimbursable expenses shall be kept and shall be available to HACSB or to HACSB's authorized representative at reasonable intervals during normal business hours.

4. Other Obligations of ARCHITERRA DESIGN GROUP

Section 4.1 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by ARCHITERRA DESIGN GROUP without the prior written consent of HACSB.

Section 4.2 In the performance of its Architecture Services hereunder, ARCHITERRA DESIGN GROUP is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of HACSB) under any and all laws, whether existing or future.

Section 4.3 Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of HACSB will cause ARCHITERRA DESIGN GROUP to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. HACSB and ARCHITERRA DESIGN GROUP agree that ARCHITERRA DESIGN GROUP is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. HACSB and ARCHITERRA DESIGN GROUP also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the ARCHITERRA DESIGN GROUP to be a "Public Official" or "participating in a governmental decision" as those terms are used in Section 87100.

5. Other Obligations of HACSB

Section 5.1 HACSB agrees to comply with all reasonable requests of ARCHITERRA DESIGN GROUP and provide access to all documents reasonably necessary to the performance of ARCHITERRA DESIGN GROUP'S duties under this Agreement.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by HACSB without the prior written consent of ARCHITERRA DESIGN GROUP.

6. Termination of Agreement

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Architecture Services set forth in Attachment "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following receipt of notice of same.

7. General Provisions

Section 7.1 Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

For Architerra Design Group:

Architerra Design Group
10221-A Trademark St.
Rancho Cucamonga, CA 91730
Attn: Richard Krumwiede

For HACSB:

Housing Authority of the County of San Bernardino
715 E. Brier Dr.
San Bernardino, CA 92408
Attn: Gus Joslin

Section 7.2 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.3 This Agreement will be governed by and construed in accordance with the laws of the State of California.

Section 7.4 Indemnification and insurance requirements:

For “design professional services” as defined in Civil Code section 2782.8, the following indemnification paragraph applies: **“Architerra Design Group shall indemnify HACSB for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.”**

For all other consultant services, the following indemnification paragraph applies: “The Architerra Design Group agrees to indemnify, defend (with counsel reasonably approved by 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 Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the HACSB on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Architerra Design Group’s indemnification obligation applies to the HACSB’s “active” as well as “passive” negligence but does not apply to the HACSB’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.”

Insurance – Without in anyway affecting the indemnity herein provided and in addition thereto the ARCHITERRA DESIGN GROUP shall secure and maintain throughout the contract the following types of insurance with limits as shown:

Workers' Compensation – A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount or form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the consultant and all risks to such persons under this Agreement.

Comprehensive General and Automobile Liability Insurance – This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

Errors and Omission Liability Insurance – Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate or

Professional Liability – Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

Additional Named Insured – All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming HACSB and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.

Waiver of Subrogation Rights – Except for the Errors and Omissions Liability and Professional Liability, Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against HACSB, its officers, employees, agents, volunteers, contractors and subcontractors. ,

Policies Primary and Non-Contributory – Except for Workers’ Compensation and Professional Liability policies. All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by HACSB.

Proof of Coverage – ARCHITERRA DESIGN GROUP shall immediately furnish certificates of insurance to HACSB administering the contract evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of service hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and ARCHITERRA DESIGN GROUP shall maintain such insurance form the time ARCHITERRA DESIGN GROUP commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the ARCHITERRA DESIGN GROUP shall furnish certified copies of the policies and all endorsements.

Insurance Review – The above insurance requirements are subject to periodic review by HACSB. HACSB is authorized, but not required, to reduce or waive any of the above insurance requirements whenever HACSB determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of HACSB. In addition, if HACSB determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, HACSB is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against HACSB, inflation, or any other item reasonably related to HACSB's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or high coverage limits must be made by amendment to this Agreement. ARCHITERRA DESIGN GROUP agrees to executive any such amendment within thirty (30) days of receipt.

8. Jury Trial Waiver

ARCHITERRA DESIGN GROUP and HACSB hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either ARCHITERRA DESIGN GROUP against HACSB, or HACSB against ARCHITERRA DESIGN GROUP, on any matter whatsoever arising out of, or in any way connected with, this Agreement.

Housing Authority of the County of San Bernardino

Architerra Design Group

Maria Razo

Name

Title: _____

Title: _____

Date: _____

Date: _____

Attachment A

Scope of Services

Required services may include but are not limited to:

- 1) Review of Existing Schematic Designs.
- 2) Design Development (all disciplines-as needed on an individual project basis)
 - Architectural Design, Structural Design, MEP Design, Civil Design, Landscape Design, Materials Research and Specifications.
- 3) Construction Documents -
Drawings, Specifications, Detailed Cost Estimates.
- 4) Construction Procurement Services -
 - Bidding/Proposal Documents, Reproduction and Distribution of Bidding and Proposal Documents, Pre-Bid Conference/Selection Interviews, Bidding/Negotiation, Bid/Proposal Evaluation.
- 5) Construction Administration -
 - General Administration, Submittal Services, Site Visitation, On-Site Project Representation, Payment Certification, Administration of Testing and Inspection, Supplemental Documentation, Administration of Changes in Work, Interpretations and Decisions, Project Close-out.
- 6) Post Completion / Warranty Phase -
 - Maintenance & Operational Programming, Record Drawings, Warranty Review, Facility Operations and Performance Meeting, submission of HUD/Funding Agency Forms.

Fee Schedule:

PERSONNEL POSITIONS	CONTRACT PERIOD	
	LOADED HOURLY RATES	
	Initial Term – 2 Years	Option Years 3-5
Principal	\$200.00	\$200.00
Directors (Design/Planning/Architecture/Senior Project Management)	\$175.00	\$175.00
Associate Directors (Design/Planning/Architecture/ Project Management)	\$135.00	\$135.00
Senior Professionals (Senior Designer/Planner/Architect)	n/a	n/a
Professionals (Project Designer/Planner/Architect)	n/a	n/a
Professional Staff (Designer/Planner/Job Captain)	n/a	n/a
Senior Staff (Designer/Planner/Senior CADD)	\$125.00	\$125.00
Technical Staff (Graphics/CADD)	\$100.00	\$100.00
Administrative Staff (Dept. Asst./Word Processing)	n/a	n/a
Clerical	\$65.00	\$65.00
Other (specify) Mileage	at current IRS rate	at current IRS rate
Other (specify) Reprographics	at cost	at cost

Attachment B
General Conditions for Non-Construction Work
(HUD – 5370C)

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. 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-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 \$150,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

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/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

18. 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.

19. 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.

20. 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.

21. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

22. 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) 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
- (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

CONTRACT FOR ARCHITECTURE SERVICES

This is a contract between the Housing Authority of the County of San Bernardino ("HACSB") and Onyx Architects, Inc. (collectively, the "Parties") for On-Call Architect Services.

1. Term

Section 1.1 The term of this contract is on an as-needed basis effective August 1, 2022 through July 31, 2024 with three single year options to extend through July 31, 2027 or until it is terminated by either or both parties. Termination shall be by 30 days prior written notice. All amounts owing under the contract shall be due and payable upon termination. In the event that work paid by HACSB to ONYX ARCHITECTS, INC. is contingent upon either bond issuance or developer advance of funds, such amounts shall remain due and payable until such time as developer advance is received and/or bond issuance has occurred, at such time HACSB shall pay all payable amounts associated therewith.

2. Services to be performed by Consultant

Section 2.1 ONYX ARCHITECTS, INC. agrees to perform the professional services for HACSB and to deliver the work products to HACSB as described in the Scope of Services attached as Attachment A hereto.

Section 2.2 Any proposed changes in the Architecture Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to the Scope of Services attached as Attachment A.

Section 2.3 Nothing in this Agreement shall give the Architect possession of authority with respect to any HACSB decision beyond the rendition of information, advice, recommendation or counsel.

3. Compensation

Section 3.1 HACSB agrees to pay ONYX ARCHITECTS, INC. for its Architecture Services a professional fee computed according to the Fee Schedule attached as Attachment A. In the event payment for work performed by ONYX ARCHITECTS, INC. is contingent upon either bond issuance or developer deposit, such amounts shall remain due and payable until such time as the deposit is received or bonds are issued. At such time, HACSB shall pay all amounts owing associated therewith in full.

Section 3.2 Records of the ONYX ARCHITECTS, INC.'S costs relating to (i) the Architecture Services performed under this Agreement and (ii) reimbursable expenses shall be kept and shall be available to HACSB or to HACSB's authorized representative at reasonable intervals during normal business hours.

4. Other Obligations of ONYX ARCHITECTS, INC.

Section 4.1 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by ONYX ARCHITECTS, INC. without the prior written consent of HACSB.

Section 4.2 In the performance of its Architecture Services hereunder, ONYX ARCHITECTS, INC. is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of HACSB) under any and all laws, whether existing or future.

Section 4.3 Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of HACSB will cause ONYX ARCHITECTS, INC. to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. HACSB and ONYX ARCHITECTS, INC. agree that ONYX ARCHITECTS, INC. is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. HACSB and ONYX ARCHITECTS, INC. also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the ONYX ARCHITECTS, INC. to be a "Public Official" or "participating in a governmental decision" as those terms are used in Section 87100.

5. Other Obligations of HACSB

Section 5.1 HACSB agrees to comply with all reasonable requests of ONYX ARCHITECTS, INC. and provide access to all documents reasonably necessary to the performance of ONYX ARCHITECTS, INC.'S duties under this Agreement.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by HACSB without the prior written consent of ONYX ARCHITECTS, INC..

6. Termination of Agreement

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Architecture Services set forth in Attachment "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following receipt of notice of same.

7. General Provisions

Section 7.1 Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

For Onyx Architects, Inc.:

Onyx Architects, Inc.
2540 E. Colorado Blvd.
Pasadena, CA 91107
Attn: Steve Kuchenski

For HACSB:

Housing Authority of the County of San Bernardino
715 E. Brier Dr.
San Bernardino, CA 92408
Attn: Gus Joslin

Section 7.2 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.3 This Agreement will be governed by and construed in accordance with the laws of the State of California.

Section 7.4 Indemnification and insurance requirements:

For “design professional services” as defined in Civil Code section 2782.8, the following indemnification paragraph applies: **“Onyx Architects, Inc. shall indemnify HACSB for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.”**

For all other consultant services, the following indemnification paragraph applies: “The Onyx Architects, Inc. agrees to indemnify, defend (with counsel reasonably approved by 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 Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the HACSB on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Onyx Architects, Inc.’s indemnification obligation applies to the HACSB’s “active” as well as “passive” negligence but does not apply to the HACSB’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.”

Insurance – Without in anyway affecting the indemnity herein provided and in addition thereto the ONYX ARCHITECTS, INC. shall secure and maintain throughout the contract the following types of insurance with limits as shown:

Workers' Compensation – A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount or form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the consultant and all risks to such persons under this Agreement.

Comprehensive General and Automobile Liability Insurance – This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

Errors and Omission Liability Insurance – Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate or

Professional Liability – Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

Additional Named Insured – All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming HACSB and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.

Waiver of Subrogation Rights – Except for the Errors and Omissions Liability and Professional Liability, Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against HACSB, its officers, employees, agents, volunteers, contractors and subcontractors. ,

Policies Primary and Non-Contributory – Except for Workers’ Compensation and Professional Liability policies. All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by HACSB.

Proof of Coverage – ONYX ARCHITECTS, INC. shall immediately furnish certificates of insurance to HACSB administering the contract evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of service hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and ONYX ARCHITECTS, INC. shall maintain such insurance from the time ONYX ARCHITECTS, INC. commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the ONYX ARCHITECTS, INC. shall furnish certified copies of the policies and all endorsements.

Insurance Review – The above insurance requirements are subject to periodic review by HACSB. HACSB is authorized, but not required, to reduce or waive any of the above insurance requirements whenever HACSB determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of HACSB. In addition, if HACSB determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, HACSB is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against HACSB, inflation, or any other item reasonably related to HACSB's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or high coverage limits must be made by amendment to this Agreement. ONYX ARCHITECTS, INC. agrees to execute any such amendment within thirty (30) days of receipt.

