

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

20-1002

SAP Number

## San Bernardino County Human Services

Department Contract Representative	Tom Hernandez
Telephone Number	(909) 501-0611
Contractor	LABARGE INDUSTRIES, LLC
Contractor Representative	Josh LaBarge
Telephone Number	(909) 931-9763
Contract Term	10/27/2020 to 10/27/2021
Original Contract Amount	\$2,793,500
Amendment Amount	N/A
Total Contract Amount	\$2,793,500
Cost Center	7700003100

**Briefly describe the general nature of the contract:** The County of San Bernardino (County), and LaBarge Industries, Inc. (LaBarge) are co-applicants on the Pacific Village project submitted to the State for the Homekey Program grant funds. Pacific Village, located on 2626 Pacific Street in San Bernardino, will provide interim/permanent housing for individuals and families who are at-risk of or experiencing homelessness that will include case management and supportive services for 28 individuals or households. The cost for the Development Services Agreement with LaBarge Industries, LLC to rehabilitate Pacific Village is \$2,793,500.

**FOR COUNTY USE ONLY**

Approved as to Legal Form  
DocuSigned by:

*Robert Messinger*  
Robert Messinger, Principal Assistant County Counsel

Date October 26, 2020

Reviewed for Contract Compliance

\_\_\_\_\_

Date \_\_\_\_\_

Reviewed/Approved by Department

\_\_\_\_\_

Date \_\_\_\_\_

## CONSULTING AND DEVELOPMENT SERVICES AGREEMENT

**THIS CONSULTING AND DEVELOPMENT SERVICES AGREEMENT** (the "Agreement") is made and entered into as of October \_\_, 2020 (the "Effective Date"), by and between the County of San Bernardino, a political subdivision of the state of California ("Owner") and LaBarge Industries, LLC, a Delaware limited liability company, or a single purpose affiliate thereof (the "Consultant" or "Developer"). The Owner and Consultant may be referred to within this Agreement individually as a "Party" and collectively as the "Parties."

### RECITALS

- A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.
- B. The Department of Housing and Community Development ("HCD") issued a Notice of Funding Availability ("NOFA") for the Homekey Program on July 16, 2020. The NOFA incorporates by reference the MHP, as well as the MHP Final Guidelines ("MHP Guidelines"), dated June 19, 2019, both as amended and in effect from time to time. In addition, the NOFA states that Homekey grant funds are derived primarily from Coronavirus Relief Fund ("CRF") money received from the U.S. Department of the Treasury. The CRF was established by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law No. 116-136).
- C. The Owner, with the assistance of the Consultant, submitted an application for Homekey funds under the NOFA, and was awarded Homekey Funds from the Department which shall be disbursed pursuant to the terms of STD 213, Standard Agreement, by and among the Department, the County and the Borrower, which shall govern the expenditure of Two Million Seven Hundred Forty Thousand Dollars (\$2,700,000.00) ("Homekey Funds").
- D. Owner, acting through its Real Estate Services Department, will use the Homekey Funds to acquire from the Salvation Army approximately 6.82 acres of land improved with six residential buildings totaling 15,797 square feet [Assessor's Parcel Numbers (APNs) 1191-141-36, 37, 38, 40 and 42] located at 2626 & 2634 East Pacific Street in the City of San Bernardino (the "Property" or the "Pacific Village Campus"), all as more fully described in Exhibit A attached hereto and incorporated herein by this reference.
- E. The proposed project is for the County to provide twenty-eight (28) doors as an interim to permanent affordable housing conversion project. The Property is currently improved with 6 permanent buildings: i) a single family home with 3 bedrooms; ii) an apartment with 3 bedrooms and an apartment with 2 bedrooms; iii) an administration building; iv) a dining building; v) a church; vi) and three (3) modular buildings with infrastructure including water, electric, and sewer. The Owner intends to rehabilitate existing single-family home depicted in the Site Map and labeled as "House"), rehabilitate the two (2) existing apartments depicted on the Site Map and identified as "Bld. A", and to locate and rehabilitate as necessary 20 modular units from Glen Helen Park to the rear parking area of the Pacific Village Campus as depicted on the Site Map, and develop the necessary infrastructure to support the residential use (together, the "Project").

The Project will result in the creation of 28 "doors" on the Pacific Village Campus for the Target Population and the ultimate use of the Property is to convert to the Project to permanent housing for lower.

F. The Owner has need for consulting and development services to be performed in connection with the Project, and the Consultant has indicated it is willing and qualified to provide such services in connection with this Agreement.

G. The Owner will own the Project and is solely responsible for obtaining the financing necessary for the Residential Improvements.

H. The Owner and the Consultant desire to execute and enter into this Agreement for the purpose of setting forth their agreement with regard services to be provided by the Consultant to the Owner.

I. Pursuant to the California Environmental Quality Act ("CEQA") the approval of this Consulting Development Services Agreement is exempt from CEQA under Section 15301 in that the Project and rehabilitation contemplated to be completed will result in the minor alteration to existing structures and is thus a Class 1 exemption for minor alteration and use of existing facilities.

J. In consideration of the mutual covenants and agreements contained in this Agreement, the compensation to be paid to the Consultant under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

## **ARTICLE 1** **DEFINITIONS.**

### Section 1.1 Defined Terms.

In addition to any other terms that are defined in this Agreement, each of the following terms, when used in this Agreement with an initial capital letter, shall have the following meaning:

(a) "Agreement" has the meaning set forth in the opening paragraph.

(b) "Approved Development Budget" means the budget of all estimated expenses which will be incurred by or on behalf of the Owner in connection with the Development Activities, as prepared by the Consultant and the Owner. The parties agree and acknowledge that further updates to the attached Approved Development Budget will be necessary. The Consultant and Owner will collaborate on preparing updates thereto. Updates to the Approved Development Budget must be approved by the Owner pursuant to Section 5.4 below, and any amendments to the Approved Development Budget will be appended to Exhibit C to this Agreement and by this reference be incorporated into this Agreement.

(c) "Assignment Agreement" means the Assignment of collateral documents pursuant to which the Consultant assigns to the Owner its rights and obligations with respect to certain agreements, plans and specifications, and approvals pursuant to Section 7.2, below.

(d) "Assignment Contract" means the Assignment and Assumption Agreement, in form to be provided by the County, allowing for the assignment of this Agreement to a wholly controlled special purpose entity affiliate of the Consultant, to be formed to perform the services hereunder.

(e) "City" means the City of San Bernardino, a California charter city.

(f) "Closing" means that date on which the grant deed transferring the Property to the County has been recorded in the Official Records of the County of San Bernardino.

(g) "Collateral" means and includes all right, title, interest, claims and demands of the Consultant in and to the Collateral Documents, including contract rights and general intangibles, now existing or hereafter arising; and all amendments, substitutions for, and proceeds thereof, including, without limitation, insurance and similar payments.

(h) "Collateral Documents" means the Consultant's right, title and interest to all Project agreements, including but not limited to development reports, all contracts, architect's agreements, engineer's agreements, management agreements, and all other contracts and agreements which concern the Residential Improvement, all Land Use Approvals (including but not limited to all permits and licenses), plans, specifications, drawings, franchises, utility agreements and similar materials not yet obtained, and any other documents and information related to the Project, reports, plans and specifications, and general documents associated with the Project. For purposes of clarifying the foregoing, "Collateral Documents" shall expressly exclude any documents that, pursuant to applicable law, the Consultant does not have the right to pledge and assign as contemplated by this Agreement.

(i) "Completion" means the completion of construction of the Residential Improvements evidenced by issuance of a certificate of occupancy for the 28 "doors" by the applicable governmental authority.

(j) "Completion Date" means the date upon which the Completion has occurred, which is expected to occur within six (6) months after the closing on the Property, but in no event later than May 31, 2021.

(k) "County Funds" means a total of Six Million Five Hundred Forty-Three Thousand Five Hundred Dollars of funds to fund the development and operation of the Residential Improvements, consisting of Two Million Seven-Hundred Ninety-Three Thousand Five-Hundred Dollars (\$2,793,500) sourced from the County's Permanent Local Housing Assistance (PLHA) Funds managed by HCD to fund the development of the Residential Improvements "County Development Funds") and an additional Three Million Seven Hundred

Fifty Thousand (\$3,750,000) of PLHA funds to fund a Capitalized Operating Subsidy Reserve "COSR" to provide an operating subsidy for the Residential Improvements (the "County COSR Funds").

(l) "DACA" means a Disbursement Account Control Agreement that the Parties will enter into

(m) "Demolition Activities" means the work to demolish the structures located on or around the area labeled "Playground" on the attached Site Map, and the demolition of the modular buildings and related structures located on or around the area labeled "Modular Buildings" on the attached Site Map. For the avoidance of doubt, the Demolition Activities shall be limited to those areas in the preceding sentence and shall specifically exclude all other buildings or structures on the Property (including but not limited to the areas labeled on the Site Map as "Outdoor Pavilion", the "Chapel & Meeting", "Bld. C", "Bld. B", "Bld. A" and the "House".

(n) "Development Activities" means the development, design, construction, and management of financing of the Project, including without limitation the Predevelopment Activities and Demolition Activities.

(o) "Development Costs" means the total of all costs and expenses of Owner with respect to the Development Activities and set forth in the Approved Development Budget.

(p) "Development Funds" means the Homekey Funds and the County Development Funds.

(q) "Development Management Fee" means the fee to be paid by the Owner to the Consultant pursuant to Section 9.1 of this Agreement.

(r) "Development Schedule" means the schedule of Development Services to be carried out by or on behalf of the Owner in connection with the Development Activities, consisting of the development of the Residential Improvements, as prepared by the Consultant and the Owner. Updates to the Development Schedule must be approved by the Owner pursuant to Section 4.2(c) below, and any amendments to the Development Schedule will be appended to Exhibit D to this Agreement by this reference be incorporated into this Agreement.

(s) "Development Services" means the services to be provided by the Consultant under this Agreement, including performance of all Development Activities.

(t) "Expiration Date" means the Completion of the Development Activities, but in any event no later than 1 year after the Effective Date, unless automatically extended by the *force majeure* provisions of Section 14.13 or by mutual agreement of the Parties.

(u) "HCD" has the meaning set forth in Recital AB, above.

(v) "Homekey Funds" means the Two-Million Seven-Hundred Thousand Dollars (\$2,700,000) awarded from the Project Homekey Grant Program for the acquisition of the Property.

(w) "Land Use Approvals" means all discretionary permits and approvals (other than a building permit) including environmental approvals, necessary for the construction of the Residential Improvements.

(x) "Pacific Village Campus" has the meaning set forth in Recital A above.

(y) "Predevelopment Activities" means the architectural work and site planning, engineering, legal, costs estimating, and securing land use approvals and environmental clearances for the Project listed in the Approved Development Budget attached as Exhibit C to this Agreement and by this reference incorporated into this Agreement.

(z) "Project" has the meaning set forth in Recital A.

(aa) "Property" has the meaning set forth in Recital B.

(bb) "Residential Improvements" means generally the residential improvements to be constructed on behalf of the Owner as part of the Development Activities. The scope and scale of the Residential Improvements will be further refined as set forth in Section 5.4, below.

(cc) "Site Map" means the site map attached hereto as Exhibit B, incorporated herein by this reference.

(dd) "Target Population" means the members of the target population identified in Health and Safety Code Section 50675.1.1 (a) who are at-risk of serious illness from COVID-19 and at-risk of or experiencing homelessness, as defined in Section 578.3 of Title 24, CFR. Persons and families at-risk of or experiencing homelessness are considered a vulnerable population impacted by COVID-19 by having a lower life expectancy, higher risk of infectious and chronic disease, and suffering from mental illness, substance use, and overall poor health. The target population will include strategies to address to disproportionate racial impacts of COVID-19 and other systematic inequities on accessibility within county communities.

(ee) "Vacant Parcels" means those portions of the property depicted in the Site Map [ APN 40, 42] that are not subject to improvement under this Agreement.

## Section 1.2 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A: Legal Description of the Property  
Exhibit B: Site Map  
Exhibit C: Approved Development Budget

Exhibit D: Approved Development Schedule  
Exhibit E: Labor Compliance Provisions  
Exhibit F: Form of DACA

**ARTICLE 2**  
**ENGAGEMENT OF CONSULTANT.**

Section 2.1 Engagement of Consultant.

(a) The Owner engages the Consultant to perform the services specified in this Agreement, subject to and in accordance with the terms and provisions of this Agreement.

(b) The purposes of this Agreement, as more specifically set forth herein, are to: (1) govern the use of the Development Funds; (2) provide for the orderly completion of the Development Activities and the disbursement of the Development Funds; (3) set the parameters for the determination of the Residential Improvements; (4) determine the feasibility and identify the sources of financing for the construction of the Residential Improvements; and (5) subject to the terms of Section 5.4, govern the construction of the Residential Improvements.

Section 2.2 Acceptance by Consultant.

The Consultant accepts its engagement by the Owner and agrees to perform the services specified in this Agreement for the benefit of and on behalf of the Owner, subject to and in accordance with the terms and provisions of this Agreement.

**ARTICLE 3**  
**NATURE OF ENGAGEMENT.**

Section 3.1 Status of Consultant.

In the performance of its duties and obligations under this Agreement, the Consultant is, and shall at all times during the term of this Agreement be, an independent contractor, and not an employee of the Owner. The Consultant shall act solely as the agent of the Owner in the performance of the Consultant's duties and obligations under this Agreement. The Consultant shall not have the authority to enter into any contracts or agreements on behalf of the Owner without the expressed written approval of the Owner.

Section 3.2 No Partnership or Joint Venture.

Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership or joint venture between the Owner, or any departments or agencies of the Owner, and the Consultant.

**ARTICLE 4**  
**TERM OF AGREEMENT.**

Section 4.1 Term.

The term of this Agreement shall commence on the Effective Date and shall continue, unless sooner terminated as provided in this Agreement, until the first to occur of the Completion Date, the Expiration Date or such other date as may be specified in writing by the Owner and the Consultant, provided that the Consultant shall complete all services provided under this Agreement not later than the Expiration Date, to the extent the Owner receives sufficient funding and provides Consultant with sufficient funds to complete the Development Services.

Section 4.2 Performance.

(a) The Consultant acknowledges that completion of the Development Services under this Agreement by the Expiration Date is a material condition to this Agreement. In the event that such Development Services are not so completed by the Expiration Date, the Consultant shall continue to provide services to so complete the work under this Agreement, but shall do so for no additional compensation unless the failure to complete Development Services is caused by the Owner's failure to provide sufficient funding to complete the Development Services required under this Agreement, or due to events or circumstances beyond the control of Consultant as described in Section 14.13 of this Agreement, in which case the Parties shall negotiate in good faith for additional compensation and the parties agree to an amendment of Section 9.1 hereof, approved by the County Board of Supervisors.

(b) The Owner and Consultant will meet to coordinate dates for the completion of Development Services to be carried out by or on behalf of the Owner in connection with the Development Activities, including among others dates for commencement and completion of the Residential Improvements. Within the time set forth in the Development Schedule, the Consultant, in consultation with the Owner, shall develop a proposed update to the Development Schedule for the development and completion of the Residential Improvements. Updates to the Development Schedule must be approved by the Owner pursuant to Section 4.2(c) below, and any amendments to the Development Schedule will be appended to Exhibit D to this Agreement by this reference be incorporated into this Agreement. Notwithstanding anything to the contrary herein or in the Development Schedule, the Consultant hereby agrees that the Consultant must meet the following "Occupancy Deadlines": (1) within forty-five (45) days of the Closing, the Consultant shall deliver and make available for occupancy the 8 doors located at the House and in Bld. A; and (2) within ninety (90) days of the Closing, the Consultant shall deliver and make available for temporary occupancy the remaining twenty (20) doors associated with the modular units. The parties further agree and acknowledge that the Development Schedule shall include a time frame for the installation of utilities to allow for the permanent hook up of the Modular Units consistent with the Completion Date.

(c) The Owner shall review the proposed amendment to the Development Schedule and shall either approve or disapprove the proposed amendment to the Development Schedule in writing within five (5) business days of receipt, which approval shall not be unreasonably withheld. If disapproved, the Owner shall give specific reasons in writing for disapproval and the required revisions to the previously submitted proposal. If the proposed amendment to the Development Schedule is disapproved, Consultant shall resubmit, a revised



proposal within five (5) business days of notification of disapproval. The Owner shall either approve or disapprove the submitted revised proposed amendment to the Development Schedule within five (5) business days of the date such revised proposal is received by the Owner which approval shall not be unreasonably withheld. Updates to the Development Schedule may be amended and modified without need for Board of Supervisor approval.

(d) Once the proposed amendment is approved, the amended and restated Development Schedule shall constitute the approved Development Schedule.

## **ARTICLE 5**

### **DEVELOPMENT SERVICES.**

#### Section 5.1 Description of Services.

(a) The Development Activities to be performed by the Consultant are set forth in the Approved Development Budget attached hereto as Exhibit C, incorporated in this Agreement by this reference.

(b) The Owner warrants and represents that the Owner has secured or requested an allocation of the Development Funds to pay for the Development Activities, and as of the Effective Date the Consultant is authorized to proceed to complete the Development Activities pursuant to the terms of the Development Schedule.

