

SECOND
MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES
AND
THE CITY OF LOS ANGELES HARBOR DEPARTMENT

This Second Memorandum of Understanding (“Second MOU” or “MOU”) is made and entered into this _____, 2022 (“Effective Date”) by and between the City of Los Angeles, a municipal corporation, acting by and through its Board of Harbor Commissioners (“Harbor Department”) and the Housing Authority of the City of Los Angeles, a public body, corporate and politic (“HACLA,” and together with the Harbor Department, the “Parties”).

RECITALS

WHEREAS, HACLA is a public body, corporate and politic, duly created, established and authorized on June 2, 1938 to transact business and exercise powers under and pursuant to the provisions of the Housing Authorities Law, consisting of Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code; and

WHEREAS, HACLA owns and operates the Rancho San Pedro Housing Development comprised of 478 public housing units located in the Barton Hill-Downtown San Pedro community (“Rancho San Pedro”); and

WHEREAS, in August 2017 HACLA submitted an application for a United States Department of Housing and Urban Development (“HUD”) Choice Neighborhoods Initiative Planning Grant (“CNI Grant”), which aims to assist in transforming neighborhoods with distressed public or HUD-assisted housing through a comprehensive approach to neighborhood transformation; and

WHEREAS, in February 2018 HUD notified HACLA of its selection as an awardee of CNI Grant funding to be used toward planning and action activities, including limited physical improvements of Rancho San Pedro and the surrounding Barton-Hill Downtown San Pedro community; and

WHEREAS, on March 29, 2018, HACLA’s Board of Commissioners (“BOC”), via Resolution No. 9432, authorized the HACLA’s President and CEO to accept the HUD CNI Grant funding; and

WHEREAS, BOC Resolution No. 9432 further authorized HACLA to partner with the City of Los Angeles Harbor Department (“Harbor Department”) to implement the CNI Grant and to undertake a community-driven process toward revitalization; and

WHEREAS, the Harbor Department owns in trust on behalf of the State of California property near Rancho San Pedro running along the eastern side of Harbor Boulevard between 1st Street and 3rd Street that currently includes a decommissioned rail right of way and other underutilized space, including open public park space (the “Harbor Boulevard Parkway”); and

WHEREAS, after a year-long process of community input and a public prioritization process including formal actions of the Rancho San Pedro Community Advisory Committee, HACLA developed a list of projects to propose for HUD funding, which included developing a linear park along the Harbor Boulevard Parkway; and

WHEREAS, on July 8, 2020, HACLA submitted an Action Activities Proposal to HUD under the CNI Grant, in which HACLA proposed to use \$950,000 in HUD funds leveraged with \$250,000 in Community Development Block Grant (“CDBG”) funding from the City of Los Angeles and at least \$200,000 from HACLA to partner with the Harbor Department to improve the Harbor Boulevard Parkway with an additional pedestrian and bike-friendly recreational area (the “Parkway Improvements” or “Project”); and

WHEREAS, on August 13, 2020, HUD approved the Parkway Improvements in concept, with final authorization for expenditure of CNI Grant action activity funds for the Parkway Improvements (“CNI Grant Parkway Funds”) contingent upon HACLA providing certain additional information to HUD; and

WHEREAS, on April 15, 2021, the Harbor Department’s Board of Harbor Commissioners (“BOHC”) approved Harbor Agreement No. 21-9799, via Resolution No. 21-9801, a memorandum of understanding with HACLA for the Parkway Improvements; and

WHEREAS, the Parties entered into Memorandum of Understanding HA-2021-28/Harbor Agreement No. 21-9799 (the “Initial MOU”), in which they agreed to undertake various tasks in support of the Project; and

WHEREAS, under the Initial MOU, the Parties’ activities were divided into “Stage One Term Tasks” and “Stage Two Term Tasks,” with Stage One Term Tasks focused on developing the information required by HUD as conditions for the authorization of CNI Grant Parkway Funds and continuing through HUD’s final funding approval. Stage Two Term Tasks require the Parties to develop and enter into this Second MOU; and

WHEREAS, the Parties have completed the Stage One Term Tasks of the Initial MOU; and

WHEREAS, the Harbor Department conducted an environmental review of the proposed Project, and on October 21, 2021, the BOHC, via Resolution No. 21-9915, authorized an Addendum to the September 29, 2009 San Pedro Waterfront Project (“SPWP”) Final Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”), finding that the proposed Project would not result in significant environmental impacts; and

WHEREAS, the Harbor Department completed its obligation to prepare the Project property for construction through demolition and remediation work at an estimated total cost of \$1,430,000; and

WHEREAS, on October 28, 2021, the BOC, via Resolution No. 9754, authorized HACLA to apply for \$700,000 in Los Angeles County Safe, Clean Neighborhood Parks and Beaches Measure

grant (“Measure A Grant”) funds from the Los Angeles County Regional Park and Open Space District (“RPOSD”) to help finance the Parkway Improvements; and

WHEREAS, on October 28, 2021, HACLA applied to RPOSD for \$700,000 in Measure A Grant funds to help finance the Parkway Improvements, with the Harbor Department providing a letter of support for HACLA’s application; and

WHEREAS, on February 10, 2022, RPOSD notified HACLA that it was awarded \$700,000 in Measure A Grant funds for construction of the Parkway Improvements; and

WHEREAS, acceptance of the Measure A Grant Funds will require HACLA to make certain commitments to RPOSD regarding the Parkway Improvements; and

WHEREAS, on April 28, 2022, the BOC, via Resolution No. 9829, authorized HACLA to enter into a contract with Lucas Builders Inc., pursuant to an invitation-for-bids competitive procurement process, for a total contract award amount of \$2,393,307, for construction of the Parkway Improvements; and

WHEREAS, HACLA and the Harbor Department are entering into this Second MOU to agree upon the terms and conditions governing their respective roles and responsibilities for the Project.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, HACLA and the Harbor Department hereby agree as follows:

ARTICLE I: GENERAL TERMS

1.1 INCORPORATION OF RECITALS

The recitals set forth above are incorporated by reference as if fully set forth herein and made a part hereof.

1.2 STAGE ONE TERM

During the Stage One Term, which commenced April 15, 2021, the Parties accomplished their respective tasks in the Initial MOU and HUD gave HACLA final approval for release of grant funds for the Project. The Parties mutually agree that all Stage One Term Tasks have been satisfactorily completed.

1.3 STAGE TWO TERM AND POST-CONSTRUCTION MAINTENANCE PERIOD

The Stage Two Term of this Second MOU shall commence upon the Effective Date set forth above, and shall continue until December 31, 2022, unless HUD notifies the Parties that its funding deadline for completion of the Project has been extended, in which case the extended deadline will mark the end of the Stage Two Term. HUD has given HACLA one extension for completion of the Project from November 19, 2022 to December 31, 2022.

Following completion of the Stage Two Term, the Post-Construction Maintenance Period shall commence, and shall last for a period of ten years from the Effective Date of this Second MOU.

ARTICLE II: SECOND MOU TASKS

2.1 HARBOR ENGINEERING PERMIT

On July 8, 2020, HACLA submitted a revised Action Activities Proposal to HUD, which included a proposal for the Parkway Improvements. The Parkway Improvements Project approved by HUD is described in Harbor Engineer Permit No. 2022-36 (“HEP No. 2022-36”), which is incorporated by reference as if fully set forth herein and made a part hereof.

2.2 STAGE TWO TERM TASKS

During the Stage Two Term, the Harbor Department shall complete any remaining demolition tasks necessary to present the Project property to HACLA as a clean and buildable construction site.

HACLA shall be responsible for construction of the Project as shown in HEP No. 2022-36 and pursuant to the Harbor Temporary Entry and Use Permit No. 1874 (“TEUP 1874”) attached hereto as Exhibit A.

2.3 PROJECT CONSTRUCTION

A. Project Estimated Cost Details

The Estimated Cost Details for the Project is attached hereto as Exhibit B.

B. Construction Contract

HACLA awarded a construction contract to Lucas Builders, Inc. (“Contractor”) attached hereto as Exhibit C.

C. Schedule

HACLA and its Contractor shall perform the construction activities pursuant to the Parkway Improvements Construction Schedule attached hereto as Exhibit D.

D. Temporary Entry and Use permit

Concurrently with this MOU, the Harbor Department is issuing TEUP 1874 to HACLA and Contractor for access to the Project site to build the Project. HACLA and Contractor shall comply with all terms and conditions in TEUP 1874 and HEP 2022-36.

2.4 LOS ANGELES COUNTY MEASURE A GRANT AGREEMENT

The County of Los Angeles (“County”) awarded HACLA a grant of \$700,000 in RPOSD Measure A Grant funds (“Grant”) in support of the Project. The County and HACLA will enter into a Measure A Grant Agreement for acceptance of the grant funds. The Measure A Grant Agreement will contain certain on-going operational and maintenance obligations, and therefore the Parties anticipate that the County will request that the Measure A Grant Agreement be assigned from HACLA to the Harbor Department (“Assignment and Assumption Agreement”). The Parties agree to negotiate in good faith with the County terms and conditions acceptable to all three entities for any Assignment and Assumption Agreement. The Harbor Department may bring the Measure A Grant Agreement and an Assignment and Assumption agreement to the Board of Harbor Commissioners for their consideration at a future date. The Parties agree that this MOU confers no obligation upon the City to approve the Measure A Grant Agreement or the Assignment and Assumption Agreement, and such approvals, if any, shall be at the sole discretion of the Board of Harbor Commissioners if it is presented for their consideration.

2.5 POST-CONSTRUCTION MAINTENANCE PERIOD

The Post-Construction Maintenance Period shall begin upon the final inspection and approval of the Project by the Department’s Chief Inspector pursuant to HEP 2022-36 and shall run for a period of ten years from the Effective Date of this Agreement. The Harbor Department will maintain the Project as public open space, subject to the Board of Harbor Commissioners discretion. During the Post-Construction Maintenance Period, the Harbor Department shall maintain the Project in compliance with the Post-Construction Maintenance Plan set forth in Exhibit E.

During the Post-Construction Maintenance Period, HACLA shall be responsible for compliance with the Measure A Grant Agreement terms and conditions except for the maintenance of the Project as set forth in Exhibit E.

2.6 HUD GRANT OBLIGATIONS

HACLA shall be solely responsible for compliance with all HUD grant obligations, including pre-construction, post-construction, and close-out compliance requirements for the Project. The Harbor Department will respond to HACLA’s reasonable requests for assistance in complying with these HUD grant obligations.

ARTICLE III: COMMUNICATION AND COORDINATION

3.1 COORDINATION OF COMMUNICATIONS

During the construction phase of the Project, HACLA and the Harbor Department will coordinate with regard to all formal external communications regarding the Project, including but not limited to press releases and public statements. After public announcements are made regarding completion of the Project construction and the Project’s opening to the public, external communication obligations between the Parties shall cease.

3.2 ENVIRONMENTAL AND SITE PREPARATION OBLIGATIONS

The Harbor Department shall provide HACLA with all completed soil studies and relevant environmental documents for the Project site to the extent such documents are available.

The Project site has been remediated to the required standard for construction of the Project. Areas of the Project site that have been disturbed by any demolition activity have been restored to pre-demolition grade and material compacted with suitable fill material rough graded so as to allow for construction of the Project.

The rail line located within the Project Site has been declared abandoned by the Surface Transportation Board, thereby authorizing removal of the rail located on the Project Site.

ARTICLE IV: RECORDS AND AUDITS

4.1 RECORDS AND AUDIT RIGHTS

The Parties shall maintain complete and accurate books of account and records for all funds utilized under this MOU, including records which will permit a timely audit fully disclosing the amount and disposition of funds used for the Project. HACLA and the Harbor Department shall maintain such records as required in conformance with applicable federal, State and local regulations.

Each Party shall have full and free access to all books, papers, documents and records that are pertinent to the performance of the other Party under this MOU, including the right to audit, and to make copies of documents from transactions and reports in compliance with laws, regulations and administrative requirements. The Parties shall comply with applicable audit laws, requirements and provisions.

HACLA shall maintain Project records for a period of no less than ten (10) years from the date of RPOSD's final inspection of the Project. The Harbor Department shall maintain Project records in its possession in accordance with its Document Retention Policy.

4.2 USE OF PROJECT FUNDS

HACLA shall expend funds on the Project in compliance with applicable City, County, state and federal laws, regulations and guidelines, including any HUD, City and/or County regulations and laws. HACLA shall hold harmless and indemnify the City for HACLA's acceptance and use of HUD grant funding and County Measure A Grant funding, and shall be solely responsible for compliance with all federal, state, County, and City grant award laws, regulations, rules and requirements. In the event HACLA is ordered to return any grant funds to the federal government, City or Los Angeles County, HACLA shall be solely liable for repayment of such funds.

The Parties agree that the Harbor Department shall not be receiving or using any local, state or federal funding, including HUD grant funding or Measure A Grant Funding, for its portion of the Project.

ARTICLE V: INDEMNIFICATION

5.1 CONSTRUCTION INSURANCE AND INDEMNIFICATION

HACLA's and its Contractor's insurance and indemnification obligations to the Harbor Department for the Project shall be pursuant to HEP 2022-36 and TEUP 1874 ("Construction Indemnification"). This Construction Indemnification shall survive the expiration or termination of the MOU.

5.2 HUD GRANT FUNDS INDEMNIFICATION

The Project is funded in part by HUD CNI Grant and HUD CDBG funds. HACLA shall indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever relating to claims regarding compliance with the HUD CNI Grant or CDBG funds ("HUD Grant Funds Indemnification").

5.3 LOS ANGELES COUNTY MEASURE A GRANT FUNDS INDEMNIFICATION

The Project is funded in part by County Grant funds. Except for the Harbor Department's Post-Construction Maintenance Period Indemnification in Section 5.4, HACLA shall indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever relating to the Measure A Grant Agreement ("Ongoing HACLA Measure A Indemnification").

5.4 POST-CONSTRUCTION MAINTENANCE PERIOD INDEMNIFICATION

During the Post-Construction Maintenance Period, the Harbor Department shall indemnify and hold harmless HACLA and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited, to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by HACLA, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever relating to the Harbor Department's maintenance of the Project as set forth in Exhibit E.

ARTICLE VI: GENERAL CONDITIONS

6.1 OWNERSHIP OF IMPROVEMENTS

The Harbor Department is the owner of the Project property, and after the Project is approved by the Department's Chief Inspector, the Harbor Department shall own the Project improvements.

6.2 STATUTES AND REGULATIONS

HACLA and the Harbor Department shall each comply with all applicable statutes, rules, regulations and orders of the United States, the State of California, the County of Los Angeles and the City of Los Angeles, including as the same may be amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject as the provision to which specific reference was made.

6.3 RELATIONSHIP OF PARTIES

The relationship between HACLA and the Harbor Department under this MOU shall not be construed as a joint venture, equity venture, partnership, or any other relationship. Neither HACLA nor the Harbor Department shall undertake or assume any responsibility or duty of the other or any third party with respect to this MOU. Except as HACLA and the Harbor Department may specify in writing, neither shall have authority to act as an agent of the other or to bind the other to any obligation.

6.4 MUTUAL COOPERATION

The Parties agree that they will each cooperate with the other, and shall provide such information and documentation as is reasonably necessary to fulfill the intent of this MOU, and shall make diligent response to inquiries and requests for information from the other Party.

6.5 ASSIGNMENT AND ASSUMPTION

HACLA and the Harbor Department shall not assign any of its interests or obligations under this MOU to any other party, without the prior written consent of the other. This Section 6.5 does not pertain to the possible assignment of HACLA's Measure A Grant Agreement to the Harbor Department pursuant to Section 2.4 above.

6.6 CONSENTS AND APPROVALS

Any consent or approval of HACLA or the Harbor Department required under this MOU shall be subject to the review and authorization procedures of each Party's Board of Commissioners and approval by either Board may be withheld in accordance with their independent decision making authority, without liability or obligation to the other Party. Any approval required under this MOU shall be in writing and executed by an authorized representative of the Party granting the approval.

6.7 COMMUNICATIONS AND NOTICES

For day-to-day administrative communication between the Parties, the points of contact for each Party shall be the following individuals;

For HACLA:

Zoe Kranemann
Development Officer

Housing Authority of the City of Los Angeles
2600 Wilshire Boulevard, 5th Floor
Los Angeles, CA 90057
zoe.kranemann@hacla.org

For the Harbor Department;

Michael Galvin
Director of Waterfront & Commercial Real Estate
425 S. Palos Verdes St.
San Pedro, CA 90731
(310) 732-3860
mgalvin@portla.org

For communication regarding demolition and construction of the Project, the Parties points of contact shall be the administrative points of contact listed above and the following individuals:

For HACLA:

Kevin Sharp
Senior Project Manager
kevin.sharp@hacla.org
213-407-0545

For the Harbor Department:

Michael Cham
Program Manager
mcham@portla.org
310-732-3680

All formal notices, demands and other similar communications between the Parties made pursuant to this MOU shall be sufficiently dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of HACLA and the Harbor Department as follows:

Harbor Department:

Contracting Officer:

Tony Gioiello
Deputy Executive Director of Development
425 S. Palos Verdes St.
San Pedro, CA 90731
tgioiello@portla.org

Legal:

Los Angeles Office of the City Attorney,
Harbor Division
Attn: General Counsel
425 S. Palos Verdes St.
San Pedro, CA 90731
(310) 732-3750

HACLA:

Contracting Officer:	Marlene Garza Chief Administrative Officer Housing Authority of the City of Los Angeles 2600 Wilshire Boulevard, 3rd Floor Los Angeles, CA 90057 marlene.garza@hacla.org
Legal:	James Johnson General Counsel Housing Authority of the City of Los Angeles 2600 Wilshire Boulevard, 3 rd Floor Los Angeles, CA 90057 james.johnson@hacla.org

The Parties shall provide written notice to the other whenever the contacts listed above need to be replaced.

6.8 TERM AND TERMINATION OF THIS MOU

Unless otherwise amended, or earlier terminated by either Party, the term of this MOU shall commence on the Effective Date and shall terminate ten years from such Effective Date.

Either Party may provide written notice to the other Party that it has materially breached this MOU, said Party (“Notifying Party”) setting forth the details of the breach. The alleged breaching Party shall either substantially correct such breach or provide details for why the Party is not in breach, within forty-five (45) days of receiving the written notice. If the breach is not substantially corrected or explained to the satisfaction of the Notifying Party within forty-five (45) days of notice, the Notifying Party may terminate this MOU.

6.9 STATE TIDELANDS GRANTS

This MOU is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this MOU is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled “An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City,” approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. The Parties agree that any interpretation of this MOU and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

6.10 GOVERNING LAW / VENUE

This MOU shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The Parties agree that all actions or proceedings arising in connection with this MOU shall be tried and litigated

exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

6.11 INTEGRATION

In addition to the Initial MOU, this Second MOU contains the entire understanding and agreement between the Parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this MOU by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the MOU and has not executed the MOU in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the MOU. **THE PARTIES ACKNOWLEDGE THAT THIS MOU IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

6.12 SEVERABILITY

Should any part, term, condition or provision of this MOU be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this MOU shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this MOU, then such part, term, condition or provision shall be deemed not to be a part of this MOU; or (b) if such part, term, condition or provision is material to this MOU, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

6.13 CONSTRUCTION OF MOU

This MOU shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this MOU and it shall be deemed their joint work product; each and every provision of this MOU shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable. In the event of a conflict between the Initial MOU and the Second MOU, the terms of the Second MOU shall prevail.

6.14 COUNTY OF LOS ANGELES THIRD-PARTY BENEFICIARY

In recognition of the County supporting the Project with its Grant, the Parties acknowledge and agree that the County of Los Angeles is hereby named a third-party beneficiary to this MOU with respect to the Harbor Department's Post-Construction Maintenance Period obligations set forth in Section 2.5. The County shall have no other rights, interest or claims under this MOU or be entitled to any other benefits hereunder. The County shall be the only third-party beneficiary under this MOU, and the Parties agree there are no other entities or persons with any rights, interests, claims

or benefits pursuant to this MOU

6.15 TITLES AND CAPTIONS

The parties have inserted the Section titles in this MOU only as a matter of convenience and for reference, and the Section titles in no way define, limit, extend or describe the scope of this MOU or the intent of the parties in including any particular provision in this MOU.

6.16 MODIFICATION IN WRITING

This MOU may be modified only by written agreement of the Parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City’s Charter and City’s Administrative Code.

6.17 WAIVER

A failure of any Party to this MOU to enforce the MOU upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

6.18 EXHIBITS; ARTICLES

All exhibits to which reference is made in this MOU are deemed incorporated in this MOU, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the MOU, the terms of the body of the MOU shall control. References to Sections are to Sections of this MOU unless stated otherwise.

6.19 COUNTERPARTS

This MOU may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

[THIS SPACE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed this MOU on the day and year first above written.

Approved as to form and legality
_____, 2022
MICHAEL N. FEUER, City Attorney
STEVEN Y. OTERA, General Counsel

By: _____
Heather M. McCloskey, Deputy

**THE CITY OF LOS ANGELES, by its
Board of Harbor Commissioners**

By: _____
Eugene D. Seroka,
Executive Director

Attest: _____
Amber M. Klesges
Board Secretary

Approved as to form and legality

By: John Nosco
John Nosco
Staff Attorney

**THE HOUSING AUTHORITY
OF THE CITY OF LOS ANGELES**

By: Douglas Guthrie
Douglas Guthrie
President and CEO

EXHIBIT A

HARBOR DEPARTMENT TEMPORARY ENTRY AND USE PERMIT NO. 1874

[Attached]

CITY OF LOS ANGELES HARBOR DEPARTMENT
Port of Los Angeles

TEMPORARY ENTRY AND USE PERMIT

TEUP No. 1874

The City of Los Angeles, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), hereby grants permission to the Housing Authority of the City of Los Angeles, a public body, corporate and politic, and Lucas Builders, Inc., a California corporation ("Assignees") to occupy and use certain lands and facilities within the Harbor District owned or under the control of City, subject to the following terms and conditions:

1. Premises. Assignees are permitted under this Temporary Entry and Use Permit ("TEUP") to occupy and use fifteen thousand six hundred and thirty-five (15,635) square feet of land located along the east side of Harbor Boulevard between 1st Street and 3rd Street in San Pedro, California as delineated and more particularly described on Exhibit A ("Premises").

2. Permitted Use. The Premises shall be used to construct the Harbor Boulevard Improvement Project as set forth in Assignees' Application for Port Permit No. 210730-125, Coastal Development Permit No. 22-02, and Harbor Engineer's Permit No. 2022-36, all of which are hereby incorporated by reference and made a part of this TEUP ("Permitted Use"). The rights hereby granted to use the Premises for said purposes shall not be exclusive, and whenever the Premises, or any part thereof, are not required in whole or in part for the use of Assignees for the stated purposes, the Executive Director of the City's Harbor Department ("Executive Director") shall have the right to and may make other assignments to any other person or entity to use such Premises, or any part thereof. Assignees shall not use the Premises in any manner, even if the use is a Permitted Use, that will cause cancellation of any insurance policy covering the Premises or adjacent premises; provided, however, Assignees may, in City's sole discretion, remain if it pays the increase in City's insurance costs caused by its operations. No offensive or refuse matter, or any substance constituting any unnecessary, unreasonable, or unlawful fire hazard, or material detrimental to the public health, shall ever be permitted by Assignees to be or remain on the Premises, and Assignees shall prevent any such material or matter from being or accumulating upon the Premises. Assignees further agree not to keep on the Premises, or permit to be kept, used, or sold thereon, anything prohibited by any policy of fire insurance covering the Premises or any structure erected thereon.

3. Effective and Termination Dates. This TEUP shall commence and become effective on the date of its execution by the Executive Director, and by the Secretary of the Board, after approval by the Board ("Effective Date") and shall terminate effective March 31, 2023 ("Termination Date"). Termination Date shall also mean the date of termination of this TEUP upon the expiration of any renewal, for a conflict of interest as set forth in Section 18, for Assignees' misrepresentation as set forth in Section 19, by operation of law, or for any other reason.

4. Assignment Revocable. This TEUP shall be revocable at any time by Assignees or by Executive Director upon the giving of at least thirty (30) days' written notice to the other party stating the date and time upon which this TEUP shall terminate. Assignees understand and agree that Assignees have the interest only of a licensee and have no other interest in the Premises. Assignees understand and agree that the City reserves the unqualified and unconditional right at any time without any more notice to Assignees than set forth in this Section 4 to withdraw the Premises from Assignees' use. Assignees understand and agree that, notwithstanding any expenditures they may have made in preparation for their use of the Premises, such withdrawal from use by City does not entitle Assignees or any other person to any damages. Neither City, nor any Board member, officer, or employee thereof, shall be liable in any manner to Assignees because of such revocation.

5. Compensation.

(a) Compensation. Assignees shall pay to City the sum of Zero Dollars (\$0.00) for the use of the Premises ("Compensation"). Use of the Premises for purposes not expressly permitted herein, whether approved in writing by Executive Director or not, may result in additional charges, including charges required under the Tariff. Assignees agree to pay such additional charges.

(b) Security Deposit. Assignees shall deposit with City a sum equal to Zero Dollars (\$0.00) as security for Assignees' performance under this TEUP ("Security Deposit"). Any deposit required under this Section 5 shall be in addition to any deposit required for the issuance of a Harbor Engineer Permit pursuant to Section 7 of this TEUP.

(c) No Right to Set-Off. Notwithstanding any other provision of this TEUP, Assignees' obligation to pay all Compensation to City shall be absolute and unconditional and shall not be affected by any circumstance including, without limitation, any set-off, counterclaim, recoupment, defense, or other right or claim which Assignees may have against City.

6. Premises Satisfactory to Assignees / Required Modifications. Assignees have inspected the Premises and agree that they are suitable for the Permitted Use. No officer or employee of City has made any representation or warranty with respect to the Premises, and in entering into this TEUP, Assignees agree they rely only on the provisions of the TEUP. Any modification, improvement, or addition to the Premises and any equipment installation or removal required by the Fire Department, Department of Building and Safety, South Coast Air Quality Management District, Regional Water Quality Control Board, U.S. Coast Guard, Environmental Protection Agency, or any other agency in connection with Assignees' operations, shall be constructed, installed, or removed at Assignees' sole expense. Assignees shall obtain a Harbor Engineer Permit from the office of the Chief Harbor Engineer, Engineering Division, of City's Harbor Department ("Chief Harbor Engineer") and shall comply with the requirements of Section 7 of this TEUP before making any modification, improvement, or addition to the Premises.

7. Alterations on Premises. Assignees shall not construct on or alter ("Alteration") the Premises, including a change in the grade, without first obtaining City's written approval and a Harbor Engineer Permit. Assignees shall submit to City a complete Application for Port Permit that attaches a complete set of drawings, plans, and specifications reflecting the proposed Alteration. Where applicable, the drawings, plans, and specifications must be prepared and stamped by a licensed engineer registered in the State of California. All projects in the Harbor District are subject to review by City's Harbor Department pursuant to the California Environmental Quality Act (CEQA) and the certified Port Master Plan. City's Chief Harbor Engineer shall have the right to reject or order reasonable changes in said drawings, plans, and specifications. Assignees, at their own expense, shall obtain all permits necessary for such Alteration, including a Harbor Engineer Permit, prior to the commencement of such Alteration. All Alterations by Assignees pursuant to this TEUP shall be at Assignees' sole expense. Assignees shall keep the Premises free and clear of liens for labor and materials and shall hold City harmless from any responsibility in respect thereto. Assignees shall give written notice to the Chief Harbor Engineer, in advance, of the date it will commence any Alteration. Immediately upon the completion of the Alteration, Assignees shall notify the Chief Harbor Engineer of the date of such completion.