8. Jury Trial Waiver

ONYX ARCHITECTS, INC. and HACSB hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either ONYX ARCHITECTS, INC. against HACSB, or HACSB against ONYX ARCHITECTS, INC., on any matter whatsoever arising out of, or in any way connected with, this Agreement.

Housing Authority of the County of San Bernardino

Onyx Architects, Inc.

Maria Razo

Name

Title: _____

Title: _____

Date: _____

Date: _____

Attachment A

Scope of Services

Required services may include but are not limited to:

- 1) Review of Existing Schematic Designs.
- 2) Design Development (all disciplines-as needed on an individual project basis)
 - Architectural Design, Structural Design, MEP Design, Civil Design, Landscape Design, Materials Research and Specifications.
- 3) Construction Documents -
Drawings, Specifications, Detailed Cost Estimates.
- 4) Construction Procurement Services -
 - Bidding/Proposal Documents, Reproduction and Distribution of Bidding and Proposal Documents, Pre-Bid Conference/Selection Interviews, Bidding/Negotiation, Bid/Proposal Evaluation.
- 5) Construction Administration -
 - General Administration, Submittal Services, Site Visitation, On-Site Project Representation, Payment Certification, Administration of Testing and Inspection, Supplemental Documentation, Administration of Changes in Work, Interpretations and Decisions, Project Close-out.
- 6) Post Completion / Warranty Phase -
 - Maintenance & Operational Programming, Record Drawings, Warranty Review, Facility Operations and Performance Meeting, submission of HUD/Funding Agency Forms.

Fee Schedule:

PERSONNEL POSITIONS	CONTRACT PERIOD	
	LOADED HOURLY RATES	
	Initial Term – 2 Years	Option Years 3-5
Managing Principal	\$350.00	\$385
Principal	\$285.00	\$310
Associate Principal	\$245.00	\$170
Associate	\$240.00	\$165
Architect	\$200.00	\$220
Interior Designer	\$155.00	\$170
Senior Job Captain	\$175.00	\$190
Job Captain	\$160.00	\$175
Project Coordinator	\$140.00	\$155
Designer II	\$130.00	\$145
Designer I	\$105.00	\$115
Administrative/Clerical	\$95.00	\$105

Attachment B
General Conditions for Non-Construction Work
(HUD – 5370C)

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. 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-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 \$150,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

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/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

18. 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.

19. 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.

20. 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.

21. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

22. 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) 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
- (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

CONTRACT FOR ARCHITECTURE SERVICES

This is a contract between the Housing Authority of the County of San Bernardino ("HACSB") and RRM Design Group (collectively, the "Parties") for On-Call Architect Services.

1. Term

Section 1.1 The term of this contract is on an as-needed basis effective August 1, 2022 through July 31, 2024 with three single year options to extend through July 31, 2027 or until it is terminated by either or both parties. Termination shall be by 30 days prior written notice. All amounts owing under the contract shall be due and payable upon termination. In the event that work paid by HACSB to RRM DESIGN GROUP is contingent upon either bond issuance or developer advance of funds, such amounts shall remain due and payable until such time as developer advance is received and/or bond issuance has occurred, at such time HACSB shall pay all payable amounts associated therewith.

2. Services to be performed by Consultant

Section 2.1 RRM DESIGN GROUP agrees to perform the professional services for HACSB and to deliver the work products to HACSB as described in the Scope of Services attached as Attachment A hereto.

Section 2.2 Any proposed changes in the Architecture Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to the Scope of Services attached as Attachment A.

Section 2.3 Nothing in this Agreement shall give the Architect possession of authority with respect to any HACSB decision beyond the rendition of information, advice, recommendation or counsel.

3. Compensation

Section 3.1 HACSB agrees to pay RRM DESIGN GROUP for its Architecture Services a professional fee computed according to the Fee Schedule attached as Attachment A. In the event payment for work performed by RRM DESIGN GROUP is contingent upon either bond issuance or developer deposit, such amounts shall remain due and payable until such time as the deposit is received or bonds are issued. At such time, HACSB shall pay all amounts owing associated therewith in full.

Section 3.2 Records of the RRM DESIGN GROUP'S costs relating to (i) the Architecture Services performed under this Agreement and (ii) reimbursable expenses shall be kept and shall be available to HACSB or to HACSB's authorized representative at reasonable intervals during normal business hours.

4. Other Obligations of RRM DESIGN GROUP

Section 4.1 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by RRM DESIGN GROUP without the prior written consent of HACSB.

Section 4.2 In the performance of its Architecture Services hereunder, RRM DESIGN GROUP is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of HACSB) under any and all laws, whether existing or future.

Section 4.3 Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of HACSB will cause RRM DESIGN GROUP to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. HACSB and RRM DESIGN GROUP agree that RRM DESIGN GROUP is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. HACSB and RRM DESIGN GROUP also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the RRM DESIGN GROUP to be a "Public Official" or "participating in a governmental decision" as those terms are used in Section 87100.

5. Other Obligations of HACSB

Section 5.1 HACSB agrees to comply with all reasonable requests of RRM DESIGN GROUP and provide access to all documents reasonably necessary to the performance of RRM DESIGN GROUP'S duties under this Agreement.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by HACSB without the prior written consent of RRM DESIGN GROUP.

6. Termination of Agreement

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Architecture Services set forth in Attachment "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following receipt of notice of same.

7. General Provisions

Section 7.1 Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by certified mail, return-receipt requested, postage pre-paid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices sent by certified mail will be deemed communicated on the date delivered in fact.

For RRM Design Group:

RRM Design Group
10 E. Figueroa St. Ste. 200
Santa Barbara, CA 93101
Attn: Detlev Peikert

For HACSB:

Housing Authority of the County of San Bernardino
715 E. Brier Dr.
San Bernardino, CA 92408
Attn: Gus Joslin

Section 7.2 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.3 This Agreement will be governed by and construed in accordance with the laws of the State of California.

Section 7.4 Indemnification and insurance requirements:

For “design professional services” as defined in Civil Code section 2782.8, the following indemnification paragraph applies: “**RRM DESIGN GROUP shall indemnify HACSB for damages to the extent that are found to arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.**” Vendor’s duty to defend shall consist of reimbursement of reasonable defense costs incurred by HACSB in direct proportion to RRM DESIGN GROUP’S proportionate percentage of fault as set forth in California Civil Code 2782.8 as it is written as of the date of this Agreement.

For all other consultant services, the following indemnification paragraph applies: “As relates to RRM DESIGN GROUP’S operations under this Agreement other than in the performance of design professional services, RRM DESIGN GROUP agrees to indemnify, defend (with counsel reasonably approved by 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 Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the HACSB on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The RRM DESIGN GROUP’S indemnification obligation applies to the HACSB’s “active” as well as “passive” negligence but does not apply to the HACSB’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.”

Insurance – Without in anyway affecting the indemnity herein provided and in addition thereto the RRM DESIGN GROUP shall secure and maintain throughout the contract the following types of insurance with limits as shown:

Workers' Compensation – A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount or form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the consultant and all risks to such persons under this Agreement.

Comprehensive General and Automobile Liability Insurance – This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

Errors and Omission Liability Insurance – Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate or

Professional Liability – Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

Additional Named Insured – All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming HACSB and its

officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.

Waiver of Subrogation Rights – Except for the Errors and Omissions Liability and Professional Liability, Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against HACSB, its officers, employees, agents, volunteers, contractors and subcontractors.

Policies Primary and Non-Contributory – Except for Workers' Compensation and Professional Liability policies. All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by HACSB.

Proof of Coverage – RRM DESIGN GROUP shall immediately furnish certificates of insurance to HACSB administering the contract evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of service hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and RRM DESIGN GROUP shall maintain such insurance from the time RRM DESIGN GROUP commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the RRM DESIGN GROUP shall furnish certified copies of the policies and all endorsements. A ten (10) day written notice to HACSB shall apply to non-payment of premium. RRM DESIGN GROUP shall provide thirty (30) days written notice to HACSB prior to implantation of a reduction of limits or material change of insurance coverage as specified herein.

Insurance Review – The above insurance requirements are subject to periodic review by HACSB. HACSB is authorized, but not required, to reduce or waive any of the above insurance requirements whenever HACSB determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of HACSB. In addition, if HACSB determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, HACSB is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against HACSB, inflation, or any other item reasonably related to HACSB's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or high coverage limits must be made by amendment to this Agreement. RRM DESIGN GROUP agrees to execute any such amendment within thirty (30) days of receipt.

8. Jury Trial Waiver

RRM DESIGN GROUP and HACSB hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either RRM DESIGN GROUP against HACSB, or HACSB against RRM DESIGN GROUP, on any matter whatsoever arising out of, or in any way connected with, this Agreement.

Housing Authority of the County of San Bernardino

Maria Razo

Title: _____

Date: _____

RRM Design Group

Name

Title: _____

Date: _____

Attachment A

Scope of Services

Required services may include but are not limited to:

- 1) Review of Existing Schematic Designs.
- 2) Design Development (all disciplines-as needed on an individual project basis)
 - Architectural Design, Structural Design, MEP Design, Civil Design, Landscape Design, Materials Research and Specifications.
- 3) Construction Documents -
Drawings, Specifications, Detailed Cost Estimates.
- 4) Construction Procurement Services -
 - Bidding/Proposal Documents, Reproduction and Distribution of Bidding and Proposal Documents, Pre-Bid Conference/Selection Interviews, Bidding/Negotiation, Bid/Proposal Evaluation.
- 5) Construction Administration -
 - General Administration, Submittal Services, Site Visitation, On-Site Project Representation, Payment Certification, Administration of Testing and Inspection, Supplemental Documentation, Administration of Changes in Work, Interpretations and Decisions, Project Close-out.
- 6) Post Completion / Warranty Phase -
 - Maintenance & Operational Programming, Record Drawings, Warranty Review, Facility Operations and Performance Meeting, submission of HUD/Funding Agency Forms.

Fee Schedule:

PERSONNEL POSITIONS	CONTRACT PERIOD	
	LOADED HOURLY RATES	
	Initial Term – 2 Years	Option Years 3-5
Principal	\$ 185 - \$ 350	\$ 200 - \$ 365
Directors (Design/Planning/Architecture/Senior Project Management)	\$ 165 - \$ 280	\$ 180 - \$ 295
Associate Directors (Design/Planning/Architecture/ Project Management)	\$ 135 - \$ 240	\$ 150 - \$ 255
Senior Professionals (Senior Designer/Planner/Architect)	\$ 135 - \$ 235	\$ 150 - \$ 250
Professionals (Project Designer/Planner/Architect)	\$ 115 - \$ 185	\$ 130 - \$ 200
Professional Staff (Designer/Planner/Job Captain)	\$ 95 - \$ 155	\$ 110 - \$ 170
Senior Staff (Designer/Planner/Senior CADD)	\$ 95 - \$ 150	\$ 110 - \$ 165
Technical Staff (Graphics/CADD)	\$ 95 - \$ 150	\$ 110 - \$ 165
Administrative Staff (Dept. Asst./Word Processing)	\$ 75 - \$ 130	\$ 90 - \$ 145
Clerical	\$ 60 - \$ 95	\$ 75 - \$ 110
Other (specify)		
Other (specify)		

Attachment B
General Conditions for Non-Construction Work
(HUD – 5370C)

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. 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-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 \$150,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

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/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

18. 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.

19. 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.

20. 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.

21. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

22. 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) 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
- (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

CONTRACT FOR ARCHITECTURE SERVICES

This is a contract between the Housing Authority of the County of San Bernardino ("HACSB") and Sillman Wright Architects (collectively, the "Parties") for On-Call Architect Services.

1. Term

Section 1.1 The term of this contract is on an as-needed basis effective August 1, 2022 through July 31, 2024 with three single year options to extend through July 31, 2027 or until it is terminated by either or both parties. Termination shall be by 30 days prior written notice. All amounts owing under the contract shall be due and payable upon termination. In the event that work paid by HACSB to SILLMAN WRIGHT ARCHITECTS is contingent upon either bond issuance or developer advance of funds, such amounts shall remain due and payable until such time as developer advance is received and/or bond issuance has occurred, at such time HACSB shall pay all payable amounts associated therewith.