(c) The Owner, relying on the assistance and experience of Consultant and Quality Management Group applied for and received an allocation of Homekey Funds. In addition to the Homekey Funds and the County Funds, the Owner may make available additional funding to pay for the construction costs of the Residential Improvements, and may elect to expand the Development Services that the Consultant shall perform under this Agreement as necessary to comply with the requirements associated with the Homekey Funds. If and to the extent the Development Services are expanded, the parties shall negotiate in good faith for additional compensation and subject to an amendment of Section 9.1 hereof.

#### Section 5.2 Nature of Consultant's Services and Responsibilities.

The Consultant's responsibilities under this Agreement in part consist of advising and consulting with Owner in connection with certain matters pertaining to the Project. While the Consultant is not itself preparing any design or engineering plans or specifications or performing any of the construction or furnishing any of the materials required for the Project, the Consultant shall work with the Owner in an effort to cause the Project to be completed in accordance with the plans and specifications approved by Owner within the time and at a price agreed to by the Owner and the Consultant. The Owner acknowledges that the Consultant is assisting the Owner in negotiations with and supervision of professional design and engineering firms, contractors, lenders, investor, regulators and others solely in connection with the Consultant's responsibilities under this Agreement and that the Consultant is not providing legal assistance or advice to the Owner in connection with such negotiations.

#### Section 5.3 Services Not Exclusive.

During the Term of this Agreement, the Consultant may render services similar or identical to those required of the Consultant under this Agreement to other owners and developers of real property, and may itself engage in the acquisition, development, management and operation of, or any other activities with respect to other real property or projects, without any notice to the Owner being required unless services to any other entity other than Owner will adversely impact the Consultant's ability to perform the Development Activities that Consultant has agreed to render under this Agreement.

Section 5.4 Development Budget.

(a) The Approved Development Budget for the Development Activities (Exhibit C to this Agreement and by this reference be incorporated into this Agreement) shall govern the Consultants performance of the Development Activities. The Owner shall make available to Consultant the Development Funds to pay Development Costs associated with the Development Activities as set forth in the Approved Development Budget.

(b) Consultant shall submit any material revision to the Approved Development Budget to the Owner for its review and approval prior to undertaking any work not covered by the Approved Development Budget. Any proposed revisions to the Approved Development Budget shall be considered and approved or disapproved by the Owner in writing within five (5) business days of receipt, which approval shall not be unreasonably withheld. If disapproved, the Owner shall give specific reasons in writing for disapproval and the required revisions to the previously submitted proposed revision. If the proposed revision to the Approved Development Budget is disapproved, Consultant shall resubmit a revised proposed revision to the Approved Development Budget within five (5) business days of notification of disapproval. The Owner shall either approve or disapprove the submitted revised proposed revision to the Approved Development Budget within five (5) business days of the date of receipt by the Owner which approval shall not be unreasonably withheld. Notwithstanding anything to the contrary herein, the Consultant may transfer or reallocate funds among line items in the Approved Development Budget by providing written notice to the Owner so long as the Consultant has not fully depleted the contingency that is approved under the Approved Development Budget.

Section 5.5 Conceptual Site Map.

(a) The Owner's consultant prepared an initial Site Map attached hereto as Exhibit B which depicts and establishes the location of the Residential Improvements and the location of other buildings and structures on the Property.

Section 5.6 Environmental Review.

(a) Owner is responsible for conducting any required environmental review for the Project and had adopted a Notice of Exemption pursuant to Section 15301 of the CEQA Regulations in that the Project and rehabilitation contemplated to be completed will result in the minor alteration to existing structures. Consultant acknowledges that any required approvals by any other local, state or federal agency may require additional environmental review, and that any

approval by the Owner shall not bind any other local, state or federal agency to approve the Project or to impose mitigation measures which are consistent with the terms of this Agreement or with the terms of any mitigation measures required by the Owner pursuant to the Owner's environmental review.

(b) If the County approves the Project following completion of an environmental review process and such approval is conditioned upon implementation of specified environmental mitigation measures, Consultant shall be responsible for implementing such mitigation measures as part of Development Services at the sole cost and expense of the Owner; provided, however, this Agreement shall be terminated upon the occurrence of any of the following:

(1) City disapproval of the Project following completion of the environmental review process; or,

(2) A determination by Consultant and the Owner that implementation by the Consultant of any required environmental mitigation measures would cause the Project to become economically infeasible.

#### Section 5.7 Design Development Documents.

(a) Consultant shall cause preparation by the selected licensed architect of design development documents ("Design Development Documents") for the Residential Improvements. Within the time set forth in the Development Schedule, Consultant shall submit such Design Development Documents to the Owner for review. During the preparation of the Design Development Documents, Consultant shall communicate and consult informally, and shall hold regular progress meetings, as frequently as necessary to ensure that the formal submittal of any plan or related document to the Owner can receive prompt consideration. The Design Development Documents shall be consistent with and in substantial conformity with the Site Map prepared pursuant to Section 5.5, above. The Design Development Documents shall consist of drawings, outline specifications and other documents to fix and describe the size, quality, and character of the Residential Improvements. Specifically, the Design Development Documents shall indicate estimated structural dimensions, and delineation of site features and elevations, materials and colors, landscaping and other features. Key details shall be provided in preliminary form, prior to formal submission.

(b) The Owner shall review the Design Development Documents and either approve or disapprove the Design Development Documents within thirty (30) days after receipt which approval shall not be unreasonably withheld. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes the Owner requests be made in order to obtain approval. Consultant shall thereafter submit revised Design Development Documents within five (5) business days of notification of disapproval. The Owner shall either approve or disapprove the submitted revised Design Development Documents within five (5) business days of the date such revised Design Development Documents are received by the Owner, and shall approve the revised Design Development Documents if the requested changes have been made.

Section 5.8 Land Use Approvals.

(a) The Consultant shall apply for and will exercise diligent good faith efforts to finalize and obtain all necessary Land Use Approvals as are necessary to construct the various components of the Residential Improvements. Consultant acknowledges that execution of this Agreement by the Owner does not constitute approval by the County or the City of any required permits, applications, or allocations, and in no way limits the discretion of the County or the City in the permit, allocation and approval process.

(b) The Owner reserves the right to prepare and submit a tentative parcel map or other subdivision map related to the Project in the future. Consultant agrees that it shall cooperate in the mapping process as necessary to assist the Owner in such efforts, at the expense of the Owner, which shall be outside of the scope of the Development Activities.

Section 5.9 Right of Entry.

(a) During the Term, Consultant and Consultant's designated agents, employees, contractors, subcontractors, licensees and representatives (collectively, "Consultant's Agents") shall have the right to enter onto any portion of the Property then owned by the Owner, to conduct all investigations, studies, inspections and testing as it reasonably determines are necessary and to perform the Development Activities (including without limitation, the demolition portion of the scope of Predevelopment Activities) and provided that in terms of such activities: (a) the Owner is given at least 24 hours' notice, in writing, where feasible, or such shorter oral notice as it reasonably consents to, including a description of the activities being conducted; (b) all activities will be conducted in compliance with all applicable laws, codes, and regulations; (c) all results of such activities, including copies of any reports, are provided to the Owner at no cost; and (d) any physical damage or alteration of the physical condition of the Property that results from any activity under this Section shall be promptly repaired by Consultant, subject to the indemnity provisions of Section 14.2 ("Permit to Enter"). Consultant understands and agrees that any such permit to enter shall only provide access to those portions of the Property then owned by the Owner and Consultant shall not enter any portion of the property not owned by the Owner. Prior to exercising its rights pursuant to this Section, Consultant shall have first complied with the obligations to acquire the insurance coverages specified in Section 11.1(i) of this Agreement.

(b) During the Term and after the Owner delivers a written notice to proceed with the construction of the Residential Improvements, Consultant and Consultant's Agents shall have the right to enter onto any portion of the Property then owned by the Owner, to perform the Development Activities (including the development of the Residential Improvements) and provided that all activities will be conducted in compliance with all applicable laws, codes, and regulations and the terms of this Agreement. Consultant understands and agrees that any such Permit to Enter shall only provide access to those portions of the Property then owned by the Owner and Consultant shall not enter any portion of the Property not owned by the Owner. Prior to exercising its rights pursuant to this Section, Consultant shall have first complied with the obligations to acquire the insurance coverages specified in Section 11.1(i) of this Agreement.

Section 5.10 Demolition.

By the date set forth in the Development Schedule, the Consultant shall complete the Demolition Activities. The Consultant's obligation to demolish the existing playground is subject to the issuance of a demolition permit and Consultant agrees and acknowledges that no demolition work will commence until a demolition permit has been issued by the City.

**ARTICLE 6**  
**PERFORMANCE OF DEVELOPMENT SERVICES**

Section 6.1 Development Contracts.

(a) Prior to the commencement of any Development Services to be performed by a third-party consultant, Consultant shall provide the Owner a copy of each contract for the performance of the work (the "Development Contract") for review. The Consultant is not barred from presenting a Development Contract for an affiliated entity of the Consultant for consideration and approval by the Owner. Consultant agrees and acknowledges that, prior to execution of any development contracts, all development contracts must be bid pursuant to applicable state or local laws, evidence of which must be provided to the County.

(b) The Owner shall have five (5) business days to review the Development Contract and give its written approval which approval shall not be unreasonably conditioned, withheld or delayed.

(c) If any Development Contract results in the production of a report pertaining to any portion of the Project or the Property (a "Development Report"), Consultant shall cause the consultant preparing the Development Report to execute a Reliance Letter substantially in the form provided to Consultant by the Owner, providing that the Owner may rely on the content of the Development Report. Upon completion, Consultant shall provide each Development Report to the Owner. The Development Contract and Development Reports are collectively referred to as the Collateral Documents.

(d) Consultant shall provide the Owner with reproducible copies of all Collateral Documents produced pursuant to this Agreement. Consultant shall not use the Collateral Documents produced pursuant to this Agreement for any purpose other than the Project or the Property.

Section 6.2 Construction Contract.

(a) No later than the date set forth in the Schedule of Performance, the Consultant shall submit to the Owner for its approval the proposed construction contract for the Residential Improvements. The Owner's review and approval shall consider whether: (1) the guaranteed maximum construction cost or stipulated sum set forth in the construction contract is consistent with the Approved Development Budget; (2) the construction contract is with a contractor approved by the Owner; (3) the construction contract contains provisions consistent

with Sections 6.5 through 6.8 of this Agreement; and (4) the construction contracts require a retention of ten percent (10%) of hard costs until completion of the Residential Improvements; or as approved by the Owner at its sole discretion. The Consultant is not barred from presenting a construction contract of an affiliated entity of Consultant for consideration and approval by the Owner, provided that the requirements of this Section 6.2(a) are met. Consultant agrees and acknowledges that, prior to execution of any construction contract, all construction contracts must be bid pursuant to applicable state or local laws, evidence of which must be provided to the County.

(b) The Owner's approval of the construction contract for the Residential Improvements shall in no way be deemed to constitute approval of or concurrence with any other term or condition of the construction contract, except as such term or condition may be required by this Agreement.

(c) Upon receipt by the Owner of the proposed construction contract, the Owner shall promptly review and either approve it within ten (10) days or, if the construction contract is not approved by the Owner, the Owner shall set forth in writing and notify the Consultant of the Owner's reasons for withholding such approval. The Consultant shall thereafter submit a revised construction contract for Owner's approval, which approval shall be granted or denied in ten (10) days in accordance with the criteria and procedures set forth above. Any construction contract executed by the Consultant for Residential Improvements shall be in a form approved by the Owner.

#### Section 6.3 Progress Reports.

During the performance of the Development Services, Consultant shall:

(a) Provide the Owner with written progress reports regarding the status of the performance of the Development Activities at least monthly for the Term, and from time to time as reasonably requested by the Owner;

(b) Provide the Owner with copies of all reports, studies, analyses, plans, correspondence and similar documents prepared or commissioned by Consultant with respect to this Agreement and the Project, promptly upon their completion.

#### Section 6.4 Consultant Supervision of Development Services.

(a) Consultant is solely responsible for all aspects of Consultant's conduct in connection with the performance of the Development Activities and Development Services, including (but not limited to) the quality and suitability of the plans and specifications, the supervision of work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, and consultants. Any review or inspection undertaken by the Owner with reference to the Development Services is solely for the purpose of determining whether Consultant is properly discharging its obligations to the Owner, and should not be relied upon by Consultant or by any third parties as a warranty or representation by the Owner as to the quality of such work.

(b) Consultant shall not construct any improvements on the Property without the prior written consent of the Owner. Consultant shall pay or otherwise discharge promptly all claims and liens for labor done and materials and services furnished in connection with the Property or the construction of any Residential Improvements in accordance with the terms of Section 6.7.

Section 6.5 Nondiscrimination.

Consultant shall not discriminate or segregate in the performance of the Development Services on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation, age, marital status, family status, physical or mental disability, or any other arbitrary basis. Consultant shall otherwise comply with all applicable local, state, and federal laws concerning discrimination.

Section 6.6 Local Hiring.

Consultant shall, to the maximum extent feasible, provide for the hiring of employees who reside in the "vicinity" of the Project and shall contract with "small businesses" that are owned and operated by persons residing in the vicinity of the Project. For the purposes of this Section, "vicinity" means the County of San Bernardino, and "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act.

Section 6.7 Mechanics Liens, Stop Notices.

(a) Consultant shall not allow any liens to be placed upon any portion of the Property in connection with the performance of the Development Services. If any claim of lien is filed against any portion of the Property or a stop notice is served on the Owner or any other third party in connection with the Development Activities, and provided that the filing of such lien or serving of such stop notice is not due to the failure of the Owner to provide funding to Consultant on a timely basis, or other intervening cause that is not within Consultant's control as described in Section 14.13 of this Agreement, then Consultant shall, within sixty (60) days after such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to the Owner a surety bond in sufficient form and amount, or provide the Owner with other assurance satisfactory to the Owner that the claim of lien or stop notice will be paid or discharged, provided that the Owner provides written notice of such claim of lien or stop notice to Consultant promptly upon receipt by the Owner.

(b) If Consultant fails to discharge any lien, encumbrance, charge, or claim in the manner required in this Section, then in addition to any other right or remedy, the Owner may (but shall be under no obligation to) discharge such lien, encumbrance, charge, or claim at Consultant's expense. Alternately, the Owner may require Consultant to immediately deposit with the Owner the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. The Owner may use such deposit to satisfy any claim or lien that is adversely determined against Consultant.

Section 6.8 Compliance with Laws.

(a) Consultant shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter in performing the Development Services.

(b) To extent applicable, in performing the Development Services required under this Agreement, including the Demolition Activities required under Section 5.10, the Consultant shall and shall cause its respective contractors and subcontractors to be in compliance with the prevailing wage requirements of the federal Davis-Bacon Act (40 U.S.C. 3141-3148) and the attached labor compliance provisions in the attached Exhibit E incorporated herein by this reference. Consultant shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Owner) the Owner against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Consultant, its contractor and subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the construction of the Development or any other work undertaken or in connection with the Property.

(c) The Consultant shall and shall cause its respective contractors and subcontractors to pay prevailing wages in performing the Development Services as those wages are determined pursuant to Labor Code Sections 1720 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., 1810-1815, and implementing regulations of the DIR. To the extent applicable, the Consultant shall and shall cause its respective contractors and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of the Owner provide to the Owner such records and other documentation reasonably requested by the Owner. Copies of the currently applicable per diem prevailing wages are available from the Owner. Consultant shall post the applicable prevailing rates of per diem wages at the Property site. Consultant shall cause its respective contractors and subcontractors to be registered as set forth in Labor Code Section 1725.5. In addition, the Consultant shall cause its respective contractors and subcontractors to do all the following:

(1) All calls for bids, bidding materials and the construction contract documents for the Development Activities must specify that (i) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the any of the Development Activities unless registered with the DIR pursuant to Labor Code Section 1725.5; and (ii) the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations ("DIR").



(2) The Consultant is required to provide the Owner all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days of the award of the contract (<https://www.dir.ca.gov/pwc100ext/>).

(3) The Consultant shall cause its respective contractors to post job site notices, as prescribed by applicable DIR regulations.

(4) The Consultant shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

(d) The general contractor and all subcontractors shall be required to pay their laborers and mechanics employed to perform Development Services under this Agreement, a wage not less than minimum wage classification, as specified in the applicable Federal law when the Contract amount for the prime contract exceeds \$2,000. When applicable, the Consultant is responsible for ensuring the general contractor and all subcontractor compliance with Davis-Bacon and related requirements. Federal Labor Standards Provisions (HUD 4010) apply to the Residential Improvements. A weekly certified payroll submitted through LCP Tracker (as defined in Exhibit E) is required during the term of construction. Payment of disbursement components may be delayed when certified payrolls are not properly submitted.

(e) Consultant shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Owner), to the extent permitted by applicable law, the Owner, and its board members, officers, employees, agents and volunteers, when applicable, against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Consultant, its consultants and contractors) to pay prevailing wages as determined pursuant the federal Davis-Bacon Act (40 U.S.C. 3141-3148) and Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the performance of the Development Services. The requirements in this Section survive the expiration of the Term.

Section 6.9 Financial Accounting and Post-Completion Audits.

