



## REPORT

**DATE ISSUED:** August 19, 2015

**REPORT NO:** HCR15-071

**ATTENTION:** Chair and Members of the San Diego Housing Commission  
For the Agenda of September 11, 2015

**SUBJECT:** Approval of the Award of Job Order Contracts

**COUNCIL DISTRICT:** Citywide

### **REQUESTED ACTION**

Award of five separate multiyear Job Order Contracts for the maintenance, renovation, modernization and alteration of properties owned and/or managed by the San Diego Housing Commission.

### **STAFF RECOMMENDATION**

That the San Diego Housing Commission (Housing Commission) takes the following actions:

- 1) Authorize the President & Chief Executive Officer (President & CEO), or designee, to enter into cooperative purchasing agreements with the contractors referenced within this report based upon procurements previously competitively bid and awarded by the National Joint Powers Alliance (NJPA);
- 2) Approve the award of five separate multiyear Job Order Contracting (JOC) contracts (Attachments 1-5) to the following companies, each with a value not to exceed maximum annual capacity of \$500,000:
  - a. Angeles Contractor Inc.
  - b. Good-Men Roofing & Construction, Inc.
  - c. The Augustine Company
  - d. Vincor Construction, Inc.
  - e. Sylvester Roofing Co., Inc.
- 3) Authorize the President & CEO, or designee, to substitute the identified contract funding sources with other available funding sources as long as the total activity budget amount after substitution does not exceed the total approved budget, should the operational need arise or should actions be to the benefit of the Housing Commission and its mission; and
- 4) Authorize the President & CEO, or designee, to execute all documents and instruments necessary and/or appropriate to implement these approvals, in a form approved by General Counsel, and take such actions as are necessary and/or appropriate to implement these approvals.

## **SUMMARY**

The Housing Commission has an ongoing need to maintain and improve the portfolio of properties it currently owns and/or manages. To meet this need more effectively, Housing Commission staff identified JOC as a procurement resource that enables staff to execute routine and reoccurring construction projects quickly and efficiently.

The Housing Commission Board has authority to approve contracts for the maintenance, modernization, and improvement of properties owned and/or managed by the Housing Commission (including LLCs) up to a maximum contract value of \$500,000 pursuant to San Diego City Council Resolution R-305431 of December 4, 2009. Housing Commission staff seeks authorization to enter into five cooperative purchasing agreements with the National Joint Powers Alliance (NJPA) and the aforementioned contractors for facility maintenance, renovation, modernization and alteration projects competitively bid and awarded by NJPA. NJPA is a State of Minnesota public agency that serves as a national municipal cooperative contracting agency for its members. The Housing Commission has been a member of NJPA since 2011.

Section 15 of the Housing Commission's Procurement Policy, titled "Cooperative Purchasing Agreements," authorizes and encourages the Housing Commission to utilize other federal, state and local cooperative purchasing agreements (also known as "intergovernmental agreements) to expedite the procurement, contracting and project delivery process. Furthermore, under California's Joint Exercise of Powers Act (Govt. Code § 6500 et seq.), two or more public agencies may jointly exercise their contracting power if authorized by their legislative bodies. This cooperative/intergovernmental agreement contracting process is also endorsed by the U.S. Department of Housing and Urban Development (HUD) in Title 24, Subpart A, Part 85, Section 85.36(b)(5) of the Code of Federal Regulations and is widely employed by hundreds of federal, state and local agencies as a routine part of their procurement and contracting methodology. These contracts shall not be utilized for new construction, however, due to federal regulations.

Contract forms have been developed to ensure Housing Commission-required provisions are included within each of the contracts. These provisions include prevailing wages and requirements of Section 3 of the HUD Act of 1968 (Section 3).

Contracts were awarded by NJPA to the five aforementioned contractors as the identified low responsive and responsible bidders for these JOC contracts after the receipt and evaluation of bid submittals for specific NJPA Invitation for Bid solicitations.

The five NJPA JOC contracts for which the Housing Commission is seeking to enter into cooperative agreements are:

- Angeles Contractor, Inc. – NJPA Contract No. CA-SD01GCA-081815-AC
- Good-Men Roofing & Construction, Inc. – NJPA Contract No. CA-SD01GCB-081815-GMR
- The Augustine Company – NJPA Contract No. CA-SD02GCA-81815-AUG
- Vincor Construction, Inc. – NJPA Contract No. CA-SD02GCB-081815-VCI
- Sylvester Roofing Co., Inc. – NJPA Contract No. CA-SD01R-081815-SRC

These contracts would be utilized by the Housing Commission on an on-call, as-needed basis. Each contract would have a maximum annual capacity of \$500,000 and will be implemented in accordance

with Housing Commission Administrative Regulation No. 203.200 and the associated Standard Operating Procedures.

Applicable federal, state and local prevailing wage labor compliance requirements shall apply to all five of the proposed contracts.

### **FISCAL CONSIDERATIONS**

Because JOC contracts are structured as on-call, as need type contracts, the above referenced maximum annual contract capacities of \$500,000 annually do not constitute a guaranteed award amount or expenditure obligation by the Housing Commission to the respective contractors. Neither do the specified maximum contract amounts constitute a budgetary encumbrance or obligation by the Housing Commission. Approving these actions will not affect the Fiscal Year 2016 budget. Budgetary encumbrances will occur on a project by project basis in accordance with the Housing Commission's delegation of authority policy.