8. Signs and Lighting.

(a) Assignees shall not erect or display, or permit to be erected or displayed, on the Premises any signs or advertising matter of any kind without first obtaining the written consent of Executive Director. If Assignees obtain consent, Assignees shall also comply with the requirements of Section 7 of this TEUP prior to erecting or displaying any signs or advertising matter on the Premises. Assignees shall further post, erect, and maintain on the Premises such signs as Executive Director may direct. All signs erected or

displayed on the Premises shall comply with the regulations set forth in Section 14.4.1 *et seq.* of the Los Angeles Municipal Code.

(b) Assignees acknowledge that the Premises may lack adequate lighting for a Permitted Use and that Assignees are responsible for installing temporary or permanent lighting as it may deem necessary to perform any labor, or to protect any property stored or located on the Premises, or to otherwise use the Premises for any Permitted Use. Assignees shall comply with the requirements of Section 7 of this TEUP prior to installing any lighting. Any lighting installed shall meet Illuminating Engineering Society / American National Standards Institute (IES/ANSI) standards.

9. Immediate Access to Repair / Maintain Premises. Assignees are aware that City's Department of Water & Power, other utility, or other maintenance or service from or on behalf of City, may need to service or repair certain facilities on the Premises. If such repair is necessary, Assignees agree to relocate, at its expense, all of its equipment and other personal property to provide such personnel adequate access. Assignees agree to complete such relocation within twenty-four (24) hours of receiving notice from City except in case of emergency. Assignees agree neither the department servicing the Premises nor City shall be responsible for any loss Assignees may suffer as a result of such maintenance or repair.

10. Premises Subject to Tariff. Assignees accept the Premises and shall undertake the Permitted Use set forth in Section 2 of this TEUP subject to each and every term and condition provided herein, and to each and every rate, term, and condition of the Tariff, as applicable to Premises and/or the Permitted Use. Assignees represent and warrant that they have received, read, and understand the rates, terms, and conditions of the Tariff. Except as otherwise set forth in this TEUP, Assignees are contractually bound by all Tariff rates, terms, and conditions as if the same were set forth in full herein. City in its sole and absolute discretion shall determine if a conflict exists between a provision of this TEUP and a Tariff provision. In the event of such conflict, this TEUP shall at all times prevail.

11. Compliance with Applicable Laws and Environmental Obligations.

(a) At all times in its use and occupancy of the Premises and its conduct of operations thereon, Assignees, at Assignees' sole cost and expense, shall comply with all applicable federal, state, county, City, or government agency laws, statutes, ordinances, standards, codes (including all building codes), rules, regulations, requirements, or orders in effect now or hereafter in effect ("Applicable Laws") pertaining to the use or condition of the Premises and/or Assignees' operations and conduct of its business. Applicable Laws shall include, but not be limited to, all environmental laws and regulations in effect now or hereafter in effect including:

(i) The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 USCS §§ 9601 *et seq.*) in its present or successor form and its implementing regulations;

(ii) The Resource Conservation and Recovery Act and Hazardous and Solid Waste Amendments of 1984 ("RCRA") (42 USCS §§ 6901 *et seq.*) in its present or successor form and its implementing regulations;

(iii) The federal Clean Water Act (33 USCS §§ 1251 *et seq.*) in its present or successor form and its implementing regulations;

(iv) The California Porter-Cologne Water Quality Control Act (California Water Code §§ 13020 *et seq.*) in its present or successor form and its implementing regulations;

(v) The federal Clean Air Act (42 USCS §§ 7401 *et seq.*) in its present or successor form and its implementing regulations;

(vi) The California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988) in its present or successor form and its implementing regulations;

(vii) The California Lewis-Presley Air Quality Management Act of 1976 (California Health and Safety Code §§ 40400 *et seq.*) in its present or successor form and its implementing regulations; and

(viii) Any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standard of conduct) now or hereinafter in effect which concerns Environmentally Regulated Material (as defined in Section 11(c)), the Premises, and/or Assignees' use and/or occupancy thereof.

(b) It is the parties' intent that Assignees will make, at Assignees' sole cost and expense, any and all alterations, improvements, and changes, whether structural or nonstructural, that are required by Applicable Laws. In addition, Assignees shall comply immediately with all applicable environmental policies, rules, and directives of City's Harbor Department, known as the Port Environmental Policies. This TEUP shall be construed in accordance with California law.

(c) Assignees shall not cause or permit any Environmentally Regulated Material, as defined in this Section 11(c), to be generated, brought onto, handled, used, stored, transported from, received, or disposed of (hereinafter sometimes collectively referred to as "handle" or "handled") in or about the Premises except for limited quantities of standard office and janitorial supplies containing chemicals categorized as Environmentally Regulated Material and except as permitted, required, or necessary under Section 2 of this TEUP, if any. Assignees shall handle all such Environmentally Regulated Material in strict compliance with Applicable Laws in effect during Assignees' occupancy. The term "Environmentally Regulated Material" shall mean:

(i) Any "hazardous substance" as that term is defined in the CERCLA;

(ii) "Hazardous waste" as that term is defined in the RCRA;

(iii) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standard of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereinafter in effect);

(iv) Radioactive material, including any source, special nuclear, or byproduct material as defined in the Atomic Energy Act of 1954 (42 USCS §§ 2011 *et seq.*) in its present or successor form;

(v) Asbestos in any form or condition;

(vi) Polychlorinated biphenyls ("PCBs") and any substance or compound containing PCBs; and

(vii) Petroleum products.

(d) Assignees shall remediate or cause the remediation of any spill, discharge, or release of any Environmental Regulated Material that occurs in, on, under, or about the Premises ("Contamination"),

whether caused by Assignees or any third-party during Assignees' occupancy, including Contamination of improvements, adjacent harbor waters, soil, sediment, groundwater, or air, or of adjacent premises (including soil, sediment, groundwater, or air) and including Contamination that is considered a nuisance under Applicable Laws. Remediation shall be to the satisfaction of City, and the requirements of the applicable governmental agencies including the Regional Water Quality Control Board, by removing or effecting the removal of all Contamination including but not limited to contaminated soil, water, groundwater, sediment, or other material it may place or cause to be placed on site such that no encumbrances, such as deed or land use restrictions, be imposed on the Premises as a result of such Contamination. In fulfilling the obligations under this Section 11, Assignees shall also comply with any other conditions reasonably imposed by City. If Assignees know or have reasonable cause to believe that Contamination has occurred in, on, under, or about the Premises, Assignees shall immediately give written notice to City.

(e) Assignees bears sole responsibility for full compliance with any and all Applicable Laws regarding the use, storage, handling, distribution, processing, and/or disposal of Environmentally Regulated Material including Contamination, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the Premises, on the owner of any improvements on the Premises, on the user of the Premises, or on the user of any improvements on the Premises. For purposes of CERCLA, and any and all other Applicable Laws, Assignees shall be considered the owner and operator. Assignees agree that any claims, damages, fines, or other penalties asserted against or levied on City and/or Assignees as a result of noncompliance with any Applicable Laws shall be the sole responsibility of Assignees and that Assignees shall indemnify and hold City harmless from any and all such claims, damages, fines, penalties, and/or judgments, as well as any costs expended to defend against such claims, damages, fines, and penalties and/or judgments, including attorneys' and experts' fees. City, at its sole option, may pay such claims, damages, fines, penalties, and/or judgments resulting from Assignees' noncompliance with any of the aforementioned authorities, and Assignees shall indemnify and reimburse City for any such payments.

(f) In discharging Assignees' obligations under this TEUP, if Assignees dispose of any Contamination, within thirty (30) days of Assignees' receipt of original documents, Assignees shall provide City copies of all records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site, and the location of the disposal site. Neither City, Port of Los Angeles, nor Los Angeles Harbor Department shall appear on any manifest document as a generator of such material.

(g) In discharging Assignees' obligations under this TEUP, Assignees shall perform any tests using a State of California Department of Health Services certified testing laboratory or other similar laboratory upon City's written approval. By signing this TEUP, Assignees hereby irrevocably direct any such laboratory to provide City, upon written request from City, copies of all of its reports, tests results, and data gathered. As used in this Section 11, "Assignees" includes agents, employees, contractors, subcontractors, and/or invitees of Assignees.

(h) Assignees shall implement City's Harbor Department's policies, known as Best Management Practices, in order to reduce the potential for pollutants to enter Harbor waters, as follows:

(i) Facility Operations: Clean and maintain facility regularly. Use dry cleaning methods whenever possible; avoid washing areas down. Do not allow sweepings or sediment to enter the storm drain or the Harbor. Collect wash water for disposal or direct to a clarifier. Do not encourage scavengers. Do not feed birds, feral cats, sea lions, or other scavengers. Recycle whenever possible.

(ii) Maintenance Operations: Use drip pans to prevent any drips or leaks from contacting the ground during maintenance and fueling operations. Clean spills or drips immediately using dry methods. Use spill cleanup kits to confine or contain spills. Do not hose down equipment or allow

process water to enter the storm drain or the Harbor. Place tarps beneath maintenance and repair operations to prevent materials such as paint chips and metals from contacting the ground.

(iii) **Material and Waste Handling and Storage:** Train employees responsible for waste management on handling and disposal procedures. Store all hazardous and universal waste in accordance with all federal, state, and local regulations. Store all materials and waste inside and in secondary containment. If stored outside, store only in designated, covered, and contained areas. Store waste in covered, leak proof, labeled containers. Keep lids closed on all outdoor containers including dumpsters. Store all oily products (e.g. engines), batteries, tires, and metal off the ground and under cover when stored outdoors.

(i) Except as may be otherwise provided in this TEUP, Assignees' obligations in this Section 11 shall survive the Termination Date of this TEUP.

12. **Maintenance, Restoration, and Surrender of Premises.** Assignees, at their sole cost and expense, shall keep and maintain the Premises, and all works and improvements of any kind thereon, in good and substantial repair and condition and shall be responsible for and perform all necessary inspection, maintenance, and repair thereof, including preventive maintenance. Assignees shall obtain any permits, including but not limited to those issued by City, necessary for such maintenance and repair. Upon the termination of this TEUP, Assignees shall quit and surrender occupancy and use of the Premises to City and shall, without cost to City, remove any and all of its property and restore the Premises to the same or as good condition as the same were in at the time of the first occupancy thereof. Assignees may incur additional charges if Assignees fails to fully restore the Premises to the satisfaction of the Executive Director prior to the termination of this TEUP. Notwithstanding the provisions of this Section 12, Assignees shall not remove or restore the improvements Assignees construct on the Premises consisting of the Harbor Boulevard Improvement Project as contemplated and described in the Memorandum of Understanding by and between the Housing Authority of the City of Los Angeles and the City of Los Angeles Harbor Department ("HACLA-City MOU").

13. **Indemnity.**

(a) Except as may arise from the sole negligence or willful misconduct of City, Assignees shall at all times relieve, indemnify, protect, and save harmless City and any and all of its boards, officers, agents, and employees from any and all claims and demands, actions, proceedings, losses, liens, costs, and judgments of any kind and nature whatsoever, including cost of litigation (including all actual litigation costs incurred by City, including but not limited to costs of experts and consultants), for death of or injury to persons, or damage to property, including property owned by or under the care and custody of City, and for civil fines and penalties that may arise from or be caused directly or indirectly by:

(i) Any dangerous, hazardous, unsafe, or defective condition of, in, or on the Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by Assignees, their officers, agents, employees, sublessees, assignee, or invitees;

(ii) Any operation conducted upon, or any use or occupation of, the Premises by Assignees, their officers, agents, employees, sublessees, assignee, or invitees under or pursuant to the provisions of this TEUP or otherwise;

(iii) Any act, error, omission, willful misconduct, or negligence of Assignees, their officers, agents, employees, sublessees, assignee, or invitees, arising from the use, operation, or occupancy of the Premises, regardless of whether any act, omission, or negligence of City, its officers, agents, or employees contributed thereto;

(iv) Any failure of Assignees, their officers, agents, or employees to comply with any of the terms or conditions of this TEUP or any Applicable Laws; or

(v) The conditions, operations, uses, occupations, acts, omissions, or negligence referred to in subdivisions (i), (ii), (iii) and (iv) above, existing or conducted upon or arising from the use or occupation by Assignees or their invitees on any other premises within the Harbor District, as defined in the Charter of City.

(b) Assignees also agree to indemnify City and pay for all damages or loss suffered by City and City's Harbor Department including, but not limited to, damage to or loss of property, to the extent not insured by City, and loss of City revenue from any source, caused by or arising out of the conditions, operations, uses, occupations, acts, omissions, or negligence referred to in this Section 13. The term "persons" as used in this Section 13 shall include, but not be limited to, officers and employees of Assignees.

(c) Assignees shall also indemnify, defend, and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution of the value of the Premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultants' fees, and experts' fees) which arise during or after the term of this TEUP as a result of Contamination for which Assignees are otherwise responsible for under the terms of this TEUP. This indemnification of City by Assignees includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal, or restoration work required by any federal, state, or local governmental agency because of Contamination present in the soil or groundwater on or under the Premises.

(d) To the fullest extent permitted by law (including without limitation, Section 2782.8 of the California Civil Code), when the services to be provided under the HACLA-City MOU are design professional services to be performed by a design professional, as that term is defined under said Section 2782.8, Assignees shall indemnify, protect, defend and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of those entities providing the design professional services, or the acts or omissions of an officer, employee, agent or Subconsultant of those entities, excepting only liability resulting from the active negligence or willful misconduct of City.

(e) The indemnity obligations under this Section 13 shall survive the Termination Date of this TEUP and shall apply regardless of the active or passive negligence of City and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on City.

14. Insurance. In addition to, and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 13 of this TEUP, Assignees shall procure and maintain at their sole cost and expense, and keep in force at all times during the term of this TEUP, the following insurance:

(a) Commercial General Liability Insurance. Commercial general liability insurance, including contractual liability and property damage insurance, written by an insurance company authorized to do business in the State of California, or approved by the California Department of Insurance as a surplus lines insurer eligible to do business in California, rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if a Best's Rating is not available) with Assignees' normal limits of liability but not less than Five Million Dollars (\$5,000,000) for injury or death to one or more persons out of each accident

or occurrence and Five Million Dollars (\$5,000,000) for bodily injury and property damage for each occurrence / Seven Million Dollars (\$7,000,000) general aggregate.

(b) Automobile Insurance. Automobile insurance with limits of liability not less than Five Million Dollars (\$5,000,000) covering injuries or death resulting from each accident or claim arising out of any one claim or accident. This insurance shall cover all owned, non-owned, and/or hired automobiles.

(c) Workers' Compensation and Employer's Liability. Assignees shall certify that they are aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Assignees shall comply with such provisions before commencing the performance of the tasks under this TEUP. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Assignees shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Assignees, and for all employees of any subcontractor or other vendor retained by Assignees.

(d) Professional Liability Insurance. Assignees shall require entities providing professional services for the Harbor Boulevard Improvement Project as contemplated and described in the HACLA-City MOU to have Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with those professional services to be provided. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability. Assignees certify that the appropriate entities who have provided, or which may provide, professional services pursuant to the HACLA-City MOU have professional liability insurance in the amount of Five Million Dollars (\$5,000,000), which covers the professional services performed pursuant to the HACLA-City MOU and that such entities shall keep such insurance or its equivalent in effect at all times and until two (2) years following the completed term of the HACLA-City MOU.

(e) Builder's Risk Coverage. Where Work set forth in Harbor Engineer Permit 2022-36 includes above-ground permanent buildings or structures, and except as set forth below, Assignee's shall, at their own expense, provide all risk builder's risk insurance covering loss, damage or destruction of property, including material in transit and stored on and off site, satisfactory to the City, in an amount at least equal to the value of the construction and materials on hand. Assignees shall keep such policy in force until the Work set forth in Harbor Engineer Permit 2022-36 is completed and accepted by the Executive Director. Acceptable evidence of coverage shall name the City as an additional named insured and as loss payee as its interest may appear.

Assignees need not provide all risk builder's risk insurance for fills; excavations; rock work; concrete or masonry walls and bulkheads retaining earth; foundations entirely below ground or in earth fill; pipe, sewer systems, conduit, and electric light and power systems entirely below ground or submerged; ballast and grading for railroad tracks on or in earth; pavements, sidewalks and pits on solid earth or in fill outside of buildings; incombustible poles, area lighting and metal fencing not attached to exterior or interior of buildings. Assignees are not relieved of the obligation to rebuild these improvements when damaged.

An installation risk or "floater" policy, written to cover only specific types of equipment during construction, may be provided to cover damage to work or high valued equipment or materials.

(f) Limits for coverage required under Section 14 of this TEUP shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self insurance in those cases

where, in his or her sole judgment, such retention or self insurance is justified by the net worth of Assignees. The self-insured retention or self insurance shall provide that any other insurance maintained by City's Harbor Department shall be excess of Assignees' insurance and shall not contribute to it. In all cases, regardless of any deductible, retention, or self insurance, Assignees shall have all the obligations of an "insurer" under the California Insurance Code and said insurance shall be deemed to include a defense of suits provision and a severability of interest clause.

(g) If Assignees maintain higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by Assignees. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

(h) Except for Professional Liability Insurance, policies submitted pursuant to Section 14 of this TEUP shall, in addition, provide the following coverage either in the original policy or by endorsement substantially as follows:

(i) "Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that the City of Los Angeles, acting by and through its Harbor Department, the Board of Harbor Commissioners, and its officers, agents, and employees, are additional insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts, and activities of all the insureds, including any sole negligence of the additional insureds, under Temporary Entry and Use Permit No. 1874, and under any amendments, modifications, extensions, or renewals of said permit regardless of whether such contractual obligations, operations, uses, occupations, acts, and activities occur on the Premises or elsewhere."

(ii) "The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by the City is excess coverage."

(iii) "In the event of one of the named insureds incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the insurance company's limit of liability."

(iv) "Notice of occurrences or claims under the policy shall be made to the City's Risk Manager with copies to the Los Angeles City Attorney's Office."

(i) Assignees shall secure the payment of compensation to any employees injured while performing work or labor necessary for and incidental to performance under this TEUP in accordance with Section 3700 of the California Labor Code. Assignees shall file with City one of the following:

(i) A certificate of consent to self insure issued by the Director of Industrial Relations, State of California;

(ii) A certificate of Workers' Compensation insurance issued by an admitted carrier;
or

(iii) An exact copy or duplicate thereof of the policy certified by the Director of Industrial Relations or the insurer.

Such documents shall be filed prior to Assignees' occupancy of the Premises. Where Assignees have employees who are covered by the United States Longshore and Harbor Workers' Compensation Act

("USLHWC Act"), Assignees shall furnish proof of such coverage to City. It is suggested that Assignees consult with their insurance professionals of their choosing to determine whether their proposed operation methods will render their employees subject to coverage under the USLHWC Act. All Workers' Compensation insurance submitted to City shall include an endorsement providing that any carrier paying benefits agrees to waive any right of subrogation it may have against City.

(j) All insurance procured by Assignees shall comply with the following:

(i) For each insurance policy, the Assignees shall give to the Board of Harbor Commissioners a 10-days prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-days prior notice of cancellation or reduction in coverage for any other reason, by written notice via registered mail and addressed to the City of Los Angeles Harbor Department, Attn: Risk Manager and City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, California 90731.

(ii) Electronic submission is the required method of submitting insurance documents. KwikComply is City's online insurance compliance system which is designed to be used by insurance brokers and agents to submit client insurance certificates directly to City. Assignees' insurance brokers or agents shall obtain access to KwikComply at <http://kwikcomply.org> and follow the instructions to register and submit the appropriate proof of insurance on Assignees' behalf.

(iii) Prior to the expiration of each policy, Assignees shall show through submitting to KwikComply that the policy has been renewed or extended or, if new insurance has been obtained, submit the appropriate proof of insurance to KwikComply. If Assignees neglect or fails to secure or maintain the required insurance, or if Assignees fails to submit proof of insurance as required above, City's Harbor Department may, at its option and at the expense of Assignees, obtain such insurance for Assignees.

(iv) Executive Director, at his or her discretion, based upon recommendation of the Risk Manager of City's Harbor Department, may request that Assignees increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving written notice to Assignees.

(v) Upon request by City, Assignees must furnish a copy of the binder of insurance and/or full certified copies of any or all policies of insurance required herein. Assignees' obligation to provide such copies shall survive the Termination Date regardless of whether City's request is made prior to or after the Termination Date.

(vi) Assignees shall report in writing to Executive Director within fifteen (15) days after they, their officers, or their managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property, occurring upon the Premises, or elsewhere within the Harbor District, if Assignees' officers, agents, or employees are involved in such an accident or occurrence. Such report shall contain to the extent available: (1) the name and address of the persons involved; (2) a general statement as to the nature and extent of injury or damage; (3) the date and hour of occurrence; (4) the names and addresses of known witnesses; and (5) such other relevant information as may be known to Assignees, their officers, or their managing agents.

15. No Assignments/Sublicenses/Transfers. No transfer of this TEUP, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by or of any Assignee (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of any Assignee), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublicense,

transfer, gift, hypothecation, or grant of total or partial control, or any encumbrance of this TEUP (hereafter collectively referred to as "Transfer"), shall be valid or effective for any purpose. "Transfer" also shall include the involvement of any Assignee or their assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout, or otherwise) whether or not a formal assignment or hypothecation of this TEUP or any Assignee's assets, which involvement results in a reduction of the net worth of any Assignee (defined as the net worth of any Assignee, excluding guarantors, established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth as it was represented at the time of the execution of this TEUP or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. For purposes of this Section 15, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of any Assignee's assets in the hands of a receiver or trustee; or (2) a transfer by any Assignee for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is an Assignee or of a general partner of an Assignee.

16. Assignee Name Change. Assignee shall notify City in writing within ten (10) days of making any changes to its names as set forth in the preamble of this TEUP and shall provide City with all documents in connection with the change.

17. Transfer of Stock. If any Assignee is a corporation and more than ten percent (10%) of the outstanding shares of capital stock of that Assignee is traded during any calendar year after filing its application for this TEUP, that Assignee shall notify Executive Director in writing within ten (10) days after the transfer date; provided, however, that this provision shall have no application in the event the stock of that Assignee is listed on either the New York Stock Exchange, NASDAQ, or the NYSE Arca Options. If more than twenty-five percent (25%) of any Assignee's stock is transferred, whether by one or by means of successive transfers, regardless of whether such Assignee is a publicly or privately held entity, such transfer shall be deemed an assignment within the meaning of Section 15. Any such transfer shall void this TEUP. Such a transfer is agreed to be a breach of this TEUP which shall entitle the Executive Director to immediately terminate this TEUP by giving written notice thereof.

18. Conflict of Interest. It is understood and agreed that the parties to this TEUP have read and are aware of the provisions of Section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of City's Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this TEUP. Notwithstanding any other provision of this TEUP, it is further understood and agreed that if such a financial interest does exist at the inception of this TEUP, City may immediately terminate this TEUP by giving written notice thereof.

19. Termination for Misrepresentations. This TEUP is granted pursuant to an application filed by Assignees with City. If the application or any of the attachments thereto contain any misstatement of fact which, in the judgment of Executive Director, affected his or her decision to grant said TEUP, Executive Director may terminate this TEUP immediately upon written notice to Assignees.

20. Notice. In all cases where written notice, including the service of legal pleadings, is to be given under this TEUP, service shall be deemed sufficient if said notice is deposited in the United States mail, in a sealed envelope, addressed as set forth below, with postage thereon fully prepaid. When so given, such notice shall be effective from the date of mailing. Unless changed by notice in writing from the respective parties, notice to the parties shall be as follows:

To City: Los Angeles Harbor Department
P.O. Box 151
San Pedro, California 90733-0151
Attention: Executive Director

Attention: Director of Waterfront & Commercial Real Estate

With a copy to: Office of City Attorney—Harbor Department
425 S. Palos Verdes Street
San Pedro, California 90731
Attention: General Counsel

To Assignee: The Housing Authority of the City of Los Angeles
2600 Wilshire Boulevard, 3rd Floor
Los Angeles, California 90057
Attention: Chief Administrative Officer
Attention: General Counsel

To Assignee: Lucas Builders, Inc.
510 E. Jaime Avenue
La Habra, California 90631
Attention: Saman K. Silva, Chief Executive Officer

Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law. All notice periods under this TEUP refer to calendar days unless otherwise specifically stated.

21. Construction of Agreement. This TEUP shall not be construed against the party preparing it and shall be construed without regard to the identity of the person who drafted this TEUP.

22. No Waiver. No waiver by either party at any time of any terms or conditions of this TEUP shall be a waiver at any subsequent time of the same or any other term or condition. The acceptance of compensation by City shall not be deemed a waiver of any other breach by Assignees of any term or condition of this TEUP other than the failure of Assignees to timely make any particular compensation payment so accepted. No breach of a covenant, term, or condition of this TEUP will be deemed to have been waived by City unless the waiver is in writing and executed by City.

23. Joint and Several Obligations of Assignees. If more than one individual or entity comprises any Assignee, the obligations imposed on each individual or entity that comprises each Assignee under this TEUP shall be joint and several.

24. Time of the Essence. Time is of the essence in this TEUP.

25. State Tidelands Act. This TEUP, the Premises, and Assignees' use and occupancy thereof shall at all times be subject to the limitations, conditions, restrictions, and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (1929 Cal. Stats., Ch. 651), as amended, and Article VI of the Charter of City of Los Angeles relating to such lands. Assignees shall not undertake any use of the Premises, even a Permitted Use, which is or will be inconsistent with such limitations, conditions, restrictions, and reservations.

26. Section Headings. Section headings used in this TEUP are merely descriptive and not intended to alter the terms and conditions of the sections.

27. Integrated Agreement. It is understood that this TEUP supersedes and cancels any and all previous negotiations, arrangements, representations, agreements, negotiations, and understandings,

if any, between the parties related to the subject matter of this TEUP and there are no oral agreements that affect any of the terms of this TEUP.

28. Amendments. No provision of this TEUP may be amended except by an agreement in writing signed by City and Assignees. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or other applicable law.

29. Governing Law and Venue. This TEUP is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced, and governed under the laws of the State of California without reference to choice of law rules. Any action or proceeding arising out of or related to this TEUP shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California.

(signature page follows)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date to the left of its signatures.

DATED: _____

CITY OF LOS ANGELES, by its Board of Harbor Commissioners

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

DATED: _____

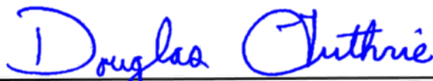
LUCAS BUILDERS, INC.