No later than ninety (90) days following Completion of Construction of the Project the Consultant shall provide to Owner a financial accounting of all sources and uses of funds. No later than one hundred fifty (150) days following Completion of Construction of the Residential Improvements, the Consultant shall submit to the Owner a copy of the cost certification report prepared by the Consultant's accountant showing the sources and uses of all funds utilized for the Residential Improvements.

**ARTICLE 7**  
**OWNER'S OBLIGATIONS**

Section 7.1 Costs and Expenses.

(a) The Owner agrees to acquire the Property using the Homekey Funds and the County Development Funds to make available the financing for the approved Development Activities in an amount not to exceed Two-Million Seven-Hundred and Ninety-Three Thousand Five-Hundred Dollars (\$2,793,500.00). Consultant shall use the Development Funds solely to conduct Development Activities consistent with the Approved Development Budget.

(b) Except as expressly set forth in this Agreement to the contrary, and subject to the Owner securing the funds necessary for the construction of the Residential Improvements in accordance with Section 5.4 and issuing a notice to proceed, all costs and expenses of the Project set forth according to the Approved Development Budget shall be the responsibility of the Owner.

(c) To the extent the Consultant advances costs on behalf of the Owner for any activities contemplated under this Agreement, the Consultant shall be promptly reimbursed for such costs with no mark-up, pursuant to the procedures set forth in Section 7.4.

#### Section 7.2 Security.

Consultant grants to the Owner pursuant to the Assignment Agreement, a valid, first priority, continuing security interest in all presently existing and hereafter acquired or arising collateral in order to secure prompt full and complete performance by Consultant of each of its covenants and duties under this Agreement. The Owner will not have any obligation under any Collateral Documents assigned pursuant to the Assignment Agreement until it expressly agrees in writing to be bound by such contracts or agreements. Upon an event of Default that has not been cured pursuant to this Agreement or termination of this Agreement pursuant to Section 13.2 below, subject to the rights of third party consultants, the Owner may use any of the foregoing assigned Collateral Documents for any purpose for which Consultant could have used them for development of the Property, and Consultant shall cooperate with the Owner to implement the Assignment Agreement and immediately deposit with the Owner, for the Owner's use, all the Collateral Documents.

#### Section 7.3 Conditions Precedent to Disbursement.

(a) The Owner is not obligated to disburse any portion of the Development Funds into the disbursement account or take any other action hereunder unless the following conditions precedent are satisfied or waived as of the initial disbursement and remain satisfied or waived prior to each such disbursement of the Development Funds:

(1) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement, or under any other agreement between the Owner and Consultant.

(2) Consultant has furnished the Owner with evidence of the insurance coverage meeting the requirements of Section 11.1 below.

(3) The Owner has received copies of all of Consultant's organizational documents, as amended, and resolutions authorizing Consultant to execute this Agreement.

(4) All requirements set forth in Section 7.3(a) have been and continue to be satisfied.

(5) The Owner has received a copy of the General Contractor's Construction Contract as required pursuant to Section 6.2.

(6) All permits and approvals necessary for the Residential Improvements have been obtained by Consultant in cooperation with Owner.

(7) The Owner has received a written draw request from the Consultant, including certification that the condition set forth in Section 7.3(a)(1) continues to be satisfied, and setting forth the Development Activities being funded and proposed uses of funds consistent with the Approved Development Budget for the Development Activities, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred.

(8) The Parties will enter into a DACA, establishing the process by which Development Funds will be distributed to Consultant pursuant to this Agreement.

Section 7.4 Process for Disbursements.

(a) Prior to the first disbursement under this Agreement, the parties shall execute the DACA substantially in the form attached hereto as Exhibit F, which shall govern the disbursement of the funds under this Agreement.

Section 7.5 Cooperation.

In performing its functions under this Agreement, each Party shall act diligently and in good faith and shall cooperate fully in all matters relating to the Project. The Owner shall act as expeditiously as possible on all requests by the Consultant for approval and execution of any contract, agreement or other document pertaining to the Project. In exercising its rights of approval, each Party shall act reasonably and in good faith.

**ARTICLE 8**  
**BOOKS, RECORDS, REPORTS, FISCAL MATTERS.**

Section 8.1 Books.

During the term, the Consultant shall assist Owner with the maintenance of books of account of all transactions with respect to the Project. Such books of account shall be maintained at the Consultant's office or at such other place as the Parties shall agree upon, and the Owner and the Owner's accountants and auditors shall have access to such books of accounts at all reasonable times. Such books of account shall be kept in accordance with generally accepted

accounting practices consistently applied, and otherwise in such manner as shall be reasonably required by the Owner and any applicable funding and regulatory entities. All original books kept pursuant to this Section 8.1 shall be transferred to the Owner within forty-five (45) days after the sooner to occur of the Completion Date or the Expiration Date of this Agreement.

Section 8.2 Records.

During the term, the Consultant shall maintain, in a secure and safe manner, complete and identifiable records on all matters pertaining to the Consultant's activities under this Agreement on behalf of the Owner with respect to the Project. All original records shall be transferred to the Owner within forty-five (45) days after the sooner to occur of the Completion Date or the Expiration Date of this Agreement.

Section 8.3 Property of Owner.

All such books of account and records shall be and remain the property of the Owner, and, upon the Expiration Date or earlier termination of this Agreement, shall be turned over to the Owner as provided in Article 8 of this Agreement. Such books and records shall thereafter be available to the Consultant at all reasonable times for inspection, audit, examination and transcription for a period of five (5) years from the Expiration Date or earlier date of termination of this Agreement, upon reasonable prior notice to the Owner and at the expense of the Consultant.

Section 8.4 Audit.

The Owner shall have the right, during normal business hours and after reasonable notice, to inspect and audit the Consultant's files, books, records, costs and expenses pertaining to the Project at the expense of the Owner

**ARTICLE 9.**  
**COMPENSATION.**

Section 9.1 Development Management Fee.

(a) As compensation for the services to be rendered to the Owner by the Consultant pursuant to this Agreement, the Owner shall pay a Development Management Fee in the amount not to exceed Seven-Hundred and Thirty-Thousand Dollars (\$730,000.00) and by the terms specified in attached Exhibit B, which is incorporated into this Agreement by this reference.

(b) The Development Management Fee shall be paid pursuant to the following:

(1) 30% developer fee to be paid upon the completion of the rehabilitation of the House and Bld. A;

(2) 30% developer fee to be paid upon the completion of rough utility installation and temporary hook up of the 20 modular units;

(3) 30% developer fee to be paid upon the completion of permanent utility hookups of the 20 modular units;

(4) 10% developer fee paid upon submission completion of the Project.

## **ARTICLE 10** **REPRESENTATIONS AND WARRANTIES.**

### Section 10.1 Of Owner.

The Owner represents and warrants to the Consultant that the Owner has the power and authority to enter into this Agreement and perform the Owner's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement.

### Section 10.2 Of Consultant.

The Consultant represents and warrants to the Owner that the Consultant is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to transact business in the State of California, and has power and authority to enter into this Agreement and perform the Consultant's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement.

## **ARTICLE 11** **INSURANCE.**

### Section 11.1 Consultant's Insurance Requirements.

Throughout the term of this Agreement, the Consultant shall carry and maintain in force the insurance described below, the premiums for which shall be the sole cost and expense of the Consultant:

(a) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal Injury, Broadform Property Damage, Premises operations and mobile equipment, and Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired vehicles, as applicable; provided, however, that if Consultant does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) The required insurance shall be provided under an occurrence form, and Consultant shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(e) Commercial General Liability and Comprehensive Automobile Liability insurance policies shall be endorsed to name as an additional insured the Owner, and its officers, agents, employees and members of the County Board of Supervisors.

(f) All policies shall contain: (1) the agreement of the insurer to give the Owner at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (2) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the Owner; (3) a provision that no act or omission of Consultant shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (4) a waiver by the insurer of all rights of subrogation against the Owner and its authorized parties in connection with any loss or damage thereby insured against; and (5) an agreement that such policies are applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Consultant and the Owner or between the Owner and any other insured or additional insured under the policy.

(g) Any design professionals working on the Project in direct contract with the Consultant shall maintain errors and omission coverage in a minimum amount of One Million Dollars (\$1,000,000).

(h) If in connection with the use of the Development Funds, death, serious personal injury, or substantial property damage occurs, Consultant shall immediately notify the Owner. Consultant shall promptly submit to the Owner a written report, in such form as may be required by the Owner, of all accidents which occur in connection with this Agreement. This report shall include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's consultant, if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of the Owner's equipment, tools or material were involved.

(i) Within five (5) business days of the Effective Date, the Consultant shall furnish a copy of the Declaration page for all applicable insurance policies and will provide complete certified copies of the policies and endorsements.

(j) The insurance required herein shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII."

(k) Any failure, actual or alleged, on the part of the Owner to monitor or enforce compliance with any of the insurance or indemnification requirements contained in this Agreement will not be deemed as a waiver of any rights on the part of the Owner.

**ARTICLE 12**  
**DEFAULT AND REMEDIES.**

Section 12.1 Default by Consultant.

The Consultant shall be in default under this Agreement if the Consultant fails to perform any of the Consultant's duties and obligations under this Agreement, which failure to perform is not the direct result of a failure of Owner to perform its duties and obligations hereunder (including without limitation timely funding of draw requests) and does not cure or remedy such failure to perform within five (5) business days after receipt of written notice from the Owner with respect to such default; provided, however, that, if such failure to perform shall necessitate longer to cure than such five (5) business day period, then such cure period shall be extended for such period of time as is reasonably necessary, without a materially adverse effect to the Project, to cure such failure to perform if the Consultant commences such cure within five (5) business days after receipt of written notice from Owner and thereafter proceeds diligently and in good faith to cure.

Section 12.2 Remedies of Owner.

(a) Upon the occurrence of a default by the Consultant that is not timely cured as provided in this Agreement, the Owner may pursue any one or more of the following remedies, separately or concurrently or in any combination, without further notice or demand whatsoever:

(1) The Owner may terminate this Agreement by giving the Consultant written notice of such termination, in which event this Agreement shall be terminated at the time designated by the Owner in the notice of termination to the Consultant.

(2) With or without terminating this Agreement, the Owner may bring an action against the Consultant to recover from the Consultant all damages, recoverable at law, suffered, incurred or sustained by the Owner as a result of, by reason of or in connection with such default and/or for such equitable relief as may be appropriate.

Section 12.3 Default by Owner.

(a) The Owner shall be in default under this Agreement if the Owner fails to perform any of the Owner's duties and obligations under this Agreement and does not cure or remedy such failure to perform within five (5) business days after receipt of written notice from the Consultant with respect to the default; provided, however, that, if such failure to perform

shall necessitate longer to cure than such five (5) business day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if the Owner commences such cure within five (5) business days after receipt of written notice from the Consultant and thereafter proceeds diligently and in good faith to cure.

(b) Notwithstanding anything to the contrary, other than the Development Funds nothing in this Agreement shall require the Owner to fund the construction of the Residential Improvements prior to the Owner receiving sufficient funds under Section 5.4 hereof.

#### Section 12.4 Remedies of Consultant.

(a) Upon the occurrence of default by Owner under this Agreement, the Consultant may pursue any one or more of the following remedies, separately or concurrently or in a combination, without further notice or demand whatsoever:

(1) The Consultant may terminate this Agreement by giving the Owner written notice of such termination, in which event this Agreement shall be terminated at the time designated by the Consultant in the notice of termination to the Owner. Any termination hereunder shall not excuse Owner from paying for costs incurred pursuant to the Approved Development Budget prior to such termination.

(2) The Consultant may seek specific performance by the Owner solely with regards to the Owner's obligation to pay for costs incurred for Development Services being performed and only to the extent and in the amounts in the Approved Development Budget.

#### Section 12.5 Costs and Fees.

In the event of the occurrence of a default under this Agreement, the prevailing party, in addition to its other rights and remedies under this Agreement, shall have the right to recover from the Party in default all reasonable costs and expenses incurred by the prevailing party in enforcing the prevailing party's rights and remedies under this Agreement, including reasonable attorneys' fees. The termination of this Agreement by either the Consultant or the Owner by reason of default by the other Party shall not relieve either Party of any of its duties and obligations under this Agreement prior to the effective date of such termination and shall not diminish continuing indemnification obligations set forth in this Agreement.



**ARTICLE 13**  
**EXPIRATION, TERMINATION.**

Section 13.1 Termination of Agreement for Infeasibility.

(a) Upon the occurrence of an Infeasibility Condition, this Agreement may be terminated at any time during the Term in the Owner's or Consultant's discretion, subject to the requirements of Section 13.3 below. For purposes of this Agreement, "Infeasibility Condition" means a condition that is an impediment to Development Activities that is beyond the control of Consultant ("Infeasibility Conditions"). Only the following conditions are Infeasibility Conditions:

(1) Consultant does not receive the Land Use Approvals required for the Development Activities on the Property by the date set forth in the Development Schedule (as such date may be extended), despite Consultant's good faith efforts to obtain such approvals; and

(2) Owner does not receive commitments of grants or other funds necessary for the Project as shown in the Approved Development Plan by the date set forth in the Development Schedule (as such date may be extended), despite Consultant's good faith efforts to obtain such funding.

(b) Following termination under this Section, neither party will have any rights or obligations under this Agreement, except that the provisions of Sections 6.8 and 14.2 of this Agreement will survive such termination and remain in full force and effect.

Section 13.2 Terminating Events.

The engagement of the Consultant under this Agreement may be terminated upon the happening of any of the following events pursuant to the provisions described below:

(a) The giving of written notice from the Owner in the event: (1) any receiver, trustee or custodian shall be appointed for all or any substantial part of the Property or assets of the Consultant; (2) the Consultant shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights; or (3) an "order for relief or other judgment or decree by any court of competent jurisdiction is entered against the Consultant in any involuntary proceeding against the Consultant under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtors rights, or any such involuntary proceeding shall be commenced against the Consultant and shall continue for a period of thirty (30) days after commencement without dismissal.

(b) The giving of written notice from the Consultant in the event: (1) any receiver, trustee or custodian shall be appointed for all or any substantial part of the Property or assets of the Owner; (2) the Owner shall commence any voluntary proceeding under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtors rights; or (3) an order for relief or other judgment or decree by any court of competent jurisdiction is entered against the Owner in any involuntary proceeding against the

Owner under present or future federal bankruptcy laws or under any other bankruptcy, insolvency or other laws respecting debtor's rights, or any such involuntary proceeding shall be commenced against the Owner and shall continue for a period of thirty (30) days after commencement without dismissal.

Section 13.3 Consultant's Obligations.

(a) Upon the expiration or earlier termination of this Agreement, the Consultant shall promptly:

(1) Account for and deliver to the Owner all revenues and receipts pertaining to the Development Services in the possession of the Consultant, if any.

(2) Deliver to the Owner as received any monies due the Owner under this Agreement but received by the Consultant after such expiration or termination unless money is owed to a third-party contractor for the rendition of Development Services consistent with the Approved Development Budget.

(3) Upon request by the Owner, deliver to Owner or such other person as Owner shall designate all materials, supplies, equipment, keys, documents, all books of account, and all records maintained pursuant to this Agreement and pertaining to the Development Services.

(4) Furnish, at the Owner's request and at the Owner's expense, (unless such termination is as a result of a default by the Consultant, in which case such expenses shall be the obligation of the Consultant) all such information, take all such other action, and cooperate with the Owner as the Owner shall reasonably require in order to effectuate an orderly and systematic termination of the Consultant's services, duties, obligations and activities under this Agreement.

(5) Within ten (10) days after the expiration or termination of this Agreement, cause to be furnished to the Owner, at the Owner's expense (unless such termination is as a result of a default by the Consultant, in which case such expenses shall be the obligation of the Consultant) a report similar in form and content to the Consultant's monthly report covering the period from the last previous monthly report to the date of expiration or termination of this Agreement.

**ARTICLE 14**  
**GENERAL PROVISIONS.**

Section 14.1 Notices.

Whenever any notice, demand or request is required or permitted under this Agreement, such notice, demand or request shall be in writing and shall be delivered: (a) personally, with a delivery receipt; (b) by certified mail, postage prepaid, return receipt requested; (c) by nationally recognized commercial courier for next business day delivery; or (d) by facsimile or other

electronic transmission with a delivery confirmation; to the addresses set forth below or to such other addresses as are specified by written notice given in accordance with this Section:

OWNER:

County of San Bernardino  
Community Development and Housing Agency  
385 North Arrowhead Ave., Third Floor  
San Bernardino, CA 92415-0140  
Attention: Director of Community Development and Housing Agency

with a copy to:

Goldfarb & Lipman LLP  
1300 Clay Street, 11<sup>th</sup> Floor  
Oakland, CA 94610  
Attention: Rafael Yaquian

CONSULTANT:

c/o LaBarge Industries, LLC  
3105 E. Guasti Road, Suite 100  
Ontario, CA 91761  
Attention: Joshua LaBarge

All notices, demands or requests delivered shall be deemed given upon the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the item was returned as undeliverable, except that electronic transmissions shall not be deemed effective unless confirmation of delivery is received by the sender.

Section 14.2 Indemnification.

Consultant agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Owner) the Owner, and its board members, 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 County 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 the County indemnitees unless Consultant is not at fault whatsoever. The Consultant's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. Consultant shall ensure that all subcontracts entered into by the Consultant associated with performance of Development Activities under this Agreement shall include a duty by each subcontractor to indemnify the County consistent with the terms of this Section 14.2. The provisions of this Section shall survive the termination of this Agreement.