### **EQUAL OPPORTUNITY CONTRACTING**

The five NJPA JOC contractors possess the following designations:

- Angeles Contractor Inc.—Local business (via Regional Office);
- Good-Men Roofing & Construction, Inc.—Local business, certified as a Small Business by the State of California;
- The Augustine Company—Local business;
- Vincor Construction, Inc.—Certified as a Small Business by the State of California; and
- Sylvester Roofing Company, Inc.—Local business, certified as a Section 3 Business Concern by the Housing Commission and as a Small Business by the State of California.

All five companies have submitted the required EOC forms and Workforce Reports.

### **PREVIOUS COUNCIL and/or COMMITTEE ACTION**

On August 15, 2014, the San Diego Housing Commission Board unanimously approved a similar request to approve three JOC contracts under Report No. HCR14-081. Additionally, on May 19, 2015, the San Diego Housing Commission Board unanimously approved a similar JOC contract to Vincor Construction under Report No. HCR15-053.

### **COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS**

On June 17, 2015, and June 24, 2015, advertisements were placed in the *U-T San Diego*, *San Diego Daily Transcript and Voice & Viewpoint* newspapers. Additionally, on June 17, 2015, notices were sent to all Section 3 construction contractors listed on the Housing Commission's Section 3 database. On July 1, 2015, a pre-bid meeting was held at the Housing Commission for all interested and licensed general contractors, subcontractors and certified Section 3 Business Concerns. Twenty-one companies attended the pre-bid meeting. On July 21, 2015, bids were due and received by NJPA. On August 20, 2015, the NJPA governing board approved contract awards to the aforementioned five contractors.

### **KEY STAKEHOLDERS and PROJECTED IMPACTS**

Stakeholders include residents at Housing Commission owned and/or managed properties, the Housing Commission Real Estate Division, Property Management and Development Services Departments and JOC contractors.

**ENVIRONMENTAL REVIEW**

This activity is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b) (5), as it is an administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c) (3), is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required. Furthermore, this activity is exempt from the National Environmental Policy Act pursuant to Part 58.34(a) (3) of the Title 24 Code of Federal Regulations as an administrative and management-related activity.

Respectfully submitted,

*George Hunt*

George Hunt  
Interim Housing Construction Supervisor  
Real Estate Division

Approved by,

*Deborah N. Ruane*

Deborah N. Ruane  
Senior Vice President Real Estate  
Real Estate Division

Attachments: 1) Angeles Contractor, Inc. – NJPA Contract  
2) Good-Men Roofing & Construction, Inc. – NJPA Contract  
3) The Augustine Company – NJPA Contract  
4) Vincor Construction, Inc. – NJPA Contract  
5) Sylvester Roofing Co., Inc. – NJPA Contract

Hard copies are available for review during business hours in the main lobby of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials on the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org).

**SAN DIEGO HOUSING COMMISSION**  
**AGREEMENT FOR**  
**JOB ORDER CONTRACTING (JOC)**  
**INDEFINITE QUANTITY CONSTRUCTION SERVICES**  
**WITH**  
**ANGELES CONTRACTOR, INC.**  
**AGREEMENT NO. JOC-16-04**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of September 2015, between Angeles Contractor, Inc. (“Contractor”), the San Diego Housing Commission (“Commission”) on its own behalf and on behalf of each limited liability company marked below, as the sole manager of such limited liability company, and as the managing agent of such limited liability company, and as the sole member of such limited liability company, each of which is a separate public agency within the state of California, for each of the residential properties owned by the entity, and each of the following:

- Belden SDHC FNMA LLC, a California limited liability company
- Central SDHC FHA LLC, a California limited liability company
- Central SDHC FNMA LLC, a California limited liability company
- Northern SDHC FHA LLC, a California limited liability company
- Northern SDHC FNMA LLC, a California limited liability company
- Southern SDHC FHA LLC, a California limited liability company

The above-selected entities shall be collectively referred to herein as the “SDHC Limited Liability Companies”. Each of the above SDHC Limited Liability Companies is registered as public agencies with the State of California.

THIS AGREEMENT (the “Agreement”), entered into the \_\_\_\_ day of September 2015,

between the Commission:

**SAN DIEGO HOUSING COMMISSION**  
1122 Broadway, Suite 300  
San Diego, California 92101  
(619) 231-9400

and the Contractor:

**ANGELES CONTRACTOR, INC.**  
8461 Commonwealth Ave.  
Buena Park, CA 90621  
714-443-3655

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish, under this Job Order Contract (JOC) all construction labor, material, equipment and services, and perform and complete all construction work required on a Job Order by Job Order basis in accordance with the construction services tasks set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA- SD01GCA-081815-AC attached hereto as Exhibit D. This Agreement shall not be effective unless and until the Agreement has been executed by the San Diego Housing Commission, SDHC Limited Liability Companies and the Contractor and the Agreement has been approved by the Board of Commissioners of the San Diego Housing Commission. This Agreement is entered into in accordance with the terms of San Diego Housing Commission Administrative Regulation number AR203.200 “Job Order Contracting” and is permitted under the provisions of both California State Law concerning Joint Powers Agreements and federal law allowing cooperative purchasing agreements, as referenced with San Diego Housing Commission Administrative Regulation AR-203.200. To the extent that compensation under this Agreement is anticipated to exceed the sum of \$500,000.00 per annum, this Agreement shall not be effective unless and until approved by the Housing Authority of the City of San Diego.