2. Services to be performed by Consultant

Section 2.1 SILLMAN WRIGHT ARCHITECTS agrees to perform the professional services for HACSB and to deliver the work products to HACSB as described in the Scope of Services attached as Attachment A hereto.

Section 2.2 Any proposed changes in the Architecture Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to the Scope of Services attached as Attachment A.

Section 2.3 Nothing in this Agreement shall give the Architect possession of authority with respect to any HACSB decision beyond the rendition of information, advice, recommendation or counsel.

3. Compensation

Section 3.1 HACSB agrees to pay SILLMAN WRIGHT ARCHITECTS for its Architecture Services a professional fee computed according to the Fee Schedule attached as Attachment A. In the event payment for work performed by SILLMAN WRIGHT ARCHITECTS is contingent upon either bond issuance or developer deposit, such amounts shall remain due and payable until such time as the deposit is received or bonds are issued. At such time, HACSB shall pay all amounts owing associated therewith in full.

Section 3.2 Records of the SILLMAN WRIGHT ARCHITECTS'S costs relating to (i) the Architecture Services performed under this Agreement and (ii) reimbursable expenses shall be kept and shall be available to HACSB or to HACSB's authorized representative at reasonable intervals during normal business hours.

4. Other Obligations of SILLMAN WRIGHT ARCHITECTS

Section 4.1 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by SILLMAN WRIGHT ARCHITECTS without the prior written consent of HACSB.

Section 4.2 In the performance of its Architecture Services hereunder, SILLMAN WRIGHT ARCHITECTS is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of HACSB) under any and all laws, whether existing or future.

Section 4.3 Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of HACSB will cause SILLMAN WRIGHT ARCHITECTS to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. HACSB and SILLMAN WRIGHT ARCHITECTS agree that SILLMAN WRIGHT ARCHITECTS is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. HACSB and SILLMAN WRIGHT ARCHITECTS also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the SILLMAN WRIGHT ARCHITECTS to be a "Public Official" or "participating in a governmental decision" as those terms are used in Section 87100.

5. Other Obligations of HACSB

Section 5.1 HACSB agrees to comply with all reasonable requests of SILLMAN WRIGHT ARCHITECTS and provide access to all documents reasonably necessary to the performance of SILLMAN WRIGHT ARCHITECTS'S duties under this Agreement.

Section 5.2 Neither this Agreement nor any duties or obligations under this Agreement may be assigned by HACSB without the prior written consent of SILLMAN WRIGHT ARCHITECTS.

6. Termination of Agreement

Section 6.1 Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Architecture Services set forth in Attachment "A" have been fully and completely performed and all proper invoices have been rendered and paid.

Section 6.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following receipt of notice of same.

7. General Provisions

Section 7.1 Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

For Sillman Wright Architects:

Sillman Wright Architects
31045 Temecula Parkway #202
Temecula, CA 92592
Attn: Brett Tullis

For HACSB:

Housing Authority of the County of San Bernardino
715 E. Brier Dr.
San Bernardino, CA 92408
Attn: Gus Joslin

Section 7.2 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.3 This Agreement will be governed by and construed in accordance with the laws of the State of California.

Section 7.4 Indemnification and insurance requirements:

For “design professional services” as defined in Civil Code section 2782.8, the following indemnification paragraph applies: **“Sillman Wright Architects shall indemnify HACSB for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.”**

For all other consultant services, the following indemnification paragraph applies: “The Sillman Wright Architects agrees to indemnify, defend (with counsel reasonably approved by 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 Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the HACSB on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Sillman Wright Architects’s indemnification obligation applies to the HACSB’s “active” as well as “passive” negligence but does not apply to the HACSB’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.”

Insurance – Without in anyway affecting the indemnity herein provided and in addition thereto the SILLMAN WRIGHT ARCHITECTS shall secure and maintain throughout the contract the following types of insurance with limits as shown:

Workers' Compensation – A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount or form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the consultant and all risks to such persons under this Agreement.

Comprehensive General and Automobile Liability Insurance – This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

Errors and Omission Liability Insurance – Combined single limits of \$1,000,000 for bodily injury and property damage and \$3,000,000 in the aggregate or

Professional Liability – Professional liability insurance with limits of at least \$1,000,000 per claim or occurrence.

Additional Named Insured – All policies, except for Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming HACSB and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.

Waiver of Subrogation Rights – Except for the Errors and Omissions Liability and Professional Liability, Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against HACSB, its officers, employees, agents, volunteers, contractors and subcontractors. ,

Policies Primary and Non-Contributory – Except for Workers’ Compensation and Professional Liability policies. All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by HACSB.

Proof of Coverage – SILLMAN WRIGHT ARCHITECTS shall immediately furnish certificates of insurance to HACSB administering the contract evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of service hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and SILLMAN WRIGHT ARCHITECTS shall maintain such insurance from the time SILLMAN WRIGHT ARCHITECTS commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement, the SILLMAN WRIGHT ARCHITECTS shall furnish certified copies of the policies and all endorsements.

Insurance Review – The above insurance requirements are subject to periodic review by HACSB. HACSB is authorized, but not required, to reduce or waive any of the above insurance requirements whenever HACSB determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of HACSB. In addition, if HACSB determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, HACSB is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against HACSB, inflation, or any other item reasonably related to HACSB's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or high coverage limits must be made by amendment to this Agreement. SILLMAN WRIGHT ARCHITECTS agrees to execute any such amendment within thirty (30) days of receipt.

8. Jury Trial Waiver

SILLMAN WRIGHT ARCHITECTS and HACSB hereby waive their respective right to trial by jury and agree to accept trial by judge alone for any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either SILLMAN WRIGHT ARCHITECTS against HACSB, or HACSB against SILLMAN WRIGHT ARCHITECTS, on any matter whatsoever arising out of, or in any way connected with, this Agreement.

Housing Authority of the County of San Bernardino

Sillman Wright Architects

Maria Razo

Name

Title: _____

Title: _____

Date: _____

Date: _____

Attachment A

Scope of Services

Required services may include but are not limited to:

- 1) Review of Existing Schematic Designs.
- 2) Design Development (all disciplines-as needed on an individual project basis)
 - Architectural Design, Structural Design, MEP Design, Civil Design, Landscape Design, Materials Research and Specifications.
- 3) Construction Documents -
Drawings, Specifications, Detailed Cost Estimates.
- 4) Construction Procurement Services -
 - Bidding/Proposal Documents, Reproduction and Distribution of Bidding and Proposal Documents, Pre-Bid Conference/Selection Interviews, Bidding/Negotiation, Bid/Proposal Evaluation.
- 5) Construction Administration -
 - General Administration, Submittal Services, Site Visitation, On-Site Project Representation, Payment Certification, Administration of Testing and Inspection, Supplemental Documentation, Administration of Changes in Work, Interpretations and Decisions, Project Close-out.
- 6) Post Completion / Warranty Phase -
 - Maintenance & Operational Programming, Record Drawings, Warranty Review, Facility Operations and Performance Meeting, submission of HUD/Funding Agency Forms.

Fee Schedule:

PERSONNEL POSITIONS	CONTRACT PERIOD	
	LOADED HOURLY RATES	
	Initial Term – 2 Years	Option Years 3-5
Principal	\$220	\$225
Directors (Design/Planning/Architecture/Senior Project Management)	\$190	\$195
Associate Directors (Design/Planning/Architecture/ Project Management)	\$185	\$190
Senior Professionals (Senior Designer/Planner/Architect)	\$180	\$185
Professionals (Project Designer/Planner/Architect)	\$170	\$175
Professional Staff (Designer/Planner/Job Captain)	\$160	\$165
Senior Staff (Designer/Planner/Senior CADD)	\$150	\$155
Technical Staff (Graphics/CADD)	\$120	\$125
Administrative Staff (Dept. Asst./Word Processing)	\$115	\$120
Clerical	\$110	\$115
Other (specify)	n/a	n/a
Other (specify)	n/a	n/a

Attachment B
General Conditions for Non-Construction Work
(HUD – 5370C)

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. 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-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 \$150,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

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/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

18. 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.

19. 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.

20. 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.

21. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

22. 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) 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
- (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

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

July 12, 2022

FROM

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

SUBJECT

Construction Contract for Concrete and Masonry Repairs at the Barstow 7th Street Complex with J. Cardenas Inc.

RECOMMENDATION(S)

1. Award contract No. PC1253, effective July 13, 2022, to J. Cardenas Inc. for concrete and masonry repairs at the 7th Street, Public Housing community in the city of Barstow, in an amount not to exceed \$343,201.
2. Authorize and direct the Executive Director to execute and deliver the contract to J. Cardenas Inc., 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 is a leading developer and provider of affordable housing in the County of San Bernardino.

HACSB residents live in safe and desirable homes and communities.

FINANCIAL IMPACT

The total contract amount is not expected to exceed \$343,201 and will be funded through the Housing Authority of the County of San Bernardino's (HACSB) reserve account that has been established for this property's Rental Assistance Demonstration (RAD) conversion process.

BACKGROUND INFORMATION

HACSB has actively pursued the United States Department of Housing and Urban Development's (HUD) RAD program in order to convert its Public Housing units to Project-Based Housing Choice Voucher (HCV) units. This allows for the stabilization of revenue to these communities as traditionally HCV funding has been less prone to federal funding cuts than the Public Housing program. HACSB has converted over 1,000 units under the RAD program since 2013 and the Barstow Public Housing community is one of the most recent RAD conversions.

One requirement of a property's RAD conversion is to conduct a Physical Condition Assessment (PCA) of the properties to determine capital needs improvements at each property. Completing the work identified in the PCA is a condition that must be met for the RAD conversion. The capital improvement work that has been identified in the PCA includes the repair of concrete and masonry work. This work will address potential trip hazards, reduce erosion, and improve the curb appeal for the property. HACSB has communicated to the contractor that they must work with HACSB staff to minimize any inconvenience to residents. Approval of this construction contract to J. Cardenas Inc. will allow for Concrete and Masonry Repairs at the Barstow 7th Street Complex.

PROCUREMENT

On September 30, 2021, HACSB issued a Request for Proposal (RFP) PC1250 for concrete and masonry repairs which resulted in the receipt of two proposals. Outreach efforts included email invitations to contractors and 250 vendor notifications through the agency's electronic bidding software, PlanetBids.com. The proposals were evaluated per the requirements of the Invitation for Bid (IFB) in which J. Cardenas Inc. had the best price, considered responsive, and determined best qualified to provide this service to HACSB.

Sealed bids were received by the deadline from the following organizations:		
<u>Contractors Name</u>	<u>Location</u>	<u>Total Proposed Amount</u>
J. Cardenas Inc	Victorville, California	\$343,201.00
Shipley Construction and Plumbing	Yucca Valley, California	\$697,065.00

Based on the responses for these services, which were solicited to an adequate number of sources and in accordance with Title 2 Code of Federal Regulations Part 200, staff recommends awarding a contract for concrete and masonry repairs upgrades to J. Cardenas Inc.

REVIEW BY OTHERS

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

CONTRACT FOR CONSTRUCTION PC1250 Concrete and Masonry 7th St. Barstow RAD

THIS CONTRACT FOR CONSTRUCTION AGREEMENT ("Agreement") is made as of the 13th day of July, 2022 by and between J. Cardenas Inc. ("Contractor"), and the Housing Authority of the County of San Bernardino, a 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. Description of Work. Contractor will furnish all work, labor, tools, equipment, materials, supervision, scheduling, coordination, and contract administration ("Work") necessary to construct and complete those certain improvements described on Exhibit "A", attached hereto and incorporated herein by reference ("Work"), which Work shall be performed in compliance with the plans and specifications described on Exhibit "A", attached hereto and incorporated herein. The Work shall be performed in a good and workmanlike manner. In connection with the performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Time of Completion. Contractor shall commence the Work on or after the date specified in the written Notice to Proceed issued by HACSB, and shall fully complete all Work within 90 calendar days after the commencement date.