Section 14.3 Assignment: Binding Effect.

The rights of the Consultant under this Agreement are personal to the Consultant, except that Owner hereby approves the assignment of this Agreement by LaBarge Industries, LLC to an affiliated single purpose entity, provided that LaBarge Industries, LLC shall provide reasonable written notice of the proposed assignment form to the Owner prior to execution of any such assignment. Any assignment by LaBarge Industries, LLC, pursuant to this Section 14.3 shall release LaBarge Industries, LLC of all liability and obligations hereunder, provided that the assignee single purpose entity assumes all said liabilities and obligations hereunder.

Section 14.4 Authorized Representatives.

Any consent, approval, authorization or other action required or permitted to be given or taken under this Agreement by either Party shall be given or taken by one or more of the authorized representatives of each. For purposes of this Agreement: (i) the authorized representative of the Owner shall be the Community and Economic Development Deputy Executive Officer; and (ii) the authorized representative of the Consultant shall be the Chief Executive Officer of LaBarge Industries. The Owner may from time to time designate other or replacement authorized representatives to the Consultant. If the Consultant wishes to designate a replacement authorized representative to the Owner, the Consultant shall be required to obtain prior written consent of the Owner; and if the Owner does not consent to such designation, the Owner may terminate this Agreement. The written statements and representations of any authorized representative of a Party shall be binding upon the Party for whom such person is an authorized representative, and the other Party shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action under this Agreement.

Section 14.5 Headings.

The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

Section 14.6 Exhibits.

Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

Section 14.7 Defined Term.

Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

Section 14.8 Pronouns.

Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

Section 14.9 Severability.

If any term, covenant, condition or provision of this Agreement, or the application to any person or circumstance, shall be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

Section 14.10 Waivers.

Any waiver by the Owner of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Owner to take action on any breach or default of Consultant or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Consultant to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Owner to any act or omission by Consultant shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Owner's written consent to future waivers.

Section 14.11 Rights Cumulative.

All rights, remedies, powers and privileges conferred under this Agreement on the Parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

Section 14.12 Time of Essence.

Time is of the essence in this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement.

Section 14.13 Force Majeure.

In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of god; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation (including suits filed by third parties concerning or arising out of this Agreement); weather or soils conditions which, in the opinion of the Consultant, will necessitate delays; inability to secure necessary labor, materials or tools; acts of the other party or failure to act of any public or governmental entity (other than the acts or failure to act of the County); or court order; or any other similar causes beyond the control or without the fault of the

Party claiming an extension of time to perform. In no event shall the Owner be required to agree to cumulative delays in excess of thirty (30) days .

Section 14.14 Applicable Law.

This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of California.

Section 14.15 Entire Agreement.

This Agreement contains the entire agreement of the Parties with respect to the engagement of the Consultant by the Owner, and all representations, warranties, inducements, promises or agreements, oral or otherwise, between the Parties not embodied in this Agreement shall be of no force or effect. This Agreement supersedes any prior agreement, whether oral or written, between the Parties regarding the subject matter of this Agreement.

Section 14.16 Modifications.

This Agreement shall not be modified or amended in any respect except by a written agreement executed by both Parties.

Section 14.17 Attorneys' Fees.

If any litigation or other action arises in connection with this Agreement, the prevailing party therein shall be awarded its costs and expenses, including reasonable attorneys' fees, incurred in connection with such litigation or action.

Section 14.18 County Approval.

Whenever this Agreement calls for Owner's approval, consent, or waiver, the written approval, consent, or waiver of the Chief Executive Officer of the County shall constitute the approval, consent, or waiver of the Owner, without further authorization required from the County Board of Supervisors. The Owner hereby authorizes the Chief Executive Officer to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Owner. Any consents or approvals required under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies. The Chief Executive Officer is also hereby authorized to approve, on behalf of the Owner, requests by Consultant for reasonable extensions of time deadlines set forth in this Agreement. The County shall not unreasonably delay in reviewing and approving or disapproving any proposal by Consultant made in connection with this Agreement, and hereby agrees to make best efforts to respond to submittals within ten (10) days of completed submissions from the Consultant.

Section 14.19 Counterparts.


This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

*[Signature Pages Follow.]*

IN WITNESS WHEREOF, Owner and Consultant have executed this Contract as of the date first above written.

**OWNER:**

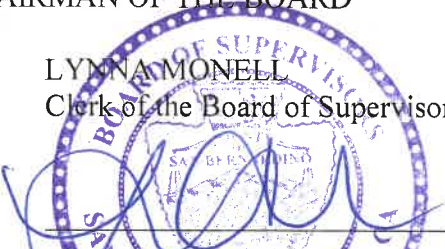
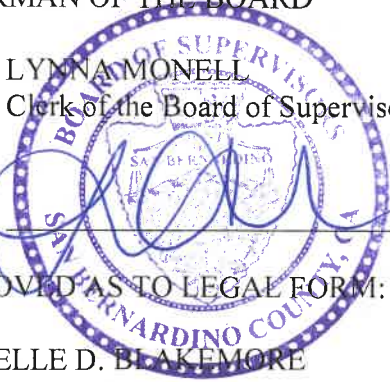
**COUNTY OF SAN BERNARDINO**, a political subdivision of the State of California

By:   
Curt Hagman, Chairman  
Board of Supervisors

Date: **OCT 27 2020**

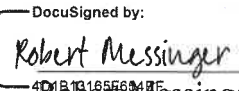
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

LYNNA MONELL  
Clerk of the Board of Supervisors

By:   


APPROVED AS TO LEGAL FORM:

MICHELLE D. BLAKEMORE  
County Counsel

DocuSigned by:  
By:   
Robert Messinger,  
Principal Assistant County Counsel

Date: October 26, 2020



**CONSULTANT:**

**LABARGE INDUSTRIES, LLC**  
a Delaware Limited-Liability Company

DocuSigned by:  
By Joshua LaBarge  
F5CAA894C4118P  
Joshua P. LaBarge, Manager

Date: October 24, 2020

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the County of San Bernardino, State of California, described as follows:

PARCEL A: (APN 1191-141-40; 1191-141-42)

That portion of Section 31, Township 1 North, Range 3 West, Muscupiabe Rancho, in the City of San Bernardino, County of San Bernardino, State of California, as shown by map on file in Book 7, Page 23 of Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at a point on the South line of said Rancho, 780 feet West of the Southeast corner thereof; thence North 660 feet; thence West 111 feet; thence South 660 feet; thence East 111 feet to the point of beginning.

EXCEPTING therefrom an undivided 1/2 interest in and to the well located on said property.

PARCEL B: (APN 1191-141-38)

The North 440 feet of that portion of Section 31, Township 1 North, Range 3 West, Rancho Muscupiabe, in the City of San Bernardino, County of San Bernardino, State of California, as shown by Map on file in Book 7, Page 23 of Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at a point on the South line of said Rancho, 891 feet West of the Southeast corner thereof; thence North 660 feet; thence West 99 feet; thence South 660 feet; thence East 99 feet to the point of beginning.

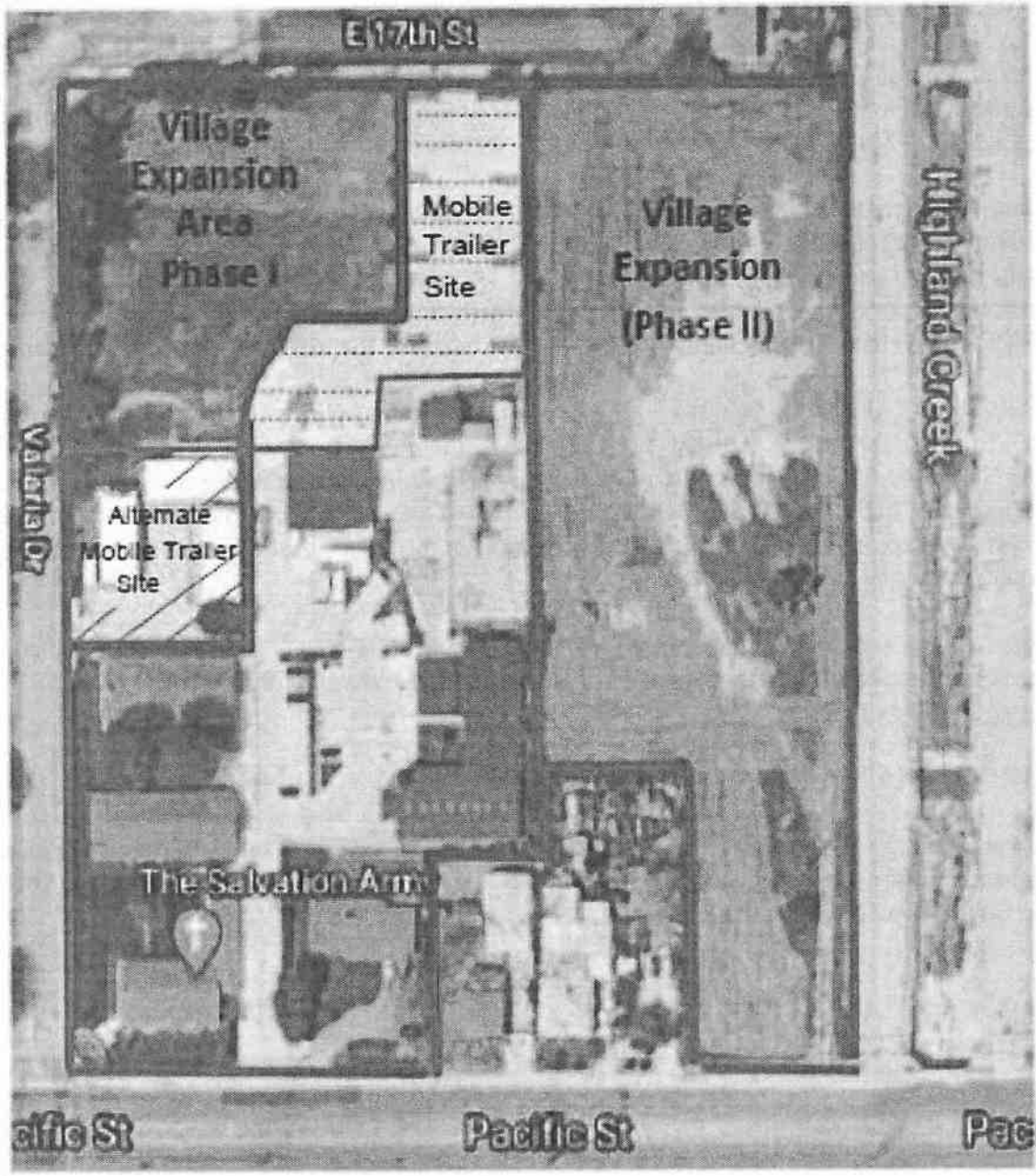
PARCEL C: (APN 1191-141-36; 1191-141-37)

Parcels 2 and 3 of Parcel Map 5102, in the City of San Bernardino, County of San Bernardino, State of California, as shown by map on file in Book 46, Page 98 of Parcel Maps, in the Office of the County Recorder of said County.

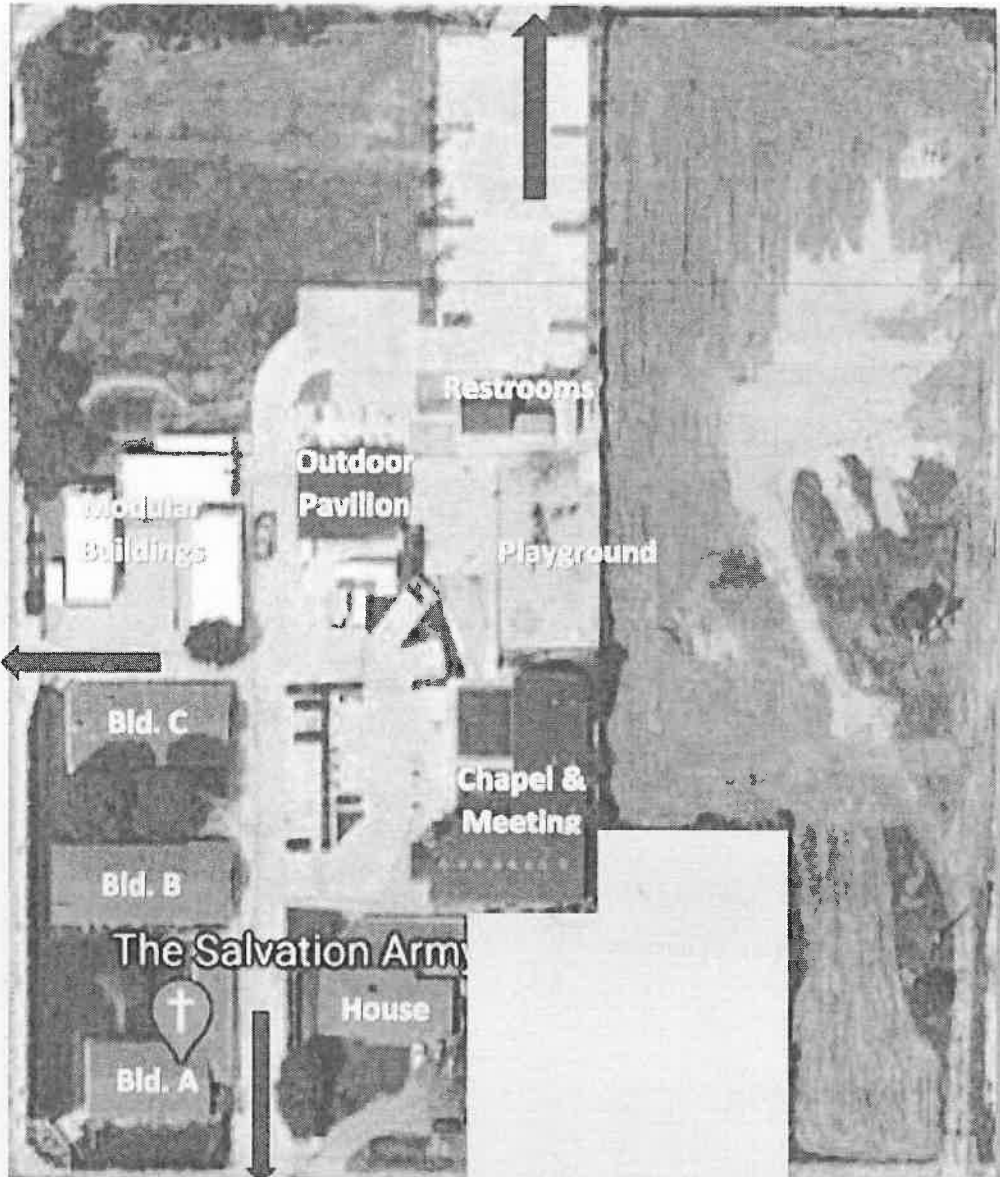
EXHIBIT B

SITE MAP- PARCEL

Site Map



**Site Map: Building Identification**



- House = Single Family Home with 3 doors
- Bld. A = 2 Apartments (3 bdrs and 2bdrs which equals a total of 5 doors)
- Bld. B = Administration Building
- Bld. C = Dinning Building
- Chapel & Meeting = Chapel/church and Meeting buildings
- Modular Buildings = 3 Modular Classrooms to be demolished
- Vacant Parcels – Two parcels to East of Developed Campus

**EXHIBIT C****APPROVED DEVELOPMENT BUDGET**

Below is the Development Activities and the authorized uses for the Development Funds. Administrative, non-substantive changes to this Exhibit C may be made by the Owner, upon consultation with County Counsel, without further approval of the Board of Supervisors. The Approved Development Budget is subject to amendment as required under Section 5.4 of the Agreement.

<b>PACIFIC VILLAGE PROJECT</b>	
<b>2626 Pacific Street San Bernardino CA.</b>	
<b>REHABILITATION / CONSTRUCTION BUDGET ESTIMATE</b>	
Demolition	\$ 25,000.00
Offsite Improvements	\$ 35,000.00
Legal	\$ 40,000.00
Structures	\$ 150,000.00
Site Work	\$ 280,000.00
General Requirements	\$ 72,500.00
Contractor Overhead	\$ 105,000.00
Contractor Profit	\$ 200,000.00
Prevailing Wages	\$ 155,000.00
General Liability Insurance	\$ 70,000.00
Modular Unit Instalation Delivery	\$ 200,000.00
Fixed Utility	\$ 161,000.00
6 Month Temp Sewer Pump, Water, Generator	\$ 120,000.00
Cameras Secuti y	\$ 50,000.00
Site Design	\$ 25,000.00
Supervision	\$ 100,000.00
Construction Hard Cost Contingency	\$ 75,000.00
Soft Cost Contingency	\$ 75,000.00
Environmental Audit	\$ 15,000.00
Local Development Impact Fees	\$ 20,000.00
Permit Processing Fees	\$ 25,000.00
Furnishings	\$ 65,000.00
Developer Overhead/Profit	\$ 620,000.00
Consultant/Processing Agent	\$ 25,000.00
Project Administration	\$ 35,000.00
Construction Oversight by Developer	\$ 50,000.00
<b>TOTAL PROJECT COST</b>	<b>\$ 2,793,500.00</b>

EXHIBIT D

APPROVED DEVELOPMENT SCHEDULE

This Schedule of Performance ("Schedule") summarizes the schedule for various activities under the Consulting and Development Services Agreement (the "Agreement") to which this Exhibit D is attached. The description of items in this Schedule is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Schedule to other provisions of the Agreement and shall not be deemed to have any substantive effect.