ARTICLE 2. Time of Performance:

a. Initial Term

This Agreement shall commence effective September \_\_\_\_\_, 2015 and continue through July 20, 2016.

b. Option to Extend Term

The President and Chief Executive Officer, or his or her delegated designee, of the Commission may, at his/her election, extend the term of this Agreement for three (3) additional one-year terms by giving written notice of the election to extend the Agreement to the Contractor in advance of the expiration of the prior term of the Agreement. Those additional one (1) year option terms would be, if exercised, as follows:

Option Period 1: July 21, 2016 through July 20, 2017

Option Period 2: July 21, 2017 through July 20, 2018

Option Period 3: July 21, 2018 through July 20, 2019

Only one (1) option may be exercised at any one time during any term of the Agreement. The option to extend the Agreement may be granted by the Commission in its sole discretion and is dependent upon the availability of funds and budget approval by the Housing Authority of the City of San Diego (“Housing Authority”) and the exercise of extension options by the National Joint Powers Alliance (NJPA) as detailed in Article 4 “Term of the Agreement” of NJPA contract No SD01GCA-081815-AC.”

Nothing contained in this Agreement shall require the Commission to exercise any or all of the options to extend the term of the Agreement. The options exist in favor of the Commission, at its sole option. All other terms and conditions of the Agreement during the option period(s) shall be as set forth in the Agreement and shall be unamended by the exercise of any option granted herein.

ARTICLE 3. Compensation: The Commission and/or SDHC Limited Liability Companies shall compensate the Contractor, on a Job Order by Job Order basis, in accordance with the contract

pricing set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-SD01GCA-081815-AC attached hereto as Exhibit D. The total maximum compensation for all services performed and all Job Orders issued pursuant to this Agreement shall not exceed the accumulated sum of FIVE HUNDRED THOUSAND AND NO/100 Dollars (\$500,000.00) annually. Contractor acknowledges that the Commission and/or SDHC Limited Liability Companies are under no obligation to procure any specific amount of services under this Agreement or to compensate Contractor for services rendered or expenses accrued under this Agreement in excess of the maximum compensation specified above.

It shall be the responsibility of the Contractor to monitor its activities to ensure that all work under the Job Orders issued pursuant to this Agreement may be completed, and no charges accrued in excess of the maximum compensation during the term of this Agreement. In the event that the work required cannot be completed within the amount specified, or it appears that the maximum compensation provided may be exceeded before the term of the Agreement expires, Contractor shall promptly notify the Commission and/or SDHC Limited Liability Companies.

Further, the Commission and/or SDHC Limited Liability Companies may cancel the Agreement, without cause, by written notice to the Contractor at any time during the term of the Agreement, or any extension thereto, in the event that the Commission, SDHC Limited Liability Companies and/or the Housing Authority of the City of San Diego (“Housing Authority”) fails to appropriate funds for the rendition of services set forth in this Agreement. This right to cancel is in addition to the rights to terminate the Agreement as set forth in Article 31 of this Agreement.

ARTICLE 4. Indemnity: Subject only to the limitations of the applicable statutes of limitations as contained within applicable federal and state law, Contractor agrees to and shall indemnify, hold harmless, and defend, the Commission, SDHC Limited Liability Companies, the Housing Authority of the City of San Diego, the City of San Diego, and all commissioners, officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the “Indemnitees” or individually as an “Indemnitee”) from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor’s employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnitee or resulting from defects in design furnished by Indemnitee and Contractor will, if requested by Indemnitee, defend any such suits against Indemnitee(s), at the sole cost and expense of Contractor, with counsel of Indemnitee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Agreement to receive attorneys’ fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Agreement.

ARTICLE 5. Governing Law: This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 6. Entire Agreement: This Agreement contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect.

ARTICLE 7. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 8. Severability: If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law. The performance to be rendered under this Agreement is divided into 7 parts, generally divided based on the party to whom goods or services are to be provided:  (1) Commission;  (2) Northern SDHC FNMA LLC;  (3) Northern SDHC FHA LLC;  (4) Southern SDHC FHA LLC;  (5) Central SDHC FNMA LLC;  (6) Central SDHC FHA LLC;  (7) Belden SDHC FNMA LLC. The breach of this Agreement by Contractor as to the Commission or any one of the SDHC Limited Liability Companies shall not affect the right of the remaining parties to receive goods and/or services pursuant to this Agreement. Furthermore, this Agreement may be severed by Commission and/or one or more of the SDHC Limited Liability Companies, with respect to goods or services provided to the severing party.

ARTICLE 9. Terminology: All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Agreement itself, and all references herein to paragraphs thereof are to this Agreement unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 10. Binding Agreement: Subject to any restrictions on the assignment of this Agreement or rights thereto, this Agreement shall inure to the benefit of and be binding upon Commission, SDHC Limited Liability Companies, and Contractor and their respective successors, assigns or transferees.

ARTICLE 11. Procedure for Resolving Disputes: In the event of a dispute concerning this Agreement, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 12. Time is of the Essence: Time is of the essence for all Job Order work issued under this Agreement, as per the Job Order schedule submitted by Contractor, on a Job Order by Job Order basis, and agreed upon by the Commission.

ARTICLE 13. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the Commission and/or SDHC Limited Liability Companies monies in accordance with the (if any) Liquidated Damages set forth in any issued Job Order as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the Commission and/or SDHC Limited Liability Companies.