ARTICLE 3. Price. This is a firm Fixed Price Agreement as that phrase is defined in the General Conditions (as hereinafter defined). The price shall not exceed \$343,201.00. This amount is full consideration for this Agreement as written.

ARTICLE 4. Payment. Unless otherwise specified, Payment shall be made in accordance with and in the manner specified in the General Conditions.

ARTICLE 5. Contract Documents. This Agreement incorporates by reference all of the following documents (the "Contract Documents"):

1. General Conditions (form HUD 5370), attached hereto as Exhibit "B" and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit "C" and incorporated herein by reference ("Additional Provisions").
3. Performance-Payment Bond ("Performance Bond"), attached hereto as Exhibit "D" and incorporated herein by reference.
4. Stipulation of Lien ("Stipulation of Lien"), attached hereto as Exhibit "E" and incorporated herein by reference.
5. Federal Labor Standards Provisions (form HUD-4010) attached hereto as Exhibit "F".
6. Applicable prevailing wages determined by the United States Department of Labor pursuant to Davis Bacon Wages: **General Decision Number: CA20220017 04/29/2022 MOD 9** as Exhibit "G"

7. All agreements, representations, warranties, covenants, and certifications of Contractor made in connection with this Agreement.
8. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U.S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 6. Best Efforts. 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 its services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor acknowledges that HACSB has the right to review the services performed by Contractor and may in its reasonable business discretion, reject such services in writing.

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 beyond the purposes set forth in Article 1 hereof. Contractor shall not be deemed to be a partner, joint venturer, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility, on behalf of HACSB or corporations affiliated with HACSB, other than as expressly herein provided.

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. Should Contractor determine that a delay in its performance has occurred, which is solely attributable to a failure of HACSB, Contractor will promptly notify HACSB in writing.

ARTICLE 10. Change Orders. HACSB shall have the right, from time to time, to make changes to the Work by change order as set forth in the Contract Documents.

ARTICLE 11. 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 12. 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 13. Performance Bond. Contractor certifies that prior to its commencement of Work it shall provide to HACSB a written, fully executed Performance Bond, in substantially the form attached hereto as Exhibit "D", and incorporated herein by reference.

ARTICLE 14. 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.

ARTICLE 15. Compliance with Contract Documents. Contractor shall comply with all of the Contract Documents in connection with the performance of the Work hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control.

ARTICLE 16. Warranty/Guarantee.

- a. Contractor warrants and guarantees that any work and/or materials supplied or installed in Contractor's performance of all contracts awarded and executed under this Agreement for HACSB will be done in accordance with the Plans and Specifications and that the Work, as installed, will fulfill the requirements of the Specifications. Contractor agrees to repair or replace any or all of its Work, together with any adjacent Work which may be displaced by so doing, that may prove to be defective in its workmanship or material within a period of two (2) years from the date of completion of the Project, except for ordinary wear and tear, unusual abuse or neglect on the part of HACSB.
- b. Contractor's warranty in no way supersedes any manufacturer's warranty or guarantee for any equipment or material supplied, or process used in the installation. The full effect of all manufacturers' warranties voided by improper installation or process will be guaranteed by Contractor for the full life of the manufacturer's warranty.
- c. In the event of Contractor's failure to comply with the conditions of this Article within a reasonable period of time as determined by HACSB and after being notified in writing, Contractor hereby authorizes HACSB to proceed to have said defect repaired and made good at Contractor's expense and will honor and pay the costs and charges therefore upon demand.

ARTICLE 17. Superintendence by Contractor. Contractor shall give his personal superintendence to the Work or have a competent superintendent, satisfactory to HACSB and/or the Architect, if any, on the Project at all times during progress with full authority to act for him.

ARTICLE 18. Accident Prevention. Contractor shall exercise proper precaution at all times for the protection of persons and property. The safety provisions of applicable law, building and construction codes shall be

observed, and Contractor shall take or cause to be taken such additional safety and health measures as HACSB may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the State of California Construction Safety Orders (CCR Title 8, Chapter 4, Subchapter 4, as amended) and the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable laws.

ARTICLE 19. Removal of Debris, Cleaning. Contractor shall, daily or as directed during the progress of the Work on the Project, remove and properly dispose of the resultant trash, dirt and debris, and keep the premises reasonably clear.

ARTICLE 20. Designation of Subcontractors.

- a. In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4100 et seq.) and any amendments thereof, each bidder shall set forth: (a) the name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to Contractor in or about the construction of the Project under this Agreement or a subcontractor licensed by the State of California who, under subcontract to Contractor, specially fabricates and installs a portion of the Project according to the Plans and Specifications in an amount in excess of one-half of one percent of Contractor's total bid, and (b) the portion of the Work which will be done by each subcontractor.
- b. If Contractor fails to specify a subcontractor or if Contractor specifies more than one subcontractor for the same portion of the Work performed for the Project in excess of one-half of one percent of Contractor's total bid, he shall be deemed to have agreed that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.
- c. Contractor shall not: (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by any one other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the Work on the Project in excess of one-half of one percent of Contractor's total bid as to which the original bid did not designate a subcontractor, except as authorized by HACSB.
- d. Subletting or subcontracting of any portion of the Work on the Project in excess of one-half of one percent of Contractor's total bid as to which no subcontractor has been designated in the original bid shall only be permitted in cases of public record of HACSB wherein HACSB has set forth the facts constituting the emergency or necessity.

ARTICLE 21. Stipulation of Lien. Contractor certifies that all Work executed under this Agreement will be performed in accordance with the Agreement terms and there will be no claims of laborers or mechanics for unpaid wages arising out of the performance of said Agreement. In consideration of the payment under the terms of the Agreement, Contractor hereby does release HACSB from any and all claims arising from any contract awarded by this process. Contractor shall prepare and submit to HACSB, a written Stipulation of Lien, in substantially the form attached hereto as Exhibit "F" and incorporated herein by reference. The Stipulation of Lien shall be recorded in the County Recorder's Office of San Bernardino County, California.

ARTICLE 22. 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.

ARTICLE 23. 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 24. 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-A Section 34 page 12). HACSB may serve written notice upon Contractor of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement, and, unless within ten (10) days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days, the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon any surety and Contractor, and any such surety shall have the right to take over and perform Contractor's obligations pursuant to this Agreement; provided, however, that if such surety does not provide HACSB written notice of its intention to take over and perform the Work required under this Agreement within fifteen (15) days after receiving such written notice, or such surety does not commence performance thereof within thirty (30) days after providing such written notice to HACSB, HACSB shall have the right to perform all uncompleted portions of the Work and to prosecute the same to completion by contract or by any other method it deems advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to HACSB for any excess costs occasioned HACSB thereby and, in such event, HACSB may, without liability for doing so, take possession of and utilize in completing the Work, such materials, appliances, and other property belonging to Contractor as may be on the site of the Work and necessary for the performance of the Work.

ARTICLE 25. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested.

All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

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

If to Contractor:

Javier Cardenas, President
J. Cardenas Inc.
12899 Nelliebell Dr.
Victorville, California 92392
javier@jcardenasinc.com

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 26. 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 27. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 28. 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 29. 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 30. 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 31. Licensed Contractor. Contractor represents and warrants that it is a licensed contractor in good standing with the California Contractors State License Board.

[END – SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, HACSB and Contractor have entered into this Agreement as of the Effective Date. July 13, 2022

Date: _____

J. Cardenas 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 "C"
GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS
PUBLIC HOUSING PROGRAMS
(form HUD – 5370)

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.
2. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Contractor warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Contractor's violation of this provision.
3. **CONTRACTOR'S POWER AND AUTHORITY:** Contractor warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Contractor agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
4. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
 - a. Contractor must strictly follow Agreement requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. HACSB may permit use of an alternate carrier at no additional cost to HACSB with advance written authorization of HACSB.
 - b. If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by HACSB and a waiver is granted in writing and in advance of shipping.
 - c. On "F.O.B. Shipping Point" transactions, should any shipments under the Agreement be received by HACSB in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of HACSB, shall at Contractor's own expense assist HACSB in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
5. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
6. **DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in the Agreement. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, HACSB shall not be required to make any payment for the excess goods, and may return them to Contractor, at Contractor's expense, or utilize any other rights available to HACSB at law or in equity.
7. **SUBSTITUTIONS:** Substitution of goods may not be tendered, without advance written consent of HACSB. Contractor shall not use any specification in lieu of those contained in the Agreement, without written consent of HACSB.

8. INSPECTION, ACCEPTANCE AND REJECTION:

- a. Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to HACSB covering goods and services under this Agreement and will tender to HACSB only those goods that have been inspected and found to conform to the requirements of this Agreement. Contractor will keep records evidencing inspections and their result, and will make these records available to HACSB during performance of the Work and for three years after final payment. Contractor shall permit HACSB to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the Work.
- b. All goods may be subject to inspection and test by HACSB or its authorized representatives.
- c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to HACSB. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d. All goods to be delivered hereunder may be subject to final inspection, test and acceptance by HACSB at destination, notwithstanding any payment or inspection at source.
- e. HACSB shall give written notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. If HACSB does not provide such notice of rejection within thirty (30) days, unless otherwise specified in the Statement of Work, of delivery, such goods and services will be deemed to have been accepted. Acceptance by HACSB will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that HACSB might have at law or by express reservation in this Agreement with respect to any nonconformity.

9. SAMPLES:

- a. Samples of items may be required by HACSB for inspection and specification testing and must be furnished free of expense to HACSB. The samples furnished must be identical in all respects to the products bid and/or specified in the Agreement.
- b. Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

10. WARRANTY: Unless otherwise specified, the warranties contained in this Agreement begin after acceptance has occurred.

- a. Contractor warrants that goods and services furnished hereunder will conform to the requirements of this Agreement (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by HACSB, free from defects in design. HACSB's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.
- b. All warranties, including special warranties specified elsewhere herein, shall inure to HACSB, its successors, assigns, customer agencies and users of the goods or services.

11. SAFETY AND ACCIDENT PREVENTION: In performing the Work under this Agreement on HACSB premises, Contractor shall conform to any specific safety requirements contained in the Agreement or as required by law or regulation. Contractor shall take any additional precautions as HACSB may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Agreement in accordance with the default provisions hereof.

12. ACCIDENT PREVENTION: Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions issued by the Industrial Accident Commission of the State of California.

13. INSURANCE: Contractor shall not commence Work under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the

subcontractor has been so obtained and approved. Contractor shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Any policy of insurance required of Contractor under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

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

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

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

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

- b. General Liability Insurance. Contractor, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence. 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 and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Contractor shall be named as an additional insured with respect to such automobile liability insurance policy.

14. FORCE MAJEURE: Contractor shall be excused for performing the Work hereunder in the event that Contractor is unable to perform the Work for one of the following reasons:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal, state or local government in either its sovereign or contractual capacity.

Such delay shall be for the period of time that Contractor is delayed from performing the Work as a direct result of one of the foregoing reasons. Contractor shall provide HACSB notice within three (3) days of any such force majeure event.

15. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Contractor, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at

Contractor's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Contractor.

- b. Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Contractor during the Agreement.
16. **INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
 17. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
 18. **TAXES:** HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.
 19. **NEWLY MANUFACTURED GOODS:** All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.
 20. **NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.
 21. **PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:**
 - a. Contractor shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.
 - b. Contractor may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
 - c. Contractor, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Contractor or the operation of such goods pursuant to a current version of Contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. Contractor shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Contractor shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
 - d. Should the goods or software, or the operation thereof, become, or in Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Contractor at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Contractor agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Contractor under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Contractor agrees to take back such goods or software and refund any sums HACSB has paid Contractor.
 - e. Contractor shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

- i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Contractor; or,
 - ii. The operation of equipment furnished by Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Contractor supplied software.
- f. Contractor certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Contractor to HACSB with respect to infringement of patents, copyrights or trade secrets.

22. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Contractor, require Contractor to stop all, or any part, of the Work called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
- i. Cancel the Stop Work Order; or
 - ii. Terminate the Work covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Agreement; and
 - 2. Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- b. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- c. HACSB shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this clause.