Whenever this Schedule requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the Owner or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, Consultant shall consult with County staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

Notwithstanding anything to the contrary herein, administrative, non-substantive changes to this Exhibit D may be made by the authorized County representative, upon consultation with County Counsel, without further approval of the Board of Supervisors.

ID	Task Name	Duration	Start	Finish	Predecessors	W	T	F	S	S
1	<b>COUNTY / CITY APPROVAL</b>	10 days	Thu 9/17/20	Wed 9/30/20						
2	Due Diligence/Verify Utilities	8 days	Thu 9/17/20	Mon 9/28/20						
3	Verify Prevailing Wages	5 days	Thu 9/17/20	Wed 9/23/20						
4	Retain Engineer	10 days	Thu 9/17/20	Wed 9/30/20						
5	Retain Utility Consultant	10 days	Thu 9/17/20	Wed 9/30/20						
6	Check on Construction/Rehab Permits	10 days	Thu 9/17/20	Wed 9/30/20						
7	Verify Trailer Setup	10 days	Thu 9/17/20	Wed 9/30/20						
8	Approved Site Plan/Exhibits/Schedule	10 days	Thu 9/17/20	Wed 9/30/20						
9	<b>COUNTY APPROVAL</b>	7 days	Thu 9/17/20	Fri 9/25/20						
10	Administrative Approvals	29 days	Thu 9/17/20	Tue 10/27/20						
11	Identify Entity for Development	29 days	Thu 9/17/20	Tue 10/27/20						
12	Legal Review of Documentation	29 days	Thu 9/17/20	Tue 10/27/20						
13	Property Management Admin	29 days	Thu 9/17/20	Tue 10/27/20						
14	Select GC	1 day	Tue 9/29/20	Tue 9/29/20						
15	<b>BIDDING PROCESS</b>	15 days	Wed 9/30/20	Tue 10/20/20	14					
16	Submission Process	10 days	Wed 9/30/20	Tue 10/13/20						
17	Selection Process	5 days	Wed 10/14/20	Tue 10/20/20	16					
18	Final Schedule	4 days	Wed 10/21/20	Mon 10/26/20	17					
19	Budget Approval	4 days	Wed 10/21/20	Mon 10/26/20						
20	BOS Approval	1 day	Tue 10/27/20	Tue 10/27/20						
21	Close of Escrow	10 days	Wed 10/28/20	Tue 11/10/20	20					
22										
23	<b>CONSTRUCTION/REHAB (3 Units)</b>	25 days	Wed 11/11/20	Tue 12/15/20						
24	Cleaning / Turn	10 days	Wed 11/11/20	Tue 11/24/20	21					

Project: 20.09.16 SCHEDULE  
Date: Thu 9/17/20

ID	Task Name	Duration	Start	Finish	Predecessors	W	T	F	S	S	S
25	Lease Up	15 days	Wed 11/25/20	Tue 12/15/20	24						
26	<b>CONSTRUCTION/REHAB (SFR)</b>	<b>41 days?</b>	<b>Wed 11/11/20</b>	<b>Wed 1/6/21</b>							
27	Abatement	10 days	Wed 11/11/20	Tue 11/24/20	21						
28	Paint	30 days	Wed 11/25/20	Tue 1/5/21							
29	Kitchen/Bath	30 days	Thu 11/26/20	Wed 1/6/21	28						
30	Code Updates	30 days	Thu 11/26/20	Wed 1/6/21							
31	Appliances	30 days	Thu 11/26/20	Wed 1/6/21							
32	Exterior Fencing	30 days	Thu 11/26/20	Wed 1/6/21							
33	Exterior Landscape	30 days	Thu 11/26/20	Wed 1/6/21							
34	Flooring	30 days	Thu 11/26/20	Wed 1/6/21							
35	Lease Up	15 days	Thu 12/17/20	Wed 1/6/21	34						
36											
37	<b>SITE IMPROVEMENTS/UTILITIES-STUB OUT</b>	<b>45 days?</b>	<b>Wed 11/11/20</b>	<b>Tue 1/12/21</b>							
38	Sewer	45 days	Wed 11/11/20	Tue 1/12/21							
39	Electrical	45 days	Wed 11/11/20	Tue 1/12/21							
40	Water	45 days	Wed 11/11/20	Tue 1/12/21							
41	Telecommunications	45 days	Wed 11/11/20	Tue 1/12/21							
42											
43	<b>CONSTRUCTION-TRAILER SITE</b>	<b>22 days</b>	<b>Wed 1/13/21</b>	<b>Thu 2/11/21</b>							
44	All Utility Connections	10 days	Wed 1/13/21	Tue 1/26/21	41						
45	Trailer Delivery	5 days	Wed 1/27/21	Tue 2/2/21	44						
46	Set up/Utility Connections	7 days	Wed 2/3/21	Thu 2/11/21	45						
47	Lease Up	12 days	Wed 1/27/21	Thu 2/11/21	44						

Project: 20.09.16 SCHEDULE  
Date: Thu 9/17/20

- Task
- Split
- Milestone Summary
- Project Summary
- Inactive Task
- Inactive Milestone
- Inactive Summary
- Manual Task
- Duration-only
- Manual Summary Rollup
- Manual Summary
- Start-only
- Finish-only
- External Tasks
- External Milestone
- Deadline
- Progress
- Manual Progress



EXHIBIT E

LABOR COMPLIANCE PROVISIONS

[See Attached.]

EXHIBIT F  
FORM OF DACA  
[See Attached.]

# EXHIBIT E - LABOR COMPLIANCE PROVISIONS



**Economic Development Agency**  
**Community Development and Housing**

## **CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS**

## **NOTICE TO BIDDERS**

### **COUNTYWIDE VISION:**

The project(s) implemented with these funds assist in meeting an element of the Countywide Vision for sustainable infrastructures and housing as adopted by the County Board of Supervisors and SANBAG on June 30, 2011.

### **FUNDING OF PROJECTS AND FEDERAL AND STATE REQUIREMENTS**

Bidders are advised that federal funds are being used for this project and that as a result, certain requirements are to be imposed, depending upon the source of the federal funds. Sources may include: Community Development Block Grant funds (CDBG), Neighborhood Stabilization Program funds (NSP) or HOME Investment Partnerships Program funds (HOME). The use of any of these federal funds on a project will require the payment of federal prevailing wages under the Davis-Bacon and Related Acts ("DBRA") (40 USC §3142, 40 USC §§ 276a-276a-7, 29 CFR Part 5, which will be enforced when the contract amount for the Prime Contract exceeds \$2,000. The Prime Contractor is responsible for ensuring all Subcontractor(s) and lower-tier Subcontractor(s) compliance with the DBRA. The Federal Labor Standards Provisions (HUD 4010) apply to this project and are attached.

For HOME and NSP funded projects, the Prime Contractor, all Subcontractors and all lower-tier Subcontractors are required to pay their laborers and mechanics employed under the contract, a wage not less than the locally prevailing wages (including fringe benefits) listed in a David Bacon wage determination for a classification, as specified in the Federal Wage Determination. **If other funding is used on a project, California state prevailing wages (as specified in the State Wage Determination) may be triggered. If that occurs, then the higher of the two applicable wage classifications (federal or state) will be enforced for all work under the contract.** For CDBG-funded projects, the Prime Contractor, all Subcontractors and all lower-tier Subcontractors are required to pay their laborers and mechanics providing work under the contract, a wage not less than the locally prevailing wages (including fringe benefits), as specified in **both** the Federal and State Wage Determinations for the project.

**The higher of the two applicable wage classifications, either the Federal Prevailing Wage or, State Prevailing Wage will be enforced for all work under this Contract.**

**Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity** - The bidder's attention is called to the "Equal Opportunity Clause" and "Standard Federal Equal Employment Specifications" contained in the bid package. Goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, is 19% for minorities and 6.9% for women.

## TABLE OF CONTENTS

• CONSTRUCTION CONTRACT PROVISIONS - DEFINITIONS.....	1
• LABOR COMPLIANCE REQUIREMENTS .....	2
• REQUIRED DOCUMENTS.....	4
• FEDERAL LABOR STANDARDS PROVISIONS .....	5
• SECTION 3 CLAUSE .....	9
• AFFIRMATIVE ACTION COMPLIANCE GUIDELINES FOR CONSTRUCTION AND NON- CONSTRUCTION CONTRACTORS .....	10
• EQUAL OPPORTUNITY CLAUSES .....	14
• CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS .....	22
• DAVIS-BACON WAGE DETERMINATION.....	23
• SAMPLE DOCUMENTS .....	24

## CONSTRUCTION CONTRACT PROVISIONS - DEFINITIONS

The following are definitions of state and federal provisions/documents for federally-assisted projects. Please refer to the "Required Documents Checklist" for any documents to be completed and submitted for this project.

**Affirmative Action Compliance Guidelines for Construction or Non-Construction Contractors** – Generally, affirmative action requirements apply to contracts and subcontracts in excess of \$10,000. This document provides guidelines to help Contractors meet affirmative action and equal employment opportunity requirements set forth in federal regulations 41 CFR 60.

**Bid Bond** – A bid guarantee of at least 10% of the contract price is required from each bidder and must be submitted with the Bid.

**Certificate of Owner's Attorney** – This certificate is to be completed by the owner's attorney when applicable.

**Certification of Bidder Regarding Equal Employment Opportunity** – This certification is required by Federal law (41 CFR 60) and must be completed by the Prime Contractor.

**Certification of Compliance with Air and Water Acts** – The prime Contractor and all Subcontractors must comply with this certification when the contract exceeds \$100,000.

**Certification by Proposed Subcontractor Regarding Equal Employment Opportunity** – This certification must be completed by all Subcontractors and every lower-tier Subcontractor and submitted to the Prime Contractor.

**Contractor's Certification of Compliance with Davis-Bacon and Related Acts** – This certification is required by federal law (29 CFR 5) and must be completed by the Prime Contractor.

**Equal Employment Opportunity Clauses/Equal Employment Opportunity Construction Contract Provisions** – These provisions are to be inserted in all applicable federally-assisted contracts and subcontracts.

**Federal Labor Standards Provisions (HUD 4010 form)** – These provisions set forth the federal labor requirements for contractors working on federally-assisted construction projects in which the prime contract exceeds \$2,000. The Prime Contractor and all Subcontractors and every lower-tier subcontractor are required to pay their laborers and mechanics working onsite a wage as specified in the **FEDERALLY FUNDED PROJECTS** section of this provision. ***The Prime Contractor is responsible to include the Labor Compliance Contract Addendum in all executed Subcontractor contracts for this project.***

**Federal Prevailing Wage Decision** – The Federal Wage Decision contains the federal wage rates for construction projects within the County of San Bernardino. A copy of the Wage Decision is included in the bid package and can also be found at <https://www.sam.gov/portal/public/SAM/> or <http://www.wdol.gov/dba.aspx> The wage decision that applies to the project is the one in effect ten days prior to the bid opening date.

**Labor and Materials Bond** – This payment bond guarantees that employees/Subcontractors, and suppliers are paid for services rendered and materials supplied. The Labor and Materials Bond must be at least 100% of the contract price and must be submitted to the CITY/COUNTY upon award of the contract.

**Performance Bond** – This bond guarantees the Contractor's performance under the terms of the construction contract and must be at least 100% of the contract price and submitted to the CITY/COUNTY following award of the contract.

**Section 3** – This law applies to construction contracts exceeding \$100,000 on projects funded by the U.S. Department of Housing and Urban Development (HUD). To the greatest extent feasible, Contractor(s) and Subcontractor(s) must attempt to become a Section 3 business. A Section 3 business is one owned by a low-income person, a business of which 30% of the workforce is comprised of low-income individuals, or a business that contracts 25% of its work to Section 3 businesses.

## LABOR COMPLIANCE REQUIREMENTS

### Davis-Bacon and Related Acts:

The Prime Contractor is responsible for ensuring all Subcontractor(s) and lower-tier Subcontractor(s) compliance with all requirements of Davis-Bacon and Related Acts (DBRA). The Federal Labor Standards Provisions (HUD 4010) apply to this project and are attached.

A copy of the Federal Prevailing Wage Decision, (and upon request the State Wage Decision) the date of which reflects the latest applicable modification at the time of this bid advertisement, is included in the Contract Documents and Specifications. Bidders shall be notified, via Addendum, of modifications, if any, which supersede that modification included herein, up until a minimum of ten days prior to the actual Bid Opening for this project.

A weekly Certified Payroll Report (CPR) is required during the term of construction on the project. Payment(s) of invoice(s) for this project may be delayed when CPRs are not submitted weekly. The CITY/COUNTY shall make progress payments on any properly completed payment request submitted by the Prime Contractor. The payment request shall not be approved unless all CPRs for the project submitted through LCPtracker have been approved and accepted for each week worked during the time period covered by said payment request.

### LCPtracker:

As permitted by the Department of Labor (DOL), The Department of Housing and Urban Development (HUD), and Title 8, section 16404 of the California Code of Regulations, the Prime Contractor and each Subcontractor and every lower-tier Subcontractor subject to DBRA are allowed to submit CPRs electronically via LCPtracker

LCPtracker is a web-based system.. The Prime Contractor and Subcontractors and lower-tier Subcontractors will receive an email from LCPtracker providing their log-on identification and temporary password. The Contractors will need to follow the instructions in the email to set-up their permanent password and activate their account. Once their account is setup, LCPtracker Inc. provides two convenient training options:

**Option 1: Computer-Based Training Courses:** Pre-recorded videos can be viewed at any time by logging into the LCPtracker website and following these simple steps:

- Enter user name/password
- Select the "eTraining" link located at the top of the page.
- Select "Contractor Training Videos"

**Option 2: Web-Based Training Sessions:** Online training sessions facilitated by members of LCPtracker's customer support team are available several times per week. All that is needed to participate is a computer with Internet access, an email address and access to a phone.

- Enter user name/password
- Select "Book Now" on the "Projects" tab and register for the Online training sessions.

# **REQUIRED DOCUMENTS**

## ***REQUIRED PRIOR TO CONTRACT AWARD***

1. Bid Package signed by Contractor or letter stating that the project specifications document is part of the contract
2. Signed Partnership Agreement (if applicable)

## ***REQUIRED PRIOR TO PRECONSTRUCTION CONFERENCE***

3. Executed Contract/Purchase Order NOTE: The Labor Compliance Contract Addendum (LCCA) which includes the HUD Form 4010 and the Federal prevailing wage determination for the project must be attached to contract
4. Prime Contractor Information Form
5. Bonds (performance/payment or labor and material bonds)

## ***REQUIRED PRIOR TO CONSTRUCTION***

6. Contractor's Certification of Compliance with Davis-Bacon and Related Act Requirements (Exhibit A1)\*
7. Sub-Contractor's Certification of Compliance with Davis-Bacon and Related Act Requirements (Exhibit A-1)\*
8. Certification of Bidder Regarding Equal Employment Opportunity(Exhibit B)\*
9. Certification by Proposed Sub-Contractor Regarding Equal Employment Opportunity (Exhibit C)\*
10. Affirmative Action Compliance Form for Construction Contracts Over \$10,000 (Exhibit D)\*
11. A Copy of all executed Sub-Contractor contracts NOTE: The Labor Compliance Contract Addendum (LCCA) which includes the HUD Form 4010 and the prevailing wage determination for the project must be attached to contract
12. City Business License/Exception Letter
13. Certificate of Understanding and Authorization Form (Exhibit E)\*
14. Fringe Benefit Statement Form (Exhibit F)\*
15. Authorization for Payroll Deduction (Exhibit G)\*
16. DOL Registered Apprentice Program\*
17. DOL Apprenticeship Certification\*
18. Apprenticeship Program Appendix A\*
19. Project Wage Rate Sheet\*

## ***REQUIRED DURING CONSTRUCTION***

20. Weekly Certified Payrolls (see "Electronic Submission of Certified Payrolls" section)

\*Note: These forms are located on the LCPtracker online database discussed in "Electronic Submission of Certified Payrolls" section and will be discussed by County CDH staff at the preconstruction conference.



# Federal Labor Standards Provisions

U.S. Department of Housing  
and Urban Development  
Office of Labor Relations

## 1. Applicability

The project or program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where

appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part

of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number. The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own

records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i) and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The Contractor or Subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work

actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate, who is not registered and participating in a training plan approved by the Employment and Training Administration, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.** The Contractor or Subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the Subcontractors to include *these clauses in any lower tier subcontracts*. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration Transactions", provides in part: "Whoever, for the purpose of influencing in any way the action of such Administration makes, utters or publishes any statement knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any Subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

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**(1) Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contract, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each Subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## SECTION 3 CLAUSE

(Information for the Section 3 Report will be input on LCPtracker)

- 3-2.2 Employment opportunities for business and lower income persons in connection with assisted projects. This clause applies to construction contracts of \$100,000 or more, on projects funded with \$200,000 or more in federal funds from the U.S. Department of Housing and Urban Development.

Assurance of compliance with regulations.