By: _____
SAMAN K. SILVA
Chief Executive Officer

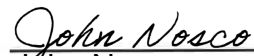
By: _____
PRISCILLA MOYNIER
Chief Financial Officer / Secretary

DATED: 08/15/2022

THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES

By: 
DOUGLAS GUTHRIE
President / Chief Executive Officer

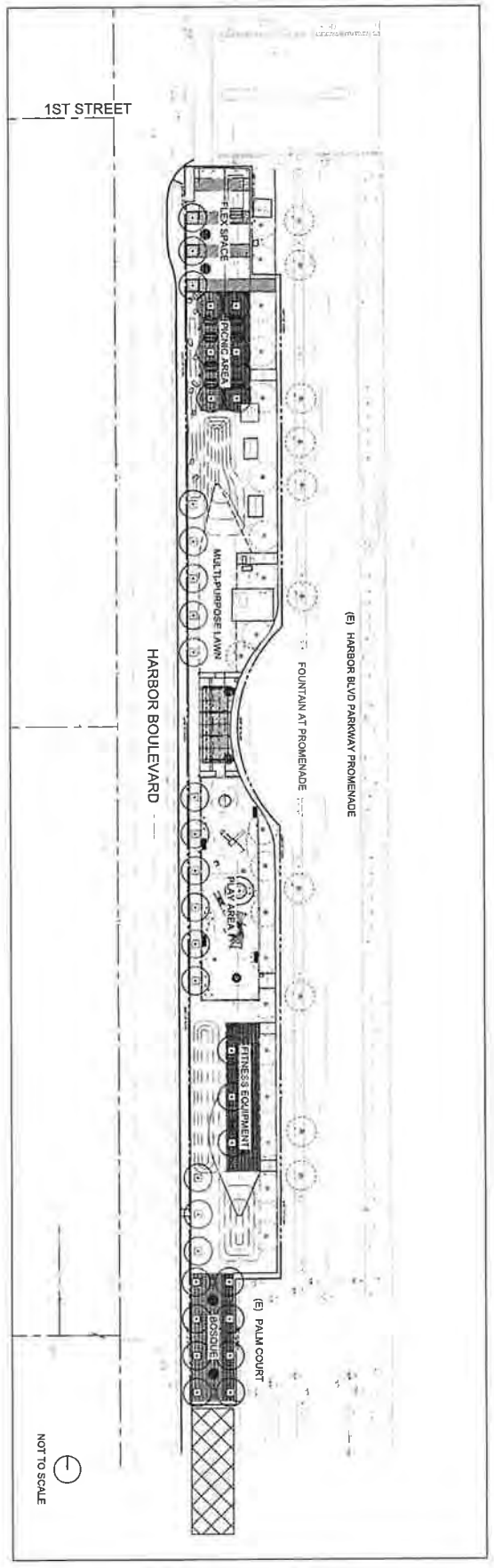
APPROVED AS TO FORM AND LEGALITY

By: 
John Nosco
Staff Attorney

APPROVED AS TO FORM AND LEGALITY

_____, 2022
MICHAEL N. FEUER, City Attorney
STEVEN Y. OTERA, General Counsel

By: _____
JANET KARKANEN, Deputy



LEGEND

- PROJECT LIMIT
- PA PLANTED AREA, SEE LP SHEETS
- [Cross-hatched box] PROPOSED CONTRACTOR LAYDOWN AREA

NO.	DATE	ISSUED FOR	BY	DATE	REVISION	NO.	DATE	ISSUED FOR	BY	DATE	REVISION	NO.	DATE	ISSUED FOR	BY	DATE	REVISION
1						2						3					
4						5						6					
7						8						9					
10						11						12					
13						14											



DATE: 11/20/18
 DRAWN: J. L. JONES
 CHECKED: J. L. JONES
 DESIGNED: J. L. JONES
 PROJECT: HARBOR BOULEVARD IMPROVEMENTS

STUDIO-MLA
 ARCHITECTS
 435 N. PALM TREES STREET SUITE 1000 CA 90024-1500

THE CITY OF LOS ANGELES
 ENGINEERING DIVISION
 435 N. PALM TREES STREET SUITE 1000 CA 90024-1500

HARBOR BOULEVARD IMPROVEMENTS
OVERALL SITE PLAN

1ST BUILDING SUBMITTAL

DRAWING NUMBER: **L003**

EXHIBIT B
PROJECT ESTIMATED COST DETAILS

[Attached]

General Requirements - Soft Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
		\$ -	\$ -	\$ -	\$ -	\$ -						
Total		\$ -	\$ -	\$ -	\$ -	\$ -						\$ -
Consultant Services - Soft Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
		\$ -	\$ -	\$ -	\$ -	\$ -						
Total		\$ -	\$ -	\$ -	\$ -	\$ -						\$ -
Environmental Studies - Soft Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
	Phase I and NEPA preparation	\$ -	\$ -	\$ -	\$ -	\$ 12,500.00						
Total		\$ -	\$ -	\$ -	\$ -	\$ 12,500.00						\$ 12,500.00
Design - Soft Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
	Schematic/ Final Design Document	\$ -	\$ -	\$ -	\$ -	\$ 344,193.00						
Total		\$ -	\$ -	\$ -	\$ -	\$ 344,193.00						\$ 344,193.00
Plan Check/ Permits/ Jurisdictional Review - Soft Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
	Building Permits	\$ -	\$ -	\$ -	\$ 50,000.00	\$ 50,000.00						
Total		\$ -	\$ -	\$ -	\$ 50,000.00	\$ 50,000.00						\$ 100,000.00
Site Preparation/ Demolition - Hard Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
	Demolition and removal of existing abandoned rail road tracks	\$ -	\$ 1,430,000.00	\$ -	\$ -	\$ -						
	Earthwork	\$ -	\$ -	\$ 192,640.00	\$ -	\$ -						
	Mobilization, Survey, Staking	\$ -	\$ -	\$ 74,414.00	\$ -	\$ -						
	General Conditions	\$ -	\$ -	\$ 156,631.00	\$ -	\$ -						
Total		\$ -	\$ 1,430,000.00	\$ 267,054.00	\$ 156,631.00	\$ -						\$ 1,853,685.00
Artistic/ Storage/ RPOSD Branding - Hard Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
	Wayfinding Signage	\$ 333.00	\$ -	\$ 2,719.00	\$ -	\$ -						
Total		\$ 333.00	\$ -	\$ 2,719.00	\$ -	\$ -						\$ 3,052.00
Sustainability - Hard Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
	Native/ Drought Tolerant Plantings	\$ 86,969.00	\$ -	\$ -	\$ -	\$ -						
	Heat Island Reduction (i.e. Roof Gardens, shade structures, etc.)	\$ 233,868.00	\$ -	\$ -	\$ -	\$ -						
	Storm Water Management (i.e. Permeable Sealing, Drywell, Bioswale, Conveyance Swale, etc.)	\$ 75,036.00	\$ -	\$ -	\$ -	\$ -						
	Irrigation	\$ 114,346.00	\$ -	\$ -	\$ 13,331.00	\$ -						
	Other	\$ 90 DAY MAINTENANCE	\$ -	\$ -	\$ 13,331.00	\$ -						
Total		\$ 510,219.00	\$ -	\$ 267,054.00	\$ 13,331.00	\$ -						\$ 533,550.00
Hardscape/ Softscape - Hard Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
	Concrete/ Brick/ Stone/ Wood (curb, flatwork, stairs, ramps)	\$ 62,864.00	\$ -	\$ -	\$ -	\$ -						
	Other	\$ 63,451.00	\$ -	\$ -	\$ -	\$ -						
	Concrete/ Brick/ Stone/ Wood (curb, flatwork, stairs, ramps)	\$ -	\$ -	\$ -	\$ 113,585.00	\$ -						
	Concrete/ Brick/ Stone/ Wood (curb, flatwork, stairs, ramps)	\$ -	\$ -	\$ 274,568.00	\$ -	\$ -						
	Concrete/ Brick/ Stone/ Wood (curb, flatwork, stairs, ramps)	\$ -	\$ -	\$ -	\$ 16,734.00	\$ -						
Total		\$ 126,315.00	\$ -	\$ 371,411.00	\$ 130,319.00	\$ -						\$ 628,045.00
Construction/ Development - Hard Costs												
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQLA Funds						
	Playground Equipment/ Tot Lots	\$ 47,614.00	\$ -	\$ -	\$ -	\$ -						

Other	Exercise equipment - CONCRETE PINGPOND	\$ 7,245.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other	Picnic tables BENCHES LITTER RECEPTACLES CHESS TABLE CAROUSEL PLAY TOWERS SPRINGERS SPINNER OWL NET TWISTER SITTING POLE CUMBI'S STEPS	\$ 7,974.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Playground Equipment/Tot Lots		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other	ROLLARDS BOULDERS LIGHT POLES PROCUREMENT OF SITE FURNISHINGS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other	CONTINGENCY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total		\$ 63,133.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pre-Acquisition - Soft Costs																			
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQCLA funds													
Total		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Acquisition - Hard Costs																			
Project Costs	Project Deliverables	RPOSD Funding	Other/ POLA	Other/ HUD CNI	Other/ CDBG	Other/ HAQCLA funds													
Total		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Project Funding																			
		\$ 700,000.00	\$ 1,430,000.00	\$ 950,000.00	\$ 700,000.00	\$ 500,000.00	\$ 93,307.00	\$ 63,133.00	\$ 349,719.00	\$ 308,816.00	\$ 308,816.00	\$ 140,674.50	\$ 40,684.00	\$ 127,457.50	\$ 349,719.00	\$ 349,719.00	\$ 93,307.00	\$ 93,307.00	\$ 814,975.00

EXHIBIT C

**CONTRACT FOR CONSTRUCTION (HA-2022-28-MX)
BETWEEN
THE HOUSING AUTHORITY OF THE CITY OF LOS ANGELES
AND LUCAS BUILDERS, INC.**

[Attached]

**CONTRACT FOR CONSTRUCTION
BETWEEN
HOUSING AUTHORITY OF THE CITY OF LOS ANGELES
AND
LUCAS BUILDERS, INC.**

THIS CONTRACT ("Contract") is made and entered into this May 15, 2022 ("Effective Date") by and between the Housing Authority of the City of Los Angeles, a public body, corporate and politic ("HACLA"), and Lucas Builders, Inc., ("Contractor"), referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, on March 22, 2022, following Sealed Bid procedures, HACLA issued Invitation for Bids ("IFB") No. HA-2022-28-MX for the project identified as Harbor Blvd. Improvements (the "Work");

WHEREAS, on April 12, 2022, HACLA opened the sealed bids for the project and thereafter determined that Contractor has the qualifications, background, knowledge, experience and expertise to perform the obligations set forth in this Contract and that the Contractor's bid, as further negotiated between the Parties, was the lowest responsive, responsible bid;

WHEREAS, the Board of Commissioners, by Resolution No.9829 adopted on April 28, 2022 ("Contract Award Date") authorized HACLA to contract with said Contractor for said Work; and

WHEREAS, HACLA and Contractor desire to enter into this Contract for the Work upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and promises herein stated, the parties hereto agree as follows:

Section 1. SCOPE OF WORK AND ADDITIONAL WORK

A. Scope of Work. Contractor shall, in a manner satisfactory to HACLA, completely perform the work described in the Scope of Work attached hereto as Exhibit 1.

B. Additional Work. If during the course of the project Work that is not included in the Scope of Work is identified as necessary for the proper completion of the project, such Work, if approved by HACLA, shall be considered "Additional Work." In the event Additional Work is necessary, Contractor shall submit a Change Order, as defined and described in the General Conditions attached hereto. The Change Order shall describe the Work to be performed and the associated costs thereof and shall include a payment schedule if appropriate. No Additional Work shall be performed in advance of a purchase order that evidences HACLA's written acceptance and approval of the Change Order. Any Additional Work performed under the Change Order shall be subject to the General Conditions.

Section 2. CONTRACTOR'S REPRESENTATIONS AND RESPONSIBILITIES

A. Contractor represents that it has specialized expertise to perform the Work and that the Work shall be completed in a manner consistent with standards practiced among Contractors doing the same or similar work under the same or similar circumstances.

B. Contractor agrees to provide, furnish, and supply all things necessary and

incidental for the Work, including, but not limited to, provision of all necessary labor, materials, equipment and transportation, unless otherwise specified in this Contract. Contractor represents that it has reviewed the Scope of Work and that it has determined the Work can be performed for the amounts set forth in Contractor's Bid.

C. Contractor represents that it is free to enter into this Contract and is not subject to any obligation or disability which will or might prevent or interfere in fully keeping and performing all of the conditions to be kept and performed under this Contract. Contractor further represents that it has not paid anyone for the purpose of entering into this Contract, and that entering into this Contract and performing the Work hereunder will not constitute a conflict of interest. Contractor further represents that neither it, nor its agents or representatives, has offered or given gratuities in the form of entertainment, gifts, favors or other items or Work of value to any officer or employee of HACLA with a view toward securing: (i) award of this Contract, (ii) amendment of the Contract after award, (iii) favorable treatment of Contractor by HACLA in the administration of the Contract or in the making of any determination with respect to Contractor's performance of its obligations under the Contract.

D. Contractor's agrees that its receipt of payments from HACLA or any inspection, review, approval or oral statement by any representative of HACLA or any other governmental entity, shall in no way waive or limit the obligations in this Contractor's Representations and Responsibilities section or lessen the liability of Contractor to re-perform or replace unsatisfactory Work to the extent required herein, including but not limited to cases where the defective or below standard Work may not have been apparent or detected at the time of such payment, inspection, review or approval.

Section 3. FEES, RETENTION, INVOICES AND PAYMENTS

A. Contract Fees.

(1) Base Fee. For Contractor's full and complete performance of its obligations under this Contract, HACLA will pay Contractor the Base Fee of **\$2,300,000** ("Base Fee"). The Base Fee serves as the Contract Award sum for purposes of bonding and project registration thresholds. Except where a percentage markup is expressly stated in the Contract or otherwise negotiated as provided herein, the Base Fee is acknowledged to be fully burdened to include all direct costs, indirect costs and profit.

(2) Contingency. A Contingency sum of **\$93,307** ("Contingency") is authorized as a reserve for HACLA to cover the cost of Additional Services. Any unspent Contingency will revert to HACLA.

B. Maximum Cumulative Payment Obligation. Notwithstanding any other provision of this Contract to the contrary, HACLA's maximum cumulative payment obligation to Contractor under this Contract shall be **Two Million Three Hundred Ninety-Three Thousand and Three Hundred Seven Dollars (\$2,393,307)** ("Contract Fees," which is the sum of the Base Fee plus the Contingency).

C. Automated Deposit of Payments. Contractor shall be paid by Automated Deposit with a Financial Institution that is a member of the Automated Clearing House. The Automated Deposit Form must be completed and submitted to HACLA prior to the start of Work under this Contract.

D. Retention. HACLA is entitled to and shall withhold five percent (5%) retention from Contractor's earned labor-related compensation, except if the Contract Fees are expressed as a lump sum (i.e., combination of labor and materials), in which case, retention will be held on labor-related and materials-related compensation. Such retention shall be applied to all phases of the Work, including any

Additional Work. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with HACLA or with a state or federally chartered bank in California as the escrow agent, in accordance with Section 22300 of the California Public Contract Code, which provides for the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract. If such request is made by the Contractor, the escrow agreement shall be prepared by Contractor in compliance with the above-referenced statute and executed by HACLA's Contracting Officer. HACLA will release to Contractor undisputed retained earnings in accordance with Article 8 (Payments and Retention) of the General Conditions. The Contractor shall provide its certification and unconditional lien release acceptable to HACLA that all subcontractors have received full payment for the Work.

E. Invoices and Payment Terms.

(1) Contractor shall submit invoices to HACLA for payment in arrears of work being performed, but no more frequently than once per calendar month. Invoices shall identify the Contract Number and related purchase order number, and shall include the location, dates, and a description of the work performed during the billing period. Contractor shall invoice HACLA within 30 days of completion of Work; requests for progress payments shall include the applicable percentage(s) of completion. Invoices that do not align with the related purchase order will be rejected for payment until corrected. Invoices submitted more than 90 days after performance of services may be declined for payment.

(2) Contractor invoices must include the correct purchase order and contract numbers, an invoice number, the location, dates and description of the work performed, and the total amount due and payable as indicated on the purchase order. The Contractor name on the invoice must be the same as on the purchase order. The invoice must be signed by Contractor's authorized representative, which signature attests that the invoice is true and accurate. Invoices may be emailed to Accounts.Payable@hacla.org or may be mailed to:

Housing Authority of the City of Los Angeles
2600 Wilshire Blvd, Finance Dept., 4th Floor
Los Angeles, California 90057
Attention: Accounts Payable

(3) HACLA will pay all properly invoiced amounts due to Contractor within 30 days after receipt of such invoice, except for any amounts withheld for retention or timely disputed by HACLA.¹ The parties shall seek to resolve all such disputes expeditiously and in good faith. Contractor shall continue performing its obligations under this Contract notwithstanding any such dispute. Without prejudice to any other right or remedy, HACLA reserves the right to set off any amount owing to it by Contractor against any amount payable by HACLA to Contractor. Payment of an invoice is not evidence or admission that the Work meets the requirements of this Contract.

Section 4. CONTRACT TERM; TIME FOR COMPLETION

A. This Contract shall commence as of the Effective Date and continue in full force and effect through May 14, 2023 ("Contract Term") unless earlier terminated as provided elsewhere in this Contract or extended by written amendment to this Contract. Work shall not commence prior to issuance of this Contract's purchase order.

¹ Public Contract Code §20104.50(b)

B. The Time for Completion shall be as specified in the Notice to Proceed, or as otherwise agreed to by the Parties.

C. Option Term. HACLA, at its sole discretion, may elect to extend the Contract Term for the period through May 14, 2024 ("Option Term") by giving notice to the Contractor prior to the expiration of the initial Contract Term.

D. Maximum Term. The Contract Term shall not exceed five years, including options for renewal or extension, without HUD's consent.

Section 5. PAYMENT AND PERFORMANCE BONDS

A. Payment Bond Requirement. Contractor is required to post a Payment Bond to secure payment of all claims, demands, stop notices, mechanics liens, or charges of Material Suppliers, mechanics, or laborers employed by Contractor or by any subcontractor or any person, firm, or entity eligible to file a stop notice with respect to the Work. The amount of the Payment Bond shall be **Two Million Three Hundred Thousand Dollars (\$2,300,000)**. Contractor shall promptly furnish such additional security as may be required by HACLA to protect its interests and those interests of persons or firms supplying labor or materials to the Work.

B. Performance Bond Requirement. Contractor is required to post a Performance Bond as a guarantee of the faithful performance of the requirements of the Contract as it may be amended from time to time including, but not limited to, liability for delays, including liquidated damages, all warranties and guarantees and indemnity obligations. The amount of the Performance Bond shall be **Two Million Three Hundred Thousand Dollars (\$2,300,000)**. Contractor shall promptly furnish such additional security as may be required by HACLA to protect its interests and those interests of persons or firms supplying labor or materials to the Work.

C. Surety companies used by Contractor shall be, as of the issue date and at all times while the bonds are in effect, admitted surety insurers as defined in Code of Civil Procedure section 995.120.

D. Change Orders, or other modifications or changes in the Work and adjustments in the Scope of Work or Contract Fees shall in no way release or exonerate Contractor or its sureties from their obligations and notice thereof shall be waived by such sureties.

E. HACLA shall have the right to communicate with Contractor's sureties with respect to matters that are related to Contractor's performance of its obligations under this Contract. Contractor will be provided with a copy of all such written communications. Such communications shall not create or be interpreted as creating any contractual relationship between HACLA and any such surety.

Section 6. INSURANCE

A. During the term of this Contract, Contractor shall, at its own cost and expense, procure and maintain the insurance required by the solicitation:

(1) Workers' Compensation (statutory)/Employer's Liability (HACLA as a certificate holder and no exclusions for lead or asbestos): \$1,000,000.

(2) Commercial General Liability (HACLA as an additional insured): \$1,000,000.

(3) Automobile Liability (Evidence of insurance in the form of ACORD listing HACLA as a certificate holder): \$500,000.

B. Copies of Contractor's insurance certificates and endorsements in effect as of the date of Contract execution are attached hereto as Exhibit 6. Contractor is responsible for providing updated insurance records during the term of this Contract evidencing compliance with the above that shall supersede and replace those certificates and endorsements previously provided and which upon receipt by HACLA shall become a part of the Contract by this reference without further action required on the part of either party.

C. Wherever Contractor is required to name HACLA as an additional insured and/or certificate holder, the following information shall be included on the policy:

Housing Authority of the City of Los Angeles
Attn: Risk Management
2600 Wilshire Blvd.,
Los Angeles, CA 90057

D. Contractor shall be responsible for requiring appropriate indemnification and insurance from its consultants, agents and subcontractors, if any, to protect the interest of Contractor and HACLA. Contractor shall provide HACLA with proof of compliance with this provision upon demand.

E. Except by agreement or instruction of HACLA in writing, Contractor shall not commence Work prior to the effective date of the insurance referenced above.

Section 7. COMPLIANCE WITH LABOR LAWS (NON-EXEMPT, BUILDING)

A. This project is not solely funded using exempt federal funding and/or is not undertaken for the development, maintenance, and modernization of a public housing project; therefore, the federal exemption of state prevailing wages at 24 CFR 965.101 is not applicable.

B. Federal and State wages apply. In accordance with 8 Cal. Code of Regs 16001, the greater of the prevailing wages, when both are applicable, shall be paid to laborers and mechanics employed on the project.

(1) The state prevailing wage determination applicable to this Work is LOS-2021-2 General Prevailing Wage Determination and Apprentice Wages, including any predetermined wage increases. The effective wage date is the Contract Award Date referenced herein. The requirement to hire an apprentice is triggered where the total project exceeds \$30,000 and the craft or trade requires the use of an apprentice. (Labor Code section 1777.5)

(2) The federal wage determination and modification applicable to this Work is Davis Bacon Act (DBA) wage determination number **CA22, Modification No. 4, published on March 4, 2022**, which is the determination and modification in effect as of April 12, 2022, the date of bid opening. The wage determination and modification is available for downloading at <https://sam.gov/content/wage-determinations>. HACLA will provide a copy upon request.

C. Contractor is responsible for obtaining and applying the correct wages during the course of the project and inserting the wages into subcontracts. Contractor and its subcontractors shall submit certified weekly payrolls to HACLA, and since the value of this Contract exceeds \$25,000,

Contractor and its subcontractors shall also submit payrolls directly to the Department of Industrial Relations at www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html. Contractor shall allow HACLA staff to conduct on-site wage interviews and shall post information concerning the DBA and other related material as requested by HACLA. Contractors and subcontractors employed on the project may address questions concerning applicable wage rates and payroll reporting to HACLA's Labor Compliance Administrator at LaborCompliance@hacla.org.

Section 8. SUBCONTRACTING

A. The substitution of subcontractors on this public works project is governed by the Subletting and Subcontracting Fair Practices Act (Public Contract Code §§4100 et seq.) Nothing herein shall be deemed to entitle Contractor, without the written approval of HACLA, to substitute other Subcontractors for those named in Contractor's List of Subcontractors, attached hereto as Exhibit 4, and, except with such approval, no such substitution shall be made.

B. Contractor shall not perform any Work on the Project with any subcontractor who is debarred from bidding on, accepting or performing on a public works contract, either as a contractor or subcontractor, by the State of California's Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE), or any subcontractor who is suspended or debarred from participation in federal programs or if under a HUD-imposed Limited Denial of Participation. A current list of individuals and entities debarred by the DLSE is available at www.dir.ca.gov/dlse/debar.html; a current list of individuals and entities debarred by the federal government is available at www.sam.gov/SAM/. General information on Federal debarments is available at www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm.

C. Contractor certifies that it has investigated the eligibility of each subcontractor and has determined that none is ineligible to perform Work pursuant to the foregoing code provisions. Contractor shall insert appropriate sections in all subcontracts to bind subcontractors to the terms and conditions of the Contract insofar as such terms are applicable to the work of subcontractors. Nothing contained in the Contract shall create any contractual relationship between any subcontractor and HACLA. Contractor shall be fully responsible and accountable to HACLA for the acts and omissions of his/her subcontractors.

D. Except as hereinafter provided, any increase in the contract amount or time for completion resulting from the replacement or substitution of a subcontractor shall be borne solely by Contractor and without any adjustment in the contract amount or time for completion.

Section 9. NOTICES

A. Any notices to be given pursuant to this Contract shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, and addressed to the party for whom it is intended as follows:

For HACLA:

Contracting Officer:	Housing Authority of the City of Los Angeles Attn: Marlene Garza, Chief Administrative Officer 2600 Wilshire Boulevard, 3rd Floor Los Angeles, CA 90057
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Contracts Dept.: Housing Authority of the City of Los Angeles
Attn: Roli Khanna Contract Administrator
Email: roli.khanna@hacla.org
2600 Wilshire Boulevard, 4th Floor
Los Angeles, CA 90057

Project Manager: Housing Authority of the City of Los Angeles
Attn: Kevin Sharp
Email: kevin.sharp@hacla.org
2600 Wilshire Boulevard, 4th Floor
Los Angeles, CA 90057

For Contractor:

Contractor: Lucas Builders, Inc.
510 Jamie Ave.
La Habra, CA 90631

Representative: Saman Silva
Email: info@lucascompany.com
Phone: 714-888-8468

B. Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

Section 10. HACLA'S RIGHTS AND REMEDIES IN GENERAL

A. All of HACLA's rights and remedies under this Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in this Contract of certain breaches as material shall not waive HACLA's authority to designate other breaches as material nor limit HACLA's right to terminate the Contract, or prevent HACLA from terminating this Contract for breaches that are not material. HACLA's determination of whether there has been noncompliance with this Contract so as to warrant exercise by HACLA of its rights and remedies for default under the Contract, shall be binding on all parties. No termination or action taken by HACLA after such termination shall prejudice any other rights or remedies of HACLA provided by law or equity or by this Contract upon such termination, and HACLA may proceed against Contractor to recover all losses suffered by HACLA.

B. No action or failure to act by HACLA will constitute a waiver of a right afforded it under this Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by HACLA of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver. No provision contained in this Contract shall create or give to third parties any claim or right of action against HACLA or Contractor.

Section 11. SECTION 3 COMPLIANCE

A. Contractor shall comply with HACLA's Section 3 Policy and Compliance Plan, including requisite periodic reporting responsibilities. Additionally, Contractor shall satisfy its obligations set forth in its most recent Economic Opportunity Plan ("EOP") and supporting documents, which identify

Contractor's Section 3 commitments, including, without limitation, hiring and/or training of Section 3 Workers or other Section 3 economic opportunities. Contractor's Section 3 documentation is attached hereto as Exhibit 5 and incorporated herein by this reference. Contractor shall also ensure that its subcontractors comply with Section 3 requirements applicable to this Contract and that they satisfy their obligations set forth in their respective EOPs, to the extent feasible.

B. Section 3 commitments are triggered in full upon commencement of Work and/or first assignment. If Contractor has agreed to satisfy its Section 3 requirement by making contributions to the Section 3 Fund, such contribution shall be paid within 30 days after each contract year expiration via a separate check made payable to HACLA. Deductions and withholdings from invoices will not be accepted in lieu of contribution. The contribution amount will be calculated in accordance with the Section 3 Policy and Compliance Plan and based on HACLA's net payments to Contractor during the term of this Contract.