- 23. COVENANT AGAINST GRATUITIES:** Contractor warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

- 24. COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Contractor certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Work, Contractors of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Contractor may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Contractor shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.
- HACSB shall have the right to audit Contractor, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Contractor agrees to maintain accurate books and records in connection with the Work, and all payments made or received by Contractor pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Contractor shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Contractor in connection with the Work, and shall permit HACSB to interview any such employees, contractors or subcontractors. Contractor agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Work shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that Contractor's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by Contractor and its subcontractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.
- 25. CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Contractor agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Contractor's books and records, and interview Contractor's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
- 26. EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Contractor certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- 27. NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
- 28. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to

comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

29. **DRUG-FREE WORKPLACE CERTIFICATION:** Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
30. **RECYCLING:** Contractor shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.
31. **LEAD BASED PAINT PROHIBITION:** For any contract for construction or rehabilitation, Contractor certifies that it shall comply with 24 CFR Part 35 prohibiting the use of lead-based paint.
32. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Contractor certifies that it complies with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
33. **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.
34. **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.
35. **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).
36. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will

immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

- 37. DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

PERFORMANCE – PAYMENT BOND

KNOW ALL ME BY THESE PRESENTS: That we _____ (Contractor) _____, a _____ (corporation) hereinafter called "Principal" and _____ (Surety) of _____, State of _____, hereinafter called the "Surety", are held and firmly bound unto _____ (Owner) _____ of _____ (City and State), hereinafter called "Owner" in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of: _____

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extension thereof which may be granted to the Owner, which or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

[END – SIGNATURES FOLLOW NEXT PAGE]

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of shall be deemed an original, this the _____ day of _____, 20____.

ATTEST:

"PRINCIPAL"

(Principal) Secretary

(Seal)

BY: _____
NAME: _____

Witness as to Principal

(Address – Zip Code)

"SURETY"

(Surety) Secretary

(Seal)

BY: _____
NAME: _____
ITS: Attorney-in-Fact

Witness as to Surety

(Address – Zip Code)

(Address – Zip Code)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute bond.

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO
715 E. BRIER DRIVE
SAN BERNARDINO, CA 92408-2841
(909) 890-0644 FAX (909) 890-4618

STIPULATION OF LIEN

Contract Number: PC1250 Concrete and Masonry 7th St. Barstow RAD

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned certifies that all contract work executed under the aforesaid Contract Number PC1250 will be performed in accordance with the contract terms thereof and there will be no claims of laborers or mechanics for unpaid wages arising out of the performance of said contract.
2. That, in consideration of the payment of the amount of any contract awarded, the undersigned does hereby release the Housing Authority of the County of San Bernardino from any and all claims arising from any contract awarded by this process.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this _____ day of _____, 20____.

By: _____

Title: _____

NAME AND ADDRESS OF CONTRACTOR:

Sworn before me this _____ day of _____, 20____.

(Notary Public)

My Commission Expires _____
(Date)

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

July 12, 2022

FROM

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

SUBJECT

Construction Contract for replacement of entry doors and windows at the Barstow 7th Street Complex with Shipley Construction and Plumbing.

RECOMMENDATION(S)

1. Award contract No. PC1256, effective July 13, 2022, to Shipley Construction and Plumbing for replacement of entry doors and windows at the 7th Street Complex, Public Housing community in the city of Barstow, in an amount not to exceed \$610,352.89.
2. Authorize and direct the Executive Director to execute and deliver the contract to Shipley Construction and Plumbing, 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 is a leading developer and provider of affordable housing in the County of San Bernardino.

HACSB residents live in safe and desirable homes and communities.

FINANCIAL IMPACT

The total contract amount is not expected to exceed \$610,352.89 and will be funded through the Housing Authority of the County of San Bernardino's (HACSB) reserve account that has been established for this property's Rental Assistance Demonstration (RAD) conversion process.

BACKGROUND INFORMATION

HACSB has actively pursued the United States Department of Housing and Urban Development's (HUD) RAD program in order to convert its Public Housing units to Project-Based Housing Choice Voucher (HCV) units. This allows for the stabilization of revenue to these communities as traditionally HCV funding has been less prone to federal funding cuts than the Public Housing program. HACSB has converted over 1,000 units under the RAD program since 2013 and the Barstow Public Housing community is one of the most recent RAD conversions.

One requirement of a property's RAD conversion is to conduct a Physical Condition Assessment (PCA) of the properties to determine capital needs improvements at each property. Completing the work identified in the PCA is a condition that must be met for the RAD conversion. The capital improvement work that has been identified in the PCA includes the replacement of entry doors and windows. This work will improve resident comfort level and reduce heating/cooling costs by improving the insulation factor at the entry points of the units. HACSB has communicated to the contractor that they must work with HACSB staff to minimize any inconvenience to residents. Approval of this construction contract to Shipley Construction and Plumbing will allow for the replacement of entry doors and windows in the 74 units at the Barstow 7th Street Complex.

Construction Contract for replacement of entry doors and windows at the Barstow 7th Street Complex with Shipley Construction and Plumbing.
July 12, 2022

PROCUREMENT

On October 22, 2021, HACSB issued a Request for Proposal (RFP) PC1256 for concrete and masonry repairs which resulted in the receipt of two proposals. Outreach efforts included email invitations to contractors and notifications through the agency's electronic bidding software, PlanetBids.com a total of 98 HACSB vendors along with 250 external vendors. The proposals were evaluated per the requirements of the Invitation for Bid (IFB) in which Shipley Construction and Plumbing had the best price, considered responsive, and determined best qualified to provide this service to HACSB.

Sealed bids were received by the deadline from the following organizations:		
<u>Contractors Name</u>	<u>Location</u>	<u>Total Proposed Amount</u>
Shipley Construction and Plumbing	Yucca Valley, California	\$610,352.89
California Custom Builders	Ventura, California	\$666,267.73

Based on the responses for these services, which were solicited to an adequate number of sources and in accordance with Title 2 Code of Federal Regulations Part 200, staff recommends awarding a contract for replacement of entry doors and windows to Shipley Construction and Plumbing.

REVIEW BY OTHERS

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

CONTRACT FOR CONSTRUCTION PC1256 Door & Window Replacement, Barstow 7th RAD

THIS CONTRACT FOR CONSTRUCTION AGREEMENT ("Agreement") is made as of the 13th day of July, 2022 by and between Shipley Construction & Plumbing ("Contractor"), and the Housing Authority of the County of San Bernardino, a 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. Description of Work. Contractor will furnish all work, labor, tools, equipment, materials, supervision, scheduling, coordination, and contract administration ("Work") necessary to construct and complete those certain improvements described on Exhibit "A", attached hereto and incorporated herein by reference ("Work"), which Work shall be performed in compliance with the plans and specifications described on Exhibit "A", attached hereto and incorporated herein. The Work shall be performed in a good and workmanlike manner. In connection with the performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Time of Completion. Contractor shall commence the Work on or after the date specified in the written Notice to Proceed issued by HACSB, and shall fully complete all Work within 240 calendar days after the commencement date.

ARTICLE 3. Price. This is a firm Fixed Price Agreement as that phrase is defined in the General Conditions (as hereinafter defined). The price shall not exceed \$610,352.89. This amount is full consideration for this Agreement as written.

ARTICLE 4. Payment. Unless otherwise specified, Payment shall be made in accordance with and in the manner specified in the General Conditions.

ARTICLE 5. Contract Documents. This Agreement incorporates by reference all of the following documents (the "Contract Documents"):

1. General Conditions (form HUD 5370), attached hereto as Exhibit "B" and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit "C" and incorporated herein by reference ("Additional Provisions").
3. Performance-Payment Bond ("Performance Bond"), attached hereto as Exhibit "D" and incorporated herein by reference.
4. Stipulation of Lien ("Stipulation of Lien"), attached hereto as Exhibit "E" and incorporated herein by reference.
5. Federal Labor Standards Provisions (form HUD 4010) attached here to as Exhibit "F".
6. Applicable prevailing wages determined by the United States Department of Labor pursuant to Davis Bacon Wages: **General Decision Number: CA20220017 04/29/2022 MOD 9**. Attached hereto as Exhibit "G" and incorporated herein by reference.

7. All agreements, representations, warranties, covenants, and certifications of Contractor made in connection with the procurement of this Agreement.
8. All applicable Federal, State, and Local laws, ordinances and regulations related to this Agreement shall be incorporated herein by reference. This Agreement is funded by the U.S. Department of Housing and Urban Development, and is subject to all regulations and requirements for agreements funded by HUD. Federal Regulations may be found at <http://www.gpoaccess.gov>. State of California regulations may be found at <http://www.leginfo.ca.gov>. For laws the County of San Bernardino, go to <http://www.sblawlibrary.org>.

ARTICLE 6. Best Efforts. 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 its services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor acknowledges that HACSB has the right to review the services performed by Contractor and may in its reasonable business discretion, reject such services in writing.

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 beyond the purposes set forth in Article 1 hereof. Contractor shall not be deemed to be a partner, joint venturer, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility, on behalf of HACSB or corporations affiliated with HACSB, other than as expressly herein provided.

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. Should Contractor determine that a delay in its performance has occurred, which is solely attributable to a failure of HACSB, Contractor will promptly notify HACSB in writing.

ARTICLE 10. Change Orders. HACSB shall have the right, from time to time, to make changes to the Work by change order as set forth in the Contract Documents.

ARTICLE 11. 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 12. 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 13. Performance Bond. Contractor certifies that prior to its commencement of Work it shall provide to HACSB a written, fully executed Performance Bond, in substantially the form attached hereto as Exhibit "D", and incorporated herein by reference.

ARTICLE 14. 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.

ARTICLE 15. Compliance with Contract Documents. Contractor shall comply with all of the Contract Documents in connection with the performance of the Work hereunder. In the event of any conflict between this Agreement and the Contract Documents, the Contract Documents shall control.

ARTICLE 16. Warranty/Guarantee.

- a. Contractor warrants and guarantees that any work and/or materials supplied or installed in Contractor's performance of all contracts awarded and executed under this Agreement for HACSB will be done in accordance with the Plans and Specifications and that the Work, as installed, will fulfill the requirements of the Specifications. Contractor agrees to repair or replace any or all of its Work, together with any adjacent Work which may be displaced by so doing, that may prove to be defective in its workmanship or material within a period of two (2) years from the date of completion of the Project, except for ordinary wear and tear, unusual abuse or neglect on the part of HACSB.
- b. Contractor's warranty in no way supersedes any manufacturer's warranty or guarantee for any equipment or material supplied, or process used in the installation. The full effect of all manufacturers' warranties voided by improper installation or process will be guaranteed by Contractor for the full life of the manufacturer's warranty.
- c. In the event of Contractor's failure to comply with the conditions of this Article within a reasonable period of time as determined by HACSB and after being notified in writing, Contractor hereby authorizes HACSB to proceed to have said defect repaired and made good at Contractor's expense and will honor and pay the costs and charges therefore upon demand.

ARTICLE 17. Superintendence by Contractor. Contractor shall give his personal superintendence to the Work or have a competent superintendent, satisfactory to HACSB and/or the Architect, if any, on the Project at all times during progress with full authority to act for him.

ARTICLE 18. Accident Prevention. Contractor shall exercise proper precaution at all times for the protection of persons and property. The safety provisions of applicable law, building and construction codes shall be

observed, and Contractor shall take or cause to be taken such additional safety and health measures as HACSB may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the State of California Construction Safety Orders (CCR Title 8, Chapter 4, Subchapter 4, as amended) and the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable laws.

ARTICLE 19. Removal of Debris, Cleaning. Contractor shall, daily or as directed during the progress of the Work on the Project, remove and properly dispose of the resultant trash, dirt and debris, and keep the premises reasonably clear.

ARTICLE 20. Designation of Subcontractors.

