

Contract Number

19-568

SAP Number

Housing Authority of the County of San Bernardino

Department Contract Representative
Telephone Number

Maria Razo
(909) 332-6305

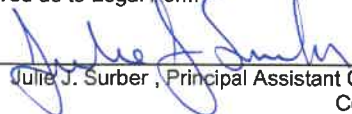
Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Amendment Amount
Total Contract Amount
Cost Center

Noble E&C Inc.
John W. Kim
(909) 890-9562
N/A
\$472,600
N/A
\$472,600
N/A

Briefly describe the general nature of the contract: *This is a construction contract for the rehab of interior plumbing re-pipe for the Parkside Pines Affordable Housing Community in Colton in an amount not to exceed \$472,600 effective August 20, 2019.*

FOR COUNTY USE ONLY

Approved as to Legal Form

► 
Julie J. Surber, Principal Assistant County
Counsel

Date 8/13/19

Reviewed for Contract Compliance

► _____

Date _____

Reviewed/Approved by Department

► 
Maria Razo, Executive Director

Date 8/13/2019

CONTRACT FOR CONSTRUCTION
(FOR CONSTRUCTION CONTRACTS GREATER THAN \$100,000)

THIS CONTRACT FOR CONSTRUCTION AGREEMENT ("Agreement") is made as of the 20th day of August, 2019 by and between Noble E&C Inc. ("Contractor"), and the Housing Authority of the County of San Bernardino, a public entity ("HACSB").

RECITALS

WHEREAS, HACSB is a public entity in San Bernardino County, State of California, committed to provide affordable and safe public housing for low and moderate income families; and

WHEREAS, Contractor has offered to provide certain services to HACSB, and HACSB wishes to retain Contractor for the provision of such services.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, Contractor and HACSB hereby agree as follows:

ARTICLE 1. Description of Work. Contractor will furnish all work, labor, tools, equipment, materials, supervision, scheduling, coordination, and contract administration ("Work") necessary to construct and complete those certain improvements described on Exhibit "A", attached hereto and incorporated herein by reference ("Work"), which Work shall be performed in compliance with the plans and specifications described on Exhibit "B", attached hereto and incorporated herein by reference ("Plans and Specifications"). The Work shall be performed in a good and workmanlike manner. In connection with the performance of the Work, Contractor shall comply with all of the Contract Documents (as hereinafter defined).

ARTICLE 2. Time of Completion. Contractor shall commence the Work on or after the date specified in the written Notice to Proceed issued by HACSB, and shall fully complete all Work within 180 calendar days after the commencement date.

ARTICLE 3. Price. This is a firm Fixed Price Agreement as that phrase is defined in the General Conditions (as hereinafter defined). The price shall be \$472,600.00. This amount is full consideration for this Agreement as written.

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

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

1. Description of plans and specifications, attached hereto as Exhibit "B" and incorporated herein by reference.
General Conditions (form HUD 5370), attached hereto as Exhibit "C" and incorporated herein by reference.
2. Additional General Provisions, attached hereto as Exhibit "D" and incorporated herein by reference ("Additional Provisions").
3. Performance-Payment Bond ("Performance Bond"), attached hereto as Exhibit "E" and incorporated herein by reference.
4. Stipulation of Lien ("Stipulation of Lien"), attached hereto as Exhibit "F" and incorporated herein by reference.
5. Applicable prevailing wages determined by the United States Department of Labor pursuant to the Davis-

Bacon Act. Information relating to the Davis-Bacon Act may be found at <http://www.gpo.gov/davisbacon/>.
Wage Determination CA190017 05/03/2019 CA17 MOD3

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

ARTICLE 6. Best Efforts. Contractor shall perform its duties on premises approved by HACSB, during HACSB'S regular work days and normal work hours and warrants that it shall perform its services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Contractor acknowledges that HACSB has the right to review the services performed by Contractor and may in its reasonable business discretion, reject such services in writing.

ARTICLE 7. No Conflicts. HACSB acknowledges that Contractor has other business and personal interests, separate and apart from the services contemplated by this Agreement, and nothing in this Agreement is intended to preclude Contractor from devoting time and attention to such business and personal interests. HACSB further acknowledges that Contractor has the right to accept other engagements as long as said engagements do not represent a conflict of interest with respect to the Work or the obligations of Contractor to HACSB pursuant to this Agreement. In connection with Contractor's performance of the Work hereunder, Contractor represents that there exists no actual, potential or appearance of conflict arising out of Contractor's business and financial interests.

ARTICLE 8. Limit of Engagement. This Agreement does not and shall not be construed to create any partnership or agency whatsoever beyond the purposes set forth in Article 1 hereof. Contractor shall not be deemed to be a partner, joint venturer, agent or legal representative of HACSB for any purpose, nor shall Consultant have any authority or power to act for, or to undertake any obligation or responsibility, on behalf of HACSB or corporations affiliated with HACSB, other than as expressly herein provided.