ARTICLE 14. Agreement Documents and Order of Precedence: This Agreement between the Commission, SDHC Limited Liability Companies, and the Contractor shall consist of the following component parts. In the event of conflicting provisions of the Agreement exhibits, attachments and component parts, the following order of precedence shall apply:

- A. Any Job Order issued pursuant to this Agreement, including any Addenda, Scope of Work, Plans, Drawings, Technical Specifications, Conditions, Requirements, and Prevailing Wage Requirements attached thereto.
- B. This Agreement Instrument.
- C. Exhibit A “San Diego Housing Commission Special Provisions for National Joint Powers Alliance (NJPA) Job Order Contract (JOC) #CA-SD01GCA-081815-AC.
- D. Exhibit B “Payment and Performance Bond Documents”.
- E. Exhibit C “Release of Lien Form”.
- F. Exhibit D “National Joint Powers Alliance (NJPA) contract number CA-SD01GCA-081815-AC ”.
- G. Exhibit E “National Joint Powers Alliance (NJPA) Invitation for Bid (IFB) number CA-SD01GCA-072115”

This Agreement instrument, together with the other documents enumerated in Article 14, form the Agreement and are as fully a part of the Agreement as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Agreement which each modifies.

In the event of a conflict between the various documents referenced within Subparagraphs A through E, inclusive, the provisions of the document referenced within subparagraph A shall prevail over the conflicting provisions contained within documents referenced within subparagraphs B through E. In the event that a provision within a document referenced within subparagraph B conflicts with a provision or provisions within the documents referenced within subparagraphs C through E, then the provisions of the documents referenced within subparagraph B shall prevail. In the same fashion the provisions of the document referenced within subparagraph C shall prevail over conflicting provisions of documents contained within subparagraphs D through E. The same conflict provisions shall be applicable to conflicts between provisions within the document referenced in subparagraph D, over the conflicting provisions of the document referenced within subparagraph E.

ARTICLE 15. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

B. Establish a drug-free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace.
- 2) The Contractor's policy of maintaining a drug-free workplace.
- 3) Any available drug counseling, rehabilitation and employee assistance programs.
- 4) The penalties that may be imposed upon employees for drug abuse violations.

C. Post the statement required by subdivision A in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 16. Equal Opportunity Programs: During the performance of this Agreement, the Contractor agrees as follows:

A. Contractor shall comply with all applicable Equal Opportunity Programs as described in the applicable State and Federal law. Contractor shall submit such forms and information as shall be requested by the Commission from time to time to verify the Contractor's compliance with applicable law.

B. Certificate of Compliance (attached hereto in Exhibit A) with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state law and regulations hereinafter enacted.

C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin.

D. If any under representation is found after submission of Contractor's workforce report, the Commission may request an equal employment opportunity plan (EEO). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEO has been approved by the Commission, the Contractor must adhere to said plan. In case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEO updates as required.

E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, Contractor may, at the election of the Commission, be disbarred from participating in a Commission project for not less than one (1) year.

ARTICLE 17. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Agreement, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress in connection with 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 modification of a Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal appropriated funds have been 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 this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

C. Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and,

D. Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 USC 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

ARTICLE 18. Necessary Approvals:

A. In the event that the initial amount of this Agreement exceeds Five Hundred Thousand Dollars (\$500,000.00), this Agreement must be approved by the San Diego Housing Commission Board of Commissioners and the San Diego Housing Authority in order to be binding upon the Commission. In no event shall the Commission be bound by this Agreement, unless and until such approvals are obtained.

ARTICLE 19. Substitution of Securities for Retained Funds: Pursuant to California Public Contract Code Section 22300, Contractor has the option to deposit securities with an escrow agent as a substitute for retention earnings required to be withheld by Commission pursuant to this Agreement. Alternatively, on written request of the Contractor, the Commission shall make payments of the retention earnings directly to an escrow agent. If Contractor exercises either option under this Article 19, Contractor and Commission shall enter into a written escrow agreement with the escrow agent governing the deposit and withdrawal of such securities and/or retention.

ARTICLE 20. Notices: Notices to the parties shall, unless otherwise requested in writing, be sent to the Commission and the Contractor at the addresses given above. Notices to the SDHC Limited Liability Companies may be made in writing to the Commission's attention.

ARTICLE 21. Facsimile Approved by General Counsel: Approval of the form of this Agreement and the attachments, if any, may be in the form of a facsimile approval by General Counsel for the Commission. The approval may be executed in counterpart and attached to the original Agreement.

ARTICLE 22. Status of Contractor: This Agreement calls for the performance of the services of the contractor as an independent contractor. Contractor will not be considered an employee of the Commission or any of the SDHC Limited Liability Companies for any purpose.

ARTICLE 23. Ownership of Materials and Documents: Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the Commission from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. However, the Contractor shall have the right to make duplicate copies of such materials and documents for its own files, or for other purposes as may be authorized in writing by the Commission.

ARTICLE 24. Non-Disclosure: The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the Commission. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the Commission or any of the SDHC Limited Liability Companies during the term of this Agreement or at any time thereafter except as authorized by the Commission.

ARTICLE 25. Conflict of Interest:

(a) For the duration of this Agreement, the Contractor will not act as a consultant or perform services of any kind for any person or entity which would conflict with the services to be provided herein, without the written consent of the Commission.

(b) A conflict occurs when circumstances, known to the Contractor, place the Commission or SDHC Limited Liability Companies and the Contractor's new client in adverse, hostile or incompatible positions wherein the interests of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego may be jeopardized. Contractor shall promptly notify the Commission in the event that such a conflict occurs.

(c) In the event of such a conflict, Contractor shall meet and confer with the Commission to agree upon modifications of its relationship with said new client or Commission in order to continue to perform services for said client and/or Commission and/or SDHC Limited Liability Companies without compromising the interests of either. Should no agreement regarding modification be reached, Commission or SDHC Limited Liability Companies may terminate this Agreement with Contractor.