- a. In compliance with the Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4100 et seq.) and any amendments thereof, each bidder shall set forth: (a) the name, the location of the place of business, and the California contractor license number of each subcontractor who will perform work or labor or render service to Contractor in or about the construction of the Project under this Agreement or a subcontractor licensed by the State of California who, under subcontract to Contractor, specially fabricates and installs a portion of the Project according to the Plans and Specifications in an amount in excess of one-half of one percent of Contractor's total bid, and (b) the portion of the Work which will be done by each subcontractor.
- b. If Contractor fails to specify a subcontractor or if Contractor specifies more than one subcontractor for the same portion of the Work performed for the Project in excess of one-half of one percent of Contractor's total bid, he shall be deemed to have agreed that he is fully qualified to perform that portion himself, and that he shall perform that portion himself.
- c. Contractor shall not: (a) substitute any subcontractor, (b) permit any subcontract to be voluntarily assigned or transferred or allow it to be performed by any one other than the original subcontractor listed in the original bid, or (c) sublet or subcontract any portion of the Work on the Project in excess of one-half of one percent of Contractor's total bid as to which the original bid did not designate a subcontractor, except as authorized by HACSB.
- d. Subletting or subcontracting of any portion of the Work on the Project in excess of one-half of one percent of Contractor's total bid as to which no subcontractor has been designated in the original bid shall only be permitted in cases of public record of HACSB wherein HACSB has set forth the facts constituting the emergency or necessity.

ARTICLE 21. Stipulation of Lien. Contractor certifies that all Work executed under this Agreement will be performed in accordance with the Agreement terms and there will be no claims of laborers or mechanics for unpaid wages arising out of the performance of said Agreement. In consideration of the payment under the terms of the Agreement, Contractor hereby does release HACSB from any and all claims arising from any contract awarded by this process. Contractor shall prepare and submit to HACSB, a written Stipulation of Lien, in substantially the form attached hereto as Exhibit "F" and incorporated herein by reference. The Stipulation of Lien shall be recorded in the County Recorder's Office of San Bernardino County, California.

ARTICLE 22. 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.

ARTICLE 23. 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 24. 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-A Section 34 page 12). HACSB may serve written notice upon Contractor of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement, and, unless within ten (10) days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days, the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon any surety and Contractor, and any such surety shall have the right to take over and perform Contractor's obligations pursuant to this Agreement; provided, however, that if such surety does not provide HACSB written notice of its intention to take over and perform the Work required under this Agreement within fifteen (15) days after receiving such written notice, or such surety does not commence performance thereof within thirty (30) days after providing such written notice to HACSB, HACSB shall have the right to perform all uncompleted portions of the Work and to prosecute the same to completion by contract or by any other method it deems advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to HACSB for any excess costs occasioned HACSB thereby and, in such event, HACSB may, without liability for doing so, take possession of and utilize in completing the Work, such materials, appliances, and other property belonging to Contractor as may be on the site of the Work and necessary for the performance of the Work.

ARTICLE 25. Notices. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested.

All notices sent pursuant to this Agreement shall be addressed as follows:

If to HACSB:

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

If to Contractor:

Ross Shipley, Owner
Shipley Construction & Plumbing
5075 Redding
Yucca Valley, CA 92284
Keithjohnson_1@msn.com

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 26. 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 27. Applicable Law/Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, with proper venue for any litigation in San Bernardino County, California.

ARTICLE 28. 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 29. 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 30. 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 31. Licensed Contractor. Contractor represents and warrants that it is a licensed contractor in good standing with the California Contractors State License Board.

[END – SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, HACSB and Contractor have entered into this Agreement as of the Effective Date. July 13, 2022

Date: _____

Shipley Construction & Plumbing

By: _____ (Affix seal if a corporation)

Name: _____

Its: _____

CERTIFICATE OF CORPORATE AUTHORITY

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

By: _____

Name: _____

Its: _____

Date: _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Name: Maria Razo

Its: Executive Director

Date: _____

EXHIBIT "C"
GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS
PUBLIC HOUSING PROGRAMS
(form HUD – 5370)

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.
2. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Contractor warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, the State of California and HACSB and agrees to indemnify HACSB against any loss, cost, damage or liability by reason of Contractor's violation of this provision.
3. **CONTRACTOR'S POWER AND AUTHORITY:** Contractor warrants that it has full power and authority to enter into and perform its obligations under this Agreement, and will hold HACSB harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this Agreement. Further, Contractor agrees that it will not enter into any arrangement with any third party which might abridge any rights of HACSB under this Agreement.
4. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by HACSB unless expressly included and itemized in the Agreement.
 - a. Contractor must strictly follow Agreement requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. HACSB may permit use of an alternate carrier at no additional cost to HACSB with advance written authorization of HACSB.
 - b. If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by HACSB and a waiver is granted in writing and in advance of shipping.
 - c. On "F.O.B. Shipping Point" transactions, should any shipments under the Agreement be received by HACSB in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of HACSB, shall at Contractor's own expense assist HACSB in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
5. **TIME IS OF THE ESSENCE:** Time is of the essence in this Agreement.
6. **DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in the Agreement. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, HACSB shall not be required to make any payment for the excess goods, and may return them to Contractor, at Contractor's expense, or utilize any other rights available to HACSB at law or in equity.
7. **SUBSTITUTIONS:** Substitution of goods may not be tendered, without advance written consent of HACSB. Contractor shall not use any specification in lieu of those contained in the Agreement, without written consent of HACSB.

8. INSPECTION, ACCEPTANCE AND REJECTION:

- a. Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to HACSB covering goods and services under this Agreement and will tender to HACSB only those goods that have been inspected and found to conform to the requirements of this Agreement. Contractor will keep records evidencing inspections and their result, and will make these records available to HACSB during performance of the Work and for three years after final payment. Contractor shall permit HACSB to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the Work.
- b. All goods may be subject to inspection and test by HACSB or its authorized representatives.
- c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to HACSB. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d. All goods to be delivered hereunder may be subject to final inspection, test and acceptance by HACSB at destination, notwithstanding any payment or inspection at source.
- e. HACSB shall give written notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. If HACSB does not provide such notice of rejection within thirty (30) days, unless otherwise specified in the Statement of Work, of delivery, such goods and services will be deemed to have been accepted. Acceptance by HACSB will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that HACSB might have at law or by express reservation in this Agreement with respect to any nonconformity.

9. SAMPLES:

- a. Samples of items may be required by HACSB for inspection and specification testing and must be furnished free of expense to HACSB. The samples furnished must be identical in all respects to the products bid and/or specified in the Agreement.
- b. Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

10. WARRANTY: Unless otherwise specified, the warranties contained in this Agreement begin after acceptance has occurred.

- a. Contractor warrants that goods and services furnished hereunder will conform to the requirements of this Agreement (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by HACSB, free from defects in design. HACSB's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.
- b. All warranties, including special warranties specified elsewhere herein, shall inure to HACSB, its successors, assigns, customer agencies and users of the goods or services.

11. SAFETY AND ACCIDENT PREVENTION: In performing the Work under this Agreement on HACSB premises, Contractor shall conform to any specific safety requirements contained in the Agreement or as required by law or regulation. Contractor shall take any additional precautions as HACSB may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Agreement in accordance with the default provisions hereof.

12. ACCIDENT PREVENTION: Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions issued by the Industrial Accident Commission of the State of California.

13. INSURANCE: Contractor shall not commence Work under this Agreement until all insurance required under this paragraph has been obtained and such insurance has been approved by HACSB, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the

subcontractor has been so obtained and approved. Contractor shall furnish HACSB with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Any policy of insurance required of Contractor under this Agreement shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to HACSB of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required hereunder shall be issued by a California admitted insurance carrier.

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

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

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

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

- b. General Liability Insurance. Contractor, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence. 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 and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Contractor shall be named as an additional insured with respect to such automobile liability insurance policy.

14. FORCE MAJEURE: Contractor shall be excused for performing the Work hereunder in the event that Contractor is unable to perform the Work for one of the following reasons:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal, state or local government in either its sovereign or contractual capacity.

Such delay shall be for the period of time that Contractor is delayed from performing the Work as a direct result of one of the foregoing reasons. Contractor shall provide HACSB notice within three (3) days of any such force majeure event.

15. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of HACSB, employees of HACSB, persons designated by HACSB for training, or any other person(s) other than agents or employees of Contractor, designated by HACSB for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at

Contractor's site or at HACSB's place of business, provided that the injury or damage was caused by the fault or negligence of Contractor.

- b. Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by Contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by Contractor during the Agreement.
16. **INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. The State of California and other sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
17. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the Agreement for work completed through the date of invoice. HACSB will pay properly submitted, undisputed invoices not more than thirty (30) days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
18. **TAXES:** HACSB will only pay for any state or local sales or use taxes on the services rendered or goods supplied to HACSB pursuant to this Agreement.
19. **NEWLY MANUFACTURED GOODS:** All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.
20. **NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this Agreement shall not be made without prior written approval of HACSB.
21. **PATENT, COPYRIGHT and TRADE SECRET INDEMNITY:**
 - a. Contractor shall hold HACSB, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the Agreement.
 - b. Contractor may be required to furnish a bond to HACSB against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
 - c. Contractor, at its own expense, shall defend any action brought against HACSB to the extent that such action is based upon a claim that the goods or software supplied by Contractor or the operation of such goods pursuant to a current version of Contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. Contractor shall pay those costs and damages finally awarded against HACSB in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Contractor shall be notified within a reasonable time in writing by HACSB of any notice of such claim; and,
 - ii. That Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided, however, that when principles of government or public law are involved, HACSB shall have the option to participate in such action at its own expense.
 - d. Should the goods or software, or the operation thereof, become, or in Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, HACSB shall permit Contractor at its option and expense either to procure for HACSB the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by HACSB shall be prevented by injunction, Contractor agrees to take back such goods or software and make every reasonable effort to assist HACSB in procuring substitute goods or software. If, in the sole opinion of HACSB, the return of such infringing goods or software makes the retention of other goods or software acquired from Contractor under this Agreement impractical, HACSB shall then have the option of terminating such Agreement, or applicable portions thereof, without penalty or termination charge. Contractor agrees to take back such goods or software and refund any sums HACSB has paid Contractor.
 - e. Contractor shall have no liability to HACSB under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

- i. The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by Contractor; or,
 - ii. The operation of equipment furnished by Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or
 - iii. The modification by HACSB of the equipment furnished hereunder or of the software; or
 - iv. The combination or utilization of software furnished hereunder with non-Contractor supplied software.
- f. Contractor certifies that it has appropriate systems and controls in place to ensure that HACSB funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g. The foregoing states the entire liability of Contractor to HACSB with respect to infringement of patents, copyrights or trade secrets.

22. STOP WORK:

- a. HACSB may, at any time, by written Stop Work order ("Stop Work Order") to Contractor, require Contractor to stop all, or any part, of the Work called for by this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, HACSB shall either:
- i. Cancel the Stop Work Order; or
 - ii. Terminate the Work covered by the Stop Work Order as provided for in the termination for default or the voluntary termination provision of this Agreement.
 - iii. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume work. HACSB shall make an equitable adjustment in the delivery schedule, the price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - 1. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Agreement; and
 - 2. Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if HACSB decides the facts justify the action, HACSB may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- b. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the provision entitled Voluntary Termination, HACSB shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- c. HACSB shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this clause.