C. Contractor's failure to comply with requirements of the Section 3 Policy and Compliance Plan and/or failure to satisfy its EOP commitments may subject Contractor to the penalties for default under the Section 3 Policy and Compliance Plan, including monetary fines and debarment.

Section 12. LIQUIDATED DAMAGES Applicable Not Applicable

Section 13. MISCELLANEOUS PROVISIONS

A. **Assignment.** Neither Contractor nor HACLA shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Work or the obligations required by this Contract. Any attempted assignment, transfer or sublet without such written consent shall be void and confer no rights upon any third person and shall constitute a default under the this Contract.

B. **Successorship.** Contractor and HACLA acknowledge that the provisions of this Contract are binding upon the Parties, their employees, agents, heirs, successors and assigns.

C. **Governing Law.** This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. In any action arising out of this Contract, Contractor consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California

D. **Severability.** If any provision or any part of a provision of this Contract shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable legal requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of this Contract, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

E. **No Waiver.** No waiver of any provision of this Contract shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver. Further, the failure of either Contractor or HACLA to insist, in any one or more instances, on the performance of any of the obligations required by the other under this Contract shall not be a construed as a waiver or relinquishment of such obligation or right with respect to future performance.

F. **Amendments.** This Contract may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

G. **No Attorney Fees.** In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of, any right or obligation pursuant to the Contract or as a result of any alleged breach of any provision of the Contract, each party shall bear its own costs and expenses, including attorney fees, and any judgment or decree rendered in such a proceeding shall not include an award thereof.

H. **Entire Agreement.** The Contract, including all exhibits and other documents incorporated herein or made applicable by reference, constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes all prior agreements, understandings and commitments, whether oral or written.

I. **Binding Authority to Sign and Authorization.** Each of the Parties to this Contract hereby represents that all necessary and appropriate actions of their governing bodies, as applicable, have been taken to make this Contract a binding obligation of each of the Parties hereto. The persons executing this Contract warrant that they are duly authorized to execute this Contract on behalf of and bind the Parties each purports to represent. For California corporations, two signatures are required as follows: 1) Chairperson of the Board, President, or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer, or any Assistant Treasurer.

J. **Survival.** The provisions of this Contract which by their nature survive termination of this Contract or final completion, including all warranties, indemnities, payment obligations, and HACLA's right to audit Contractor's books and records, shall remain in full force and effect after final completion or any termination of the Contract.

K. **Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed to be an original.

L. **Working Papers.** All statements, records, schedules, working papers and memoranda made by Contractor incident to, or in the course of, rendering Work to HACLA pursuant to this Contract, except for the deliverables submitted by Contractor to HACLA and except for records which held by HACLA and are part of HACLA's records, shall be and remain the property of Contractor in the absence of an express agreement between Contractor and HACLA to the contrary. No such statements, records, schedules, working papers, or memoranda shall be sold, transferred, or bequeathed, without the consent of HACLA, to anyone other than HACLA's licensee, successor's, or assigns, or any combined or merged firm or successor in interest to Contractor.

M. **Legal Requirements.** Contractor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act (ADA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work.

N. **Performance Evaluation.** All multi-year contracts are subject to annual performance reviews; contracts of one year or less may be subject to performance reviews. Performance evaluations are performed in accordance with the applicable Contractor Evaluation Form, copies of which are available at www.hacla.org/forms. Contractor understands and agrees that HACLA may rely upon completed Contractor Evaluation Forms in assessing Contractor's qualifications, responsibility and ability to perform on future contracting opportunities with HACLA and that an over-all assessment of "Unsatisfactory" may result in Contractor's disqualification or debarment from future contracting opportunities with HACLA.

O. **Interpretation.** Should interpretation of this Contract or any portion thereof, be necessary, it is deemed that this Contract was prepared by the parties jointly and equally, and shall not be interpreted against either party on the grounds that the party prepared this Contract or caused it to be prepared. The captions and headings of the various articles and paragraphs of this Contract are for convenience and identification only and shall not be deemed to limit or define the content of the respective articles and paragraphs hereof.

[THIS PORTION INTENTIONALLY BLANK]

HOUSING AUTHORITY OF THE CITY OF LOS ANGELES
Harbor Blvd. Improvements

HA- 2022-28-MX

In executing this Contract, HACLA and the Contractor each individually represents that it has the necessary financial resources to fulfill its obligations under this Contract, and each has the necessary corporate approvals to execute this Contract, and to perform the work described herein.

IN WITNESS WHEREOF, HACLA and the Contractor have executed this Contract on the day and year first above written.

Approved as to form

**HOUSING AUTHORITY OF THE
CITY OF LOS ANGELES**

By: _____
DocuSigned by:
Jane Reimers
LEGAL COUNSEL

By: _____
DocuSigned by:
MARLENE GARZA
MARLENE GARZA
Chief Administrative Officer

Name: Jane Reimers, Sr. Staff Attorney

LUCAS BUILDERS, INC.

License No.: 982296
Public Works Registration: 1000004271

By: _____
DocuSigned by:
Sam Silva
(Signature of Person Authorized To Sign)

Sam Silva
(Printed Name of Person Authorized To Sign)

Title: President

Exhibit 1**SCOPE OF WORK****HARBOR BOULEVARD IMPROVEMENTS PROJECT****PART 1 - PROJECT OVERVIEW****Project site and location**

The project site is located on along the east side of Harbor Boulevard between 1st St. and 3rd St. in San Pedro. The total rail right-of-way is approximately 668' long and varies in width from 21'-6" to 35'. Total area of the right-of-way is approximately 15,635 sf. A map depicting the project site was included as Attachment No. 1 at Volume II of the IFB, and is incorporated herein by reference.

The Project site is owned by Los Angeles Harbor Department (LAHD) and currently contains inactive rail previously used by the suspended Waterfront Red Car Line in addition to the occasional freight rail lines, which are also now inactive. The Project site is adjacent to the existing Harbor Boulevard Parkway Promenade, which is a multi-use Parkway that runs east of and parallel to the rail tracks and the Harbor Boulevard along the LA Waterfront. LAHD will remove the existing tracks, clear the site, and prepare the site for construction.

Project Concept and Design

Because of the long rectangular site, the park programming consists of a flex space, multi-purpose lawn, children's play area, adult exercise area, picnic areas, and game tables arranged in a linear fashion. The flex space area on the north end of this park space is equipped to provide access and space for food trucks or pop up services. The adjacent shaded picnic area with tables and benches will maximize the appeal and use of this flex space. A shade structure with swinging benches and circular sitting benches is placed centrally along the site as it provides a place to relax and watch the activities on the multi-purpose lawn area and/ or the children's play area. The children's play area has play structures for 3-5 and 5-12-year-old kids, boulders, wood stumps, and benches to provide seating areas for adults or kids. A fence for this children's play area is provided along the Harbor Boulevard sidewalk as a safety measure based on the community input. The adult exercise equipment, picnic/sitting area with chess tables, ping-pong table, and circular benches create a very vibrant and active atmosphere in the Palm Court Area towards the south end of this park space.

PART 2: SCOPE OF WORK

Contractor shall adhere to the Design Plans and Technical Reports included in Vol. II of the IFB, a portion of which are included herein by this reference, and which are not intended to limit or contradict Vol. II. All materials, products, equipment, or assemblies provided shall be comparable or "approved equal" to those specified in Vol. II of the IFB.

Relocate Existing Signage and footing:

Shall include furnishing all labor, materials, tools, equipment and incidentals for relocating existing signage and footing to the new specified location indicated on the Design Plans included in Vol. II of the IFB.

Storm Utility Drainage:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of the Storm Utility Drainage. Items to include Bio-Swale Connection to (E) Storm Drain at Cross Street, PVC 8" connect to nearest storm drain pipe, etc.

Bioswales:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of the Bioswales. Items to include Excavation & Remove Offsite (3'-0" from Rough Grading Level) - IN EARTHWORK , Perforated PVC Pipe 6" dia. Wrapped in root (3/CD-001), Hood overflow with strainer- 30' OC, Open Graded Washed-Gravel 3/4" to 1-1/2", Geotextile filter fabric - Mirafi 140N or equivalent, Planting Media with 60%-70% Sand.

Irrigation:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of the Irrigation. Items to include PVC mainline, laterals, sleeving, Irrigation Controller update, valves, quick couplers, spray heads, drip line and drip accessories.

Fencing:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of the Fencing. Galvanized railing fence.

Bollards:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of the Bollards. Items to include Removable Bollard At Flex Space - Powdercoated and Fixed Bollard At Flex Space - Calpipe IBF06040 Powdercoated.

Edging:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of Edging. Items to include Flush Concrete Header - C.I.P.

Paving:

The scope of work shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of Paving. Items to include Integral Color Concrete Paving A - Davis Colors: San Diego Buff 5237 (1,437 sf), Decomposed Granite Stabilized - Graphite Grey - Southwest Boulder (3,062 sf), Pip Rubberized Play Surfacing – Spectrapour - Sky Blue (Base) - Eggshell (Bands).

Play Equipment:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of Play Equipment. Items to include Universal Carousel - Pcm157-0205, Play Tower – Physical - Slide - Pcm100304-0936, Double Springer- Dolphin - Pcm104, Single Springer- Shark -

Pcm102-0401, Sky Twister - Cor299001, Spinner Bowl - Ele400024-37817F, Net Twister - Cor203011-1108, Sitting Pole - Nro210-0501.

Work-out Equipment:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of Work-out Equipment. Items to include Combi 3 - Fsw103, Step (32 In & 24 In) - Faz30300/Faz30400.

Shade Canopy with Swinging Benches:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of the Shade Canopy with Swinging Benches. Items to include Shade Canopy At Promenade Fountain W/ 3 Swinging Benches - Custom - Steel- Painted, Aluminum- Champagne Gold, Swinging Bench: Fabricated And Provided By Landscape Forms. Bench: Parc Vue Backed Bench With End Arms And Seat Divider.

Amenities and Site Furnishings:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of Amenities and Site Furnishings. Items to include Picnic Table - Q-Std-90Pt - Craftsmans Etch - W/ Permashield 4200 Sealer - Mission White - Qcp Corp with concrete footing, ADA Picnic Table - Q-Std-90Pt-ADA - Craftsmans Etch - W/ Permashield 4200 Sealer - Mission White - Qcp Corp with concrete footing, Park Bench - Parc Vue Pv644-08 – Powdercoated – Titanium with concrete footing - Landscape Forms, Litter Receptacle - California Round: Qr-Cal2436W-Hover19- Craftsmans Etch - W/ Permashield 4200 Sealer - Mission White - QCP Corp, Park Large Circle Bench - Stripes Bench / 3610-900 – Powdercoated -Ral 5012 Light Blue – Vestre, Chess Table And Benches - Q-Mod82T- Craftsmans Etch - W/ Permashield 4200 Sealer - Mission White - QCP Corp, Park Concrete Ping Pong Table - Q-PP- Craftsmans Etch - W/ Permashield 4200 Sealer - Mission White - QCP Corp, Park

Landscape - Purchase, Install + 90 Day Warranty:

Shall include furnishing all labor, materials, tools, equipment and incidentals for completion and installation of the Landscape. Items to include Trees, Shrubs, Soil Preparation including testing and amendments, Allowance For Equipment: Crane, Etc, Turf Sod Hybrid Bermuda / Hybrid Bermuda, Bark Mulch Over Shrub Areas - 3" Layer, Gravel Mulch – 3/8" Crushed Aggregate, Pewter Grey, Root Barriers.

All work must be completed in accordance with the Design Plans, including any subsequently approved change orders, other HACLA requirements, and applicable Federal, State, and local codes and regulations.

Exhibit 2

CONTRACT FEES

All prices are fully burdened, which means that all general conditions, taxes, insurance, bonds and permits (if required) are included.

BASE PRICE: \$2,300,000

CONTINGENCY: \$93,307² (any unspent Contingency will revert to HACLA)

² Following contract execution, Contractor will submit and HACLA intends to approve Change Order No. 1 for the sum of \$78,500, payable from the Contingency, for added Concrete Paving at the North and South end with expansion joints per City of Los Angeles Public Works Green Book, described as (1) Flex Space, Natural Color Concrete Paving - Natural Grey (2,131 sf) and (2) Bosque - Integral Color Concrete B - Davis Colors: San Diego Buff 5237 (1,592 sf).

Exhibit 3**HACLA'S GENERAL CONDITIONS FOR
CONSTRUCTION PROJECTS USING NON-EXEMPT FEDERAL AND MIXED FUNDS****ARTICLE 1. GENERAL PROVISIONS****1.1 Definitions (HUD)³**

(a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract. [If an Architect is not employed on the project, any responsibilities assigned to the Architect herein shall instead be the responsibilities of the Project Manager.]

(b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5369-A), these General Conditions, the applicable wage rate determinations from the U.S. Department of Labor [and/or other applicable wages], any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.

(c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.

(d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.

(e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.

(f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.

(g) "Project" means the entire project, whether construction or rehabilitation, the work for which is

³ Form HUD 5370, General Conditions for Construction Contracts (HUD General Conditions), clause 1 (as amended).

provided in whole or in part under this contract.

(h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.

(i) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

(j) "Work" means materials, workmanship, and manufacture and fabrication of components.

1.2 Definitions (HACLA)

(a) "Acceleration Proposal Request" means HACLA's written request to Contractor to submit an itemized proposal for Extraordinary Measures to achieve early completion of all or a portion of the Work when not due to the fault of the Contractor.

(b) "Acceptance" means the point after Final Completion when Contractor has fully performed all of the requirements of the Contract and the Work is accepted by HACLA in writing.

(c) "Allowance" means an amount included in the bid that may or may not be included in the project, or for portions of Work where the amount or scope of the work cannot be ascertained at the time of bid submissions. The Allowances for this project, if any, are identified in the IFB.

(d) "Application for Payment" means an itemized application for payment prepared and submitted by Contractor for review and approval by HACLA, which is prepared, submitted and accompanied by supporting documentation in accordance with the requirements of the Contract.

(e) "As-Built Drawings" means Drawings submitted by Contractor or subcontractor at any tier to show the construction of a particular structure or Work as actually completed under the Contract. "As-built drawings" shall be synonymous with "Record drawings."

(f) "Beneficial Occupancy" means HACLA's right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work, at any time prior to Substantial Completion, upon 7 days' notice to Contractor.

(g) "Change Order" means the written instrument issued after the execution of the Contract signed by HACLA and Contractor stating their agreement upon the scope of the change in the Work and the adjustment in the Contract Fees and/or Time for Completion, if any.

(h) "Compensable Delay" means any Excusable Delay to the path of activities that is critical to Contractor's Substantial Completion of the Work within the Time for Completion, which Delay is all of the following: (i) solely due to acts or omissions within HACLA's control, including but not limited to Changes requested by HACLA that involve Extra Work; (ii) not due, in whole or in part, to the fault or negligence or breach of Contractor or any subcontractor; and (iii) not concurrent with another Excusable Delay or any Unexcused Delay.

(i) "Contract" additionally means HACLA's Invitation for Bids (IFB) issued for the Work and all exhibits and attachments thereto, Contractor's bid submitted in response to the IFB and all exhibits and attachments thereto, these General Conditions, Contractor's Insurance Endorsements, and Contractor's Section 3 Economic Opportunity Plan.

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- (j) "Contract Fees" or "Contract Price" means the amount HACLA will pay Contractor for the performance of the Contract, subject to adjustments, which is set forth in the Contract.
- (k) "Contracting Officer" includes his/her designee. Unless otherwise specified, the Project Manager is the Contracting Officer's designee for purposes of these General Conditions. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing.
- (l) "Defective Work" means Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract, directives of the Project Manager, or the requirement of any inspection, reference standard, test, or approval specified in the Contract.
- (m) "Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.
- (n) "Excusable Delay" means a delay for which Contractor may be entitled under the Contract to an extension of time, but not compensation.
- (o) "Extraordinary Measures" means measures implemented by Contractor at HACLA's direction to expedite the progress of construction of all or a portion of the Work, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) submitting a recovery schedule for resequencing performance of the Work or other similar measures.
- (p) "Final Completion" means full completion of all Work required by the Contract, including all punch list items, and submission of Record Documents, all to HACLA's satisfaction.
- (q) "General Conditions" or "General Conditions of Contract" means these General Conditions, including any exhibits and attachments attached hereto, which are specifically made a part of these General Conditions by this reference.
- (r) "Hazardous Materials" are any materials, wastes, substances and chemicals deemed to be hazardous under applicable legal requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable legal requirements.
- (s) "HUD Form 5370" means HUD Form 5370 (exp. 11/30/2023), which is applicable to contracts greater than [\$250,000]. All references to "HA" or "PHA" in the General Conditions for Construction Contracts refers to HACLA as defined above.
- (t) "Inspection" means examining and testing the Work performed under the Contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to Contract requirements.
- (u) "Notice of Completion" means and refers to Contractor's notification to HACLA that the Work is fully complete and ready for Acceptance.
- (v) "Plans" or "Drawings" additionally means the drawings, profiles, cross sections, working drawings, and supplemental drawings, or reproductions thereof, issued or approved by the Project Manager, which show the location, character, dimensions or details of the Work.

- (w) "Project Manager" means the person identified as the Project Manager in the Contract Notices section, who is charged with the responsibilities described in these General Conditions and elsewhere in the Contract.
- (x) "Record Documents" means the As-Built Drawings, warranties, guarantees and other documents required to be submitted by Contractor as a condition of Final Completion.
- (y) "Request for Information" means a written instrument, prepared by Contractor, which requests an interpretation or clarification in the Work or a response to a question concerning the Work. A Request for Information does not entitle Contractor to an adjustment in the Contract Fees unless it requires Extra Work and Contractor requests and is entitled to such an adjustment in accordance with the provisions of the Contract.
- (z) "Request for Information Response" means a written instrument that sets forth an interpretation or clarification in the Work or a response to a Contractor question concerning the Work.
- (aa) "Shop drawings" means drawings, submitted to HACLA by Contractor, subcontractor, or any lower tier subcontractor, showing in detail the proposed fabrication and assembly of structural elements and the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract.
- (bb) "Site" means the land or premises on which the Project is located.
- (cc) "Substantial Completion" or "Substantially Complete" means the point at which the Work is sufficiently complete to be occupied and utilized by HACLA for its intended purpose, and Contractor has fulfilled its obligations under the Contract, except for minor punch list items that do not impair HACLA's ability to so occupy and utilize the Project.
- (dd) "Superintendent" means the person appointed by Contractor, subject to approval by HACLA, to supervise and coordinate Contractor's own forces and subcontractors in all aspects of the Work.
- (ee) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (ff) "Time for Completion" means the date indicated on the Notice to Proceed as the date upon which the Contractor shall complete performance of the Contract. The Time for Completion is subject to adjustment as set forth herein.
- (gg) "Unexcused Delay" means any delay in the path of activities that is critical to Substantial Completion of the Work and which delay is not attributable to HACLA. An Unexcused Delay shall not entitle Contractor to either an extension of the Time for Completion or an adjustment of the Contract Fees. To the extent an Unexcused Delay is concurrent with an Excusable Delay, the Excusable Delay shall be conclusively deemed an Unexcused Delay.

1.3 Ownership and Use of Architect's Documents

The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be

executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Owner or the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any subcontractor, sub-subcontractor or material or equipment supplier on other Projects or for additions to this Project outside the scope of the Work without the specific, written consent of the Owner. The Contractor, subcontractors, sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any copyrights or other intellectual property rights.

1.4 Ownership of Results and Work for Hire

(a) Any interest (including, but not limited to, property interests and copyright interests) of Contractor or its subcontractors, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Contractor or its subcontractors in connection with the Work shall become the property of and shall be transmitted to HACLA at the conclusion of this Contract. Contractor may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the Contractor's activities, Contractor shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the project.

(b) Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Contractor or its subcontractors in connection with the Work shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of HACLA. In the event that it is ever determined that any works created by Contractor or its subcontractors under this Contract are not Works for Hire under U.S. law, Contractor hereby assigns all copyrights to such works to HACLA. With the prior written approval of HACLA, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

(c) After the completion of the project, Contractor shall not permit any reproductions to be made of any HACLA-owned documents without the written approval of HACLA and shall refer to HACLA all such requests for such documents.

1.5 Order of Provisions⁴

(a) HACLA has the sole discretion to resolve conflicts between these General Conditions and the Specifications. Any claimed inconsistency between a HUD provision and HACLA's provisions that

⁴ HUD General Conditions, clause 26 as revised by HACLA

supplement the HUD provision, HACLA shall have the sole power to decide which provision shall govern in the best interests of HACLA. In the event of a conflict between the Contract and any applicable state or federal law or regulation, the state or federal law or regulation shall prevail.

(b) With respect to the Drawings, figured dimensions shall control over scaled measurements and specific details shall control over typical or standard details.

(c) With respect to the Contract, Addenda shall govern over other portions of the Contract to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specifically noted.

(d) Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

(e) Unless otherwise stated in the Contract, technical words and abbreviations contained in the Contract are used in accordance with commonly understood construction industry meanings; and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

(f) The Contract may omit modifying words such as “all” and “any,” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including,” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation,” “but not limited to,” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

(g) Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract or any subdivision thereof.

(h) If a claimed inconsistency cannot be resolved through the order of precedence, HACLA shall have the sole power to decide which document or provision shall govern as may be in the best interests of HACLA.

1.6 Force Majeure

In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault or negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy; insurrection; acts of the federal government or any unit of state or local government in either sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes, freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

1.7 Pre-construction Conference and Notice to Proceed⁵

(a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.

(b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

ARTICLE 2. HACLA'S RIGHTS AND RESPONSIBILITIES**2.1 Furnishing of Services and Information**

(a) Requests for Information Responses, approvals and decisions required of HACLA, Architect or Project Manager shall be provided by the Project Manager or Architect to Contractor upon request in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Work. Notwithstanding the foregoing, failure by HACLA, Architect, Project Manager or HACLA's other consultants to provide Request for Information Responses, approvals or decisions shall not be considered as a basis for Contractor to seek adjustment in the Time for Completion until 10 working days after Contractor has delivered written notice to HACLA and to the person from whom such information, approval or decision is requested, including the following:

(1) The notice must include the following statement: "You are hereby notified that certain information, approval or decision described herein has not been provided in accordance with the General Conditions and if not provided within 10 working days from this notice may result in additional cost or a request for time extension due to delay."

(2) A detailed description of the information, approval or decision required, accompanied by copies of Contractor's prior written request(s).

(3) The date by which the information, approval or decision must be received so as to not result in delay to the Project, which shall be no sooner than 10 working days after HACLA's receipt of such notice.

(b) The Architect's or Project Manager's failure to provide the requested information, approval or decision within 10 working days following receipt of the above notification will not entitle Contractor to an increase in the Contract Fees or Time for Completion unless Contractor requests an increase in the Contract Fees and/or Time for Completion by submitting a Change Order in compliance with these General Conditions.

2.2 Access to Project Site

HACLA will make available, no later than the commencement date designated in the current construction schedule accepted by HACLA, the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities designated in the Contract, for use by Contractor.

2.3 HACLA's Right to Order Extraordinary Measures

⁵ HUD General Conditions, clause 5

(a) In the event HACLA determines that the performance of the Work, or any portion thereof, has not progressed or reached the level of completion required by the construction schedule in effect at the time (referred to in this clause as the "Effective Construction Schedule") due to causes within the control of Contractor, HACLA will have the right to serve upon Contractor an Acceleration Proposal Request, ordering Contractor to take corrective Extraordinary Measures necessary to expedite the progress of construction, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures.

(b) Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion as required by the Effective Construction Schedule. The Contractor shall not be entitled to an adjustment in the Contract Fees in connection with the Extraordinary Measures required by HACLA under or pursuant to this clause. HACLA may exercise the rights furnished HACLA under or pursuant to this clause as frequently as HACLA deems necessary to ensure that the Contractor's performance of the Work will comply with the Time for Completion or interim completion dates set forth in the Effective Construction Schedule.

(c) If Contractor or its subcontractors fail to implement or commence Extraordinary Measures within 2 days, excluding Saturdays, Sundays and legal holidays, of HACLA's written demand, HACLA may, without prejudice to other remedies, take corrective action at the expense of the Contractor and may reduce the Contract Fees.

(d) In the event HACLA determines that the performance of the Work, or any portion thereof, has not progressed or reached the level of completion required by the Effective Construction Schedule due to causes not within the control of Contractor, in order to achieve early completion of all or a portion of the Work, HACLA may serve upon Contractor an Acceleration Proposal Request, asking Contractor to submit an itemized proposal for Extraordinary Measures, in a form acceptable to HACLA.

2.4 HACLA's Right to Stop the Work

If Contractor fails to correct Defective Work as required herein or fails to perform the Work in accordance with the Contract, HACLA may direct Contractor to stop the Work, or any portion thereof, until the cause for such stop order has been eliminated by Contractor. Contractor shall not be entitled to any adjustment of Time for Completion or Contract Fees as a result of any such order. HACLA has no duty or responsibility to Contractor or any other party to exercise the right to stop the Work.

2.5 HACLA's Right to Supervise on a Temporary Basis

Without limitation upon any of the rights or remedies of HACLA under the Contract or under law arising from a default by Contractor, in the event that Contractor fails to have personnel on Site to supervise the Work, HACLA will have the right, in its sole discretion, but not the responsibility, upon 24 hours' telephonic notice to Contractor, to provide such supervision on a temporary basis. Contractor shall, notwithstanding HACLA's providing such temporary supervision, remain solely responsible for all actions of its personnel and subcontractors and shall defend and indemnify HACLA in accordance with the Contract against any losses arising therefrom. HACLA shall have the right, in its discretion, to deduct from the sums owing to Contractor the reasonable cost of such temporary supervision.

2.6 Rights to Data

HACLA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive

possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of the Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of the Contract.

ARTICLE 3 CONTRACTOR'S RIGHTS AND RESPONSIBILITIES

3.1 Contractor Responsibility for Work (HUD)⁶

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.

(b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.

(c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent Superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and Acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

(f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.

(g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

(h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

⁶ HUD General Conditions, clause 2

3.2 Site Investigation and Conditions Affecting the Work⁷

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

(b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

3.3 Conditions Affecting the Work

Notwithstanding the foregoing clause, Site Investigation and Conditions Affecting the Work:

(a) Contractor warrants and represents that it carefully reviewed the Bid and Contract prior to submitting its Bid and executing the Contract. The Contractor shall not be entitled, and conclusively waives any right, to an adjustment in the Contract Fees or Time for Completion for any additional or unforeseen costs or delay in the performance of Work due to conditions in Contract constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with applicable legal requirements, if such conditions were either discovered by Contractor or could have been reasonably discovered by Contractor or its subcontractors in the exercise of care and diligence in the review of the Contract, subject to the limitations of Public Contract Code Section 1104.

(b) If Contractor discovers what it perceives to be errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with applicable legal requirements, then Contractor shall, within two 2 days of discovery, notify the Project Manager in writing stating both of the following: (i) a detailed description of the conditions discovered; and (ii) Contractor's request for clarification, further details or correction of the Contract. Failure by Contractor to provide written notice within the period of time required shall result in Contractor waiving any right to adjustment in the Contract Fees or Time for Completion on account thereof.