(d) When consent has been given, Contractor shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Contractor for Commission and/or the SDHC Limited Liability Companies. Under no circumstances may Contractor convey, utilize, or permit to be utilized, confidential information gained through its association with Commission and the SDHC Limited Liability Companies for the benefit of any other client.

(e) Contractor agrees to alert every client for whom consent is required, to the existence of this conflict of interest provision and to include language in its agreement with said client which would enable Contractor to comply fully with its terms. This last paragraph shall

not apply to existing clients of the Contractor for which Contractor has previously received the Commission's consent.

(f) This Agreement may be unilaterally and immediately terminated by the Commission and/or the SDHC Limited Liability Companies if Contractor employs an individual who, within twelve months immediately preceding such employment, in their capacity as a Commission employee, participated in negotiations with or otherwise had an influence on the selection of the Contractor.

ARTICLE 26. Correction of Work: The performance of services by the Contractor shall not relieve the Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Commission and/or the interested SDHC Limited Liability Companies when such inaccuracies are due to the negligence of the Contractor, provided such work has not been accepted in writing by an authorized representative of the Commission or the interested SDHC Limited Liability Companies.

ARTICLE 27. Cost Records: In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Commission, the SDHC Limited Liability Companies, and/or to the appropriate federal agencies after reasonable notice, and at reasonable times.

ARTICLE 28. Subcontracting:

(a) No services covered by this Agreement shall be subcontracted without the prior written consent of the Commission and/or the interested SDHC Limited Liability Companies.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the Commission. Once this list has been approved, no changes to the list will be allowed except by written approval of the Commission and/or the interested SDHC Limited Liability Companies.

(c) The Contractor shall be as fully responsible to the Commission and/or the SDHC Limited Liability Companies for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him. Commission, in its discretion, may require Contractor to provide Commission with an executed release of all claims against the Commission, the Housing Authority, and the City, arising by virtue of this Agreement, which release shall be provided to Commission concurrently with a request for payment for services provided pursuant to this Agreement and shall include a statement that payments to all subcontractors and suppliers have been made.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, Commission requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the Commission and/or labor surplus areas are used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on

solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

#### ARTICLE 29. Assignability:

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission and the interested SDHC Limited Liability Companies. Commission may assign this Agreement or any portion of this Agreement to any entity that is wholly-owned by the Commission by giving written notice of such assignment to Contractor and provided that such assignment shall not change the terms of this Agreement.

(b) Claims for money due or to become due to the Contractor from the Commission and/or the SDHC Limited Liability Companies under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission and/or the interested SDHC Limited Liability Companies.

#### ARTICE 30. Documents and Written Reports:

The Contractor, when preparing any document or written report for or under the direction of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego, shall comply with the provisions of Government Code Section 7550; to wit,

“(a) Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of such contracts and subcontracts relating to the preparation of such document

or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

(b) When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.”

ARTICLE 31. Termination: This Agreement may be terminated by the Commission and/or any of the SDHC Limited Liability Companies on thirty (30) days’ written notice to the Contractor, the effective date of cancellation being the 30th day of said written notice with no further action required by either party.

ARTICLE 32. Attorney’s Fees and Costs: If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys’ fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

ARTICLE 33. Contract Work Hours and Safety Standards Act: In the event Contractor’s performance of this Agreement entails the use of laborers or mechanics, and the Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

ARTICLE 34. Section 3:

(a) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this Agreement agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject

to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The Contractor agrees to include the Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD-assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment subcontracts shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

ARTICLE 35. HUD-Program Specific Audit Requirement: 24 CFR 45-1 require that nonprofit institutions with combined receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totaling \$300,000 or more a year shall have an audit conducted in accordance with the requirement of OMB Circular A-133 or a program specific financial audit, depending on the amount of funds received and the number of programs. Nonprofit institutions having only outstanding HUD direct, guaranteed or insured loans that were made guaranteed or insured prior to the effective date of the part, are required to conduct audits in accordance with HUD program specific audit requirements.

ARTICLE 36. Prevailing Wage Requirements:

Each Job Order will designate whether federal prevailing wages or state prevailing wages are applicable to each Job Order. Each Job Order shall reference the applicable wage rates and all other applicable language concerning prevailing wages that will be applicable to any specific Job Order. Generally, the following provisions shall also apply, depending upon the source of funding, to wit: either federal or state/ local:

(a) If federal prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable federal prevailing wage laws.

(b) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable state prevailing wage laws.

(c) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with SB-854 with respect to any Job Order submitted on or after March 1, 2015, and/or any Agreement entered into after April 1, 2015:

(i) Labor Code Section 1725.5 requires that Contractor and its subcontractors register and qualify with the State of California Department of Industrial Relations (“DIR”) in order to bid on, be listed in a proposal for, or engage in the performance of any contract for a public work. In order to register with the DIR, Contractor and its subcontractors must pay an initial nonrefundable registration fee of \$300, pay an annual renewal fee each July 1 thereafter, and provide the specified information to establish eligibility. Contractor and its subcontractors must register with the DIR at <http://www.dir.ca.gov/dlse/dlsepublicworks.html>.

(ii) Contractor or its subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 (Labor Code Section 1771.1(a).) This Agreement is subject to cancellation absent proof of the Contractor and its subcontractor’s current registration to perform public work pursuant to Section 1725.5.