ARTICLE 9. Responsibilities of HACSB. If information, data, or documentation necessary to facilitate Contractor's performance of the Work is required to be provided by HACSB, HACSB shall provide such information upon request by Contractor. Should Contractor determine that a delay in its performance has occurred, which is solely attributable to a failure of HACSB, Contractor will promptly notify HACSB in writing.

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

ARTICLE 11. Return of HACSB Property. All reports, plans, designs, specifications, field data, construction documents, and other documents and instruments, including electronic files, but excluding Contractor's notes, relating to the Work shall be and remain the property of HACSB and shall be turned over to HACSB promptly upon the completion of the Work, or upon the earlier termination of this Agreement. Contractor hereby waives and assigns to HACSB all intellectual property or common law rights Contractor may develop in the Work. Contractor shall not use any trademarks owned by HACSB without HACSB's prior written authorization.

ARTICLE 12. Confidential Information. HACSB agrees to make available to Contractor information that may be needed to perform the Work. Such information may include information HACSB considers to be confidential. For purposes hereof, "Confidential Information" of HACSB means any nonpublic, proprietary information or technology used in HACSB's business, and any materials evidencing the same (specifically, including, without limitation, technical data or know-how relating to development plans, business plans, services, customers, markets, inventions (whether patentable or not), processes, designs, drawings, research, developments, strategies, marketing and/or

financial information). Unless HACSB acknowledges that any such information provided under this Agreement is not Confidential Information, all information provided by HACSB to Contractor shall be considered to be Confidential Information. Unless approved in advance in writing or compelled to make such disclosure by a government agency, by court order, or by law, Contractor shall not disclose, transfer, distribute or allow access to any of HACSB's Confidential Information to any third parties, except those individuals employed by Contractor and who are specifically authorized by Contractor to perform the Work contemplated in this Agreement.

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

ARTICLE 14. Indemnity; Hold Harmless. Contractor agrees to defend, save, indemnify and hold harmless HACSB and all its officers, employees, and agents, against any and all liabilities, claims, judgments, or demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the performance of the Work, the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation to the extent arising through the active negligence or willful misconduct of HACSB. Contractor shall reimburse HACSB for any expenditures, including reasonable attorneys' fees, HACSB may incur arising out of any such claim or litigation, and, if requested by HACSB, Contractor shall defend any such suits at the sole cost and expense of Contractor with counsel selected by HACSB.

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

ARTICLE 16. Warranty/Guarantee.

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

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

ARTICLE 18. Accident Prevention. Contractor shall exercise proper precaution at all times for the protection of persons and property. The safety provisions of applicable law, building and construction codes shall be observed, and Contractor shall take or cause to be taken such additional safety and health measures as HACSB may determine to be reasonably necessary. Machinery, equipment and all hazards shall be guarded in accordance with the safety provisions of the State of California Construction Safety Orders (CCR Title 8, Chapter 4, Subchapter 4, as amended) and the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable laws.

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

ARTICLE 20. Designation of Subcontractors.

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

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

ARTICLE 22. Assignment. Neither the Agreement, nor any part thereof, nor moneys due or to become due there under may be assigned by Contractor without the prior written approval of HACSB.

ARTICLE 23. Rights and Remedies of HACSB for Default.

In the event any goods furnished or services provided by Contractor in the performance of the Work should fail to conform to the requirements herein, or to the sample submitted by Contractor, HACSB may reject the same, and it shall become the duty of Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to HACSB, and immediately replace all such rejected items with others conforming to the Agreement.

- a. In addition to any other rights and remedies HACSB may have, HACSB may require Contractor, at Contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Contractor.
- b. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by Contractor, any loss or damage sustained by HACSB in procuring any items which Contractor agreed to supply shall be borne and paid for by Contractor.
- c. HACSB reserves the right to offset the reasonable cost of all damages caused to HACSB against any outstanding invoices or amounts owed to Contractor or to make a claim against Contractor therefore.

ARTICLE 24. Termination. In addition to the rights of Termination for Convenience of HACSB and Termination for Default set forth in the Contract Documents, HACSB may terminate this Agreement if Contractor should file a bankruptcy petition and/or be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency (as referenced in HUD Form 5370-C Section 1 page 1). HACSB may serve written notice upon Contractor of its intention to terminate the Agreement. The notice shall contain the reasons for such intention to terminate the Agreement, and, unless within ten (10) days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days, the Agreement shall cease and terminate. In the event of any such termination, HACSB shall serve written notice thereof upon any surety and Contractor, and any such surety shall have the right to take over and perform Contractor's obligations pursuant to this Agreement; provided, however, that if such surety does not provide HACSB written notice of its intention to take over and perform the Work required under this Agreement within fifteen (15) days after receiving such written notice, or such surety does not commence performance thereof within thirty (30) days after providing such written notice to HACSB, HACSB shall have the right to perform all uncompleted portions of the Work and to prosecute the same to completion by contract or by any other method it deems advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to HACSB for any excess costs occasioned HACSB thereby and, in such event, HACSB may, without liability for doing so, take possession of and utilize in completing the Work, such materials, appliances, and other property belonging to Contractor as may be on the site of the Work and necessary for the performance of the Work.