- (A) Every contract or agreement for a grant, loan, subsidy or other direct financial assistance in aid of housing, urban planning, development, redevelopment, or renewal, public or community facilities and new community facilities and new community development, entered into by the Department of Housing and Urban Development with respect to a Section 3 covered project shall contain provisions requiring the applicant or recipient to carry out the provisions of Section 3, the regulations set forth in this part, and any applicable rules and orders of the Department issued thereunder prior to approval of its application for assistance for a Section 3 covered project.
- (B) Every applicant, recipient, contracting party, Contractor and Subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as Section 3 clause):
- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development as 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 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns, which are located or owned in substantial part by persons residing in the area of the project.
  - b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth to 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
  - c. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organizations or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
  - d. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development 24 CFR 135. The Contractor will not subcontract unless the Subcontractor has first provided him with a preliminary statement of ability to comply with the requirements of these regulations.
  - e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Contractors and Subcontractors, its successors and assigns, to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135

**AFFIRMATIVE ACTION COMPLIANCE  
GUIDELINES FOR CONSTRUCTION AND  
NON-CONSTRUCTION CONTRACTORS**

## AFFIRMATIVE ACTION COMPLIANCE GUIDELINES FOR CONSTRUCTION AND NON-CONSTRUCTION CONTRACTORS

These Affirmative Action Compliance Guidelines have been designed to provide Contractors with information necessary to comply with Federal regulations found under Title 41, Part 60 of the Code of Federal Regulations. It is the intent of these guidelines to insure that equal opportunity for employment is practiced by the Contractor without regard to race, color, sex, religion, national origin, disability, and veteran's status. These guidelines provide the minimum information necessary to comply with EEO and affirmative action requirements, including the preparation of an Affirmative Action Plan that complies with federal regulations regarding Affirmative Action for federally-assisted projects. Contractors are urged to contact the implementing entity or the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) officer for any necessary technical assistance in meeting Affirmative Action requirements if they are considering bidding under this contract.

### I. AFFIRMATIVE ACTION COMPLIANCE PROGRAM

A. The Affirmative Action program embodies the following principals:

1. Discrimination because of race, color, age, sex, religion, national origin, marital status, disability, or veteran's status is inconsistent with the constitution, laws, and policies of the United States, State of California and County of San Bernardino.
2. The implementing entity is committed to insuring that there be no discrimination by vendors, Contractors (including professional services and consultants), lessors, or lessees doing business with the implementing entity.
3. Contractors and Subcontractors agree to take affirmative personnel actions to hire and promote workers who traditionally have been discriminated against in the job market, including women, minorities, members of certain ethnic and religious groups, individuals with disabilities, and veterans.

B. Affirmative Action Step Requirements for CONSTRUCTION Contractors and Subcontractors:

1. Personnel affirmative action in recruitment, hiring, and promotion is required by Contractor and Subcontractors who have entered into a federally-assisted construction or non-construction contract that exceed \$10,000 or \$10,000 in the aggregate over a 12-month period.
2. Contractors and Subcontractors who enter into a CONSTRUCTION CONTRACT in excess of \$10,000 must take 16 specific affirmative action steps to ensure equal employment opportunity. These steps are included in 41 CFR 60-4.3 (a) (7) and are also included under "Standard Federal Equal Employment Opportunity Construction Contract Specifications" of Attachment "D" of the bid package.

C. Affirmative Action Plan requirements for NON-CONSTRUCTION Contractors:

1. All Contractors who have entered into a NON-CONSTRUCTION CONTRACT and who: 1) do business in the amount of \$50,000 or more with the implementing entity in any one fiscal year and, 2) employ 50 or more employees, must develop a written Affirmative Action Program within 120 days after the contract award date.
2. All Subcontractors rendering services or supplies to a Contractor in the amount of \$50,000 or more and employ 50 or more employees, must develop a written Affirmative Action Program within 120 days after the contract award date.

D. Exemptions under 41 CFR 60:

The following persons/contracts shall be exempt from this program:

1. A contract or contracts by a Contractor that do not exceed \$10,000 in the aggregate over a 12-month period.
2. Contracts for Work outside the United States
3. State and Local Governments
4. Contracts with certain educational institutions
5. Work on or near Indian Reservations
6. Specific contracts and facilities found exempt by
7. Deputy Assistant Secretary
8. National security contracts

Any Contractor who feels qualified for an exemption should contact the local Contract Compliance Officer or the U.S. Department of Labor's OFCCP Officer for further information.

### II. SATISFYING AFFIRMATIVE ACTION PLAN

A. Affirmative Action Plan requirements for NON-CONSTRUCTION Contractors can be met through the following:

1. Completing a Contract Compliance Qualifying Report for Non-construction Contractors and Vendors, (refer to the form found in the "Additional Required Documents/Sample Documents" section of Attachment "D" of the bid package).
2. Completing a Contractor's Affirmative Action Policy, including methods of recruiting minorities and women. If the Contractor does not have its own Affirmative Action Policy, it may adopt the County's model Affirmative Action Policy ((refer to the form found in the "Additional Required Documents/Sample Documents" section of Attachment "D" of the bid package).
3. Following Federal Affirmative Action Plan guidelines which comply with the requirements of 41 CFR 60.2.10.

## DEFINITIONS

Unless a provision of a contract otherwise requires, certain words and phrases shall be defined as follows:

- A. "Affirmative Action" is a commitment to increase the number of minorities and women in the work force by setting employment goals and timetables, including action to achieve objectives. Affirmative Action seeks to ensure that discrimination is eliminated in dealings with employees or applicants for employment whether the discrimination is intentional or unintentional. In addition, Affirmative Action seeks to improve job standards and productivity through the removal of artificial and unnecessary barriers to employment and promotion and ensure that all job actions are related to job performance measures.
- B. "Affirmative Action Plan" is a written affirmative plan required of Contractors and Subcontractors who have 50 or more employees and have entered into a contract with the implementing entity that exceeds \$50,000, or \$50,000 in contracts over a 12-month period.
- C. "Contract" means a federally-assisted purchase order, offer and acceptance, lease, agreement or other arrangement creating an obligation to which the implementing entity is a party, which would make one of the parties within the definition a Contractor.
- D. "Construction" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways or other changes or improvements to real property, including facilities providing utility services.
- E. "Contractor" means a prime Contractor or Subcontractor.
- F. "Covered Area" means the geographical area described in the solicitation from which the contract resulted;
- G. "Director" means Director, OFCCP, U.S. Dept. of Labor, or any person to whom the Director delegates authority to;
- H. "Employee" means one who performs work for compensation, or a person who is permanently or regularly employed by the Contractor or Subcontractor.
- I. "Employer Identification Number" means the Federal Social Security Number;
- J. "Handicapped Status" means any person who:
1. Has a physical or mental impairment, which substantially limits one or more of such person's major life activities.
  2. Has a record or such impairment or,
  3. Is generally regarded as having such an impairment.
- K. "Employer Identification Number" means the Federal Social Security Number;
- L. "Handicapped Status" means any person who:
1. Has a physical or mental impairment, which substantially limits one or more of such person's major life activities.
  2. Has a record or such impairment, or
  3. Is generally regarded as having such an impairment.
- M. "Implementing Entity" means public jurisdiction who is administering the contract.
- N. "Minority" includes:
1. Black (all persons having origins in any Black African racial groups not of Hispanic origin);
  2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  3. Asian or Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);
  4. American India or Alaskan native (all persons having origins in any of the native peoples of North America and maintaining identifiable tribal affiliations through membership and participation in community identification).
- O. "Non-construction Contract" means any contract that does not fall within the definition of "Construction Contract".
- P. "Officer" means the Contract Compliance Officer of the implementing entity or U.S. Department of Labor Office of Federal Contract Compliance Program (OFCCP) Officer.
- Q. "Persons" means any individual, firm, co-partnership, public service, joint venture, association, social club, fraternal organization, corporation, estate, trust receiver, syndicate CITY, county, municipal corporation, district or other political subdivision, or any other group or combination acting as a unit.
- R. "Underutilization" means having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.
- S. "Vietnam-Era Veteran" means a person who:
1. Served on actual duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
  2. Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.



T. Violation and Appeal Procedure:

1. A Contractor found in violation of equal opportunity/affirmative action laws will be referred to the U.S. Department of Labor's OFCCP Division, and the Solicitor for Labor, Associate Solicitor of Labor Relations and Civil Rights Regional Solicitors and Regional Attorney are authorized to institute enforcement proceedings by filing a compliant and serving that compliant to the Contractor (defendant), in accordance with procedures set forth in 41 CFR 60-30.5. The complaint shall contain information on the alleged violation, a prayer regarding the relief being sought, and the name and address of the attorney representing the Government. Within 20 days after receiving the complaint, the defendant shall file an answer with the Chief Administrative Law Judge, if the case has not been assigned to an Administrative Law judge.
2. The answer shall contain a statement of the facts which constitute the ground of defense, and shall:
  - 1) specifically admit, explain, or deny each of the allegations of the complaint unless the defendant is without knowledge, or
  - 2) state that the defendant admits all the allegations contained in the complaint. The answer may contain a waiver for a hearing and if not, a separate paragraph in the answer shall request a hearing. The answer shall contain the name and address of the defendant, or of the attorney representing the defendant. Failure to file an answer or plead specifically to an allegation of the complaint shall constitute an admission of such allegation.
3. Contractor agrees to fully comply with the laws and programs (including regulations issued pursuant thereto) identified herein. Such compliance is required to the extent such laws, programs and their regulations are, by their own terms, applicable to this contract. Contractor warrants that he will make himself thoroughly familiar with the applicable provisions of said laws, programs, and regulations prior to commencing performance of the contract. Copies of said laws, programs, and regulations are available upon request from the implementing entity's Contract Compliance Officer, or from the U.S. Department of Labor's OFCCP Officer to the extent applicable the provisions of said laws programs and regulations are deemed to be a part of this contract as if fully set forth herein.
4. Vietnam Era Veterans' Readjustment Assistance Acts of 1972 and 1974, as amended. Pub. L. 92-540, Title V, Sec 503(a), Pub. L 93-508. Title IV, Sec. 402. (38 USCA 2011-2013).
5. Rehabilitation act of 1973, as amended (Handicapped) Pub. 193-112 as amended. (29 USCA 701-794).
6. California Fair Employment Practice Act. Labor Code Sec. 1410 *et seq.*
7. Civil Rights Act of 1964, as amended (42 USCA 2000a to 2000H-6) and Executive Order No. 11246, September 24, 1965, as amended.

## EQUAL OPPORTUNITY CLAUSES

The Contractor and Subcontractors not found exempt under 41 CFR 60-1.5, are required to comply with the following equal opportunity clauses as a condition of being awarded a federally-assisted contract. Each nonexempt prime Contractor shall include equal employment opportunity clauses in each of its nonexempt Subcontractors.

### EQUAL OPPORTUNITY CLAUSE FOR FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS

This clause is inserted pursuant to Executive Order 11246 of September 24, 1965, as amended, and Title VII of the Civil Rights Act of 1964, and is applicable pursuant to 41 CFR Sec. 60-1.4. The following requirements apply to Contractors and Subcontractors

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor 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, 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 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.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he 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'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.
- (4) The Contractor 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.
- (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24,

1965, and by rules, regulations and orders of the Secretary of Labor, pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders

- (6) In the event of the Contractor's noncompliance 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 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.
- (7) The Contractor will include the provisions of paragraphs (1) through (7) 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 Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 1124 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and Subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee), refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurances of future compliance has been received from such applicant, and refer the case to the Department of Justice for appropriate legal proceedings.

In addition to the above, Contractor will agree to furnish all information and reports, including Standard form EEO-1, if applicable, to the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor's OFCCP, as required by Executive Order No. 11246 of September 24, 1965.

### **EQUAL OPPORTUNITY CLAUSE FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA**

This clause is inserted pursuant to Executive Order 11701 of January 24, 1973 and the Vietnam Era Veterans Readjustment Assistance Acts of 1972 and 1974 (P.L. 92-540, 93-508), and is applicable pursuant to 41 CFR Sec. 60-250.

- (1) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam Era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam Era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of

independently operated corporate affiliates, shall be listed at an appropriate local office of the State Employment Service System wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

- (3) Listings of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.
- (4) The reports required by paragraph (2) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State Employment Service. Such reports shall indicate for each hiring location, (a) the number of individuals hired during the reporting period, (b) the number of non-disabled veterans of the Vietnam Era hired, (c) the number of disabled veterans of the Vietnam Era hired, and (d) the total number of disabled veterans hired. The reports shall include covered veterans hired for on-the-job training under 38 USC Sec. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location, copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.
- (5) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.
- (6) This clause does not apply to the listing of employment openings, which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

- (7) The provisions of paragraphs (2), (3), (4) and (5) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer - union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer - union arrangement for that opening.
- (8) As used in this clause:
- a. "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and non-supervisory; technical; and executive, administrative and professional openings as are compensated on a salary basis of less than \$25,000 per year. The term includes full-time employment, temporary employment of more than three days duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer - union hiring arrangement or openings in an educational institution which are restricted to students of that institution. Under most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.
  - b. "Appropriate office of the State Employment Service System" means the local office of the federal - state national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Colombia, Guam, Puerto Rico and the Virgin Islands.
  - c. "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.
  - d. "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer - union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.
- (9) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
  - (10) In the event of the Contractor's 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.
  - (11) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era for employment, and the rights of applicants and employees.
  - (12) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.
  - (13) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, 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 of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
  - (14) Collective bargaining agreement or other contract understanding that the Contractor is bound by the terms of the Vietnam Era Veterans' Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.
  - (15) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, 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 of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

## **EQUAL OPPORTUNITY CLAUSE FOR WORKERS WITH DISABILITIES**

This clause is inserted pursuant to the Rehabilitation Act of 1973 (P.L. 93-112) and 41 CFR Sec. 60-741-4.

- (1) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) The Contractor 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's non-compliance 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer.
- (5) Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- (6) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- (7) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500.00 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, 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 of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**STANDARD FEDERAL EQUAL  
EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT PROVISIONS  
(EXECUTIVE ORDER 11246, PURSUANT TO  
41 CFR 60-4.3 (a))**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarter Federal Tax Return. U.S. Treasury Department form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with the plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which the contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonable be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance programs Office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period and the Contractor must have made commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and

shall implement affirmative action steps at least as extensive as the follow 16 steps:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's

employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the item and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment source, the Contractor shall send written

- notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors; adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a – p). The efforts of a Contractor association, joint Contractor-union, Contractor-
- community or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation, which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the executive order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
  - 10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
  - 11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
  - 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
  - 13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum



results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the director shall proceed in accordance with 41 CRF 60-4.6.

which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer) dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

a) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid conditions for Federal and federally Assisted Construction published at 41 CFR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60-4 become effective.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws

### **Minority Goals**

The goal for the utilization of women employees on federally-assisted construction contracts is set at 6.9%.

The goal for utilization of minorities, based on the Standard metropolitan Statistical Area (SMSA) for Riverside/San Bernardino County is 19%.

For additional information on these goals, please contact the OFCCP-Pacific Region at (415) 848-6969.

## CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(Applicable to federally assisted construction contracts  
and related subcontracts exceeding \$100,000)

During the performance of this Contract, the Contractor and all Subcontractors shall comply with the requirements of the Clean Air act, as amended, 42 U.S.C. 1857 et. seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the forgoing requirements, all nonexempt Contractors and Subcontractors shall furnish to the owner, the following:

- (1) A stipulation by the Contractor or Subcontractors, that any facility to be utilized in the performance of any nonexempt Contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- (2) Agreement by the Contractor to comply with all requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) A stipulation that as a condition for the award of the Contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.
- (4) Agreement by the Contractor to include, or cause to be included, the criteria and requirements in paragraph (1) through (3) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

**- Insert -**

**DAVIS-BACON WAGE DETERMINATION**

# **SAMPLE DOCUMENTS**

(Including Exhibits A through G)



**Economic Development Agency**  
Community Development and Housing

**CONTRACTOR'S CERTIFICATION OF COMPLIANCE WITH  
DAVIS-BACON AND RELATED ACTS REQUIREMENTS**

PRIME CONTRACTOR	
PROJECT NAME:	PROJECT CODE:
PROJECT ADDRESS:	
PRIME CONTRACTOR NAME:	
<p>As the Prime Contractor for the above referenced project, I hereby make the following certification and acknowledgment with respect to the applicability of "<u>DAVIS-BACON AND RELATED ACTS</u>" requirements:</p> <ol style="list-style-type: none"> <li>1. By entering into this contract I certify and acknowledge that the above referenced project is federally funded and, as the Prime Contractor, I am solely responsible for complying with the "<u>DAVIS-BACON AND RELATED ACTS</u>" requirements; and</li> <li>2. The Prime Contractor and all Subcontractors are required to pay their laborers and mechanics employed a wage not less than the highest wage applicable to their work classifications. If no federal work classification appears to apply, the Prime Contractor shall make a written request to the County of San Bernardino to obtain the applicable work classification and wage rate prior to the start of construction. The Prime Contractor is solely responsible for ensuring that all Subcontractors are in compliance with the "<u>DAVIS-BACON AND RELATED ACTS</u>" requirements.</li> </ol>	
_____ PRIME CONTRACTOR	_____ DATE
_____ PRIME CONTRACTOR SIGNATURE	_____ TITLE
<b>IF PRIME CONTRACTOR IS A CORPORATION OR PARTNERSHIP LIST THE LEGAL NAMES AND TITLES OF ALL PARTNERS OR CORPORATE OFFICERS.</b>	
_____ NAME	_____ TITLE
_____ NAME	_____ TITLE
_____ NAME	_____ TITLE
_____ NAME	_____ TITLE
_____ NAME	_____ TITLE

EXHIBIT: A

Created on 8/23/2012



**Economic Development Agency**  
 Community Development and Housing

**SUBCONTRACTOR'S CERTIFICATION OF COMPLIANCE WITH  
 DAVIS-BACON AND RELATED ACTS REQUIREMENTS**

SUBCONTRACTOR	
PROJECT NAME:	PROJECT CODE:
PROJECT ADDRESS:	
PRIME CONTRACTOR NAME:	
SUBCONTRACTOR NAME:	
<p>As the undersigned Subcontractor, having executed a contract with the above named contractor on the above referenced project, hereby make the following certification and acknowledgment with respect to the applicability of "<b>DAVIS-BACON AND RELATED ACTS</b>" requirements:</p> <ol style="list-style-type: none"> <li>1. By executing a contract with the above named contractor, I/we certify and acknowledge that the above referenced project is federally funded and will comply with the "<b>DAVIS-BACON AND RELATED ACTS</b>" requirements.</li> <li>2. I/we have read the "<b>LABOR COMPLIANCE CONTRACT ADDENDUM</b>" including the wage determination for the above referenced project. I/we acknowledge the receipt and adherence to following provisions set forth in the "<b>FEDERAL LABOR STANDARDS PROVISIONS</b>" before participation on this project.</li> <li>3. I/we will include the "<b>LABOR COMPLIANCE CONTRACT ADDENDUM</b>" including the wage determination for the above referenced project in any lower tier subcontracts/purchase orders executed. I/we will forward to Prime Contractor a copy of all executed subcontracts/purchase orders to any lower tier subcontractors within seven (7) days of the execution date.</li> </ol>	
SUBCONTRACTOR	DATE
SUBCONTRACTOR SIGNATURE	TITLE
<b>IF SUBCONTRACTOR IS A CORPORATION OR PARTNERSHIP          LIST THE LEGAL NAMES AND TITLES OF ALL PARTNERS OR CORPORATE OFFICERS.</b>	
NAME	TITLE
NAME	TITLE
NAME	TITLE
NAME	TITLE
NAME	TITLE



**CERTIFICATION OF BIDDER REGARDING  
EQUAL EMPLOYMENT OPPORTUNITY**

**PRIME CONTRACTOR**

PROJECT NAME:

PROJECT CODE:

PROJECT ADDRESS:

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed Subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the **Equal Opportunity Clause**; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such report is submitted.

**BIDDER'S CERTIFICATION**

BIDDER'S NAME:

ADDRESS:

**1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.**

Yes  No (IF YES, identify the most recent contract.) \_\_\_\_\_

(IF NO, contractor may be required to submit an EEO-1 survey or other reports to the Equal Employment Opportunity Commission, EEOC at 800-669-4000 or online at <http://www.eeoc.gov/eeo1survey/index.html>.

**2. Compliance reports were filed in connection with such contract or subcontractor with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission.**

Yes  No  None Required

**3. Has Bidder ever been or is bidder being considered for sanction due to violation of EXECUTIVE ORDER 11246, as amended. <http://www.dol.gov/compliance/laws/comp-eeo.htm>**

Yes  No

**Certification:** The information above is true and complete to the best of my knowledge and belief.

PRIME CONTRACTOR (Print Name)

TITLE

CONTRACTOR SIGNATURE

DATE



Economic Development Agency  
Community Development and Housing

**CERTIFICATION BY PROPOSED SUBCONTRACTOR  
REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

**SUBCONTRACTOR**

PROJECT NAME:

PROJECT CODE:

PROJECT ADDRESS:

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective Contractor, or any of their proposed Subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the **Equal Opportunity Clause**; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the Subcontractor has not filed a compliance report due under applicable instructions, such Subcontractor shall be required to submit a compliance report before the Prime Contractor approves the subcontract or permits work to begin under the subcontract. No contract shall be awarded unless such report is submitted.

**SUBCONTRACTOR'S CERTIFICATION**

SUBCONTRACTOR'S NAME:

ADDRESS:

**1. Subcontractor has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.**

Yes  No (IF YES, identify the most recent contract.) \_\_\_\_\_

(IF NO, contractor may be required to submit an EEO-1 survey or other reports to the Equal Employment Opportunity Commission, EEOC at 800-669-4000 or online at <http://www.eeoc.gov/eeo1survey/index.html>.)

**2. Compliance reports were filed in connection with such contract or subcontractor with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission.**

Yes  No  None Required

**3. Subcontractor has ever been or is being considered for sanction due to violation of EXECUTIVE ORDER 11246, as amended. <http://www.dol.gov/compliance/laws/comp-eeo.htm>**

Yes  No

**Certification:** The information above is true and complete to the best of my knowledge and belief.

\_\_\_\_\_  
SUBCONTRACTOR (Print Name)

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
SUBCONTRACTOR SIGNATURE

\_\_\_\_\_  
DATE





Economic Development Agency  
Community Development and Housing

**AFFIRMATIVE ACTION COMPLIANCE FORM  
FOR CONSTRUCTION CONTRACTS OVER \$10,000**

PRIME CONTRACTOR	SUBCONTRACTOR
PROJECT NAME:	PROJECT CODE:
COMPANY – CONTRACTOR NAME:	
Please check the box that applies to your company to affirm an understanding and implementation of <b>AFFIRMATIVE ACTION COMPLIANCE</b> requirements and that you have read and completed the requirements for the project as noted below:	
I / We have reviewed and understand the <b>“CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (ATTACHMENT D)”</b> of the bid package and/or <b>“LABOR COMPLIANCE CONTRACT ADDENDUM”</b> .	
<b>** MANDATORY REQUIREMENT **</b>	
<input type="checkbox"/> I / We <b>DO</b> currently maintain an effective Affirmative Action Program. The Affirmative Action Program complies with the <b>Standard Federal Equal Employment Opportunity Construction Contract Provisions Executive Order 11246, pursuant to 41 CFR 60-4.3 (a)</b> and will furnish a copy upon request.	
<input type="checkbox"/> I / We <b>DO NOT</b> currently maintain an Affirmative Action Program. I / We agree to the <b>Equal Opportunity Clause for Federally-Assisted Construction Contracts (Executive Order 11246)</b> , as amended, and Title VII of the Civil Rights Act of 1964, and is applicable pursuant to 41 CFR 60-1.4) of <b>“CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (ATTACHMENT D)”</b> of the bid package and/or <b>“LABOR COMPLIANCE CONTRACT ADDENDUM”</b> .  Personnel affirmative action in recruitment, hiring and promotion is required by Contractors and Subcontractors who have entered into a federally-assisted construction contract that exceeds \$10,000 or \$10,000 in the aggregate over a 12-month period. Contractors or Subcontractor who enter into a “Construction Contract” in excess of \$10,000 must take 16 specific affirmative action steps to ensure equal employment opportunity. These steps are included in <b>41 CFR 60-4.3 (a) (7)</b> and are also included under “Standard Federal Equal Employment Opportunity Construction Contract Specifications” of <b>“CONSTRUCTION CONTRACT LABOR COMPLIANCE PROVISIONS (ATTACHMENT D)”</b> of the bid package and/or <b>“LABOR COMPLIANCE CONTRACT ADDENDUM”</b> .	
I certify the information above is true and complete to the best of my knowledge and belief.	
_____	_____
CONTRACTOR (Print Name)	TITLE
_____	_____
CONTRACTOR SIGNATURE	DATE

EXHIBIT: D

Created on 3/12/2014



**Economic Development Agency  
Community Development and Housing**

**CERTIFICATE OF UNDERSTANDING  
AND AUTHORIZATION FORM**

PRIME CONTRACTOR	SUBCONTRACTOR
<b>** Complete If Owner/Officer Is <u>NOT</u> Signing <i>Statement of Compliance</i> **</b>	
PROJECT NAME:	PROJECT CODE:
COMPANY – CONTRACTOR NAME:	
<p>The undersigned certifies that the company <u>principal(s)</u>, and the <u>authorized payroll officer</u> have read the most current “<b>DAVIS-BACON LABOR STANDARDS</b>” (A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects) and understand the labor standards clauses pertaining to this project including the pre-construction conference discussions and all related documents required for this project by the implementing agency in the pre-construction checklist package.</p>	
<p><b>THE FOLLOWING PERSON(S) IS DESIGNATED AS THE PAYROLL OFFICER FOR THE UNDERSIGNED COMPANY – CONTRACTOR AND IS AUTHORIZED TO SIGN THE STATEMENT OF COMPLIANCE WHICH WILL ACCOMPANY EACH WEEKLY CERTIFIED PAYROLL REPORT FOR THIS PROJECT.</b></p>	
<hr/> PAYROLL AGENT (PRINT NAME)	<hr/> PAYROLL AGENT (SIGNATURE)
<hr/> OWNER/OFFICER (PRINT NAME)	<hr/> OWNER/OFFICER (SIGNATURE)
<hr/> TITLE (PARTNER/CORPORATE OFFICER OR OWNER)	<hr/> DATE
<p>*** A PAYROLL OFFICER MAY SELF-CERTIFY AUTHORIZATION TO SIGN PAYROLL REPORTS ONLY IF A SOLE-PROPRIETOR. ALL OTHERS MUST HAVE AUTHORIZATION FROM A SECOND CORPORATE OFFICER / PARTNER OR OWNER. ***</p>	

EXHIBIT: E



**FRINGE BENEFIT STATEMENT FORM**

PRIME CONTRACTOR		SUBCONTRACTOR	
<b>PROJECT NAME:</b>		<b>PROJECT CODE:</b>	
<b>COMPANY – CONTRACTOR NAME:</b>			
Use this form to identify those bona fide Fringe Benefit Plan(s) in which your employees are participating. List all third party plans, funds or trustees to which your firm makes fringe benefit payments in the interest of your employees. Provide an hourly equivalent of each fringe type (in dollars) below. Payrolls will be monitored to ensure the proper Fringe Benefit rates are being paid. Additional documentation may be required.			
<b>CLASSIFICATION:</b>		<b>EFFECTIVE DATE:</b>	<b>SUBSISTENCE OR TRAVEL PAY \$:</b>
<b>FRINGE BENEFIT HOURLY AMOUNT:</b>		<b>NAME, ADDRESS AND CONTACT INFORMATION OF PLAN, FUND OR PROGRAM</b>	
<b>VACATION/HOLIDAY \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
<b>HEALTH &amp; WELFARE \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
<b>PENSION \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
<b>APPRENTICE/TRAINING \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
<b>OTHER \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
<b>CLASSIFICATION:</b>		<b>EFFECTIVE DATE:</b>	<b>SUBSISTENCE OR TRAVEL PAY \$:</b>
<b>FRINGE BENEFIT HOURLY AMOUNT:</b>		<b>NAME, ADDRESS AND CONTACT INFORMATION OF PLAN, FUND OR PROGRAM</b>	
<b>VACATION/HOLIDAY \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
<b>HEALTH &amp; WELFARE \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
<b>PENSION \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
<b>APPRENTICE/TRAINING \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
<b>OTHER \$:</b>		NAME:	
		ADDRESS:	
		CONTACT INFORMATION:	
I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds or programs as listed above:			
_____ <b>CONTRACTOR (PRINT NAME)</b>		_____ <b>TITLE</b>	
_____ <b>CONTRACTOR SIGNATURE</b>		_____ <b>DATE</b>	

## FRINGE BENEFIT FORM INSTRUCTIONS

**Supplemental statements MUST be submitted during the progress of work should a change in rate of any of the classifications be made.**

**NOTE:** To receive credit for employer paid benefit contributions, plans must be bona fide and contributions must be documented. On the Fringe Benefit Statement, indicate the name, address and phone number of the administrator of the Plan, Fund or Program.

**VACATION PLAN/PAID HOLIDAY DOCUMENTATION:** Please submit copies of your company's policy for employer paid vacation and holidays. For vacation, please explain how you track the vacation hours for each employee. Additionally, please submit copies of monthly reports or statements from the bank/fund depository showing that the plan and vacation amounts are available for the workers.

**HEALTH AND WELFARE DOCUMENTATION:** For your Health & Welfare Plan, please submit copies of the plan documentation indicating monthly or quarterly billings for the covered benefits (and delineating all benefits per worker), as well as statements and copies of checks transmitted by your company to the trust fund or plan for these benefits.

**PENSION PLAN DOCUMENTATION:** Please submit copies of the plan documentation from the Plan Administrator including the plan summary, account balances, monthly or quarterly transmittals into the account and copies of checks transmitted by your company as payments into the accounts.

**APPRENTICE/TRAINING DOCUMENTATION:** Please submit copies of the Apprentice/Training Certification Letter from your Federally Registered Program Sponsors. The apprenticeship program must be registered with the Department of Labor (DOL), Office of Apprenticeship. Include level, step or period of the apprentice; apprentice's wage scale and ratio information. A training or apprentice wage can be paid only if the trainee is registered in a DOL approved apprenticeship or training program or with a State Apprenticeship Agency recognized by DOL. Otherwise, the individual is to be paid the Davis-Bacon and Related Acts (DBRA) prevailing wage rate for the classification of work that they are performing regardless of their skill level. (Federal regulations DO NOT REQUIRE the employment of apprentices on federally funded projects)

**OTHER DOCUMENTATION:** Please submit copies of explanation, monthly reports or statements and plan documentation from the Plan Administrator for all "OTHER" company paid plan(s). The implementing agency will verify plan(s) for employer to receive credit.

**FRINGES PAID IN CASH:** Indicate if some or all fringes will be added to the employee's basic hourly rate.

If your company does not operate under a collective bargaining agreement or contribute based on an hourly amount; you may use the following formulas to compute hourly benefits. Please be advised that examples are provided only to demonstrate how the formulas are used.

**Annual Calculation:** The annual calculation is based on 2080 hours per year (40hrs x 52 weeks per year)

Formula: Employee's Basic Hourly Rate x Number of Benefit Hours (8 Hrs a Day x Number of Days) divided by 2080 Annual Hours.

Example: At \$20/Hr, with 80 vacation hours a year, the hourly rate would calculate as follows:

$\$20 \times 80 \text{ Hrs} = \$1,600$  divided by 2,080 hours per year = \$.77

Fringe Benefit Hourly Amount: \$.77

**Monthly Calculation:** The monthly calculation factor 173.33 is based on 2080 hours per year divided by 12 months.

Formula: Monthly Benefit Plan Contribution divided by 173.33

Example: If employer pays \$200/month for a medical benefit, the monthly hourly rate calculates as follows:

A monthly plan contribution of \$200 divided by 173.33 = \$1.15

Fringe Benefit hourly amount: \$1.15



**Economic Development Agency**  
Community Development and Housing

**AUTHORIZATION FOR PAYROLL DEDUCTION(S)**

PRIME CONTRACTOR	SUBCONTRACTOR
PROJECT NAME:	PROJECT CODE:
COMPANY – CONTRACTOR NAME:	
EMPLOYEE NAME:	EMPLOYEE #:

**MUST** be completed and signed by the employee who has "OTHER/GARNISH" deduction(s) subtracted from his/her payroll. Deduction types include: Alimony, Child Support, other Court-Ordered Deductions or Garnishments, Uniforms, 401K, Loans, Advance Paybacks, or Insurance, etc. This form is to be submitted before the first Certified Payroll reflecting the deduction(s). **ALL** "Other/Garnish" deductions must be accompanied by **supporting documentation**.

DEDUCTION TYPE:	EXPLANATION FOR DEDUCTION(S):	WEEKLY AMOUNT:

I, \_\_\_\_\_, HEREBY AUTHORIZE \_\_\_\_\_  
{PRINT EMPLOYEE NAME} (COMPANY - CONTRACTOR NAME)  
 TO MAKE THE ABOVE LISTED DEDUCTION(S) FROM MY PAYROLL CHECK. IT IS UNDERSTOOD THAT THESE DEDUCTIONS ARE IN THE INTEREST OF THE EMPLOYEE AND NOT A CONDITION OF EMPLOYMENT, OR A DIRECT OR INDIRECT FINANCIAL BENEFIT ACCRUING TO THE EMPLOYER, AND NOT OTHERWISE FORBIDDEN BY LAW.

_____ EMPLOYEE SIGNATURE	_____ DATE
_____ CONTRACTOR SIGNATURE	_____ DATE

EXHIBIT: G



**EXHIBIT F – FORM OF DACA**

**DISBURSEMENT ACCOUNT CONTROL AGREEMENT**  
**(DISBURSEMENT ACCOUNT)**

This DISBURSEMENT ACCOUNT CONTROL AGREEMENT (DISBURSEMENT ACCOUNT) (this “Agreement”) dated as of November \_\_, 2020 (the “Effective Date”), by and among Haven View Escrow, a California corporation, having an address at (“Escrow Agent”), [Insert SPE Name], a Delaware limited liability company (“Consultant”), and the County of San Bernardino, a political subdivision of the State of California (“Owner”).