(iii) Additionally, Contractor and its subcontractors must furnish records as specified in labor Code Section 1776 to the California Labor Commissioner for the following:

(a) Projects for which the initial contract is awarded on or after April 1, 2015 (Lab. Code § 1771.4(c))

(b) All projects, whether new or ongoing, on or after January 1, 2016 (Lab. Code § 1771.4(c)(2)(d))

(c) Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records (Lab. Code § 1771.4(c)(2)(c))

(d) Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to June 20, 2014 (Lab. Code § 1771.4(c)(2)(a))

**ARTICLE 37. Insurance:** Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the Commission. Contractor agrees to the following:

(a) Contractor shall provide public liability and property damage insurance in the minimum amount of \$1,000,000 for injury to or death of one or more persons and/or property damage arising out of a single accident or occurrence, insuring against all liability of the SDHC Limited Liability Companies, the Commission, Contractor, its subcontractors and its authorized representatives, arising out of or in connection with the Contractor’s performance of work under this Agreement.

The Commission, the SDHC Limited Liability Companies, the Housing Authority of the City of San Diego and the City of San Diego, and each of them, shall each be named as additional insureds on policy endorsements for each Job Order.

(b) Contractor shall purchase and maintain in full force and effect worker's compensation insurance for contractors, subcontractors, employees, and agents in form and amount acceptable to the Commission during the full term of this Agreement.

(c) Contractor shall provide automobile liability insurance on owned and non-owned motor vehicles used in the performance of services as detailed in the Scope of Services, both on site or in connection therewith for a combined single limit for bodily injury and property damage of no less than \$500,000 per occurrence.

(d) All insurance required to be purchased and maintained by the Contractor shall name the Commission, the SDHC Limited Liability Companies, the Housing Authority and the City of San Diego as additional insured's and shall contain cross-liability endorsements.

(e) For any claims arising out of or in connection with Contractor's performance under this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the SDHC Limited Liability Companies, the Commission, the Housing Authority and/or the City of San Diego.

(f) The Contractor shall furnish to the Commission Certificates of Insurance evidencing the insurance carried in compliance with this Section. This Certificate shall contain a provision that at least thirty days prior written notice will be given to the Commission and the SDHC Limited Liability Companies in the event of cancellation, reduction, or nonrenewal of the insurance.

(g) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to waive all rights of subrogation against the SDHC Limited Liability Companies, the Commission, the Housing Authority, the City of San Diego, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

ARTICLE 38. Contract Governed by Laws of State of California: This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

ARTICLE 39. Dispute Resolution: All disputes that arise out of this Agreement shall be resolved in the Superior Court of San Diego, Downtown Branch.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

**Contractor:**

Angeles Contractor, Inc.

By: \_\_\_\_\_  
Chang Chung Chon, President

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

**Commission:**

SAN DIEGO HOUSING COMMISSION

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

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

**Approved as to Form:**

Christensen & Spath LLP

By: \_\_\_\_\_  
Charles B. Christensen  
General Counsel  
San Diego Housing Commission

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

Belden SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FNMA LLC, a California  
limited liability company  
By: San Diego Housing Commission, a public  
agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Southern SDHC FHA LLC, a California  
limited liability company  
By: San Diego Housing Commission, a public  
agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

**EXHIBIT A**  
**SAN DIEGO HOUSING COMMISSION SPECIAL PROVISIONS**  
**FOR**  
**NATIONAL JOINT POWERS ALLIANCE (NJPA) JOB ORDER CONTRACT (JOC)**  
**NUMBER SD01GCA-081815-AC**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT B**  
**PAYMENT AND PERFORMANCE BOND DOCUMENT**

For every Job Order issued by the Commission and/or interested SDHC Limited Liability Companies to the Contractor pursuant to this Agreement, in an amount greater than \$100,000, the Contractor shall be required to provide the Commission a Payment Bond and a Performance Bond. Each bond shall be in the amount of 100% of the total price of the Job Order.

**EXHIBIT C  
RELEASE OF LIEN**

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned certifies that all work required under this Agreement will be performed in accordance with the terms thereof, and that, provided the undersigned is paid in accordance with the terms of this Agreement, there will be no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Agreement.
  
2. That, in consideration of and conditioned upon the payment in full of the amount of this Agreement, as such amount may be adjusted as provided in the Agreement, the undersigned does hereby release the San Diego Housing Commission and the SDHC Limited Liability Companies from any and all claims arising under or by virtue of this Agreement, provided, however, the wrongful withholding of funds by the San Diego Housing Commission or the SDHC Limited Liability Companies shall not effect a release as to the funds wrongfully held.

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

BY \_\_\_\_\_  
(Contractor)

(Seal)

**EXHIBIT D**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) CONTRACT  
NUMBER SD01GCA-081815-AC**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT E**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) INVITATION FOR BID (IFB)  
NUMBER CA- SD01GCA-072115**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

ATTACHMENT 2 - GOOD-MEN ROOFING & CONSTRUCTION, INC. AGREEMENT

**SAN DIEGO HOUSING COMMISSION**

**AGREEMENT FOR**

**JOB ORDER CONTRACTING (JOC)  
INDEFINITE QUANTITY CONSTRUCTION SERVICES**

**WITH**

**GOOD-MEN ROOFING & CONSTRUCTION, INC.**

**AGREEMENT NO. JOC-16-05**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of September 2015, between Good-Men Roofing & Construction, Inc. (“Contractor”), the San Diego Housing Commission (“Commission”) on its own behalf and on behalf of each limited liability company marked below, as the sole manager of such limited liability company, and as the managing agent of such limited liability company, and as the sole member of such limited liability company, each of which is a separate public agency within the state of California, for each of the residential properties owned by the entity, and each of the following:

- Belden SDHC FNMA LLC, a California limited liability company
- Central SDHC FHA LLC, a California limited liability company
- Central SDHC FNMA LLC, a California limited liability company
- Northern SDHC FHA LLC, a California limited liability company
- Northern SDHC FNMA LLC, a California limited liability company
- Southern SDHC FHA LLC, a California limited liability company

The above-selected entities shall be collectively referred to herein as the “SDHC Limited Liability Companies”. Each of the above SDHC Limited Liability Companies is registered as public agencies with the State of California.