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

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

If to HACSB:

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

If to Contractor:

John W. Kim
Noble E&C Inc.
21643 Birch Hill Dr.
Diamond Bar, CA 91765
Noble4info@gmail.com

Notices will be deemed effective upon receipt or rejection only.

ARTICLE 26. Complete Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between HACSB and Contractor and of all the terms of this Agreement and cannot be varied, contradicted, nor supplemented by evidence of any prior or contemporaneous oral or written agreements.

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

ARTICLE 28. Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this Agreement shall be deemed valid and operative and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The section headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or of any part hereof.

ARTICLE 29. Interpretation. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the parties.

ARTICLE 30. Counterparts. This Agreement may be executed in multiple counterparts, and when so executed by each of the parties hereto shall constitute a single agreement binding upon all of the parties hereto.

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

[END – SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, HACSB and Contractor have entered into this Agreement as of the Effective Date. _____ (PC1111 Interior Plumbing Re-Pipe R.A.D Re-hab Colton)

CONTRACTOR

Noble E & C Inc

(Affix seal if a corporation)

By: Hyun Joo Oh _____

Title: president _____

Date: 08/01/2019 _____

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

By: _____

Curt Hagman
Chairman, Board of Governors

Date: AUG 20 2019 _____

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

LYNNA MCNEEL, Secretary of the Board of Governors

By: _____

Date: AUG 20 2019 _____

Approved as to Legal Form:
MICHELLE BLAKEMORE, County Counsel
San Bernardino County, California

By: _____

JULIE J. SURBER
Principal Assistant County Counsel

Date: 8/13/19 _____

**GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS
PUBLIC HOUSING PROGRAMS
(form HUD – 5370)**

EXHIBIT “C”

ADDITIONAL GENERAL PROVISIONS

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

8. INSPECTION, ACCEPTANCE AND REJECTION:

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

9. SAMPLES:

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

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

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

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

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

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

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

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

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

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

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

- b. General Liability Insurance. Contractor, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the entire term of this Agreement in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence. Such coverage shall include, but shall not be limited to, protection against claims arising from, and damage to property resulting from, activities contemplated under this Agreement. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to HACSB and shall provide that notice must be given to HACSB at least thirty (30) days prior to cancellation or material change. The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement.

Broad form property damage endorsement must be attached. HACSB is to be named as an additional insured on any contracts of insurance under this paragraph b. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by HACSB. Contractor shall be named as an additional insured with respect to such general liability insurance policy.

- c. Automobile Liability. Contractor, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit coverage. Contractor shall be named as an additional insured with respect to such automobile liability insurance policy.

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

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

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

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

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

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

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

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

22. STOP WORK:

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

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

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

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

29. **DRUG-FREE WORKPLACE CERTIFICATION:** Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. the person's or organization's policy of maintaining a drug-free workplace;
 - iii. any available counseling, rehabilitation and employee assistance programs; and,
 - iv. penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting agreement:
 - i. will receive a copy of the company's drug-free policy statement; and,
 - ii. will agree to abide by the terms of the company's statement as a condition of employment on the agreement.
30. **RECYCLING:** Contractor shall certify in writing under penalty of perjury, compliance with Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to HACSB regardless of whether the product meets the requirements of Section 12209.
31. **LEAD BASED PAINT PROHIBITION:** For any contract for construction or rehabilitation, Contractor certifies that it shall comply with 24 CFR Part 35 prohibiting the use of lead-based paint.
32. **COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** For agreements in excess of \$2,000, and in excess of \$2500 for other agreements which involve the employment of mechanics or laborers, Contractor certifies that it complies with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
33. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, Contractor acknowledges in accordance with Public Contract Code Section 7110, that:
- a. Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State of California and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
34. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
35. **ENVIRONMENTAL REGULATIONS:** For agreements in excess of \$100,000, Contractor certifies that it complies with the requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (3 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15).
36. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will

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

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

PERFORMANCE – PAYMENT BOND

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

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

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

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

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

[END – SIGNATURES FOLLOW NEXT PAGE]

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of shall be deemed an original, this the _____ day of _____, 20____.

ATTEST:

"PRINCIPAL"

(Principal) Secretary

(Seal)

BY: _____

NAME: _____

Witness as to Principal

(Address – Zip Code)

"SURETY"

(Surety) Secretary

(Seal)

BY: _____

NAME: _____

ITS: Attorney-in-Fact

Witness as to Surety

(Address – Zip Code)

(Address – Zip Code)

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

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

STIPULATION OF LIEN

Contract Number:

KNOW ALL MEN BY THESE PRESENTS:

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

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

By: _____

Title: _____

NAME AND ADDRESS OF CONTRACTOR:

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

(Notary Public)

My Commission Expires _____
(Date)