

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



Contract Number
24-123

SAP Number

Community Development & Housing

Department Contract Representative	<u>Carrie Harmon</u>
Telephone Number	<u>(909) 382-3983</u>
Contractor	<u>Quality Management Group, Inc. Haven View Escrow</u>
Contractor Representative	<u>Josh LaBarge (Quality Management Group, Inc.) Mary Gilreath (Haven View Escrow)</u>
Telephone Number	<u>(909) 931-9763 (Josh LaBarge) (909) 373-1200 (Mary Gilreath)</u>
Contract Term	<u>02/06/2024 to 02/09/2025</u>
Original Contract Amount	<u>\$0</u>
Amendment Amount	<u>\$0</u>
Total Contract Amount	<u>\$0</u>
Cost Center	<u>6210002507</u>

Briefly describe the general nature of the contract: The Disbursement Account Control Agreement outlines the process for the County to deposit funds into the escrow account, how the escrow agent will manage the escrow account and how Quality Management Group, Inc. (QMG) can request disbursements in connection with the Property Management Agreement as amended. The disbursements will be for the property's operating and management services provided by QMG for Pacific Village that provides housing for individuals and households who are at-risk of or experiencing homelessness that includes case management and supportive services for 28 individuals or households.

FOR COUNTY USE ONLY

Approved as to Legal Form Signed by Suzanne Bryant, Deputy County Counsel Date <u>February 1, 2024</u>	Reviewed for Contract Compliance _____ Date _____	Reviewed/Approved by Department Signed by Carrie Harmon, Director Date <u>February 1, 2024</u>
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DISBURSEMENT ACCOUNT CONTROL AGREEMENT
(DISBURSEMENT ACCOUNT)

This DISBURSEMENT ACCOUNT CONTROL AGREEMENT (DISBURSEMENT ACCOUNT) (this "Agreement") dated as of February 6, 2024 (the "Effective Date"), by and among Haven View Escrow, a California corporation, having an address at ("Escrow Agent"), Quality Management Group, Inc. a California corporation ("Agent"), and San Bernardino County, 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 Property Management 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 and incorporated herein by this reference (the "Property").
- C. Owner is providing funding in the amount of up to Eight Hundred Thousand Dollars (\$800,000.00) ("Operating Funds") to fund the operating costs of the Property to Agent pursuant to the Property Management Agreement, dated as of January 26, 2021, as amended, by and among Owner and Agent (as amended and otherwise in effect from time to time, the "Property Management Agreement") to fund the operating costs for the Property.
- D. In accordance with Section 3.2(e) of the Property Management Agreement, the Owner and the Agent have agreed to the disbursement of the Operating 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 OPERATING FUNDS

Section 1. Owner Deposit. As set forth in Section 3.2(e) of the Property Management Agreement, the Owner has disbursed or will disburse the Operating Funds to the Escrow Agent in accordance with the terms of the Property Management Agreement.

Section 2. Use of Funds. The Operating Funds will be used exclusively for the payment of, or reimbursement for, approved operating costs that are needed to operate and maintain the Property, in accordance with the Approved Operating Budget.

Section 3. Duties of Escrow Agent.

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

Name: Haven View Escrow/Trust Account
Account No.: 013364044

(b) Security Interest in Items. Agent 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. Agent 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. Agent authorizes Escrow Agent, and Escrow Agent agrees (without requiring Agent'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 Agent 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 number of such Charges. With respect to any Returned Item, if Agent 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 a 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 I. Consistency with Operating Activities. The Owner has approved in writing, the operating costs. 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 operating costs, which are not required under the Property Management Agreement previously approved by Owner.

Section 2. Draw Requests.

(a) Application for Payment. Disbursements of Operating Funds shall be made upon submission by Agent 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 Agent 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, Agent shall transmit to Owner, to the extent available to Agent, a copy of receipts and invoices 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 Property Management 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 Agent 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 Agent and the Escrow Agent of such amount, and authorize Escrow Agent to disburse the approved amount of Operating Funds, by check or wire transfer, to Agent. If the Owner fails to approve or disapprove an Application for Payment within twenty-one (21) 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 documentation of the operating costs for the Property and the conditions precedent to making disbursements contained in their respective agreements with Agent, 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 Agent in an Application for Payment (the "disapproved amount"), Owner shall promptly provide written notice to the Escrow Agent and the Agent 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 Operating 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 and agrees to deliver to the Agent copies of any inspection reports. Inspection of the Project shall be for the sole purpose of protecting the Owner's interest.

Section 7. Escrow Agent Protections.

(a) Escrow Agent neither undertakes nor assumes any responsibility to review, inspect, supervise, approve or inform Agent or Owner of any matter in connection with the Project, including matters relating to: (1) operating costs; or (2) documentation of operating costs or maintenance; and Agent 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 Agent or Owner by Escrow Agent in connection with such matters is solely for the protection of Escrow Agent and that neither Agent 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 Agent and their representatives, and any exchange of any information between and among such shall be solely for the benefit of Escrow Agent and not for the benefit of Agent, Owner, or any other Person, and neither Agent, 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, Operating 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 Operating 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 Property Management 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 has 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 Agent. 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. Agent 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 Agent, 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 Agent or the Owner. 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 Agent, 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, Agent 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.

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, each party is responsible for its attorneys' fees and cost.

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: Mary Gilreath

- (2) If to Agent:
Quality Management Group Inc.
3105 E. Guasti Road, Suite 100
Ontario, CA 91761
Attention: Joshua LaBarge

- (3) If to Owner:
San Bernardino County
Department of Community Development and Housing
560 E. Hospitality Lane, Second Floor
San Bernardino, CA 92415
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 on 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 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:

QUALITY MANAGEMENT GROUP, INC. a California Corporation

By:  _____

Name: Joshua LaBarge

Title: President

Date: 1.29.24 _____

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

OWNER:

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

By: _____



Name: Luther Snoke

Title: Chief Executive Officer

Date: _____

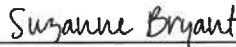
2/29/2024

APPROVED AS TO LEGAL

FORM: TOM BUNTON
County Counsel

DocuSigned by:

By: _____



Suzanne Bryant,
CPA 78868945419...

Deputy County Counsel


Date: _____

January 30, 2024

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

ESCROW AGENT:

HAVEN VIEW ESCROW, a California
corporation

By:  _____
Name: Mary Gilreath _____
Title: Escrow Officer _____
Date: January 30, 2024 _____