(c) The Contractor shall take field measurements of the existing field conditions verified. Contractor shall carefully compare the field conditions with the Contract and other information known to Contractor before commencing the Work. Contractor shall promptly report in writing to the Project Manager any errors, inconsistencies, or omissions the Contractor discovers.

⁷ HUD General Conditions, clause 7

(d) If Contractor performs any portion of the Work which it knows, or in the exercise of care and diligence should have known, involves an error, omission, conflict, ambiguity, lack of coordination or noncompliance with applicable legal requirements, without notifying and obtaining the written approval of HACLA or before obtaining a written clarification, interpretation, instruction or decision from Project Manager, then any Work that is performed that is not in conformance with the clarifications, interpretation, instruction or decision of HACLA, Architect or Project Manager shall be removed or replaced and Contractor shall be responsible for the resultant losses with no adjustment in the Contract Fees or Time for Completion.

(e) Existing improvements at the Site, for which no specific description is made on the Drawings, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by Contractor, but only upon the specific direction and control of HACLA. Without limitation to the foregoing, and notwithstanding any information provided by HACLA pertaining to groundwater elevations and/or geological and soils conditions encountered, it is understood that it is Contractor's responsibility to determine and allow for the elevation of groundwater, and the geological and soils conditions at the date of performance of the Work.

3.4 Supervision and Construction Procedures

(a) Contractor shall supervise, coordinate and direct the Work using Contractor's best skill and attention and shall provide supervision sufficient to assure proper coordination and timely completion of the Work. Contractor shall be solely responsible for and have control over construction means, methods, techniques, safety, sequences, procedures and the coordination of all portions of the Work.

(b) Contractor shall be responsible for the accurate layout of all portions of the Work and shall verify all dimensions on the Drawings and shall report to HACLA any discrepancies before proceeding with related Work.

(c) Contractor may be assigned working space adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. Contractor shall be responsible for leaving the space in as good condition as Contractor found it, or restoring it to the condition it was in prior to Contractor commencing the Work.

(d) Contractor shall be responsible to HACLA for acts and omissions of Contractor's agents, employees, and of Contractor's subcontractors, and their respective agents and employees. Unless otherwise stated in or a contrary intention is reasonably inferable from the Contract, references to Contractor, when used in reference to an obligation bearing upon performance of the Work, shall be deemed to include Contractor's subcontractors.

(e) Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract by the act(s) or omission(s) by HACLA in the administration of the Contract, or by tests, inspections or approvals required or performed by persons or firms other than Contractor.

3.5 Material and Workmanship (HUD)⁸

(a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make,

⁸ HUD General Conditions, clause 11

or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) Approval of equipment and materials.

(1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

(3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

(4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.

(5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

(c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

3.6 Lead-Based Paint Rule

Notwithstanding the foregoing clause, Material and Workmanship at paragraph (c), federal law requires that all Contractors performing renovation, repair and painting Projects that disturb paint in any housing units constructed prior to 1978 or a child-occupied facility, defined as any building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours, must be certified in the Environmental Protection Agency ("EPA") Renovation, Repair and Painting Rule, and must follow specific work practices to reduce human exposures to lead, as outlined in 40 CFR Part 745. By executing a Contract for a renovation, repair and/or painting Project subject to this clause, the Contractor hereby verifies that it has been certified by the EPA and conforms with all EPA standards and practices as it relates to the renovation, repair and painting of such projects.

3.7 Responsibility for HACLA-Furnished Materials

Contractor is held responsible for all materials furnished by HACLA after such materials have been delivered to the Site and until such materials are incorporated in the Work and accepted by HACLA. Deductions will be made from any monies due, or to become due, the Contractor to make good any loss, damage, shortage, or deficiency from Contractor's failure to protect such materials including, but not limited to, demurrage charges due to delinquency in unloading. In case of suspension of the Work for any cause whatever, the Contractor shall be responsible for protection of all materials, whether furnished by Contractor or by HACLA, and shall properly store such, if necessary.

3.8 Accounting Records; Audit

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract in accordance with generally accepted accounting principles and practices.

3.9 Examination and Retention of Contractor's Records⁹

(a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to litigation or settlement of claims arising from the performance of this contract, or costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

3.10 Construction Methods and Procedures

⁹ HUD General Conditions, clause 45, as amended

(a) The methods and procedures adopted by Contractor shall be such as to secure a quality of Work satisfactory to HACLA and to enable completion of the Work in the time agreed upon. If at any time such methods and procedures appear inadequate, HACLA may order Contractor to improve the character or increase efficiency, and Contractor shall conform to such order; but the failure of HACLA to order such improvement of methods or increase of efficiency will not relieve Contractor from its obligation to perform the Work in accordance with the Contract or within the Time for Completion.

(b) If the Contract give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall be fully and solely responsible for the Site safety for implementing such means, methods, techniques, sequences or procedures. If Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give written notice to the Project Manager and shall not proceed with that portion of the Work without further written instruction by the Project Manager.

3.11 Taxes

Contractor and subcontractors are responsible for paying all sales, consumer, business license, use, income and payroll, and similar taxes for the Work or portions thereof provided by Contractor and subcontractors.

3.12 Permits and Codes¹⁰

The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation. The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work.

3.13 Project Staff

(a) Contractor shall employ a complete and competent Project staff for the duration of the Work, which shall include separate individuals designated to act as Superintendent, Construction Manager, Project engineer(s) and administrative assistant(s), plus such other persons necessary to diligently prosecute the Work. Contractor shall not replace the designated Superintendent or Construction Manager without a minimum 7 day written notice. Any Project staff member and any replacement member shall be subject to the approval of HACLA, which may be granted or withheld in its sole discretion.

(b) Upon notice from HACLA requesting replacement of any Project staff member who is unsatisfactory to HACLA, Contractor shall in a timely manner, but in no event longer than 3 days after notification, replace such member with a competent member satisfactory to HACLA. Failure by Contractor to comply with the provisions of this paragraph shall entitle HACLA, at its option exercised in its sole discretion, to terminate the Contract or suspend the Work until Contractor complies with this paragraph. All costs or damages associated with such termination or suspension shall be borne by Contractor, without adjustment in the Contract Fees or Time for Completion.

¹⁰ HUD General Conditions, clause 12, as amended by HACLA

(c) The Superintendent shall be at the Site at all times during the performance of the Work. The Superintendent shall represent Contractor and communications given to and acknowledged by the Superintendent shall be binding on Contractor. Further, communications issued by or received from the Superintendent shall be deemed as binding on Contractor. The Superintendent must be able to read, write and communicate fluently in English.

3.14 Specifications and Drawings for Construction¹¹

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words 'directed', 'required', 'ordered', 'designated', 'prescribed', or words of like import are used, it shall be understood that the 'direction', 'requirement', 'order', 'designation', or 'prescription', of the Contracting Officer is intended and similarly the words 'approved', 'acceptable', 'satisfactory', or words of like import shall mean 'approved by', or 'acceptable to', or 'satisfactory to' the Contracting Officer, unless otherwise expressly stated.

(c) Where 'as shown', 'as indicated', 'as detailed', or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word 'provided' as used herein shall be understood to mean 'provide complete in place' that is 'furnished and installed'.

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

¹¹ HUD General Conditions, clause 9

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

(h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

(i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

3.15 As-Built Drawings (HUD)¹²

(a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."

(b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

(c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

3.16 As-Built Drawings (HACLA)

Notwithstanding the foregoing clause, As-Built Drawings (HUD):

(a) Contractor shall provide the Project Manager and Architect accurate information to be used in the preparation of permanent As-Built Drawings and at Final Completion, the Contractor shall provide the fully As-Built Drawings to HACLA. For this purpose, Contractor shall record on one set of Contract Drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface

¹² HUD General Conditions, clause 10

improvements such as buildings, curbs, or edges of walks. If the As-Built Drawings are prepared on a computer, then the revised computer files shall also be provided to HACLA in the file format specified by HACLA.

(b) Contractor, in concert with the Architect and the Project Manager, shall review Contractor's As-Built Drawings for conformance with all current Changes prior to presenting its monthly Application for Payment. The monthly progress payment statement will not be accepted or processed by HACLA unless the As-Built Drawings are current and complete, and approved by HACLA. No final payment will be made to Contractor until the Project Manager has received accurate information to be used in the preparation of permanent As-Built Drawings.

(c) It shall be the responsibility of Contractor to ensure that all As-Built Drawings prepared by subcontractors are submitted to the Project Manager (or Architect if so directed).

3.17 Documents and Samples at Project Site

(a) Contractor shall maintain 1 set of As-Built Drawings at the Site, which shall be kept up to date on a daily basis during the performance of the Work. All performed changes, deletions or additions in the Work from that shown in the Contract shall be recorded accurately and completely in the Record Documents. Upon Final Completion and as a condition to final payment, each sheet of the As-Built Drawings and other Record Documents shall be signed and attested to by the Contractor's Superintendent as being complete and accurate.

(b) Contractor shall, at all times during performance of the Work, also maintain the following at the Site: (i) the latest updated construction schedule approved by HACLA; (ii) Shop Drawings, product data, and samples; and (iii) all other required submittals. At all times during the course of the Project, these documents shall be available to HACLA, the Project Manager and the Architect to audit, excerpt, or copy as they see fit. Upon Final Completion or termination of the Contract, these documents shall be delivered to HACLA in the format requested by HACLA.

(c) It shall be the responsibility of Contractor to maintain a current and complete record of all Changes performed during the progress of the Project construction. The record shall be in the form of a complete set of prints of the As-Built Drawings on which daily recordings are made by Contractor, indicating in detail and dimension each variation from the original set of Contract for all of the Work. At the completion of construction, Contractor shall, as a requirement of the Final Completion, certify that to the best of its knowledge, the As-Built Drawings are true and accurate, and that the indications thereon represent all Changes performed during the construction of the Project. At Final Completion, the As-Built and other Record Documents shall become the property of HACLA.

3.18 Submittals

(a) Submittals are intended to demonstrate, for those portions of the Work for which submittals are required, how Contractor proposes to conform to the information given and the design concept expressed in the Contract. Prior to starting Work, Contractor shall provide to the Project Manager an initial schedule for submission of the submittals for which Shop Drawings are required by the Contract. For each required Shop Drawing, Contractor shall provide to the Project Manager the date for the Drawing's intended submittal to the Architect for review. The date required for its return to avoid delay in any activity beyond the scheduled start date shall also be given.

(b) All Shop Drawings and other submittals shall be provided at Contractor's expense, and at the time required by the construction schedule or requested by the Project Manager or Architect.

(c) Contractor shall review, approve, and submit to the Project Manager (or to Architect if so directed), all submittals required by the Contract to be submitted and reviewed by the Architect. Submittals to the Project Manager or Architect without evidence thereon of Contractor's approval shall be returned, without review, for resubmission in accordance with these requirements.

(d) Submittals shall be provided within the time frame specified in the Specifications in accordance with the construction schedule, and in such sequence as to cause no delay in the Work or in the activities of HACLA or of separate contractors. Submittals made by Contractor that are not required by the Contract may be returned without action by the Project Manager or Architect. Submittal to the Project Manager and Architect must include a statement, in writing, identifying any deviations from the Contract required due to manufacturing or installation limitations contained in the submittal.

(e) No Work requiring a submittal shall be performed by Contractor until the submittal has been reviewed and approved by the Project Manager or Architect, as appropriate, and the Architect has documented the exceptions noted on the submittal. Once the submittal is returned to Contractor by the Project Manager with a statement that it has been reviewed and no exceptions are taken or further action requested, such Work shall be performed in accordance with the submittal and the Contract.

(f) Contractor's submittals represent that Contractor has determined or verified materials and field measurements and conditions related thereto and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract and submittals for related Work.

(g) If Contractor discovers any conflicts, omissions or errors in submittals, Contractor shall notify the Project Manager (or Architect if so directed) and receive instruction before proceeding with the affected Work.

(h) Contractor shall remain solely responsible, notwithstanding the Project Manager's or Architect's review or approval of submittals, for deviations (including, without limitation, those arising from standard shop practice) from the Contract, unless Contractor has specifically informed the Project Manager or Architect in writing of such deviation at the time of transmitting the submittal and the Project Manager or Architect has given written approval of such deviation. No adjustment in the Contract Fees or Time for Completion shall be permitted with respect to any such deviations that are noted in writing by Contractor and as to which the Project Manager or Architect takes no exception or approves.

(i) After review of Contractor's submittals by the Project Manager or Architect, as appropriate, the Project Manager or Architect will transmit to Contractor one set of submittals. If the submittals are found to be incomplete or incorrect, Contractor shall resubmit after corrective action has been taken. Contractor shall reimburse HACLA, or HACLA may withhold from payments due Contractor, sums owing by HACLA for any fees charged by the Project Manager or Architect or HACLA's other consultants for more than 2 reviews of a submittal, or for accelerated review in a shorter time than set forth in the approved construction schedule, if requested by Contractor or caused by late submittals by Contractor. The return of a submittal due to failure to comply with the Contract or for correction or additional information shall be considered a review.

(j) Review of submittals by the Project Manager or Architect will be general and for conformance with design intent, and shall not relieve Contractor from the responsibility for proper fitting and construction of the Work, nor from furnished materials and Work required by the Contract which may not be indicated on the reviewed submittals.

(k) Submittals shall be in English, be of good quality, and be of a size and scale to clearly show all

necessary details. Submittals shall show in detail the size, sections and dimensions of all members; the arrangement and construction of all connections, joints and other pertinent details; and all holes, straps and other fittings required by other separate contractors for attaching their Work. When required by the Project Manager or Architect, engineering computations shall be submitted. Contractor shall be responsible for delivering duplicates of submittals to all other persons whose Work is dependent thereon.

(l) Contractor shall, at all times, maintain at the Site a complete file of all Project Manager or Architect-reviewed submittals.

3.19 Trade Names, Substitutions

(a) Any request for substitution of "or equal" items by the Contractor shall be made within 35 days of award of the Contract, unless otherwise specified in these Contract, and shall be governed by Public Contract Code Section 3400.

(b) If HACLA accepts for use in the Project a substitute material or process which in the opinion of the Project Manager or Architect is not the equal of that specified, a Change Order shall be issued issuing a credit to HACLA for the difference in value.

(c) Substitutions by Contractor that are incorporated into the Work without the prior review and approval by the Project Manager or Architect in accordance with the requirements of the Contract shall be deemed to be Defective Work.

(d) The Time for Completion shall not be affected by any circumstance developing from the substitution provisions of this clause.

3.20 Cutting, Fitting and Patching

(a) Contractor shall do all cutting, fitting, or patching of the Work required to make all parts of the Work join properly and to allow the Work to join the work of separate contractors shown in, or reasonably implied by, the Contract.

(b) Contractor shall not endanger the Work, the Project, existing improvements, or adjacent property by cutting, digging, or otherwise. Contractor shall not cut or alter the work of any separate contractor without the prior written consent of HACLA.

(c) In all cases, cutting shall be performed under the supervision of competent workers skilled in the applicable trade and shall cause the openings to be cut as small as possible to minimize unnecessary damage.

3.21 Access to the Work

(a) HACLA, Project Manager, Architect, their consultants and other persons authorized by HACLA shall at all times have access to the Work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access and for Inspection.

(b) HACLA may, at any time, and from time to time during the performance of the Work, enter the Project for the purpose of installing any necessary other work by HACLA labor or other contracts or for any other purpose. Contractor shall cooperate with HACLA and not interfere with other work being done by or on behalf of HACLA.

3.22 Hazardous Materials

(a) If Contractor encounters Hazardous Material that may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify HACL A and promptly thereafter confirm such notice in writing. Contractor's written notice shall indicate whether the Hazardous Material was shown or indicated in Contract to be within the Scope of Work, and whether the Hazardous Material was brought to the Site by Contractor, its subcontractors, sub-subcontractors, suppliers, or anyone else for whom Contractor is responsible.

(b) If Contractor introduces and/or discharges a Hazardous Material onto the Site in a manner not specified by the Contract, and/or disturbs a Hazardous Material identified in the Contract, Contractor shall hire a qualified remediation Contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall Contractor perform Work for which it is not qualified. HACL A, in its sole discretion, may require Contractor to retain an independent testing laboratory at Contractor's cost.

(c) Except as otherwise provided in Contract or as provided by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of Hazardous Materials where such matter is disturbed or observed as part of the Scope of Work under Contract (such as hazardous waste or hazardous material investigation, remediation or disposal activities that are identified as the subject of Work under Contract), where Contractor complies with all requirements in Contract and applicable law respecting such materials.

(d) Contractor shall not be entitled to any adjustment in the Contract Fees or Time for Completion regarding claimed Hazardous Material if: (i) Contractor knew of the existence of such Hazardous Material at the time Contractor submitted its Bid; (ii) Contractor should have known of the existence of such Hazardous Material as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies and data concerning the conditions at or contiguous to the Site prior to submitting its Bid; or (iii) Contractor failed to give timely written notice of the Hazardous Material as required above.

(e) If HACL A determines that conditions do not involve Hazardous Material or other materials not previously disclosed or that no change in Contract Document terms is justified, HACL A will notify Contractor in writing, stating the reasons for its determination. If HACL A and Contractor cannot agree on an adjustment in Contract Fees or Time for Completion, Contractor shall proceed with the Work and as directed by HACL A and may file a claim as provided herein.

(f) If Contractor does not agree to resume work based on a reasonable belief that it is unsafe, or does not agree to resume work under special conditions, HACL A may order the disputed portion of work deleted from the Work, or performed by others, or HACL A may invoke its right to terminate the Contract. If Contractor does not agree with HACL A's determination of any adjustment in the Contract Fees or Time for Completion as a result, Contractor may make a claim as provided herein.

(g) Contractor is required to ensure that material safety data sheets are available in a readily accessible place at the Site, or any material requiring a material safety data sheet per the federal "hazard communication" standard, or employees' right-to-know law. Contractor is also required to ensure proper labeling on any substance brought into the Site, and that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.

(h) Contractor is required to comply with the provisions of California Health and Safety Code section

25249, *et seq.* (the Safe Drinking Water and Toxic Enforcement Act, also known as Prop 65), which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer.

3.23 Differing Site Conditions (HUD)¹³

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for Differing Site Conditions shall be allowed if made after final payment under this contract.

3.24 Contractor to Bear Risk and Cost

Notwithstanding the foregoing clause, Differing Site Conditions (HUD):

Save and except as permitted for Differing Site Conditions, Contractor agrees to solely bear the risk and the additional cost and delay of all concealed or unknown conditions at the Site or in existing improvements, without adjustment to the Contract Fees or Time for Completion.

3.25 Parking

Contractor shall provide and maintain suitable parking areas, for use by all construction workers and others performing work or furnishing services in connection with the Project, as required to avoid any need for parking personal vehicles where they may interfere with public traffic, construction activities or public parking.

3.26 Use of the Project Site and Clean Up

(a) Contractor shall confine operations at the Site to areas permitted by applicable legal requirements and the Contract. Contractor shall not encumber the Site with materials or equipment so that separate contractors' work is hindered or impeded due to such encumbrances.

¹³ HUD General Conditions, clause 8

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- (b) Contractor shall, during performance of the Work, keep the Site and surrounding area free from the accumulation of excess dirt, dust, waste materials, water and rubbish caused by Contractor or any subcontractors. Contractor shall continuously and daily remove all excess dirt, waste material, water and rubbish caused by Contractor and all tools, equipment, machinery and surplus materials from the Site and surrounding area at end of each day. Adequate cleanup will be a condition for progress payments.
- (c) Personnel of Contractor shall not occupy, live upon, or otherwise make use of the Site during any time that Work is not being performed at the Site, except as otherwise provided in the Contract.
- (d) Upon Final Completion, Contractor shall remove all construction facilities, appurtenances, tools, material and other articles from the Site. The entire area, including all fixed equipment, floors, surfaces and hardware shall be cleaned and restored to their original condition in accordance with these General Conditions and Specifications.
- (e) In addition to water sprinkling, temporary enclosures and anti-dust sweeping compounds should be used to limit dust and dirt rising and to keep the Site clean.
- (f) Construction materials shall be neatly stacked by Contractor when not in use. Loose materials, whether on the Site or in transit, shall be covered to prevent dust. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions from the affected surfaces to prevent marring or other damage to the Work.
- (g) Volatile wastes shall be properly stored in covered metal containers and removed daily. All other trash receptacles shall be promptly emptied when full.
- (h) Contractor shall promptly and legally transport and dispose of removed and demolished items and waste materials not identified to be recycled or reused in compliance with local ordinances and anti-pollution laws. No rubbish or waste materials shall be burned, buried, or otherwise disposed of on the Site.

3.27 Care of Existing Utilities

- (a) Prior to the start of any grinding or any excavation, Contractor shall be responsible for notifying Underground Services Alert (USA) 800-642-2444 at least 5 days prior to beginning underground work so that existing utilities can be marked in the field. Contractor is responsible for the location of all utilities, both public and private. Contractor shall give specific address for grinding or excavation location. Each location shall be marked by Contractor in the field with white paint. Contractor shall take all necessary precautions to avoid damaging these utilities.
- (b) All Underground Services Alert marking shall be removed by Contractor. Any utilities damaged or altered in any way during the performance of the Work shall be promptly reported to the Project Manager, and shall be restored to their original condition at Contractor's expense.
- (c) If Contractor comes into contact with any existing utilities during his/her operations, Contractor shall notify the Project Manager before proceeding with the work involved.
- (d) Pursuant to Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by HACLA in the Contract, Contractor shall immediately provide written notice to HACLA and the utility. HACLA assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site, if such utilities are not identified in the Contract. Contractor shall be compensated in accordance with the provisions of the

Contract for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans or specifications with reasonable accuracy and for equipment on the Project necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by HACLA's failure to provide for removal or relocation of such utility facilities.

(e) In the event it should become necessary to remove the property of any owner of public utilities or franchise or any pipe, pipeline, conduit, tunnel, hole, cable, vault, crack, manhole, appliance, attachment, and appurtenances for which a permit has been granted for the installation thereof by the City of Los Angeles, Contractor shall notify the Project Manager of such fact, and HACLA will remove, or cause to be removed such property. The right is reserved to owners of public utilities, tenants and franchises to enter upon the Site for the purpose of making repairs or changes to their property that may be made necessary by the Work. The City of Los Angeles shall also have the right to enter upon the Site for the purpose of repairing sewers, water pipes, gas pipes, or other pipes or conduits, or making house connections thereto, or repairing existing culverts or storm drains.

3.28 Availability and Use of Utility Services¹⁴

(a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

3.29 Temporary Buildings and Transportation of Materials¹⁵

(a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

¹⁴ HUD General Conditions, clause 15

¹⁵ HUD General Conditions, clause 17

3.30 Assignment of Contract¹⁶

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

3.31 Subcontracts¹⁷

(a) Definitions. As used in this contract -

(1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

3.32 Subcontractor Utilization

Contractor shall not perform any Work on the Project with any subcontractor who is ineligible to perform Work on a public works Project pursuant to California Labor Code Sections 1777.1 or 1777.7. Contractor certifies that it has investigated the eligibility of each subcontractor and has determined that none is ineligible to perform Work pursuant to the foregoing code provisions. Contractor shall insert appropriate sections in all subcontracts to bind subcontractors to the terms and conditions of the Contract insofar as such terms are applicable to the work of subcontractors. Nothing contained in the Contract shall create any contractual relationship between any subcontractor and HACLA. Contractor shall be fully responsible and accountable to HACLA for the acts and omissions of his/her subcontractors.

3.33 Emergencies Affecting Safety

¹⁶ HUD General Conditions, clause 35

¹⁷ HUD General Conditions, clause 37

In an emergency affecting the safety of persons or property, Contractor shall immediately act to prevent or minimize damage, injury or loss. If practicable, Contractor shall immediately communicate with the Project Manager and shall be guided by the directions and advice of the Project Manager or HACLA, as the case may be. Within twenty-four (24) hours after occurrence of the incident, Contractor shall provide the Project Manager written notice of the occurrence of the emergency, which shall include a report of Contractor's response to the incident.

3.34 Warranty of Title¹⁸

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

3.35 Warranty of Construction¹⁹

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of _____ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.

(b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—

- (1) The Contractor's failure to conform to contract requirements; or
- (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.

(d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:

- (1) Obtain all warranties that would be given in normal commercial practice;

¹⁸ HUD General Conditions, clause 22

¹⁹ HUD General Conditions, clause 23

- (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
- (3) Enforce all warranties for the benefit of the PHA.

(g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.

(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.

(j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

3.36 Prohibition against Liens²⁰

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

3.37 Independent Contractor

(a) Contractor shall, during the performance of the Contract, act as a wholly independent contractor. Neither HACLA nor any of its officers, employees, servants or agents shall have control over the conduct of Contractor or its employees or agents, except to advise or provide Project direction as required. Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner employees of HACLA.

(b) Nothing contained in the Contract shall be deemed, construed or represented by HACLA or Contractor or by any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between HACLA and Contractor.

(c) HACLA shall not be called upon to assume any liability for the direct payment of any salary, wage or other compensation to any person employed by Contractor performing services hereunder for HACLA.

3.38 General Indemnification

(a) The Contractor shall hold harmless, indemnify and defend HACLA and its officers, employees, commissioners, servants, agents, successors, assigns, instrumentality entities, subsidiaries and related non-profit corporations, as well as the directors, officers, employees, commissioners, servants, agents, successors, and assigns of HACLA's instrumentality entities, subsidiaries, and related non-profit corporations (collectively, "Indemnified Parties") from and against all claims, actions, lawsuits, complaints, demands, damages, liabilities, losses, obligations, taxes, settlements, judgments, costs or

²⁰ HUD General Conditions, clause 24

expenses (including without limitation reasonable attorney fees and costs), whether or not involving a third party claim, which arise out of, relate to, or result from (i) any breach of any representation or warranty of Contractor contained in this Contract; (ii) any breach of any covenant or other obligation or duty of the Contractor under this Contract or under applicable law; and/or (iii) any acts or omissions by Contractor or subcontractor of any tier, in each case whether or not caused by the negligence of HACLA or any other Indemnified Party, and whether or not the relevant claim has merit. This indemnification provision shall not apply to any claims resulting solely from the gross negligence or willful misconduct of HACLA, HACLA's officers, employees, commissioners, servants, agents, successors, assigns, instrumentality entities, subsidiaries, and related non-profit corporations, or the directors, officers, employees, commissioners, servants, agents, successors, and assigns of HACLA's instrumentality entities, subsidiaries, and related non-profit corporations. The Contractor's obligations set forth above shall survive the expiration or termination of the Term of this Contract, including any Option Term.

(b) HACLA does not, and shall not waive any rights that it may have against the Contractor by reason of the acceptance by HACLA, or the deposit with HACLA, of any insurance policies or endorsements required pursuant to this Contract. This indemnification provision shall apply regardless of whether or not said insurance policies or endorsements are determined to be applicable to any claims, actions, lawsuits, complaints, demands, damages, liabilities, losses, obligations, taxes, settlements, judgments, costs or expenses described above.