THIS AGREEMENT (the “Agreement”), entered into the \_\_\_\_ day of September 2015,

between the Commission:

**SAN DIEGO HOUSING COMMISSION**  
1122 Broadway, Suite 300  
San Diego, California 92101  
(619) 231-9400

and the Contractor:

**GOOD-MEN ROOFING &  
CONSTRUCTION, INC.**  
3940 Hancock Street, Suite 220  
San Diego, CA 92110  
619-221-0873

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish, under this Job Order Contract (JOC) all construction labor, material, equipment and services, and perform and complete all construction work required on a Job Order by Job Order basis in accordance with the construction services tasks set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-SD01CBC-081815-GMR attached hereto as Exhibit D.

This Agreement shall not be effective unless and until the Agreement has been executed by the San Diego Housing Commission, SDHC Limited Liability Companies and the Contractor and the Agreement has been approved by the Board of Commissioners of the San Diego Housing Commission. This Agreement is entered into in accordance with the terms of San Diego Housing Commission Administrative Regulation number AR203.200 "Job Order Contracting" and is permitted under the provisions of both California State Law concerning Joint Powers Agreements and federal law allowing cooperative purchasing agreements, as referenced with San Diego Housing Commission Administrative Regulation AR-203.200. To the extent that compensation under this Agreement is anticipated to exceed the sum of \$500,000.00 per annum, this Agreement shall not be effective unless and until approved by the Housing Authority of the City of San Diego.

ARTICLE 2. Time of Performance:

a. Initial Term

This Agreement shall commence effective September \_\_\_\_\_, 2015 and continue through July 20, 2016.

b. Option to Extend Term

The President and Chief Executive Officer, or his or her delegated designee, of the Commission may, at his/her election, extend the term of this Agreement for three (3) additional one-year terms by giving written notice of the election to extend the Agreement to the Contractor in advance of the expiration of the prior term of the Agreement. Those additional one (1) year option terms would be, if exercised, as follows:

Option Period 1: July 21, 2016 through July 20, 2017

Option Period 2: July 21, 2017 through July 20, 2018

Option Period 3: July 21, 2018 through July 20, 2019

Only one (1) option may be exercised at any one time during any term of the Agreement. The option to extend the Agreement may be granted by the Commission in its sole discretion and is dependent upon the availability of funds and budget approval by the Housing Authority of the City of San Diego ("Housing Authority") and the exercise of extension options by the National Joint Powers Alliance (NJPA) as detailed in Article 4 "Term of the Agreement" of NJPA contract No.CA-SD01CBC-081815-GMR."

Nothing contained in this Agreement shall require the Commission to exercise any or all of the options to extend the term of the Agreement. The options exist in favor of the Commission,

at its sole option. All other terms and conditions of the Agreement during the option period(s) shall be as set forth in the Agreement and shall be unamended by the exercise of any option granted herein.

ARTICLE 3. Compensation: The Commission and/or SDHC Limited Liability Companies shall compensate the Contractor, on a Job Order by Job Order basis, in accordance with the contract pricing set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-SD01CBC-081815-GMR attached hereto as Exhibit D. The total maximum compensation for all services performed and all Job Orders issued pursuant to this Agreement shall not exceed the accumulated sum of FIVE HUNDRED THOUSAND AND NO/100 Dollars (\$500,000.00) annually. Contractor acknowledges that the Commission and/or SDHC Limited Liability Companies are under no obligation to procure any specific amount of services under this Agreement or to compensate Contractor for services rendered or expenses accrued under this Agreement in excess of the maximum compensation specified above.

It shall be the responsibility of the Contractor to monitor its activities to ensure that all work under the Job Orders issued pursuant to this Agreement may be completed, and no charges accrued in excess of the maximum compensation during the term of this Agreement. In the event that the work required cannot be completed within the amount specified, or it appears that the maximum compensation provided may be exceeded before the term of the Agreement expires, Contractor shall promptly notify the Commission and/or SDHC Limited Liability Companies.

Further, the Commission and/or SDHC Limited Liability Companies may cancel the Agreement, without cause, by written notice to the Contractor at any time during the term of the Agreement, or any extension thereto, in the event that the Commission, SDHC Limited Liability Companies and/or the Housing Authority of the City of San Diego ("Housing Authority") fails to appropriate funds for the rendition of services set forth in this Agreement. This right to cancel is in addition to the rights to terminate the Agreement as set forth in Article 31 of this Agreement.

ARTICLE 4. Indemnity: Subject only to the limitations of the applicable statutes of limitations as contained within applicable federal and state law, Contractor agrees to and shall indemnify, hold harmless, and defend, the Commission, SDHC Limited Liability Companies, the Housing Authority of the City of San Diego, the City of San Diego, and all commissioners, officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the "Indemnitees" or individually as an "Indemnitee") from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor's employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnitee or resulting from defects in design furnished by Indemnitee and Contractor will, if requested by Indemnitee, defend any such suits against Indemnitee(s), at the sole cost and expense of Contractor, with counsel of Indemnitee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation

concerning this Agreement to receive attorneys' fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Agreement.