- 23. COVENANT AGAINST GRATUITIES:** Contractor warrants that it complies with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3), and that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of HACSB with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, HACSB shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by HACSB in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of HACSB provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

- 24. COMPLIANCE WITH DAVIS-BACON ACT:** For construction agreements in excess of \$2,000, Contractor certifies that it complies with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 3). Unless otherwise indicated in the Statement of Work, Contractors of HACSB are required, pursuant to 24 CFR 85.36(h)(5), to pay Davis-Bacon wage rates for all "construction contracts and related subcontracts in excess of \$2000," which means, for such jobs, the wage rates paid must be equal to or exceed the listed applicable Davis-Bacon wage rate. Compliance with this clause also means that Contractor may be subject to completing certain reports and to audits by HACSB and the Department of Housing and Urban Development. Such reports and information relating to compliance can be obtained at the Internet website: <http://www.gpo.gov/davisbacon/>. Contractor shall include the wage provisions of this clause in all subcontracts to perform work under this Agreement.
- HACSB shall have the right to audit Contractor, at any time, in order to ensure compliance with the requirements of this Section. In connection therewith, Contractor agrees to maintain accurate books and records in connection with the Work, and all payments made or received by Contractor pursuant to this Agreement, and to provide such information to HACSB, within five (5) business days of any request by HACSB. In addition, Contractor shall provide, upon two (2) business days request, information to HACSB of each and every employee retained by Contractor in connection with the Work, and shall permit HACSB to interview any such employees, contractors or subcontractors. Contractor agrees that all maintenance laborers and mechanics employed by it in connection with the performance of the Work shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that Contractor's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination, including any additional classifications and wage rates approved by HUD shall be posted at all times by Contractor and its subcontractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.
- 25. CALIFORNIA PREVAILING WAGE (IF AGREEMENT PRICE IS LESS THAN \$2,000):** In the event the Agreement Price is less than \$2,000, Contractor agrees to comply with all prevailing rate requirements of the California Labor Code. HACSB shall have the right to audit and inspect Contractor's books and records, and interview Contractor's employees, contractors and subcontractors, all according to the same provisions set forth in Section 26 above.
- 26. EQUAL EMPLOYMENT OPPORTUNITY:** For all construction agreements in excess of \$10,000, Contractor certifies its compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
- 27. NONDISCRIMINATION CLAUSE:**
- a. During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - b. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
- 28. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to

comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

29. **DRUG-FREE WORKPLACE CERTIFICATION:** Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
30. **RECYCLING:** Contractor shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.
31. **LEAD BASED PAINT PROHIBITION:** For any contract for construction or rehabilitation, Contractor certifies that it shall comply with 24 CFR Part 35 prohibiting the use of lead-based paint.
32. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Contractor certifies that it complies with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
33. **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.
34. **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.
35. **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).
36. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will

immediately advise HACSB of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

- 37. DOMESTIC PARTNERS:** For agreements over \$100,000 executed or amended after January 1, 2007, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

PERFORMANCE – PAYMENT BOND

KNOW ALL ME BY THESE PRESENTS: That we _____ (Contractor) _____, a _____ (corporation) hereinafter called "Principal" and _____ (Surety) of _____, State of _____, hereinafter called the "Surety", are held and firmly bound unto _____ (Owner) _____ of _____ (City and State), hereinafter called "Owner" in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction of: _____

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extension thereof which may be granted to the Owner, which or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

[END – SIGNATURES FOLLOW NEXT PAGE]

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each one of shall be deemed an original, this the _____ day of _____, 20_____.

ATTEST:

"PRINCIPAL"

(Principal) Secretary

(Seal)

BY: _____
NAME: _____

Witness as to Principal

(Address – Zip Code)

"SURETY"

(Surety) Secretary

(Seal)

BY: _____
NAME: _____
ITS: Attorney-in-Fact

Witness as to Surety

(Address – Zip Code)

(Address – Zip Code)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute bond.

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO
715 E. BRIER DRIVE
SAN BERNARDINO, CA 92408-2841
(909) 890-0644 FAX (909) 890-4618

STIPULATION OF LIEN

Contract Number: PC1256 Doors & Windows, 7th St. Barstow RAD

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned certifies that all contract work executed under the aforesaid Contract Number PC1253 will be performed in accordance with the contract terms thereof and there will be no claims of laborers or mechanics for unpaid wages arising out of the performance of said contract.
2. That, in consideration of the payment of the amount of any contract awarded, the undersigned does hereby release the Housing Authority of the County of San Bernardino from any and all claims arising from any contract awarded by this process.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this _____ day of _____, 20_____.

By: _____

Title: _____

NAME AND ADDRESS OF CONTRACTOR:

Sworn before me this _____ day of _____, 20_____.

(Notary Public)

My Commission Expires _____
(Date)

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

July 12, 2022

FROM

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

SUBJECT

Regular Meeting Minutes for Meeting Held on June 14, 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 June 14, 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 June 14, 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 June 29, 2022.

**MINUTES OF A REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF
THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO
June 14, 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 879 6767 9261, Password 856079) at 3:00 p.m. on June 14, 2022.

Details of the meeting discussion can be obtained through the recording of the Board of Commissioners meeting through a Public Records Request submitted in person or through the HACSB website: <https://hacsb.com/public-records-request/>

1) Call to Order and Roll Call

The meeting was called to order, and upon roll call, the following were present:

Vice-Chair Cooper
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Chair Johnson was recorded as absent.

Also in attendance were Maria Razo, Executive Director; Gus Joslin, Deputy Executive Director; Rishad Mitha, Director of Operations; Jennifer Dawson, Director of Human Resources; Nicole Beydler, Director of Policy and Public Relations; Jesse Diaz, Finance Manager; Renee Kangas, Sr. Management Analyst; George Silva, Family Empowerment Services Manager; Angie Lardapide, Procurement and Contracts Supervisor; Claudia Nuñez, Procurement Assistant; Clifford Goss, Procurement Officer; Ronald Kennedy, Management Analyst; Kristin Maithonis, Assistant Director of Housing Services; Evan Miles, Project Manager; Perlle Liu, Asset Management Analyst and Claudia Hurtado, Executive Assistant.

Also present, are 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 June 14, 2022 agenda. There were none.

3) General Public Comment

The Chair provided an opportunity for members of the public to address the Board of Commissioners. There was no public comment.

4) 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

5) 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

Following closed session item number 4 and closed session item number 5, General Counsel Fred Galante reported that the Board of Commissioners held a closed session to discuss the items listed on the agenda, and no reportable action was taken.

6) Executive Director's Report

The Executive Director's Report was requested.

Executive Director Razo gave the Executive Director's Report.

Discussion amongst the Board of Commissioners took place regarding the Executive Director's Report.

7) Board Building Presentation

The Board Building Presentation was requested.

The Board Building Presentation included an overview on the Fiscal Year 2022-2023 agency budget and the 2023 Moving to Work Annual Plan.

Board Building on the 2023 Moving to Work Annual Plan was presented by Renee Kangas, Sr. Management Analyst, and a presentation on the Fiscal Year 2022-2023 agency budget was presented by Jesse Diaz, Finance Manager.

Discussion amongst the Board of Commissioners took place regarding the Board Building.

8) Amendment No. 1 to Employment Agreement between the Housing Authority of the County of San Bernardino and Executive Director

Discussion calendar item number 8 to approve Amendment No. 1 to the Employment Agreement between the Housing Authority of the County of San Bernardino and Executive Director Maria Razo.

Legal Counsel to the Housing Authority of the County of San Bernardino Fred Galante explained the item.

Commissioner Tarango moved to approve discussion calendar item number 8, as recommended by staff and Commissioner MacDuff seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Vice-Chair Cooper
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

9) Resolution No. 152

Discussion calendar item number 9 to Adopt Resolution No. 152 a) Authorize the Housing Authority of the County of San Bernardino to enter into a New Member Agreement with the California Affordable Housing Agency; and b) 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 California Affordable Housing Agency New Member Agreement, and any ancillary documents necessary to carry out and establish membership was requested.

Deputy Executive Director Joslin explained the item.

Commissioner Tarango moved to approve discussion calendar item number 8, as recommended by staff and Commissioner Miller seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Vice-Chair Cooper
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

10) First Amendment to Loan Forgiveness Agreement with Knowledge and Education for Your Success

Discussion calendar item number 10 to 1) Approve First Amendment to Loan Forgiveness Agreement with Knowledge and Education for Your Success for the entirety of the loan amount of \$17,506.17, 2) Authorize and direct the Executive Director to execute and deliver the Amendment to Knowledge and Education for Your Success, 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 MacDuff moved to approve discussion calendar item number 10, as recommended by staff, and Commissioner Tarango duly seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Vice-Chair Cooper
Commissioner MacDuff

Nays

Commissioner Miller
Commissioner Tarango

11) Coin Operated Laundry Machine Services Contract with WASH Multifamily Laundry Systems, LLC.

Discussion calendar item number 11 to 1) Approve Contract No. PC1251, effective July 1, 2022, with WASH Multifamily Laundry Systems, LLC. for the provision of laundry vending services at a 53 percent gross laundry revenue, for a three-year period through June 30, 2025 with a single two year option to extend through June 30, 2027, 2) Authorize and direct the Executive Director to execute and deliver a contract to WASH Multifamily Laundry Systems, LLC. and, upon consultation with Legal Counsel, approve any non-substantive revisions necessary to complete the transaction, was requested.

Executive Director Razo explained the item.

Commissioner Tarango moved to approve discussion calendar item number 11, as recommended by staff, and Commissioner Miller duly seconded the motion. Upon roll call, the Ayes and Nays were as follows:

Ayes

Vice-Chair Cooper
Commissioner MacDuff
Commissioner Miller
Commissioner Tarango

Nays

12) Contract Amendment with Executive Inspections, LLC for Housing Quality Standards (HQS) Inspection – Alternative Inspection.

Discussion calendar item number 12 to 1) Approve Amendment No. 1 to Contract No. PC1204 effective July 1, 2022 with Executive Inspections, LLC for Housing Quality Standards (HQS) Inspections – Alternative Inspections, increasing the current contract amount by \$42,853.50 for a total contract amount not to exceed \$85,707 for the one-year option through June 30, 2023, 2) Authorize and direct the Executive Director to execute and deliver the contract amendment to Executive Inspections, 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 discussion calendar item number 11 as recommended by staff. The motion was duly seconded by Commissioner Miller, and upon roll call, the Ayes and Nays were as follows:

Ayes

Vice-Chair Cooper
Commissioner MacDuff
Commissioner Miller

Nays

Commissioner Tarango

13-20) Consent Items

Approval of the consent calendar agenda items numbers 13 - 20 was requested.

Commissioner Tarango moved to approve consent calendar agenda item numbers 13 - 20, to:

13) Approve the meeting minutes for the Board of Commissioners of the Housing Authority of the County of San Bernardino Regular Meeting held on May 10, 2022.

14) Approve and file Agency-wide Financial Statements through February 2022.

15) Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of March 2022.

16) Receive updates from staff on Emergency Housing Voucher implementation.

17) Adopt Resolution No. 151 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 June 16, 2022 through July 15, 2022.

18) To 1) Approve a grant of easement and right of way to Southwest Gas Corporation, to use and maintain an underground natural gas supply system on real property owned by the Housing Authority of the County of San Bernardino, at 1050 Deseret Avenue in the City of Barstow, 2) Authorize and direct the Executive Director, upon consultation with Legal Counsel, to accept and sign ancillary documents or exhibits necessary to finalize and record the grants of easement with the County of San Bernardino Recorder.

19) To 1) Approve Amendments to Contract No. PC1083, effective June 15, 2022, for on-call flooring services with Singer Carpets and Mike's Custom Flooring, Inc. exercising the one-time two-year option extension for both contracts through October 7, 2024, 2) Approve an appropriation in an amount not to exceed \$548,000 for on-call flooring services through October 7, 2024, 3) Authorize and direct the Executive Director to execute and deliver the contract amendments to Singer Carpets and Mike's Custom Flooring, Inc. and, upon consultation with Legal Counsel, to approve any non-substantive revisions necessary to complete the transaction.

20) Approve an increase in appropriations for temporary staffing services in the amount not to exceed of \$350,000 through July 22, 2023.

The motion was duly seconded by Commissioner Miller and upon roll call, the Ayes and Nays were as follows:

Ayes

Vice-Chair Cooper

Commissioner MacDuff

Commissioner Miller

Commissioner Tarango

Nays

Discussion amongst the Board of Commissioners took place regarding the Consent Calendar.

Vice-Chair Cooper provided an opportunity for individual board member comments. No Comments were presented by the board.

There being no other business, Commissioner MacDuff moved for the regular meeting of Tuesday, June 14, 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 5:01 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

July 12, 2022

FROM

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

SUBJECT

Agency-wide Financial Statements through March 2022

RECOMMENDATION(S)

Approve and file Agency-wide Financial Statements through March 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 March 2022 for Federal Fiscal Year (FFY) 2021-22 is \$(402,212). The net loss is currently lower than the anticipated \$5,932,156 budgeted net income, with a variance of \$6.3 million. The primary reasons for the budget variance are included below.