3.39 Royalties and Patents²¹

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

3.40 License Fees and Royalties

Contractor shall identify, obtain, and pay for all necessary license fees and royalties related to or necessary for any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. Contractor shall deliver to HACLA all documents evidencing Contractor's satisfaction of such requirements prior to submission of the final Application for Payment, or upon termination of the Contract, whichever is earlier.

3.41 Indemnification for Copyright and Patent Infringement

(a) Contractor shall defend any action or proceeding brought against HACLA based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. HACLA will give prompt written notice to Contractor of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Contractor shall indemnify and hold harmless HACLA from and against all damages and costs, including but not limited to attorney fees and expenses awarded against HACLA or Contractor in any such action or proceeding. Contractor shall keep HACLA informed of all developments in the defense of such actions.

²¹ HUD General Conditions, clause 44

(b) If HACLA is enjoined from the operation or use of the Work, or any part thereof, as the result of any copyright or patent suit, claim, or proceeding, Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at Contractor's option and at Contractor's expense, (i) modify the Work so as to avoid infringement of any such copyright or patent or (ii) replace said Work with Work that does not infringe or violate any such copyright or patent.

(c) Above paragraphs (a) and (b) hereof shall not be applicable to any suit, claim or proceeding based on infringement or violation of a copyright or patent (i) relating solely to a particular process or product of a particular manufacturer specified by HACLA and not offered or recommended by Contractor to HACLA or (ii) arising from modifications to the Work by HACLA or its agents after Acceptance of the Work.

(d) The obligations set forth in this clause shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

3.42 Organizational Conflicts of Interest

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of Work under the Contract and a Contractor's organizational, financial, contractual or other interests are such that: (i) award of the Contract may result in an unfair competitive advantage; or (ii) the Contractor's objectivity in performing the Contract Work may be impaired.

(b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to the Contract or any task/delivery order under the Contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer, which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. HACLA may, however, terminate the Contract or task/delivery order for the convenience of HACLA if it would be in the best interest of HACLA.

(c) Contractor's intentional failure to disclose an organizational conflict of interest prior to award of the Contract is a material default under the Contract and shall constitute grounds for HACLA to terminate the Contract for default.

(d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

3.43 Unfair Business Practices Claims²²

Contractor offers and agrees to assign to HACLA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time HACLA tenders final payment to Contractor, without further acknowledgment by the parties. Contractor shall incorporate this provision in all subcontractor contracts.

²² Public Contract Code §7103.5

3.44 Reporting Requirements

Contractor, at such times and in such forms as HACLA may require, shall promptly and timely provide to HACLA such periodic reports as it may request pertaining to the Work undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection herewith, and any other matters covered by this Contract.

3.45 Insurance²³

(a) The insurance requirements for this project are set forth HACLA's Contractual Requirements for Insurance, which was included by reference in the IFB. During the term of the Contract, Contractor shall, at its own cost and expense, procure and maintain the insurance set forth in the Contract. It is Contractor's responsibility to provide updated Certificates of Insurance during the life of this Contract.

(b) Except by agreement or instruction of HACLA in writing, Contractor shall not commence operations on the Site or elsewhere prior to the effective date of the insurance required to be furnished by Contractor. Contractor's obligations to commence the Work and to complete the Work within the Time for Completion shall not be changed by the effective date of such insurance.

(c) Contractor shall be responsible for requiring indemnification and insurance as it deems appropriate from its consultants, agents and subcontractors, if any, to protect the Contractor's and HACLA's interests, and for ensuring that such persons comply with any applicable insurance statutes. Contractor shall provide HACLA with proof of compliance with this provision upon demand.

3.46 Construction Hours and Holidays

(a) Work shall be performed during the hours of 8:00 AM to 4:30 PM, Monday through Friday, unless otherwise specified in these General Conditions or approved in writing by the Project Manager. Contractor shall be granted appropriate time extensions to the Time for Completion for all holidays and inclement weather days when no Work can be performed.

(b) No Work may be performed on HACLA's recognized holidays, which include the following:

New Year's Day/New Year's Eve	Independence Day
Martin Luther King Day	Labor Day
Presidents' Day	Veterans Day
Cesar Chavez Day	Thanksgiving Day and the Friday following
Memorial Day	Christmas Day/Christmas Eve
	Juneteenth

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday. In the event that any of the above days falls on a Saturday, than the preceding Friday shall be considered a holiday.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT**4.1 Architect's Duties, Responsibilities and Authority²⁴**

²³ HUD General Conditions, clause 36 as revised by HACLA

²⁴ HUD General Conditions, clause 3

(a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

(b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

(c) The Architect's duties and responsibilities may include but shall not be limited to:

(1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;

(2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;

(3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and

(4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4.2 Contract Administration by HACLA and Project Manager

Notwithstanding the foregoing clause, Architect's Duties, Responsibilities and Authority:

(a) HACLA and the Project Manager will provide administration of the Contract as provided herein.

(b) The Project Manager will be present on the Site during the performance of the Work primarily for the purposes of providing administration, inspection and expediting communications between HACLA, Architect and Contractor.

(c) HACLA, Architect and Project Manager, and their employees and consultants, will not have control over, be in charge of, or be responsible for construction means, methods, techniques, safety, sequences or procedures or for safety precautions and programs in connection with the Work, all of which are the sole responsibility of Contractor.

(d) Unless otherwise provided in the Contract or when direct communications have been specifically authorized, communications between Contractor and HACLA or Architect shall be in writing through Project Manager. Communications by Contractor or subcontractors and with separate contractors shall be through the Project Manager. Contractor shall not rely on oral or other non-written communications.

(e) Based on the Project Manager's Site visits and evaluations of Contractor's Applications for Payment, the Project Manager will review and recommend to HACLA for HACLA approval the amounts,

if any, due Contractor.

(f) HACL A alone shall have HACL A to stop the Work or any portion thereof. Whenever HACL A considers it necessary or advisable, HACL A will have HACL A to require additional inspection or testing of the Work in accordance with the Contract, whether or not such Work is fabricated, installed or completed.

(g) Project Manager's authority includes, but is not limited to the following:

(1) Conducting or directing inspections to determine suitability of the Project or portion thereof for Beneficial Occupancy.

(2) Assisting HACL A in determining the dates of Substantial Completion and Final Completion;

(3) Reviewing any records, written warranties and related documents required by the Contract and assembled by Contractor; and

(4) Making recommendations to HACL A for issuance of final payment upon Contractor's compliance with the requirements of the Contract.

(h) HACL A, with the assistance of and recommendations from the Architect, shall be the ultimate interpreter of the requirements of the Contract and the judge of performance thereunder by Contractor. Such decisions by HACL A will be final and binding upon Contractor.

4.3 Contract Modifications²⁵

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

4.4 Changes²⁶

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

(1) In the specifications (including drawings and designs);

²⁵ HUD General Conditions, clause 28

²⁶ HUD General Conditions, clause 29

-
- (2) In the method or manner of performance of the work;
 - (3) PHA-furnished facilities, equipment, materials, services, or site; or,
 - (4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

(1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.

(2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.

(3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit

received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.

(g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.

(h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.

(i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Contractor Claims for Relief herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.

(j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

4.5 Mark Ups

Notwithstanding the foregoing clause (Changes), negotiated change order markups for subcontractors and materials, if any, shall not exceed twelve percent (12%) of the Contractor's direct costs.

4.6 Contractor Claims for Relief²⁷

(a) Except for disputes arising under the Labor Standards clauses, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause in accordance with Public Contract Code section 9204.

(b) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the HACLA against the Contractor shall be subject to a written decision by the Contracting Officer. The Contracting Officer shall, within 30 days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made. The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in HACLA in accordance with HACLA's policy and procedures, or (2) files suit in a court of competent jurisdiction. Such appeal must be made within 30 days after receipt of the Contracting Officer's decision. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

(c) Written claims not subject to the requirements of Public Contract Code section 9204 shall be given within a reasonable time after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. If disputes or disagreements arise, Contractor and HACLA each commit to resolving such disputes or

²⁷ HUD General Conditions, clause 31 (Disputes) is superseded by HACLA's requirements, which reflect requirements of Public Contract Code section 9204.

disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

4.7 Allowances

(a) Use of Allowances, if specified in the Contract Fees, is only as directed by the Project Manager for HACLA's purposes. Contractors shall provide distinct break-out of Allowances on the Schedule of Values and shall list Allowance amounts separately in Applications for Payment. Contractor shall submit invoices or delivery slips to show actual quantities of materials delivered to the Site or services provided for use in fulfillment of each Allowance.

(b) Contractor's percentage markup for all costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be expressly stated in the Contract Fees; otherwise Allowance items shall be delivered at Contractor's actual cost, less applicable trade discounts.

(c) This subsection is applicable when an Allowance pertains to products and/or services to be selected after award of the Contract but prior to the start of construction. At the earliest practical date after award of the Contract, Contractor shall advise the Project Manager of the date when final selection and purchase of each product or service described by an Allowance must be completed to avoid delaying the Work. Materials and equipment under an Allowance will be selected by HACLA with reasonable promptness. At the request of the Project Manager or Architect, Contractor shall obtain proposals for each Allowance for use in making final selections, which shall include recommendations that are relevant to performing the Work.

ARTICLE 5. CONSTRUCTION BY HACLA OR SEPARATE CONTRACTORS

5.1 Other Contracts²⁸

The PHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PHA employees.

5.2 Coordination with Separate Contractors

(a) HACLA will provide coordination of the activities of HACLA forces and of each separate contractor with the Work of Contractor. Contractor shall participate with HACLA and separate contractors in joint review of construction schedules and Project requirements when directed to do so. Contractor shall make necessary revisions to the construction schedule after such joint review.

(b) Contractor shall be responsible for affording separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities.

(c) Contractor shall ensure that each subcontractor and sub-subcontractor engaged on the Site arranges the storage of materials and equipment and performance of its Work so as to interfere as little as possible with separate contractors or other persons engaged in Work for HACLA on the Site.

²⁸ HUD General Conditions, clause 4

5.3 Mutual Responsibility

(a) If a portion of the Work is dependent upon the proper execution or results of other construction or operations by separate contractors, Contractor shall inspect such other construction or operations before proceeding with its portion of the Work. Contractor shall promptly report to HACLA apparent discrepancies or defects which render the other construction or operations unsuitable to receive the Contractor's Work. Unless otherwise directed by the Project Manager, Contractor shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Contractor to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by HACLA or separate contractors is suitable to receive the Work, except as to defects not then reasonably discoverable.

(c) In the event of delays, improperly timed activities or Defective Work by the Contractor or the separate contractors, the costs of such occurrences shall be borne by the party responsible therefor.

(d) If Contractor wrongfully causes damage to completed or partially completed construction or to property of HACLA or separate contractors, Contractor shall promptly remedy damage as provided in these General Conditions.

(e) If a dispute or other matters in question arise between Contractor and a separate contractor, such occurrences shall be subject to the resolution of claims provisions of these General Conditions, to the extent practicable. Contractor shall immediately notify the Project Manager in writing of such occurrences.

5.4 HACLA's Right to Clean Up

If a dispute arises between Contractor and separate contractors as to the responsibility under their respective contracts for maintaining the Site and surrounding areas free from waste materials and rubbish, HACLA may clean up and allocate the cost between those firms it deems, in its sole discretion, to be responsible.

ARTICLE 6. WORK SCHEDULING AND PROGRESS

6.1 Construction Progress Schedule (HUD)²⁹

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be

²⁹ HUD General Conditions, clause 6

required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

6.2 Progress of Work

Notwithstanding the foregoing clause, Construction Progress Schedule (HUD):

(a) Contractor shall plan, develop, supervise, control and coordinate the performance of the Work so the progress, sequence and timing of the Work conform to the current accepted construction schedule. Contractor shall continuously obtain from subcontractors information and data about the planning for and progress of the Work, the ordering and fabrication of materials, required submittals, and the delivery of equipment, shall coordinate and integrate such information and data in updated construction schedules and Record Documents, and shall monitor the progress of the Work and the delivery of equipment. Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances or disruptions for its own forces and those forces of subcontractors, regardless of tier. Contractor shall cooperate with HACLA in the development of the construction schedule and updated construction schedules.

(b) The approved construction schedule may reflect a period of performance that is shorter than the Time for Completion; provided however, that the difference shall be deemed as float and nothing in this paragraph or in any other provision of the Contract shall be construed as creating any contractual right, express or implied, on the part of Contractor to finish the Project earlier than the Time for Completion. Under no circumstances shall HACLA be liable to Contractor for any costs, damages or compensation due to the inability of Contractor to complete the Work earlier than the Time for Completion, regardless of the cause, including, without limitation, acts or omissions (intentional or negligent) of HACLA.

(c) The Project Manager will schedule and hold progress meetings at regular intervals. Contractor and/or Contractor's designee shall be present at each progress meeting. In addition to Contractor and/or Contractor's designee, each subcontractor, supplier, or other entity concerned with current progress or involved in planning, coordination or performance of the work shall, if requested by the Project Manager, be represented at these meetings. All participants at the progress meetings shall be familiar with the Project. Failure of the Contractor to be represented at any progress meeting that is held at a mutually agreed time or for which a written notice is given, shall not relieve Contractor from abiding by any and all HACLA determinations or directives issued at such meeting. Contractor shall revise the construction schedule after each progress meeting where revisions to the schedule have been made or recognized, and shall issue the revised schedule at the next regularly scheduled progress meeting, or such other earlier time as may be directed by the Project Manager.

(d) HACLA's review, comments, requests for revisions, or acceptance of any schedule or scheduling data: (i) shall not relieve Contractor from its sole responsibility for the feasibility of the schedule and to plan for, perform, and complete the Work within the Time for Completion; (ii) shall not transfer responsibility for any schedule from Contractor to HACLA; and (iii) shall not imply HACLA's agreement

with any assumption upon which such schedule is based or any matter underlying or contained in such schedule.

(e) Contractor shall cooperate with and coordinate its construction schedule with work of HACLA and HACLA's separate contractors.

6.3 Time is of the Essence

Time is of the essence with respect to all time limits set forth in the Contract. Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable.

6.4 Contract Period (HUD)³⁰

The Contractor shall complete all work required under this contract within _____ calendar days of the effective date of the contract, or within the time schedule established in the Notice to Proceed issued by the Contracting Officer.

6.5 Time for Completion (HACLA)

Notwithstanding the foregoing clause, Contract Period (HUD):

The Time for Completion is the date indicated on the Notice to Proceed, which date is subject to adjustment as set forth herein.

6.6 Suspension of Work³¹

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

6.7 Delay

³⁰ HUD General Conditions, clause 25

³¹ HUD General Conditions, clause 30

(a) Contractor may request an extension of the Time for Completion for an Excusable Delay or a Compensable Delay, subject to the following:

(1) In order to avoid double counting concurrent Delays, if an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Time for Completion shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last.

(2) If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Time for Completion shall be the number of days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Unexcused Delay.

(3) If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Time for Completion shall be the number of days, if any, by which the number of days of Excusable Delay, as determined pursuant these General Conditions, exceeds the number of days of the Unexcused Delay.

(b) As a condition precedent to Contractor's right to an adjustment to the Time for Completion and/or the Contract Fees for Compensable Delay, Contractor must provide written notice to the Project Manager within 10 days of the date that Contractor learned of the delay or should have learned of the delay in exercise of diligence and reasonable care, setting forth: (i) a description of the delay; (ii) a statement that the delay is critical to completion; and (iii) the probable effect of the delay in terms of the number of days' extension the Contractor believes are required to the Time for Completion. The written notice required by this paragraph is necessary for HACLA to adequately monitor the progress of the Work, to differentiate between critical and non-critical delays, and to prioritize its actions in a manner that is appropriately targeted to mitigate the effect of delays. Accordingly, Contractor's failure to provide written notice in the manner required by this paragraph shall constitute Contractor's waiver of the right to an adjustment of the Contract Fees and Time for Completion on account thereby, regardless of whether the circumstances of the delay may have been known or suspected by HACLA or the Project Manager and that no other form of notice (including, without limitation, meeting minutes, log entries or schedule updates) shall suffice as constituting notice to HACLA in accordance with this paragraph.

(c) Adequate supporting data for a request for extension of time shall include both of the following: (i) all relevant scheduling data including a Fragnet, and (ii) a detailed, event-by-event description of the impact of each event on completion of Work. Documentary support for any related increase in the Contract Fees must include both a detailed cost breakdown, and supporting cost data in such form and including such information and other supporting data as required for submission of a Change Order.

(d) The Project Manager may order changes, whether or not resulting in extra Work and regardless of the extent and number of Change Orders, or may suspend the Work.

(e) The determination of whether a delay is an Excusable Delay, Compensable Delay or Unexcused Delay shall not be affected by the fact that any earlier delay occurred, regardless of fault or causation.

(f) All time limits stated in the Contract are of the essence.

(g) Compensation for delay shall be limited to actual, direct, reasonable, and substantiated Project costs, and shall not include home office overhead, or markup for overhead and profit.

6.8 Liquidated Damages³²

³² HUD General Conditions, clause 33

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum [specified in the Liquidated Damages clause of the Contract] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.

(b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the PHA in completing the work.

(c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

ARTICLE 7 DEFECTIVE WORK AND REPAIR PERIOD

7.1 Detection and Uncovering of Defective Work

If a portion of the Work has been covered, which is not required by the Contract to be observed or inspected prior to its being covered and which HACLA or the Architect has not specifically requested to observe prior to its being covered, HACLA may request to see such Work and it shall be uncovered and replaced by Contractor. If such Work is in accordance with the Contract, the costs of uncovering and replacing the Work shall be added to the Contract Fees by Change Order; and if the uncovering and replacing of the Work extends the Time for Completion, an appropriate adjustment of the Time for Completion shall be made by Change Order. If such Work is not in accordance with the Contract, Contractor shall pay such costs and shall not be entitled to an adjustment of the Time for Completion or the Contract Fees.

7.2 Inspection and Acceptance of Construction³³

(a) Definitions. As used in this clause -

(1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.

(2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.

(3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is

³³ HUD General Conditions, clause 20

subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.

(d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The PHA may conduct routine inspections of the construction site on a daily basis.

(g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.

(i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right

under any warranty or guarantee.

7.3 Correction of Defective Work

Notwithstanding the foregoing clause, Inspection and Acceptance and the Warranty of Construction clause herein:

(a) Contractor shall (i) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period identified in the Guarantee to Repair Period clause herein and/or (ii) replace, repair, or restore to HACLA's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work, without any expense whatsoever to HACLA.

(b) The Project Manager will give notice of observed Defective Work with reasonable promptness, and Contractor shall promptly commence such correction, replacement, repair or restoration upon notice from the Project Manager, but in no case later than 7 days after receipt of such notice. Contractor shall diligently and continuously prosecute such correction to completion. Contractor shall bear all costs of such correction, replacement, repair, or restoration and all losses resulting from such Defective Work, including additional testing, inspection and compensation for HACLA's services and expenses. Contractor shall perform corrective Work at such times that are acceptable to HACLA and in such a manner as to avoid, to the extent practicable, disruption to HACLA's activities. Contractor shall notify HACLA upon completion of repairs.

(c) If immediate correction of Defective Work is required for life safety or the protection of property or, if in the opinion of HACLA, Defective Work creates a dangerous condition or requires immediate corrections or attention to prevent further loss to HACLA or to prevent interruption of operations of HACLA, the Project Manager will attempt to give immediate notice to Contractor. If Contractor cannot be contacted or does not comply with HACLA's request for correction within a reasonable time as determined by HACLA, HACLA or separate contractors under HACLA's direction, may, notwithstanding the provisions of this clause, proceed to make such corrections or provide such attention and the costs of such correction or attention shall be charged against Contractor. Such action by HACLA will not relieve Contractor of the guarantees provided in this Article or elsewhere in the Contract. Contractor shall replace, repair or restore to HACLA's satisfaction any other parts of the Work and any other real or personal property, which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

(d) Contractor shall promptly remove from the Site Defective Work and any portions of Work and materials that are nonconforming and which are neither corrected by Contractor nor accepted by HACLA.

(e) If, after notice from HACLA, Contractor fails to timely commence correction of Defective Work as required in this clause or fails to diligently prosecute such correction to completion, HACLA may correct the Defective Work in accordance with the above provisions, and, in addition, HACLA may remove the Defective Work and store salvageable materials and equipment at Contractor's expense.

(f) If Contractor fails to promptly remove Defective or nonconforming Work from the Site as required by the above provisions or fails or refuses to pay the costs of such removal and storage as required by above the above provisions, HACLA may, within 7 days after written demand, sell such materials at auction or at private sale or otherwise dispose of such material without prejudice to other remedies. Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Contractor is liable to HACLA, including compensation for HACLA's services and expenses. If such proceeds of sale do not cover costs and damages for which Contractor is liable to HACLA, the Contract

Fees shall be reduced by such deficiency. If there are no remaining payments due Contractor or the remaining payments are insufficient to cover such deficiency, Contractor shall promptly pay the difference to HACLA.

(g) Contractor's warranty with respect to corrective work will run for (one year unless otherwise indicated) from the date of correction completion.

7.4 Guarantee to Repair Period

(a) In addition to any specific warranty mentioned in the Contract, Contractor shall guarantee that all material, apparatus, equipment, and workmanship used, installed, or incorporated in the Work is free from defects, and agrees to replace at no expense to HACLA any and all Defective Work or materials that become evident within 1 year ("Guarantee to Repair Period"). The Guarantee to Repair Period commences the date of recordation of the Notice of Completion or the date of the Notice of Completion issued by HACLA, whichever date is later, unless a longer period of time is specified in the Contract.

(b) Enforcement of Contractor's express warranties and guarantees to repair contained in the Contract shall be in addition to and not in limitation of any other rights or remedies HACLA may have under the Contract or at law or in equity. Nothing contained in this clause or elsewhere in the Contract shall be construed to establish a period of limitation with respect to other obligations of Contractor under the Contract, which may be longer specified periods. Establishment of the Guarantee to Repair Period relates only to the specific obligation of Contractor to correct the Work and in no way limits either Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce Contractor's obligations under the Contract.

7.5 Acceptance of Defective Work

Notwithstanding the provisions of this Defective Work and Repair Period article, prior to Final Completion and Acceptance of the Work, HACLA shall have the option, at its sole discretion and by notice to Contractor, to accept Defective Work instead of requiring its removal or correction, in which case the Contract Fees shall be reduced by an amount equal to the difference between the value to HACLA the Work would have had were it complete, correct and in conformity with the Contract and the value to HACLA of such Defective Work. Such option shall be exercised solely by notice to Contractor and shall not be implied from any act or omission by HACLA or the Project Manager. If there are no remaining payments of the Contract Fees to be made to Contractor, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Fees, Contractor shall promptly pay to HACLA the amount of any such deficiency.

ARTICLE 8 PAYMENTS AND RETENTION

8.1 Schedule of Values

(a) Within 30 days after signing the Contract, but in any event not later than 14 days following receipt of the Notice to Proceed, Contractor shall submit to HACLA through the Project Manager a Schedule of Values that reflects the cost breakdown of the Contract Fees, which shall be presented in a form approved by the Project Manager. If the Contract covers more than one project, the Contractor shall furnish a Schedule of Values for each.

(b) The Schedule of Values shall itemize as separate line items the cost of each scheduled Work activity and all other permissible fees, the total of which shall equal the Contract Fees. The Schedule of

Values, when approved by HACLA, shall become the basis for determining the cost of Work requested on Contractor's Applications for Payment.

(c) The values and quantities employed in making up the Schedule of Values are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the Contract Fees. The Contractor shall prorate its overhead and profit over the construction period of the Contract.

8.2 Payments³⁴

(a) The PHA shall pay the Contractor the price as provided in this contract.

(b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

(c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

(d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price. Such estimates shall be submitted not later than [ten] days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

(e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that:

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

³⁴ HUD General Conditions, clause 27

Name:
Title:
Date:

(f) ~~Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract~~ [*Except as otherwise provided in the bid solicitation for this Work, HACLA will retain five percent (5%) of the amount of progress payments until Final Completion and Acceptance*]; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

(g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments. Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

(h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.

(i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.

(j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

(k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold

moneys from the Contractor shall in nowise impair the obligations of any surety or sureties under any bonds furnished under this contract.

8.3 Withholding of Payment

Notwithstanding the foregoing Payments clause:

(a) Approval of all or any part of an Application for Payment may be withheld on account of any of the following:

- (1) Defective Work not remedied;
- (2) Third-party claims against Contractor or HACLA arising from the acts or omissions of Contractor or subcontractors;
- (3) Stop notices;
- (4) Failure of Contractor to make timely payments due subcontractors for material or labor;
- (6) Damage to HACLA or separate contractor for which Contractor is responsible;
- (7) Reasonable evidence that the Work will not be completed within the Time for Completion, and that the unpaid balance of the Contract Fees would not be adequate to cover HACLA's damages for the anticipated delay;
- (8) Failure of Contractor to maintain and update As-Built Drawings;
- (9) Failure of Contractor to submit schedules or their updates as required by the Contract;
- (10) Failure to provide conditional or unconditional releases from any subcontractor or supplier, if such waiver(s) have been requested by the Project Manager;
- (11) Performance of Work by Contractor without properly processed Shop Drawings;
- (12) Failure of Contractor to pay assessed liquidated damages;
- (13) Failure to provide updated reports of subcontractor information and self-certifications, as applicable;
- (14) Failure of Contractor, any of its subcontractors, or any person or entity under Contractor, to provide any required insurance information; and
- (15) Any other failure of Contractor to perform its obligations under the Contract.

(b) A progress payment made by HACLA does not constitute Acceptance of Defective Work.

8.4 Deposit of Securities Into Escrow

In lieu of HACLA's retention of a portion of progress payments due to Contractor, Contractor may elect to deposit qualifying securities equivalent to the amount to be withheld into a state or federally chartered bank to be held as an escrow agent. The escrow agent will then pay those funds back to Contractor.

Upon satisfactory completion of the project, the securities shall be returned to Contractor. (See Public Contract Code section 22300.)

8.5 Final Payment

(a) After Final Completion and Acceptance or as settlement upon termination of the Contract, prior to final payment under the Contract and as a condition precedent thereto, the Contractor shall execute and deliver to HACLA a certificate and release, in a form acceptable to HACLA, of all claims against HACLA by the Contractor under and by virtue of the Contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if Contractor's claim to amounts payable under the Contract has been assigned.

(b) Final payment shall be conditioned upon the following:

(1) Contractor submittal of the certificate and release identified above;

(2) Contractor submittal of the final Application for Payment and HACLA's approval of the same; and

(3) Contractor submittal of the As-Built Drawings, the Record Documents, all operating manuals for equipment installed in the Project, and all other submittals required by the Contract.

(c) After receipt of the final Application for Payment, if the Project Manager determines that Final Completion has occurred, the Project Manager will issue the final payment.

(d) In the event of a dispute between HACLA and the Contractor, HACLA may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. (Public Contract Code § 7107)

(e) Acceptance of final payment by Contractor shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by Contractor as unsettled at the time of the final Application for Payment.

8.6 Release of Retention

(a) The definition of "completion" as used in this clause is the definition set forth at Public Contract Code section 7107.

(b) HACLA will release the retained amounts within 60 days after the date of completion, except that, to the extent permitted by law, HACLA may retain the amounts HACLA deems 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.