W I T N E S S E T H:

- A. All capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Services Agreement.
- B. Owner holds fee title to approximately 6.82 acres of land improved with six residential buildings totaling 15,797 square feet [Assessor’s Parcel Numbers (APNs) 1191-141-36, 37, 38, 40 and 42] located at 2626 & 2634 East Pacific Street in the City of San Bernardino as more particularly described in the attached Exhibit A, attached hereto and incorporated herein by this reference (the “Property”).
- C. Owner is making providing funding in the amount of up to Two Million Seven-Hundred Ninety-Three Thousand Five-Hundred Dollars (\$2,793,500) (“Development Funds”) to fund the development to Consultant pursuant to that certain Consulting and Development Services Agreement, dated as of October 27, 2020, by and among Owner and Consultant (as amended and otherwise in effect from time to time, the “Services Agreement”) to fund the Development Services.
- D. In accordance with Sections 7.3 and 7.4 of the Services Agreement, the Owner and the Consultant have agreed to the disbursement of the Development Funds in accordance with the terms and conditions of this Agreement.
- E. The parties desire to enter into this Agreement in order (i) to establish the Escrow Account, (ii) to set forth their relative rights and duties with respect to the Escrow Account and (iii) to set forth the disbursement requirements with respect to the Escrow Account.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I  
DEVELOPMENT FUNDS**

Section 1. Owner Deposit. As set forth in Section 7.3 of the Services Agreement, the Owner has disbursed or will disburse the Development Funds to the Escrow Agent in accordance with the terms of the Services Agreement.

Section 2. Use of Funds. The Development Funds will be used exclusively for the payment of, or reimbursement for, approved Development Activities which are needed for the completion of the Residential Improvements, in accordance with the Approved Development Budget.

Section 3. Duties of Escrow Agent.

(a) The Account. Escrow Agent shall establish and maintain the Escrow Account entitled as follows:

Name: [ \_\_\_\_\_ ]  
Account No.: [ \_\_\_\_\_ ]

(b) Security Interest in Items. Consultant and Escrow Agent hereby agree that all proceeds of all items deposited in the Account from time to time, together with all other funds received by Escrow Agent in the Account via wire transfer, ACH, merchant card transactions and other electronic funds transfers, or otherwise, shall be held for the benefit of Owner.

(c) Available Funds. Consultant and Owner agree that withdrawals or transfers from the Escrow Account will not at any time exceed the available funds in the Escrow Account, as determined by Escrow Agent's current availability schedule and subject to Escrow Agent's right to place holds for uncollected funds.

(d) Monthly Report. Consultant authorizes Escrow Agent, and Escrow Agent agrees (without requiring Consultant's further authorization or instruction), to send or make available at least a monthly report to Owner containing information specifying the amounts withdrawn and amounts on deposit in the Escrow Account for the previous month.

Section 4. Fees and Charges.

(a) To compensate Escrow Agent for performing the services described in this Agreement, Owner agrees to pay the fees owed to Escrow Agent. Escrow Agent shall debit the Account under advice on a monthly basis for its reasonable and customary fees and charges relating to the Account and shall include its fees in the monthly report required pursuant to Section 1(f). Owner agrees to pay Escrow Agent, upon demand, all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by Escrow Agent in the preparation, negotiation and administration of this Agreement (including any amendments hereto or additional instruments or agreements required hereunder); and Owner authorizes Escrow Agent to charge the Account for such costs and expenses.



(b) Owner agrees to pay Escrow Agent for all Returned Items and for all service charges, returned check fees and any other charges to which Escrow Agent may be entitled for servicing and maintaining the Account (collectively with Returned Items, the "Charges") and authorizes Escrow Agent to charge other accounts maintained with Escrow Agent by Consultant for such Charges. In the event that there are insufficient collected funds on deposit in such other accounts to pay the Charges, Consultant and Owner agree that Escrow Agent may debit the Account the amount of such Charges. With respect to any Returned Item, if Consultant fails to repay Escrow Agent in accordance with this section, then Secured Party shall repay Escrow Agent the amount of such Returned Item within ten (10) Business Days of receipt of written demand for such payment, *provided* that (i) such demand is received within ninety (90) days of the date such Returned Item was credited to the Account, and (ii) Owner or their respective designee(s) received the proceeds of such Returned Item.

## **ARTICLE II DRAW REQUESTS**

Section 1. Consistency with Development Activities. The Owner has approved in writing, the Development Activities. Notwithstanding anything to the contrary contained elsewhere in this Disbursement Agreement, the Escrow Agent shall have no obligation to make any disbursement for any work or materials which are not required under the Development Activities previously approved by Owner or for costs that are otherwise inconsistent with the Approved Financing Plan for the Residential Improvements.

### Section 2. Draw Requests.

(a) Application for Payment. Disbursements of Development Funds shall be made upon submission by Consultant of a written itemized statement or draw request in a form approved by Escrow Agent (subject to the Owner's consent) (the "Application for Payment" or "Draw Request"). An Application for Payment shall be submitted not more frequently than every two weeks.

(b) Contents and Documentation of Application for Payment. Each Application for Payment shall be in a form containing sufficient detail and with sufficient supporting documentation to permit the Owner to confirm that the work to be funded by the draw request has been performed.

(c) Delivery of Applications for Payment. The Consultant shall deliver copies of each Application for Payment and supporting documentation concurrently to Escrow Agent and Owner. Each Application for Payment and supporting documentation shall be subject to the approval of the Owner.

Section 3. Submission to Owner. Immediately after each disbursement pursuant to any Application for Payment, Consultant shall transmit to Owner, to the extent available to Consultant, a copy of Escrow Agent's inspection report or other documentation indicating the Escrow Agent's inspector's determination of the percentage of work completed pertaining to such Application for Payment. No representation or warranty of Escrow Agent is

made or shall be implied with respect to any matter shown in such inspection report or other documentation. If the Owner fails to approve or disapprove an Application for Payment within five (5) business days of receipt thereof, approval of such Application for Payment shall be deemed given by the Owner.

Section 4. Approval of Draw Requests.

(a) General. The Owner's approval of each Draw Request shall be subject to satisfaction of the requirements of this Disbursement Agreement and the Services Agreement. Under no circumstance will the Owner have any further obligation to approve any Application for Payment following: (1) termination of this Disbursement Agreement; or (2) notification by the Owner to the Consultant of a Default under the terms of the Disbursement Agreement, subject to notice and cure rights set forth in the Disbursement Agreement.

(b) Procedure. The Owner shall, within five (5) business days after receipt of an Application for Payment containing all of the items described in Section 3 of this Article II, determine the amount of the Application for Payment to be approved, notify Consultant, appropriate members of the construction team and the Escrow Agent of such amount, and authorize Escrow Agent to disburse the approved amount of Development Funds, by check or wire transfer, to Consultant, or to the respective contractor or subcontractor, as determined by written notice provided by the County Community Development and Housing Director. If the Owner fails to approve or disapprove an Application for Payment within five (5) business days of receipt thereof, approval of such Application for Payment shall be deemed given by the Owner.

(c) Disapprovals. On the basis of the progress of the work performed on the Project and the conditions precedent to making disbursements contained in their respective agreements with Consultant, the Owner may disapprove all or part of a Draw Request/Application for Payment. In the event Owner disapproves any portion of the amount requested by Consultant in an Application for Payment (the "disapproved amount"), Owner shall promptly provide written notice to the Escrow Agent and the Consultant of the disapproved amount and the reason therefor.

Section 5. General Conditions Applicable to Disbursements. Disbursements shall be subject to the following condition: Escrow Agent shall not be obligated to disburse any Development Funds until the Owner has approved all or a portion of the corresponding Application for Payment for the funds to be disbursed, which approval will not be unreasonably delayed or withheld.

Section 6. Inspection of the Project. Owner shall have the right to inspect the Property during construction and agrees to deliver to the Consultant copies of any inspection reports. Consultant shall deliver to Owner all inspection reports prepared by for the Project. Inspection of the Project shall be for the sole purpose of protecting the Owner's security and is not to be construed as a representation by Owner that there has been compliance with the Plans and Specifications or that the Project will be free of faulty materials or workmanship. The Consultant may make or cause to be made such other independent inspections as the Consultant may desire for its own protection.

Section 7. Supervision of Construction. The Owner shall be under no obligation to perform any of the construction or complete the construction of the improvements on the Project, or to supervise any construction on the Project, and shall not be responsible for inadequate or deficient contractors, subcontractors, materials, equipment or supplies. The Consultant is an agent on behalf of the Owner, but the parties are not partners or joint venturers with each other.

Section 8. Escrow Agent Protections.

(a) Escrow Agent neither undertakes nor assumes any responsibility to review, inspect, supervise, approve or inform Consultant or Owner of any matter in connection with the Project, including matters relating to: (1) the plans and specifications; (2) architects, contractors, subcontractors and materialmen, or the workmanship of or materials used by any of them; or (3) the progress of the Project and its conformity with the plans and specifications; and Consultant and Owner shall rely entirely on their own judgment with respect to such matters and acknowledge that any review, inspection, supervision, approval or information supplied to Consultant or Owner by Escrow Agent in connection with such matters is solely for the protection of Escrow Agent and that neither Consultant nor Owner nor any third party is entitled to rely on it.

(b) By accepting or approving anything required to be performed or given to Escrow Agent under this Agreement, including any Draw Request, application, or certificate, Escrow Agent shall not be deemed to have warranted or represented the sufficiency or legal effect of the same or of the information or conclusions contained therein, and no such acceptance or approval shall constitute a warranty or representation by Escrow Agent to anyone. Any meetings between or among Escrow Agent, Owner and/or Consultant and their representatives and inspectors, and any exchange of any inspection or construction information between and among such shall be solely for the benefit of Escrow Agent and not for the benefit of Consultant, Owner or any other Person, and neither Consultant, Owner nor any such Person may rely thereon for any purpose. Escrow Agent shall be fully protected in acting in reliance upon any documents, instrument or agreement which Escrow Agent, in good faith, believes to be signed by the named party thereto. Escrow Agent shall in no event be responsible or liable to any person for the disbursement of, or failure to disburse, Development Funds or any part thereof.

### ARTICLE III MISCELLANEOUS

Section 1. Effective Date. This Agreement shall take effect upon the receipt by the Escrow Agent of deposits of the Development Funds (the "Effective Date").

Section 2. Integrated Agreement. This Agreement is made for the sole benefit and protection of the parties hereto and no other person or persons shall have any right of action or right to rely hereon. As this Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Notwithstanding the foregoing sentence or any other provision of this Agreement, this Agreement does not supersede and shall not be deemed to amend the Services Agreement.

Section 3. Complete Agreement. This Agreement and the instructions and notices required or permitted to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof, and, subject to Section 2 of this Article III, supersede any prior agreement and contemporaneous oral agreements of the parties concerning its subject matter.

Section 4. Termination. This Agreement shall continue in effect until Owner have notified Escrow Agent in writing that this Agreement is terminated. Upon receipt of such notice, the obligations of Escrow Agent hereunder with respect to the operation and maintenance of the Escrow Account after the receipt of such notice shall terminate. Escrow Agent reserves the right, unilaterally, to terminate this Agreement, such termination to be effective upon thirty (30) Business Days' written notice to Owner and Consultant. Upon termination of this Agreement, any funds on deposit in the Escrow Account shall be returned to the Owner.

Section 6. Indemnification. Escrow Agent shall not be liable for any claims, suits, actions, costs, damages, liabilities or expenses ("Liabilities") in connection with the subject matter of this Agreement other than Liabilities caused by the gross negligence or willful misconduct of Escrow Agent. Consultant and Owner and their respective successors and assigns hereby agree to indemnify and hold harmless Escrow Agent and its directors, officers, employees and agents and the successors and assigns of Escrow Agent from and against any and all liabilities, legal fees, law suits or legal proceedings, including, without limitation, reasonable fees and disbursements of legal counsel incurred by Escrow Agent in any action or proceeding between Consultant, the Owner and Escrow Agent or between Escrow Agent and any third party or otherwise, without regard to the merit or lack of merit thereof, arising from or in connection with any acts or omissions taken by Escrow Agent or any director, officer, employee or agent of any of them, as applicable, in connection with this Agreement. Notwithstanding anything to the contrary contained herein, Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to Consultant or the County. Escrow Agent may execute any of its powers or perform any of its duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and retained by it at the cost and expense of Owner. Nothing contained herein shall be deemed to prohibit Escrow Agent from complying with its customary procedures in the event that it is served with any legal process with respect to the Escrow Account.

Section 7. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile machine, portable document format ("PDF") or other electronic means shall be as effective as delivery of a manually executed counterpart of this Agreement. The effectiveness of any such documents and signatures shall, subject to applicable laws, have the same force and effect as manually signed originals and shall be binding on Consultant, Escrow Agent and the Owner. Owner may also require that any such documents and signatures be confirmed by a manually signed original thereof; *provided,*

*however*, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature. No party may raise the use of a telecopier, facsimile machine, PDF or other electronic means, or the fact that any signature was transmitted through the use of a telecopier, facsimile machine, PDF or other electronic means, as a defense to the enforcement of this Agreement.

Section 8. Successors and Assigns; Assignments. This Agreement shall bind and inure to the benefit of and be enforceable by Escrow Agent, Consultant and Owner and their respective successors and assigns.

Section 9. Governing Law and Venue. This Agreement has been negotiated and entered in the State of California, and shall be governed by, construed and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California.

Section 10. Headings. The section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 11. Interpretation. No provision in this Agreement is to be interpreted for or against either party because that party or his legal representatives drafted such provision.

Section 12. Waiver. No breach of any provision hereof may be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

Section 13. Amendments; Other Agreements. This Agreement may be amended from time to time in writing by all parties hereto. This Agreement is supplemented by the terms and conditions of the Deposit Agreements, and to the extent the terms of such Deposit Agreements conflict with this Agreement, the specific terms of this Agreement shall control; *provided, however*, that this Agreement shall not alter or affect any mandatory arbitration provision currently in effect between Escrow Agent and Consultant pursuant to the Deposit Agreements.

Section 14. Severance. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or enforceable, such provision will be deemed to be severed and deleted from the agreement as a whole and neither such provision, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Agreement.

Section 15. Independent Advice of Counsel. The parties hereto and each of them, represent and declare that in executing this Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any of the parties hereto or by any person representing them, or any of them.

Section 16. Voluntary Agreement. The parties hereto, and each of them, further represent and declare that they carefully read this Agreement and know the contents thereof, and that they sign the same freely and voluntarily.

Section 17. Attorneys' Fees. In the event of any dispute between the parties regarding this Agreement, the prevailing party shall be entitled to recover costs and expenses, including but not limited to reasonable attorneys' fees.

Section 18. Notices. All notices and requests required or permitted under this Agreement (a "Notice") shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile or electronic mail, in each case addressed as follows (or to such other address or Person as a party shall designate from time to time by notice to the other party):

(1) If to Escrow Agent:

Haven View Escrow  
8429 White Oak Avenue, Suite 104  
Rancho Cucamonga, CA 91730  
Attn: \_\_\_\_\_

(2) If to Consultant:

[Insert Special Purpose Entity]  
c/o LaBarge Industries, LLC  
3105 E. Guasti Road, Suite 100  
Ontario, CA 91761  
Attention: Joshua LaBarge

(3) If to Owner:

Department of Community Development and Housing  
County of San Bernardino  
385 North Arrowhead Ave Third Floor  
San Bernardino, CA 92415-0043  
Attn: Community Development and Housing Director

A Notice shall be deemed to have been given: (i) if sent by hand delivery, upon delivery, or (ii) if sent by overnight courier, upon receipt, or (iii) if mailed, three (3) Business Days after mailing, or (iv) if transmitted by telecopy, upon confirmation of transmission, or (v) if by e-mail upon confirmation of actual receipt by the intended recipient.

Section 19. Certain Matters Affecting Escrow Agent. Escrow Agent may rely and shall be protected in acting or refraining from acting upon any notice (including but not limited to electronically confirmed facsimiles of such notice) believed by it to be genuine and to

have been signed or presented by the proper party or parties. The duties and obligations of Escrow Agent set forth in this Agreement shall be determined solely by the express provisions of this Agreement, Escrow Agent shall not be liable except for the performance of such party's duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against Escrow Agent.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each party has caused this Disbursement Account Control Agreement (Escrow Account) to be duly executed as of the Effective Date.

**CONSULTANT:**

[ENTITY NAME], a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



[COUNTERPART SIGNATURE PAGE TO  
DEPOSIT ACCOUNT CONTROL AGREEMENT (DISBURSEMENT ACCOUNT)]

**OWNER:**

**COUNTY OF SAN BERNARDINO**, a political  
subdivision of the State of California

By: \_\_\_\_\_  
Leonard X. Hernandez, Chief Executive Officer

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

MICHELLE D. BLAKEMORE  
County Counsel

By: \_\_\_\_\_  
Suzanne Bryant,  
Deputy County Counsel

Date: \_\_\_\_\_

[COUNTERPART SIGNATURE PAGE  
DEPOSIT ACCOUNT CONTROL AGREEMENT (DISBURSEMENT ACCOUNT)]

**ESCROW AGENT:**

HAVEN VIEW ESCROW, a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

PROPERTY LEGAL DESCRIPTION