The primary reason for the budget variance is attributed to \$8.5 million less funding received for our Housing Choice Voucher program. Our budget reflects funding for a 100% lease rate and when actual expenses are lower than the expected lease rate, HUD provides us with less funding. The difference between the authorized funding amount and actual funding received is deposited into a HUD Held Reserve (HHR) account which can be used for future eligible expenses, with HUD's approval. The budget variance is also attributed to \$2.1 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 \$1.3 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 \$1.1 million (reflected in the extraordinary maintenance expenses line). Examples of extraordinary maintenance expenses budgeted include asphalt repairs, concrete repairs, roofing work and exterior painting. Depreciation expenses and other non-operating items are not budgeted and amount to \$2.9 million through March 2022.

Financial Summary	FY 2022 YTD
Revenues	\$74,315,266
Expenses	\$(71,793,792)
Operating Net Income/(Loss)	\$2,521,474
Operating Transfers/Non-Operating Items	\$(2,923,686)
Net Income/(Loss)	\$(402,212)

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 June 20, 2022.

HACSB Budget Comparison

Period = Oct 2021-Mar 2022

	YTD Actual	YTD Budget	Variance	% Var	Annual
INCOME					
TENANT INCOME					
Total Rental Income	13,450,639	13,046,670	403,969	3.10	26,093,339
Total Other Tenant Income	360,193	300,593	59,600	19.83	600,732
NET TENANT INCOME	13,810,832	13,347,263	463,569	3.47	26,694,072
GRANT INCOME					
TOTAL GRANT INCOME	57,968,632	68,410,339	-10,441,707	-15.26	136,820,678
OTHER INCOME					
TOTAL OTHER INCOME	2,535,802	3,970,204	-1,434,402	-36.13	6,918,012
TOTAL INCOME	74,315,266	85,727,807	-11,412,540	-13.31	170,432,762
EXPENSES					
GRANT EXPENSES					
TOTAL GRANT EXPENSES	3,114,531	5,190,515	2,075,984	40.00	10,381,030
ADMINISTRATIVE					
Total Administrative Salaries	6,574,642	7,097,874	523,232	7.37	14,891,275
Total Legal Expense	252,911	247,168	-5,743	-2.32	493,744
Total Other Admin Expenses	2,905,329	2,949,835	44,506	1.51	6,012,450
Total Miscellaneous Admin Expenses	1,123,739	1,527,373	403,635	26.43	2,799,577
TOTAL ADMINISTRATIVE EXPENSES	10,856,621	11,822,249	965,629	8.17	24,197,045
TENANT SERVICES					
TOTAL TENANT SERVICES EXPENSES	407,450	106,791	-300,659	-281.54	212,482
UTILITIES					
TOTAL UTILITY EXPENSES	1,816,326	1,940,475	124,149	6.40	3,883,825
MAINTENANCE AND OPERATIONS					
Total General Maint Expense	1,521,099	1,332,842	-188,257	-14.12	2,768,190
Total Materials	428,090	468,829	40,740	8.69	936,669
Total Contract Costs	1,490,294	2,020,604	530,311	26.25	4,048,806
TOTAL MAINTENANCE EXPENSES	3,439,483	3,822,276	382,793	10.01	7,753,664
GENERAL EXPENSES					
TOTAL GENERAL EXPENSES	775,642	623,312	-152,330	-24.44	1,218,695
EXTRAORDINARY MAINTENANCE EXPENSES					
TOTAL EXTRAORDINARY MAINTENANCE EXPENSES	919,693	2,001,740	1,082,047	54.06	3,710,753
HOUSING ASSISTANCE PAYMENTS					
TOTAL HOUSING ASSISTANCE PAYMENTS	49,747,612	53,560,471	3,812,859	7.12	107,120,942
FINANCING EXPENSE					
TOTAL FINANCING EXPENSES	716,434	727,821	11,387	1.56	1,455,642
TOTAL OPERATING EXPENSES	71,793,792	79,795,651	8,001,858	10.03	159,934,078
OPERATING NET INCOME	2,521,474	5,932,156	-3,410,682	-57.49	10,498,684
NET OPERATING TRANSFER IN/OUT	0	0	0	N/A	0
NON-OPERATING ITEMS					
TOTAL NON-OPERATING ITEMS	2,923,686	0	-2,923,686	N/A	0
NET INCOME	-402,212	5,932,156	-6,334,368	-106.78	10,498,684

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

July 12, 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 April 2022

RECOMMENDATION(S)

Approve vacated tenant accounts for the Authority Owned Portfolio to be written off as collection losses for the month of April 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 April 30, 2022, is \$23,151.48. 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. The total write-off for the month of April 2022 is \$23,151.48, as delineated in the following table. Attached is a worksheet that itemizes the individual accounts.

Vacated Tenant Accounts for the Authority Owned Portfolio to be Written Off as Collection Loss
for the Month of April 2022
July 12 2022

SUMMARY BY PROPERTY MANAGEMNT		
PROPERTY	NO. VACATED	TOTAL
203 - Maplewood	1	5,268.99
207 - Barstow	1	6,488.00
407 - Sunset Pointe	0	-
408 - Sunrise Vista	2	1,058.00
416 - Arrowhead	1	555.00
425a - Sequoia	1	10,446.54
426 - Sunnyside	0	-
437 - Sunset Gardens	0	-
467 - Hillcrest	1	50.00
Concessions Write Off	0	-
TOTAL RENT WRITE OFF	7	23,866.53
Miscellaneous Charges		366.00
Maintenance Charges		2,042.95
Legal Charges		-
Security Deposits Applied		(3,124.00)
NET TOTAL WRITE OFF		23,151.48

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by General Legal Counsel, Fred Galante, on June 29, 2022.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End: 04/30/22

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
203 - Maplewood													
1	O	E		S	1,218.00	5,268.99		300.00	1,315.67	-	6,884.66	1,099.00	5,785.66
TOTALS:						5,268.99	-	300.00	1,315.67	-	6,884.66	1,099.00	5,785.66

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	Notice of Abandonment	03/22/22	Posted	NA	NA	NA		NA	NA	04/11/22

207 - Barstow													
1	B	L		V	1,707.00	6,488.00			640.00		7,128.00	500.00	6,628.00
TOTALS:						6,488.00	-	-	640.00	-	7,128.00	500.00	6,628.00

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
1	Notice to Vacate	N/A	N/A	N/A	N/A	N/A		N/A	N/A	04/04/22

407 - Sunset Pointe													
1	M	S							(314.60)		(314.60)		(314.60)
2	R	W							(192.64)		(192.64)		(192.64)
3	K	C							(66.60)		(66.60)		(66.60)
4	W	R					-		221.98		221.98		221.98
TOTALS:						-	-	-	(351.86)	-	(351.86)	-	(351.86)

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									
2	Collection on bad debt									
3	Collection on bad debt									
4	Collection fee due on bad debt									

*Reasons: E=Evictions S=Skip V=Voluntary T=Terminated Tenancy **Unpaid Misc: D=Deceased Stipulated agreements for rent, maintenance charges, late charges, etc.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End: 04/30/22

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
408 - Sunrise Vista													
5	C	D							(154.20)		(154.20)		(154.20)
6	L	K							(907.11)		(907.11)		(907.11)
7	S	C							(238.20)		(238.20)		(238.20)
8	S	J		V	850.00	(142.00)		(59.00)	420.00		219.00	100.00	119.00
9	T	E		T	825.00	1,200.00		75.00	872.00		2,147.00	400.00	1,747.00
10	W	C							(110.74)		(110.74)		(110.74)
							-			-	-		-
TOTALS:						1,058.00	-	16.00	(118.25)	-	955.75	500.00	455.75

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	Collection on bad debt									
7	Collection on bad debt									
8	30 Day Notice	03/15/22								04/19/22
9	60 Day Notice	02/15/22	Hand							04/13/22
10	Collection on bad debt									

416 - Arrowhead													
11	D	K		D	875.00	555.00	-		140.00		695.00	200.00	495.00
TOTALS:						555.00	-	-	140.00	-	695.00	200.00	495.00

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
11	Death									04/01/22

425a - Sequoia													
12	G	J		V	800.00	10,446.54		50.00	316.00		10,812.54	400.00	10,412.54
											-		-
TOTALS:						10,446.54	-	50.00	316.00	-	10,812.54	400.00	10,412.54

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
12	30 Day Notice	02/11/22								03/31/22

426 - Sunnyside													
13	H	L							(594.61)		(594.61)		(594.61)
											-		-
TOTALS:						-	-	-	(594.61)	-	(594.61)	-	(594.61)

Item #	Type of Notice	Date Notice Served	Posted or Hand Delivered	Date File Sent to Attorney	Date Attorney Filed in Court	Response Filed by Tenant (Y or N)		Court Date	Lock Out Date	Vacate Date
13	Collection on bad debt									

*Reasons: E=Evictions S=Skip V=Voluntary T=Terminated Tenancy **Unpaid Misc: D=Deceased Stipulated agreements for rent, maintenance charges, late charges, etc.

Housing Authority County of San Bernardino

COLLECTION WRITE-OFFS - Authority Owned Portfolio

Month End: 04/30/22

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
437 - Sunset Gardens													
14	C	J					-		(11.00)		(11.00)		(11.00)
							-				-		-
TOTALS:						-	-	-	(11.00)	-	(11.00)	-	(11.00)
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		
14	Payment on bad debt												
467 - Hillcrest													
15	L	A		V	686.00	50.00			707.00		757.00	425.00	332.00
											-		-
TOTALS:						50.00	-	-	707.00	-	757.00	425.00	332.00
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		
15	30 Day Notice	02/22/22									03/24/22		
ALL PROPERTY TOTALS:						23,866.53	-	366.00	2,042.95	-	26,275.48	3,124.00	23,151.48

Submitted by: Laurie Herrera Date: 5/17/2022 Reviewed by: Date:

*Reasons: E=Evictions S=Skip V=Voluntary T=Terminated Tenancy **Unpaid Misc: D=Deceased Stipulated agreements for rent, maintenance charges, late charges, etc.

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

July 12, 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.

At this juncture, HACSB is in negotiation with the County to reduce its contract amount for the first year and at the same time try to secure an extension for the use of ESG funds to continue funding housing navigation services for the fiscal year ending in 2023. The end of the fiscal year 2023 also coincides with the deadline to continue utilizing EHV as established by HUD.

The EHV program launched on October 4, 2021 for HACSB to start receiving referrals. We are happy to share that 99 families have been housed as of June 28, 2022. HACSB continues to accept referrals and a waiting list has been created as to not over obligate the program. A breakdown of the referrals received as of June 29th is as follows:

Emergency Housing Voucher Housing Navigation Status Update
July 12, 2022

Coordinated Entry System (CES)	Victim Service Providers (VSP)	Total submission to Date	Referred for Housing Search/Navigation	Housed
722	99	821	370	99

Below are key points related to the status of the EHV program and the housing navigation contract as of June 29, 2022:

- HACSB has received 80% more referrals (818) 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).
- 99 families have been housed (32 additional since the last report) and 182 families are searching for housing with the assistance of the housing navigation services through Brilliant Corners.
- An additional 46 vouchers are scheduled to be issued in July.
- Families have been searching for an average of 92 days for housing. This is a nine day increase since the last report.
- 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 July 1, 2022.

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

July 12, 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. 157 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 July 16, 2022 through August 15, 2022.

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

GOALS & OBJECTIVES

HACSB communication is open, honest, and consistent.

FINANCIAL IMPACT

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

BACKGROUND INFORMATION

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

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

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

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

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

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

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

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.

On May 10, 2022, the Board adopted Resolution No. 147 (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 May 16, 2022, through June 15, 2022.

On June 14, 2022, the Board adopted Resolution No. 151 (Item No. 17) 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 June 16, 2022, through July 15, 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 August 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 June 21, 2022.

HOUSING AUTHORITY RESOLUTION NO. 2022-157

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 JULY 16, 2022, THROUGH AUGUST 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 July 16, 2022, through August 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) August 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