ARTICLE 9 COMPLETION AND ACCEPTANCE

9.1 Substantial Completion

(a) When the Contractor gives notice to the Project Manager that the Work or such designated portion thereof is Substantially Complete, the Project Manager will arrange for inspection by the City's Building Official and other officials, as appropriate, unless the Project Manager determines that the Work is not sufficiently complete to warrant an inspection.

(b) If the Project Manager determines that the Work or such designated portion thereof is not Substantially Completed, the Project Manager will prepare and give to Contractor a comprehensive list of items to be completed or corrected before establishing Substantial Completion. Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract. Upon notification that the items on the list are completed or corrected, as applicable, the Project Manager will make an inspection to determine whether the Work is Substantially Complete. Costs for additional inspection shall be deducted from any monies due and payable to Contractor.

(c) If the Project Manager determines that the Work or such designated portion thereof is Substantially Complete, the Project Manager will prepare a Certificate of Substantial Completion on HACLA's form, which, when signed by HACLA, shall establish the date of Substantial Completion and the responsibilities of HACLA and Contractor for security, maintenance, utilities, insurance, and damage to the Work. The Project Manager will prepare and furnish to the Contractor a comprehensive "punch list" of items to be completed or corrected prior to Final Completion.

(d) Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee to Repair Period for the Work covered by the Certificate of Substantial Completion, shall commence on the date of Substantial Completion except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that are not operational (equipment or systems shall not be considered operational if they cannot be used to provide the intended service), or are not accepted by HACLA. The Guarantee to Repair Period for equipment or systems which become operational and accepted subsequent to Substantial Completion will begin on the date of their written acceptance by HACLA.

9.2 Use and Possession Prior to Completion (HUD)³⁵

(a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

9.3 Use and Possession Prior to Completion (HACLA)

Notwithstanding the foregoing Use and Possession Prior to Completion (HUD) clause:

(a) Beneficial Occupancy shall be subject to the following conditions:

³⁵ HUD General Conditions, clause 21

(1) All responsibility for the operation and maintenance of equipment shall remain with Contractor while the equipment is so operated. Contractor shall submit to HACLA an itemized list of each piece of equipment so operated with the date operation commences.

(2) The Guarantee to Repair Periods, as defined in the Guarantee to Repair Period clause herein, will commence upon the date of Beneficial Occupancy except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which HACLA has not taken Beneficial Occupancy or issued a Certificate of Substantial Completion shall not commence until HACLA has taken Beneficial Occupancy for that portion of the Work or has issued a Certificate of Substantial Completion with respect to the entire Project.

(3) HACLA will pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied, and will pay all utility costs which arise out of the Beneficial Occupancy. HACLA will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Contractor's remaining Work.

(4) Contractor shall not be required to repair damage caused by HACLA in its Beneficial Occupancy and Contractor shall not be responsible for providing security in areas beneficially occupied.

(5) Contractor shall continue to maintain all insurance required by the Contract in full force and effect.

(6) Except as provided in this clause, there shall be no added cost to HACLA due to Beneficial Occupancy.

(7) Beneficial Occupancy by HACLA shall not constitute a waiver of HACLA's right to assess liquidated damages as otherwise provided in these Contract Documents.

(8) Beneficial Occupancy by HACLA shall not constitute a waiver of existing Claims of HACLA or Contractor against each other.

9.4 Acceptance and Final Completion

(a) Unless otherwise specified in the Contract, HACLA will accept, as soon as practicable after Substantial Completion and Inspection, all Work required by the Contract or that portion of the Work the Project Manager determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or HACLA's right under any warranty or guarantee.

(b) Final Completion shall be when the Project Manager determines that the Work is fully completed and in accordance with the Contract, including without limitation, satisfaction of all "punch list" items, and issuance of a Certificate of Occupancy, if applicable. HACLA will record a Notice of Completion within 15 days after Final Completion.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 Health, Safety and Accident Prevention (HUD)³⁶

(a) In performing this contract, the Contractor shall:

³⁶ HUD General Conditions, clause 13

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

(2) Protect the lives, health, and safety of other persons;

(3) Prevent damage to property, materials, supplies, and equipment; and,

(4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

(1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. 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 U.S.C. 3701 et seq.; and

(2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

10.2 Health, Safety and Accident Prevention (HACLA)

(a) Contractor shall be solely and completely responsible for job site conditions and safety during the life of the Contract. This obligation shall include the safety of all persons within or affected by the line of construction and all private property affected by the Work.

(b) Contractor and subcontractors shall comply with all applicable legal requirements relating to safety, as well as any HACLA-specific safety requirements set forth in the Contract, provided that such HACLA-specific requirements do not violate any applicable legal requirements.

10.3 Safety Precautions and Programs

(a) Contractor shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs on the Site in connection with the performance of the Contract, including safety of all persons for the duration of the Work, on a 24-hour day, 7- day week basis.

(b) Contractor shall designate a responsible member of Contractor's organization at the Project Site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by Contractor in writing to the Project Manager.

(c) Prior to the start of construction, Contractor shall submit to Project Manager a copy of Contractor's safety program for the Project. A copy of this program shall be maintained on Site at all times. The safety program shall include, at a minimum: (i) management policy, illness and injury prevention program (as described below); (ii) safety meetings; (iii) accident investigation; (iv) basic accident causes; (v) safety inspection check list; (vi) fire prevention and control; (vii) report forms; and (viii) employee safety manual.

10.4 Safety of Persons and Property

(a) At its sole expense, Contractor shall furnish, erect and maintain such temporary fences, barricades, signs, lights, ramps, and temporary construction of whatever nature as may be necessary to provide access to abutting properties and to warn the public of the Work in progress and of any dangerous conditions as may exist due to the Work in progress. The Contractor's responsibility shall be continuous and not be limited to working hours or days, and shall not cease until Acceptance, except that if HACLA should make partial Acceptance of the Work, the Contractor's responsibility for the portion of the Work so accepted shall thereupon cease, except for latent errors in the Work or faulty construction.

(b) The duty of HACLA or the Architect or their agents or employees to conduct construction review of the Contractor's performance and operations is not intended to, and does not include review of or responsibility for the adequacy of the Contractor's safety measures and procedures in, on, or adjacent to the Site.

(c) Contractor shall protect persons and property on the Site at all times. Contractor shall have available at the Site copies or suitable extracts of "Construction Safety Orders" and "General Industrial Safety Orders" issued by the California Division of Industrial Safety. Contractor shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

(d) Contractor shall immediately respond to notice from the Project Manager of unsafe conditions, shall take adequate precautions for safety of persons on the Site, and shall provide adequate protection to prevent injury or loss to the following: (i) employees involved in the Work and other persons who may be affected thereby; (ii) the Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of Contractor or subcontractors; and (iii) other property at the Site and adjoining property(ies).

(e) Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract) to property caused in whole or in part by Contractor or its Subcontractors or anyone for whose acts they may be liable and for which Contractor is responsible.

(f) When use or storage of Hazardous Materials, equipment, or unusual methods is necessary for execution of the Work, Contractor shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

(g) Contractor shall be responsible for locating, providing, and coordinating the storage and staging

of materials and equipment on-Site and off-Site and shall not load/store or permit any part of the Work on the Site to be loaded/stored so as to endanger the safety of persons or property.

(h) Contractor shall protect its materials and the Work from damage in a manner satisfactory to HACLA and shall make good, without charge to HACLA, all damage due to negligence in providing proper protection.

(i) Contractor shall take necessary precautions to guard against and eliminate possible fire hazards and to prevent damage to the Work, building materials, equipment, temporary field offices, storage sheds and public and private property.

(j) Contractor shall not permit the possession or use of alcohol or controlled substances on the Site.

(k) Explosives may be used only when authorized in writing by HACLA. Explosives shall be handled, used and stored in accordance with applicable regulations.

10.5 Protection of Existing Vegetation, Structures, Equipment, etc.³⁷

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

(f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.

(g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.

(h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing

³⁷ HUD General Conditions, clause 16

or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.

(i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.

(j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

(k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

10.6 Protection of Existing Structures (HACLA)

(a) Contractor shall use proper and diligent care to protect any and all property belonging to HACLA or others, including existing buildings, doors, floors, walks, pavements, pipe systems, ceiling structures, etc. Contractor shall take all reasonable steps to minimize any dirt, noise, dust, traffic, or other problems, i.e. damage to surrounding property or buildings attributable to any action by Contractor.

(b) Contractor shall not overload any part of the premises or the building with any excess material or equipment. If so, he shall do so at his own risk and he shall be solely responsible for any and all loss, damage, and/or injury arising or resulting from the overloading. Protect interior floors and concrete sidewalks not only with heavy plywood sheets to evenly distribute trucks loads, but also when carting materials and debris over them.

10.7 Temporary Heating³⁸

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

10.9 Excavation³⁹

(a) Prior to the commencement of digging or excavation, Contractor is responsible for investigating the current condition of the underground area to be excavated and notifying all appropriate authorities. For all work that involves digging trenches or other excavations that extend deeper than 4 feet below the surface, the Contractor shall notify HACLA promptly in writing of any of the following conditions: (i) material that the Contractor believes may be hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, differing

³⁸ HUD General Conditions, clause 14

³⁹ Public Contract Code §7104

materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. Contractor shall notify HACLA of such conditions prior to disturbing them, and shall await direction from HACLA as to how to proceed.

(b) In the event HACLA is notified of the conditions listed in paragraph (a) above, HACLA will promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, HACLA will issue a change order.

(c) In the event that a dispute arises between HACLA and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

10.10 Trench Safety⁴⁰

Excavation of any trench that extends 5 feet below the surface or deeper shall not begin until Contractor has received approval from HACLA, or its designee, of the Contractor's detailed plan showing design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazards of caving ground. Such plan shall be submitted at least 5 Days before Contractor intends to begin work on the trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the State of California Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer. Contractor shall not use shoring, sloping, or protective systems less effective than that required by the Construction Safety Orders of the Division of Industrial Safety. HACLA will not be responsible or liable for the safety of such trenching or trenching plans.

10.11 Public Health and Safety Orders (COVID-19)

(a) Contractor shall comply with all current and applicable State, County, and City public health and safety orders pertaining to the Coronavirus (COVID-19) pandemic ("Stay-At-Home Orders") in the performance of Services under this Contract. The Parties acknowledge that modifications of or revisions to existing Stay-At-Home-Orders, or the issuance of new Stay-At-Home-Orders, may impact the extent to which full performance of this Contract is possible.

(b) To the maximum extent practicable, Contractor shall engage in Social Distancing while engaging in activities at any of HACLA's properties (the "Site"). For the purposes of this Contract, "Social Distancing" means: (i) Maintaining at least six-feet of physical distance from members of the public, including HACLA's tenants and staff (the "Public"); (ii) Frequently washing hands with soap and water for at least 20 seconds or using hand sanitizer that contains at least 60% alcohol; (iii) Wearing a cloth face covering while at the Site; (iv) Directing Contractor employees, agents, contractors, and volunteers to stay away from the Site when exhibiting signs of sickness, including, but not limited to, fever, cough, or respiratory distress; and (v) When possible and practicable, communicating with the Public by telephonic or electronic means rather than by in-person contact. To the maximum extent practicable, Contractor shall ensure its subcontractors also follow Social Distancing protocols when on the Site.

ARTICLE 11 DEFAULT AND TERMINATION

⁴⁰ Labor Code §6705

11.1 Termination for Convenience⁴¹

(a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

(b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

(c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.

(d) Any disputes with regard to this clause are expressly made subject to the provisions of the Contractor Claims for Relief clause of this contract, if applicable.

11.2 Default⁴²

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

(b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from

⁴¹ HUD General Conditions, clause 34 (as amended)

⁴² HUD General Conditions, clause 32

unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

11.3 Right to Terminate for Cause and Perform

Notwithstanding the foregoing clause, Default:

(a) If Contractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract, (iii) comply with HACLA's instructions or applicable laws, ordinances, and regulations, (iv) timely pay the correct wages to workers, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed within the Time for Completion, as such times may be adjusted, or (vi) perform material obligations under the Contract, then HACLA, in addition to any other rights and remedies provided in the Contract or by law, shall have the rights set forth in paragraphs (b) and (c) immediately below.

(b) Upon the occurrence of an event set forth in paragraph (a) immediately above, HACLA may provide written notice to Contractor that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured to HACLA's satisfaction, within 7 days of Contractor's receipt of such notice.

(c) If Contractor fails to timely cure, or reasonably commence to cure such problem, then HACLA may declare the Contract terminated for default by providing written notice to Contractor and its surety of such declaration ("Notice of Default"). The surety shall have the right to take over and perform the Contract. If the surety does not, within 15 days after HACLA's service of the Notice of Default, provide HACLA written notice of its intention to take over and perform the Contract or does not commence performance thereof within 30 days after HACLA's service of the Notice of Default, HACLA may, at the expense of Contractor, take over the work and prosecute the same, by contract or otherwise, to the extent of completion HACLA deems necessary, and the surety shall be liable to HACLA for any cost or other damage occasioned thereby. In such event, HACLA may, without liability for so doing, take possession of, and utilize in completing such work, such materials, appliances, plants and other items thereon that have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to HACLA for such purpose. Should the surety fail to take over and diligently perform the contract upon Contractor's default, the surety agrees to promptly, on demand, deposit with HACLA, such amount as HACLA reasonably estimates as the cost of completing all of Contractor's obligations. For any such work HACLA elects to complete by furnishing its own employees, materials, tools, equipment, HACLA shall receive reasonable compensation therefor, including costs of supervision and overhead.

11.4 Contractor's Duties Upon Termination

(a) Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following:

(1) Immediately discontinue the Work to the extent specified in the notice.

(2) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work that is not discontinued.

(3) Provide to HACLA a description in writing, no later than 15 days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as HACLA may determine necessary in order to decide whether to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract.

(4) Promptly assign to HACLA those subcontracts, purchase orders or contracts, or portions thereof, that HACLA elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that HACLA does not elect to accept by assignment.

(5) Do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

11.5 Contract Following Termination

Upon termination, whether for cause or for convenience, the provisions of the Contract remain in effect as to any claim, right and obligation arising prior to the termination date.

11.6 Notice of Termination

Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by Contractor on terms that are consistent with the Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor against HACLA under this Default and Termination article.

11.7 Damages

HACLA will be entitled to recovery of all losses under law or equity in the event of Contractor's default under the Contract. In the event that HACLA's losses arise from Contractor's default under the Contract, HACLA will be entitled to deduct the cost of such losses from monies otherwise payable to Contractor. If the losses incurred by HACLA exceed the amount payable, Contractor shall be liable to HACLA for the difference and shall promptly remit same to HACLA.

11.8 Emergency Termination of Contract

The Contract is subject to termination as provided by Government Code Sections 4410 and 4411, being portions of the Emergency Termination of Public Contract Act of 1949. In the event that the Contract is terminated pursuant to said section, compensation to Contractor shall be determined on the basis of the reasonable value of the Work done, including preparatory Work. As an exception of the foregoing, in the

case of any fully completed separate item or portion of the Work for which there is a separate unit or Contract Fees, the unit or Contract Fees shall control.

11.9 Contract Termination; Debarment

A material breach of these Contract clauses may be grounds for Contractor's debarment or denial of participation as a contractor or subcontractor in future procurements of HACLA.

ARTICLE 12 WAGES, HOURS AND LABOR PROVISIONS

[ALL SUBCONTRACTS SHALL INCLUDE SECTIONS 12.1 – 12.11 BELOW]

12.1 Federal Labor Standards – Minimum Wages for Work Performed Using Non-Exempt Federal Funds.⁴³ (a) Minimum Wages. This project is not solely funded using exempt federal funding and/or is not undertaken for the development, maintenance, and modernization of a public housing project; therefore, the federal exemption of state prevailing wages at 24 CFR 965.101 is not applicable. In accordance with 8 Cal. Code of Regs 16001, the greater of the prevailing wages, when both are applicable, shall be paid to laborers and mechanics employed on the project. The applicable state and federal wages are identified in the Contract.

(b) Withholding of funds. 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 federal 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 in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds 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.

(c) Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. 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 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

⁴³ HACLA's alternative to HUD Form 5370, Clause 46. Applicable to projects where the federal preemption at 24 CFR 965.101 is not applicable.

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.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer 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 subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.) (ii) 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: (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete; (B) 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; and (C) 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. (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause. (iv) 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 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, 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, 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.

(d) (1) 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 and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, 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 OATELS 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 in this paragraph, 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 journeyman 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 of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, 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.

(2) 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 in 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 in 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 in the wage determination for the classification of 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 in 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.

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

(e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(g) Compliance with Davis-Bacon and related Act requirements. [Applicable to Work performed at public housing sites] 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.

(h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause 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 the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.

(i) Certification of eligibility.

(1) 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 contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

(j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements.⁴⁴ ~~No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, 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 provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to 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 provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

(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 Federal contract with the same prime Contractor, or any other federal contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions

⁴⁴ Federal overtime requirements are preempted by the state law requirements as stated in the Work Day provision, herein.

set forth in subparagraph (j)(2) of this clause.

(k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

12.2 State Prevailing Wages. This Project is a public works project, as defined in Labor Code section 1720, and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815, inclusive, and sections 16000 to 17270 of Title 8 of the California Code of Regulations, which govern the payment of prevailing wage rates on public works projects. Contractor and any of its subcontractors shall pay to all workers employed in connection with the Work not less than the sums set forth in the applicable Wage Determinations identified in the Contract. As the wage determination for each craft may have predetermined increases and modifications, it is Contractor's responsibility to ensure that the prevailing wage rates of concern are current and paid to employees.

12.3 Work Day. (a) In accordance with the provisions and requirements of Labor Code sections 1810-1815, neither Contractor nor any Subcontractor who employs, directs, or controls the work of any worker employed to execute Work done under the Contract, shall require or permit such worker to labor more than 8 hours during any one day and more than 40 hours a week. As mandated by Labor Code section 1813, Contractor shall, as a penalty to HACLA, forfeit \$25.00 for each worker employed in the execution of the Contract by Contractor or by any Subcontractors for each day during which such worker is required or permitted to work more than 8 hours in any 1 day and more than 40 hours in any one week, unless the worker receives compensation of not less than one and one-half (1-1/2) times the basic rate of pay. As mandated by Labor Code section 1815, all workers performing work in excess 8 hours a day and more than 40 hours during any one week, shall be paid no less than one and one-half (1-1/2) times the basic rate of pay.

(b) (Federal Construction over \$100k). For prime contracts in excess of \$100,000, pursuant to the Contract Work Hours and Safety Standards Act, as amended, contractors and subcontractors must also, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. Contractor and any subcontractor shall be liable for unpaid wages and liquidated damages computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$27 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. (29 CFR 5.8(a))

12.4. Rest and Meal Periods. Contractor and subcontractor(s) shall comply with all applicable laws, regulations and wage orders concerning rest and meal periods, including the requirements set forth at Labor Code section 512.

12.5 Postings. Contractor and subcontractors must post in conspicuous places all applicable workplace postings which include, but is not limited to, applicable project wages and a 11 x 17 Davis Bacon color poster (WH-1321) in English and Spanish. Other posters that meet employer legal obligations may be downloaded at www.dir.ca.gov/wpnodeb.html. For a list of available safety and health postings, visit the Cal/OSHA publications page at www.dir.ca.gov/dosh/puborder.asp. Contractor and subcontractors are responsible for determining and satisfying their state posting requirements.

12.6 Apprentice Utilization (State Requirements). Contractor shall comply with all applicable laws and regulations concerning the employment of apprentices, including Labor Code sections 1777.5 and

1777. Information relative to apprenticeship standards and administration of the state's apprenticeship program may be obtained from the Director of Industrial Relations or from the Division of Apprenticeship Standards.

12.7 Penalty (State Requirements). Pursuant to Labor Code Section 1775, Contractor shall, as a penalty to HACLA, forfeit the statutory amount (currently not more than \$200.00) for each day, or portion thereof, for each worker paid less than the prevailing rates, determined by the director for the work or craft in which that worker is employed for any public work done under the Order by Contractor or except as provided in Labor Code Section 1775(b), by any Subcontractor under Contractor. The difference between such prevailing wage rates and the amount paid to each worker for each such day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor. Contractor shall post at appropriate conspicuous points at the Site of the project a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in Work on the project and all deduction, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

12.8 Certified Payroll Records and Basic Payroll Records (State Requirements). Contractor and its Subcontractors shall maintain Certified Payroll Records and "Basic Payroll Records," defined as time cards, front and back copies of canceled checks, cash receipts, trust fund forms, daily logs, employee sign-in sheets, accounting ledgers, tax forms and/or any other record maintained for the purposes of reporting payroll, during the course of the Work and shall preserve such records for a period of 3 years after Final Completion. Pursuant to Labor Code section 1776, Contractor and its Subcontractors shall maintain accurate, weekly payroll records showing employee full names, addresses, social security numbers, work classifications, amounts paid per hour, straight time, overtime and holiday hours worked each day and weekly totals, the actual per diem wages paid to each person employed on the Work, and the gross/net wages paid for this project, as well as Contractor's or Subcontractor's name and address, project name and location, and dates of payroll ("Certified Payroll"). If payments are made to any third party trust, funds or plans for health and welfare, pension or vacation trust, those payments must be stated on the Certified Payroll Record. The basic wage rate paid per hour plus the employer contributions for benefits, including training and contributions must at least equal the prevailing wage rate for that classification.

12.9 Making Certified Payrolls Available Upon Request (State Requirements). Pursuant to Labor Code section 1776, Contractor and its Subcontractors shall make their Certified Payroll records available for inspection by HACLA at all reasonable hours at the principal office of Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to HACLA, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations; and (iii) a certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through HACLA, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. Contractor shall file a certified copy of the payroll records with the entity that requested such records within 10 days after receipt of written request. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by HACLA, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated so as to prevent disclosure of individual names, addresses and social security numbers, in accordance with Labor Code section 1776.

12.10 Forfeiture for Failure to Comply with Record Request Laws (State Requirements). Pursuant to Labor Code section 1776(h), Contractor and Subcontractors shall have 10 days in which to comply,

subsequent to receipt of written request regarding Certified Payroll Records or Basic Payroll Records. In the event Contractor or Subcontractors fail to strictly comply after such 10 day period, Contractor or Subcontractors shall, as a penalty to HACLA, forfeit \$100.00 for each day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from any portion of the fees then or thereafter due Contractor. A Contractor is not subject to a penalty assessment due to the failure of Subcontractors to comply with this clause.

12.11 Registration for Public Works (Construction). This project qualifies as a public works project within the meaning of Labor Code section 1771.1. Since the value of this contract exceeds \$25,000, Contractor and its public works subcontractors shall be registered with the Department of Industrial Relations.

ARTICLE 13 ENVIRONMENTAL PROTECTION

13.1 General Environmental Protection Requirements

Contractor shall at all times provide and maintain environmental protective measures to control pollution that develops during normal construction practice. Contractor shall comply with Federal, State, and local regulations pertaining to the environment, including but not limited to water, air, waste, hazardous materials and noise.

13.2 Preservation of Natural Resources

Contractor shall preserve the natural resources within the Site and vicinities unless otherwise provided in the Contract.

13.3 Spill Prevention

Contractor shall prevent oil or other hazardous substances from entering the ground, drainage areas, drainage system or harbor. All temporary petroleum storage tanks, paint and chemical storage or transformers shall be maintained within impervious containment structures of sufficient size and strength to contain the contents of the tanks and containers in the event of leakage or spillage.

13.4 Equipment and Motor Vehicles

Contractor shall conduct the fueling and maintenance of the equipment and motor vehicles at off-site fueling and maintenance facilities whenever possible. If on-Site fueling or maintenance of equipment and motor vehicles is required, such activities and their on-Site location must be accepted by the Project Manager and addressed in the Storm Water Pollution Prevention Plan (SWPPP), if one is required for this project. Contractor shall conduct fueling and lubricating of equipment and motor vehicles to prevent spills and evaporation in accordance with all applicable Federal, State and local regulations and shall dispose of lubricants and all excess oil in accordance with all applicable Federal, State and local regulation. Any on-road or off-road diesel engine used in construction activities must use ultra- low sulfur diesel fuel that complies with California Air Resources Board (CARB) regulation for diesel fuel (13 CCR § 2281). Portable equipment with engines 50 horsepower and over must be permitted through the CARB Portable Equipment Registration Program or equivalent. Proof of permit is required.

13.5 Dust Control

Contractor shall prevent the generation of airborne dust particles per South Coast Air Quality

Management District Rule 403 – Fugitive Dust, and shall keep dust down at all times for dust sufferers, including during non-working periods. Contractor shall use only potable water. Contractor shall sprinkle with water all demolition debris, soil at the Site, haul roads and other areas disturbed by operations, and prevent track out of bulk material onto public or paved roadways and remove such material promptly anytime track-out occurs. Contractor shall remove all visible roadway dust tracked-out upon public paved roadways at the conclusion of each work day.

13.6 Hazardous Waste

Contractor shall handle and dispose of generated hazardous waste in accordance with all applicable Federal, State and local regulations.

13.7 Control and Disposal of Solid Wastes

Contractor shall keep all Work areas clean at all times and shall pick up solid wastes, rubbish, debris and garbage and place in containers, which are regularly emptied off site. Contractor shall prevent contamination of the site or other areas when handling and disposing of wastes.

13.8 Impacted Soils and Materials

If during construction activities, contamination or hazardous materials not previously identified are discovered, the Project Manager shall be notified immediately. Contractor shall cease all activities that may result in disturbance or migration of the material and prevent employees and others from coming into contact with the material.

13.9 Historical, Archeological and Cultural Resources

If during construction activities, items are observed that may have historic or archeological value, human remains or associated objects discovered, such observations shall be reported immediately to the Project Manager so that the appropriate authorities may be notified and a determination made as to their significance and what, if any, special disposition of the finds should be made. Contractor shall cease all activities that may result in impact to or the destruction of these resources. Contractor shall prevent its employees from removing, or otherwise disturbing such resources. Contractor shall prevent any disturbance of these resources pending further instruction from HACL A.

13.10 Noise Control

Contractor shall comply with the City of Los Angeles Municipal Code for noise reduction.

13.11 Equipment Power

Whenever feasible, the Contractor shall use electrical power instead of gas or diesel power and/or gas-powered vehicles instead of diesel-powered vehicles.

13.12 Energy Efficiency⁴⁵

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

⁴⁵ HUD General Conditions, clause 19

13.13 Clean Air and Water⁴⁶

The contractor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

ARTICLE 14 SECTION 3 COMPLIANCE

If the requirements of Section 3 are imposed herein, the regulations set forth at 24 CFR Part 75 and in HACLA's Section 3 Policy and Compliance Plan will apply.

ARTICLE 15 MISCELLANEOUS**15.1 Equal Employment Opportunity⁴⁷**

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, or handicap.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or handicap.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

⁴⁶ 2 CFR Appendix II to Part 200 - Contracts in Excess of \$150,000; HUD General Conditions, clause 18

⁴⁷ HUD General Conditions, clause 39; 41 CFR 60-1.4(a)

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

15.2 Subcontracting with Small and Minority Firms, etc.⁴⁸

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

15.3 Interest of Members of Congress⁴⁹

No member of or delegate to the Congress of the United States of America shall be admitted to any share

⁴⁸ HUD General Conditions, clause 38

⁴⁹ HUD General Conditions, clause 41

or part of this contract or to any benefit that may arise therefrom.

15.4 Interest of Members, Officers, or Employees and Former Members, etc.⁵⁰

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15.5 Limitations on Payments Made to Influence Certain Federal Financial Transactions⁵¹

(a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

15.6 Compliance with Copeland “Anti-Kickback” Act Requirements⁵²

Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

15.7 Procurement of Recovered Materials⁵³

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding

⁵⁰ HUD General Conditions, clause 42

⁵¹ HUD General Conditions, clause 43

⁵² 2 CFR Appendix II to Part 200; 40 U.S.C. Sec. 3145

⁵³ HUD General Conditions, clause 48

HOUSING AUTHORITY OF THE CITY OF LOS ANGELES
Harbor Blvd. Improvements

HA- 2022-28-MX

Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

Exhibit 4

LIST OF SUBCONTRACTORS

(attached)

Exhibit E

LIST OF SUBCONTRACTORS

Please provide the requested information concerning each subcontractor selected to perform Work on the project. State law prohibits the listing of more than one subcontractor for the same item of work. The substitution of subcontractors on this public works project will be governed by the Subletting and Subcontracting Fair Practices Act (Public Contract Code §§4100 et seq.). Contractor certifies that it has investigated the eligibility of each subcontractor listed below and has determined that none is (1) debarred, suspended or otherwise ineligible to be awarded contracts by any agency of the United States Government or to participate in programs of the U.S. Department of Housing and Urban Development, or (2) ineligible to perform work on a public works project pursuant to California Labor Code Section 1777.1.

As the value of the Contract exceeds \$25,000, public works subcontractors must be registered with the Department of Industrial Relations (DIR) in order to be listed on this bid and to perform work on this project (see Labor Code §§ 1725.5, 1771.1). As this is a federally-assisted public works contract, public works subcontractors must be registered with the DIR at the time of contract award (see Labor Code §1725.5).

Company Name: Lucas Builders, Inc.

1. Company Name:	<u>SpectraTurf Inc</u>		
Contact Person:	<u>Alex Stout</u>	Title:	<u>Estimator</u>
Business Address:	<u>555 S Promenade Ave, Suite 103 Corona CA 92879</u>		
Phone:	<u>(800)875-5788</u>	Email:	<u>estimating@spectraturf.com</u>
Trade performed on the Project:	<u>System, SpectraPour</u>	Contract Amount: \$	<u>\$72,341.00</u>
License/Certification Type (for Project Work, i.e., C-10, C-21):	<u>D12</u>		
License/Certification No(s):	<u>CA#854429</u>		
Public Works Registration No:	<u>DIR#1000002615</u>	Expires	<u>6/30/20</u>
<input type="checkbox"/> not required to be registered			

Exhibit 5

CONTRACTOR'S SECTION 3 DOCUMENTATION

(attached)

HOUSING AUTHORITY OF THE CITY OF LOS ANGELES
SECTION 3 ECONOMIC OPPORTUNITY PLAN
Economic Opportunities for Low- and Very-Low Income Persons:
Section 3 Regulation (24 CFR Part 75)

Section 3 of the Housing and Urban Development Act of 1968⁴ ("Section 3") provides that economic opportunities, most importantly employment, generated by certain U.S. Department of Housing and Urban Development ("HUD") financial assistance must be directed to low- and very low-income persons, particularly those who are either recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

The project that is the subject of this solicitation ("project") will be funded using federal financial assistance and thus qualifies as **Housing and Community Development Financial Assistance** for purposes of Section 3 regulations or is otherwise subject to Section 3 compliance in accordance with HACLA's Section 3 Policy and Compliance Plan. As such, this solicitation and the resulting contract award is subject to compliance with Section 3 regulations and the Section 3 Policy and Compliance Plan, which is available for viewing at www.hacla.org/section3. **HACLA places a particular importance on creating new job opportunities for Section 3 Workers and Targeted Section 3 Workers, including, providing them sufficient labor hours on the project. Awarded vendor will be required to meet or exceed the 25% and 5% labor hour benchmark, 30% new hire benchmark and any other commitments made herein or as imposed in the contract.**

As a participating Bidder/Proposer, please answer the questions and provide the requested information on the pages that follow and sign where indicated. Include your completed Section 3 forms with your bid/proposal. Failure to complete all information and/or submit all pages may result in a finding that your bid/proposal is non-responsive.

All subcontractors identified in the EOP must also complete these Section 3 forms within the time provided in the solicitation. Failure to submit completed subcontractor forms may result in a finding that your bid/proposal is non-responsive.

If awarded a contract, you will be required to provide reports documenting your efforts to comply with the requirements of Section 3 and HACLA's Section 3 Policy and Compliance Plan, including hiring Section 3 Workers/Targeted Section 3 Workers and meeting the labor hour benchmarks. A copy of your completed Section 3 package will be included in the contract.

General questions and assistance in completing Section 3 forms can be directed to section3@hacla.org. For a fillable PDF version, see Section 3 Exhibit – PH Funding at www.hacla.org/forms.

IFB Number: HA-2022-28-MX

PROJECT TITLE: HARBOR BLVD. IMPROVEMENTS

<u>Lucas Builders, Inc.</u>	<u>Saman Silva, President</u>
Name of Contractor/Service Provider	Contact Name and Title
<u>Wet Utilities, Heavy Construction, Rehab</u>	<u>Minority Business Enterprise (MBE)</u>
Services Provided	Business Certifications ⁵
<u>510 Jamie Ave.</u>	<u>La Habra CA 90631</u>
Address	City/State/Zip Code
<u>714-888-8468</u>	<u>info@lucascompany.com</u>
Phone	Email

⁴ Section 3 is codified at 12 U.S.C. 1701u, as amended, and implemented at 24 CFR Part 75
⁵ Business certifications include Section 3, MBE/WBE/SBE

Bidder/Proposer: Lucas Builders, Inc.

1. Does your Business qualify as a Section 3 Business Concern? YES NO

If you answered YES, complete the Section 3 Business Certification Form attached to this exhibit. If you answered NO, you do not need to submit the Section 3 Business Certification with your bid/proposal/quote.

A **Section 3 Business Concern** means a business concern that satisfies **at least one** of the following criteria within the last six-month period:

- a. The business is at least 51 percent owned and controlled by low- or very low-income persons;
- b. Over 75 percent of the labor hours performed for the business over the prior three-month period has been performed by Section 3 workers; or
- c. The business is at least 51 percent owned and controlled by residents who currently live in public housing or Section 8-assisted housing.

2. Will you be using any subcontractors on this project? YES NO

If you answered YES, complete below. **Remember to provide each listed subcontractor with a copy of these Section 3 forms, and include them with your bid/proposal.**

Subcontractor Name	Trade	Subcontract Dollar Value	Business Certification
SpectraTurf Inc	Laborer	\$72,341.00	CA#854429

3. If awarded a contract, how many people/workforce are needed to complete the job?

Please list the job classifications and number of workers needed for each classification.

Job Title	Current Workforce	Additional Needed
Laborers	5 workers	2

4. If awarded a contract, how many new employment positions do you expect to have available that you can commit to filling by hiring Section 3 Workers and/or Targeted Section 3 Workers?(30% new hire benchmark requirement)

Job Classification/ Position	Number of Expected New Positions you commit to hire Section 3 Worker/Targeted Section 3 Worker	Notes
Laborer	1	
Landscaper	1	

Bidder/Proposer: Lucas Builders, Inc.

DEFINITIONS

A **Section 3 Worker** means any worker who currently qualifies or when hired within the last five years qualified in **at least one** of the following categories:

- a. The worker's income for the previous or annualized calendar year is below the income limit established by HUD (includes residents of public housing);
- b. The worker is employed by a Section 3 business concern; or
- c. The worker is a YouthBuild participant.

For **Housing and Community Development Financial Assistance** projects like this, a **Targeted Section 3 worker** means a **Section 3 worker** who is:

- a. A worker employed by a Section 3 business concern; or
- b. A worker who currently qualifies or when hired within the last five years qualified in **at least one** of the following categories:
 - (i) Living within the service area or the neighborhood of the project*, as defined in § 75.5; or
 - (ii) A YouthBuild participant.

*Neighborhood of the Project also referred to as "Service Area," means an area within one mile of the Section 3 Project or, if fewer than 5,000 people live within one mile of a Section 3 Project, within a circle centered on the Section 3 Project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census. Contact HACLA's Section 3 Compliance Administrator prior to starting work on the project to receive the mapping tools and/or boundaries applicable to your project.

HUD INCOME LIMITS

Federal low- and very low-income limits are determined annually by HUD and are published at www.huduser.gov/portal/datasets/il/il2021/2021summary.odn. These limits are typically established at 80 percent and 50 percent of the area median individual income.

Income Eligibility Guideline* (FY 2021 Los Angeles County HUD Income Limits)

Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area

Very Low (50%) Income Limit	No more than \$41,400, or
Low (80%) Income Limit	No more than \$66,250

*Note: a **Section 3 worker** can be either a very low or low-income individual.

HIRING PRIORITIES

Employment and training opportunities created for this project shall be given to Section 3 Workers in the following order of priority, unless agreed otherwise;

- P1: To Section 3 Workers residing within the service area or the neighborhood of the project; and
- P2: To participants in YouthBuild programs

Bidder/Proposer: Lucas Builders, Inc.

SECTION 3 COMPLIANCE BENCHMARKS:

If awarded a contract, you will be required to demonstrate good faith efforts and provide evidence that you followed the hiring priorities and met or exceeded the following Section 3 Benchmarks:

1. **25 percent** or more of the total number of labor hours worked by all workers on the project are
2. **Section 3 Workers**; and
3. **5 percent** or more of the total number of labor hours worked by all workers on the project are
4. Targeted Section 3 Workers; and
5. **30 percent** of all New Hires are **Section 3 Workers**

See www.hacla.org/section3 for more information and graphics explaining the benchmarks.

5. If awarded a contract, do you commit to engaging in good faith efforts to meet or exceed the Section 3 Benchmarks?

YES NO

For purposes of Section 3⁶, good faith efforts include, but are not limited to:

- a. Engaging in outreach efforts to generate job applicants who are **Targeted Section 3 Workers**, including notifying HACLA’s Section 3 team, posting job openings at job site, [HUD Opportunity Portal](#)⁷, social media pages and other platforms.
- b. Providing training, apprenticeship opportunities, technical assistance to help **Section 3 workers** compete for jobs (e.g., resume assistance, coaching) or holding job fairs.
- c. Providing or referring **Section 3 Workers** to services that support work readiness and retention (e.g., worker readiness activities, test fees, clothing for interviews, transportation, child care).
- d. Providing **Section 3 Workers** assistance to apply for or attend community college, a four-year educational institution or vocational/technical training.
- e. Engaging in outreach efforts to identify and secure bids from **Section 3 Business Concerns** and providing them technical assistance to bid on contracts.
- f. Providing **Section 3 Business Concerns** bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- g. Promoting use of business registries designed to create opportunities for disadvantaged and small businesses.
- h. Outreach, engagement, or referrals with an affiliate of America’s Job Center of California, which serves as California’s one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

⁶ See 24 CFR 75.25

⁷ See <https://hudapps.hud.gov/OpportunityPortal/> for posting jobs and contracting opportunities

6. If you are unable to satisfy the Benchmarks, please indicate whether you can provide Section 3 Workers and/or Targeted Section 3 Workers these other economic opportunities⁸:

Commit to provide Section 3 Workers with apprenticeship opportunities. Specify:

laborer apprentice

Commit to contribute to HACLA's Section 3 Fund for educational, vocation / technical training or other purpose. Specify:

NA

Commit to assist Section 3 Workers to obtain financial literacy training or coaching. Specify:

NA

Commit to provide or connect Section 3 Workers with assistance in seeking employment including: drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services. Specify:

NA

Additional Notes/Comments

we are a union shop and will follow union guidelines

Please sign below to acknowledge the following:

- You have read and understood the Section 3 requirements set forth herein.*
- If awarded a contract, you intend to comply with all applicable requirements and satisfy Section 3 benchmarks and your expressed commitments.*
- You understand that if awarded a contract you may be held in material default of the contract if you fail to comply with your expressed commitments.*
- You understand that if awarded a contract, your business is required to submit compliance reports, worker certification forms, payroll or time and attendance records and documentation evidencing your efforts to satisfy Section 3 benchmarks and your expressed commitments.*

Name: Saman Silva

Signature: 

Title: President

Date: 4/12/22

END OF SECTION

⁸ For a complete list of qualitative efforts, please see 24 CFR 75.15

SECTION 3 BUSINESS CONCERN SELF-CERTIFICATION

(24 CFR Part 75)

Business Name	Address / City / State / Zip Code	Services Provided / Trade
Lucas Builders, Inc.	510 E Jamie Ave La Habra, CA 90631	Wet Utilities, Rehab, Heavy Construction
Point of Contact / Title	Telephone	E-mail
Saman Silva, President	714-888-8468	info@lucascompany.com

Does your business qualify as a "Section 3 Business Concern" as that term is defined in 24 CFR Part 75.5?

YES NO

If yes, check the boxes below under which subcategory you qualify.

Your business qualifies as a **Section 3 Business Concern** if you can document that the business satisfied at least one of the following criteria within the last six-month period:

- i. The business is at least 51 percent owned and controlled by low- or very low-income persons (see page 2 for qualifying income limits or refer to www.hacla.org/section3);
- ii. More than 75 percent of the labor hours performed for the business over the prior three month period was performed by Section 3 Workers (see page 2 for definition of "Section 3 Worker" or refer to www.hacla.org/section3); or
- iii. The business is at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Does your business qualify as one of the following?

Minority Owned Business: Black American Hispanic American Native American

(If checked this box, specify) Asian/Pacific Americans Other: _____

Small Business Enterprise Women Owned Business Labor Surplus Area

By submitting this form, I certify to the truthfulness of the statements and information contained herein. I understand that providing false information is grounds for termination of Section 3 certification. I further understand that qualifying as a Section 3 Business Concern or being listed on HACLA's Section 3 Business Registry database does not entitle the business to preference for contract award.


Signature

Saman Silva, President
Name and Title

4-12-2022
Date

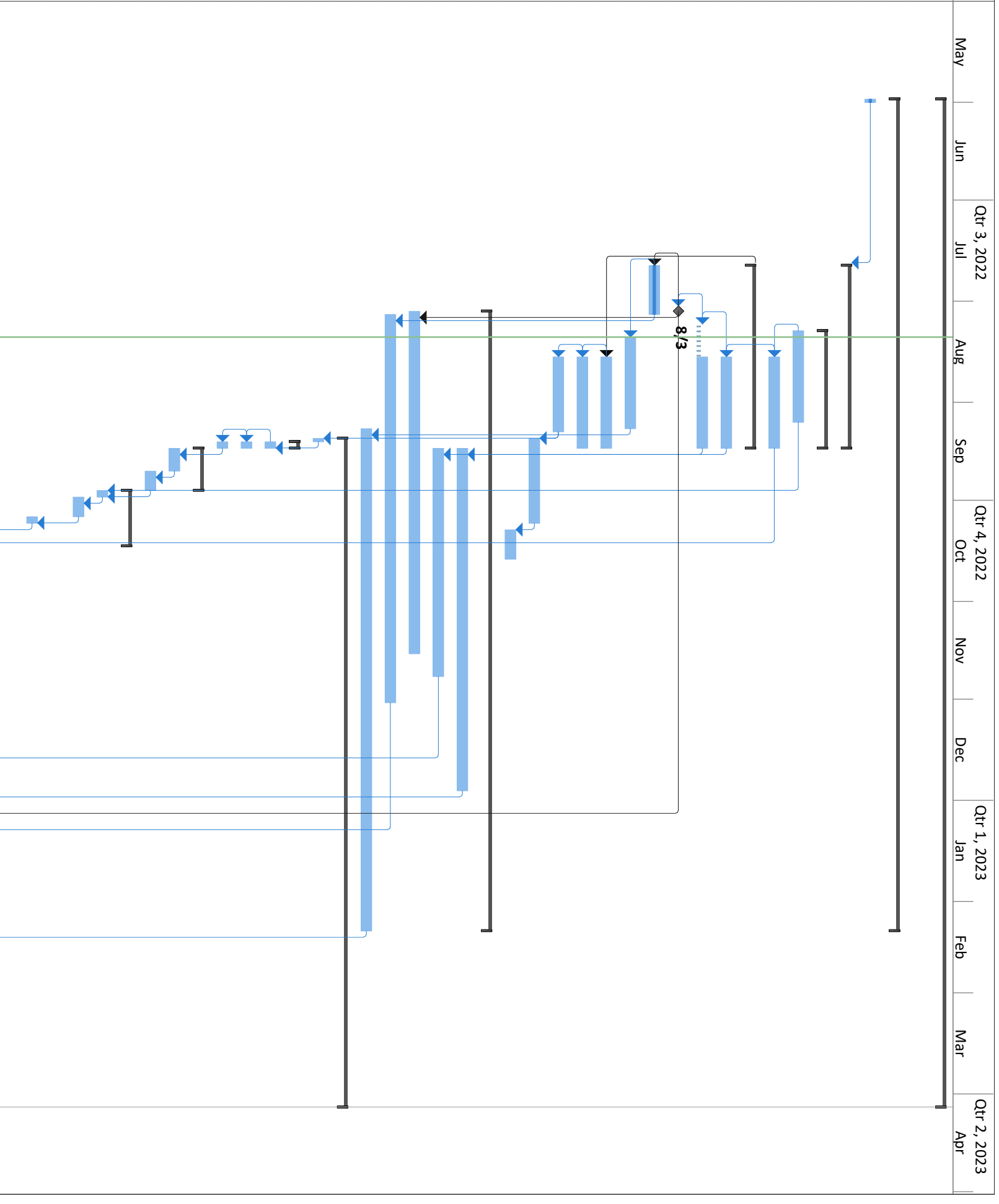
END OF FORM

EXHIBIT D

PARKWAY IMPROVEMENTS CONSTRUCTION SCHEDULE

[Attached]

ID	Task Mode	Task Name	Duration	Start
1	🚧	HA-2022-28-MX- Harbor Blvd Park Improvements	221 days	Tue 5/31/22
2	🚧	Preconstruction	183 days	Tue 5/31/22
3	🚧	Contract Issued	1 day	Tue 5/31/22
4	🚧	Submittals	40 days	Thu 7/21/22
5	🚧	Underground	26 days	Wed 8/10/22
6	🚧	Storm Drain	20 days	Wed 8/10/22
7	🚧	Electrical	20 days	Thu 8/18/22
8	🚧	Architectural	40 days	Thu 7/21/22
9	🚧	OCP Site Furnishings	20 days	Thu 8/18/22
10	🚧	Canopy Shade Structure	20 days	Mon 8/8/22
11	🚧	Vestre-Circle Benches	0 days	Thu 7/21/22
12	🚧	Park Vue- Park Bench	11 days	Thu 7/21/22
13	🚧	Kompan Site Furnishings	20 days	Fri 8/12/22
14	🚧	Irrigation	20 days	Thu 8/18/22
15	🚧	Landscaping Submittals	20 days	Thu 8/18/22
16	🚧	General Submittals	17 days	Thu 8/18/22
17	🚧	Permits	20 days	Mon 9/12/22
18	🚧	Issue notices	7 days	Mon 10/10/22
19	🚧	Procurement	136 days	Thu 8/4/22
20	🚧	Procure OCP Site Furnishings	15 wks	Thu 9/15/22
21	🚧	Procure Canopy Shade Structur	10 wks	Thu 9/15/22
22	🚧	Vestre-Circle Benches	15 wks	Thu 8/4/22
23	🚧	Park Vue- Park Bench	17 wks	Fri 8/5/22
24	🚧	Procure Kompan Site Furnishing	22 wks	Fri 9/9/22
25	🚧	Construction	147 days	Mon 9/12/22
26	🚧	Mobilization	1 day	Mon 9/12/22
27	🚧	Demolition	2 days	Tue 9/13/22
28	🚧	Install Tree protection	2 days	Tue 9/13/22
29	🚧	Mark Protect in Place	2 days	Tue 9/13/22
30	🚧	Tree & Uplight Removal	2 days	Tue 9/13/22
31	🚧	Grading	9 days	Thu 9/15/22
32	🚧	Grade site	5 days	Thu 9/15/22
33	🚧	Construct Bioinfiltration Planter	4 days	Thu 9/22/22
34	🚧	Underground	13 days	Wed 9/28/22
35	🚧	Construct Filter Catch Basins (2	2 days	Wed 9/28/22
36	🚧	Construct Filter Trench Drain & Infiltration trench (1 ea)	4 days	Fri 9/30/22
37	🚧	Construct Modified case 2 Inlet	2 days	Thu 10/6/22
		Curb Drain (1 ea)		



Project: msproj11
Date: Fri 8/12/22

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

ID	Task Mode	Task Name	Duration	Start	May	Jun	Qtr 3, 2022 Jul	Aug	Sep	Qtr 4, 2022 Oct	Nov	Dec	Qtr 1, 2023 Jan	Feb	Mar	Qtr 2, 2023 Apr	
38	▶	Install 6" HDPE Drain Pipe to Curb-O-Let Drain (15 Lf)	1 day	Mon 10/10/22													
39	▶	Construct Overflow Curb-O-Let Drains & Concrete Collars (3)	3 days	Tue 10/11/22													
40	▶	Install Conduit for Canopy Uplig	1 day	Fri 10/14/22													
41	▶	Irrigation	5 days	Mon 10/17/22													
42	▶	Run irrigation lines & Backfill	5 days	Mon 10/17/22													
43	▶	Concrete	39 days	Mon 10/24/22													
44	▶	Install Removable Bollard at Flex Space (3 EA)	3 days	Mon 10/24/22													
45	▶	Install Fixed Bollards at Flex Spa	2 days	Thu 10/27/22													
46	▶	Construct Vehicular PCC	8 days	Mon 10/31/22													
47	▶	Construct Pedestrian PCC	5 days	Thu 11/10/22													
48	▶	Install Concrete Curb & Flush Concrete header	7 days	Thu 11/17/22													
49	▶	Layout & Install foundations for Playground Equipment & Architectural	14 days	Mon 11/28/22													
50	▶	Install Play Area Fence	1 day	Fri 12/16/22													
51	▶	Site Furnishings	53 days	Mon 12/19/22													
52	▶	Canopy Shade Structure	3 days	Mon 12/19/22													
53	▶	Install canopy uplights	1 day	Thu 12/22/22													
54	▶	QCP Site Furnishings	5 days	Thu 12/29/22													
55	▶	Trash Receptacle (4 EA)	1 day	Thu 12/29/22													
56	▶	Picnic Table (4 EA)	1 day	Fri 12/30/22													
57	▶	ADA Picnic Table (3 EA)	1 day	Mon 1/2/23													
58	▶	Chess Table and Benches (1 day)	1 day	Tue 1/3/23													
59	▶	Ping Pong Table (1 EA)	1 day	Wed 1/4/23													
60	▶	Vestre- Circle Benches (6 EA)	1 day	Thu 1/5/23													
61	▶	Boulders (17 EA)	2 days	Fri 1/6/23													
62	▶	Park Vue- Park Bench (4 EA)	2 days	Tue 1/10/23													
63	▶	Kompan Site Furnishings	14 days	Fri 2/10/23													
64	▶	Carousel (1EA)	1 day	Fri 2/10/23													
65	▶	Play Tower, Physical, Slide	2 days	Mon 2/13/23													
66	▶	Double Springer- Dolphin	1 day	Wed 2/15/23													
67	▶	Single Springer- Shark (1EA)	1 day	Thu 2/16/23													
68	▶	Sky Twister (1EA)	1 day	Fri 2/17/23													
69	▶	Spinner Bowl (1EA)	1 day	Mon 2/20/23													
70	▶	Net Twister (1EA)	2 days	Tue 2/21/23													
71	▶	Siting Pole (21 Ea)	2 days	Thu 2/23/23													
72	▶	Combi 3 (1 EA)	2 days	Mon 2/27/23													
73	▶																

Project: msproj11
Date: Fri 8/12/22

Task

Split

Milestone

Summary

Project Summary

External Tasks

External Milestone

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

Deadline

Progress

Manual Progress

↓

ID	Task Mode	Task Name	Duration	Start	May	Jun	Qtr 3, 2022 Jul	Aug	Sep	Qtr 4, 2022 Oct	Nov	Dec	Qtr 1, 2023 Jan	Feb	Mar	Qtr 2, 2023 Apr
74	Mode	Step (32 IN & 24 IN)	1 day	Wed 3/1/23												
75		Landscaping	24 days	Thu 3/2/23												
76		Install Sprinklers	2 days	Thu 3/2/23												
77		Plant trees	5 days	Mon 3/6/23												
78		Plant shrubs	5 days	Mon 3/13/23												
79		Place Mulch	3 days	Mon 3/20/23												
80		Place turf Sod	3 days	Thu 3/23/23												
81		Install decomposed granite	3 days	Tue 3/28/23												
82		Install Rubberized Play Surface	3 days	Fri 3/31/23												

Project: msproj11
Date: Fri 8/12/22

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

EXHIBIT E
POST-CONSTRUCTION MAINTENANCE PLAN

[Attached]

Exhibit E

Harbor Boulevard Parkway Improvements Maintenance Plan

The Harbor Boulevard Parkway Improvements Project (“Project”) is a project in the Housing Authority of the City of Los Angeles (“HACLA”) Choice Neighborhoods Planning and Action Grant program for the construction of open park space on property owned by the City of Los Angeles Harbor Department on Harbor Boulevard between 1st and 3rd streets in San Pedro. HACLA submitted a grant application for funding of the Project to the U.S Department of Housing and Urban Development (“HUD”) on July 8, 2020, which was ultimately approved. The Project consists of the improvement of 15,600 square feet of underutilized rail right-of-way into park space that expands upon existing public open space and provides direct access to the Port of Los Angeles waterfront.

The Harbor Department will maintain ownership of the Project property before, during, and after completion of the improvements, and as owner will be responsible for the Project’s regular maintenance after construction. HACLA submitted the Maintenance Plan to HUD as part of the requirements for final funding approval and receipt of grant funds.

The Harbor Department will include ongoing maintenance of the Project in its regular maintenance program for the existing public Waterfront, which was built by the Harbor Department in 2005 at a cost of \$23.4 million. The Waterfront property is a public open space consisting of an 80-foot-wide pathway, approximately a mile in length, that includes a 20-foot pedestrian path, a 10-foot bike path, landscaping, lighting, seating, plazas, fountains, and additional amenities.

Maintenance of the Project will be managed, conducted and under the discretion of the Harbor Department’s Construction & Maintenance Division. Maintenance will generally include:

- Litter and trash removal, daily
- Safety inspection of the site, daily
- Weed removal and trimming, as needed
- Mowing, biweekly
- Landscape fertilizing, quarterly
- Irrigation system inspection, monthly
- Power washing, as needed
- Play equipment inspection, daily
- Signage replacement, if damaged or vandalized
- Graffiti removal, as needed
- Landscape replacement (equivalent type), as needed
- Repair/replacement of amenities, playground/streetscape furniture, as needed.