ARTICLE 5. Governing Law: This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 6. Entire Agreement: This Agreement contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect.

ARTICLE 7. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 8. Severability: If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law. The performance to be rendered under this Agreement is divided into 7 parts, generally divided based on the party to whom goods or services are to be provided: :  (1) Commission;  (2) Northern SDHC FNMA LLC;  (3) Northern SDHC FHA LLC;  (4) Southern SDHC FHA LLC;  (5) Central SDHC FNMA LLC;  (6) Central SDHC FHA LLC;  (7) Belden SDHC FNMA LLC. The breach of this Agreement by Contractor as to the Commission or any one of the SDHC Limited Liability Companies shall not affect the right of the remaining parties to receive goods and/or services pursuant to this Agreement. Furthermore, this Agreement may be severed by Commission and/or one or more of the SDHC Limited Liability Companies, with respect to goods or services provided to the severing party.

ARTICLE 9. Terminology: All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Agreement itself, and all references herein to paragraphs thereof are to this Agreement unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 10. Binding Agreement: Subject to any restrictions on the assignment of this Agreement or rights thereto, this Agreement shall inure to the benefit of and be binding upon Commission, SDHC Limited Liability Companies, and Contractor and their respective successors, assigns or transferees.

ARTICLE 11. Procedure for Resolving Disputes: In the event of a dispute concerning this Agreement, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 12. Time is of the Essence: Time is of the essence for all Job Order work issued under this Agreement, as per the Job Order schedule submitted by Contractor, on a Job Order by Job Order basis, and agreed upon by the Commission.

ARTICLE 13. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the Commission and/or SDHC Limited Liability Companies monies in accordance with the (if any) Liquidated Damages set forth in any issued Job Order as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the Commission and/or SDHC Limited Liability Companies.

ARTICLE 14. Agreement Documents and Order of Precedence: This Agreement between the Commission, SDHC Limited Liability Companies, and the Contractor shall consist of the following component parts. In the event of conflicting provisions of the Agreement exhibits, attachments and component parts, the following order of precedence shall apply:

- A. Any Job Order issued pursuant to this Agreement, including any Addenda, Scope of Work, Plans, Drawings, Technical Specifications, Conditions, Requirements, and Prevailing Wage Requirements attached thereto.
- B. This Agreement Instrument.
- C. Exhibit A “San Diego Housing Commission Special Provisions for National Joint Powers Alliance (NJPA) Job Order Contract (JOC) #CA-SD01CBC-081815-GMR.
- D. Exhibit B “Payment and Performance Bond Documents”.
- E. Exhibit C “Release of Lien Form”.
- F. Exhibit D “National Joint Powers Alliance (NJPA) contract number CA-SD01GBC-081815-GMR ”.
- G. Exhibit E “National Joint Powers Alliance (NJPA) Invitation for Bid (IFB) number CA-SD01GCB-072115”

This Agreement instrument, together with the other documents enumerated in Article 14, form the Agreement and are as fully a part of the Agreement as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Agreement which each modifies.

In the event of a conflict between the various documents referenced within Subparagraphs A through E, inclusive, the provisions of the document referenced within subparagraph A shall prevail over the conflicting provisions contained within documents referenced within subparagraphs B through E. In the event that a provision within a document referenced within subparagraph B conflicts with a provision or provisions within the documents referenced within subparagraphs C through E, then the provisions of the documents referenced within subparagraph B shall prevail. In the same fashion the provisions of the document referenced within subparagraph C shall prevail over conflicting provisions of documents contained within subparagraphs D through E. The same

conflict provisions shall be applicable to conflicts between provisions within the document referenced in subparagraph D, over the conflicting provisions of the document referenced within subparagraph E.

ARTICLE 15. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

B. Establish a drug-free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace.
- 2) The Contractor's policy of maintaining a drug-free workplace.
- 3) Any available drug counseling, rehabilitation and employee assistance programs.
- 4) The penalties that may be imposed upon employees for drug abuse violations.

C. Post the statement required by subdivision A in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 16. Equal Opportunity Programs: During the performance of this Agreement, the Contractor agrees as follows:

A. Contractor shall comply with all applicable Equal Opportunity Programs as described in the applicable State and Federal law. Contractor shall submit such forms and information as shall be requested by the Commission from time to time to verify the Contractor's compliance with applicable law.

B. Certificate of Compliance (attached hereto in Exhibit A) with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state law and regulations hereinafter enacted.

C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin.

D. If any under representation is found after submission of Contractor's workforce report, the Commission may request an equal employment opportunity plan (EEO). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEO plan has been approved by the Commission, the Contractor must adhere to said plan. In case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEO updates as required.

E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, Contractor may, at the election of the Commission, be barred from participating in a Commission project for not less than one (1) year.

ARTICLE 17. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Agreement, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress in connection with 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 modification of a Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal appropriated funds have been 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 this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

C. Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and,

D. Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 USC 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

ARTICLE 18. Necessary Approvals:

A. In the event that the initial amount of this Agreement exceeds Five Hundred Thousand Dollars (\$500,000.00), this Agreement must be approved by the San Diego Housing Commission Board of Commissioners and the San Diego Housing Authority in order to be binding upon the Commission. In no event shall the Commission be bound by this Agreement, unless and until such approvals are obtained.

ARTICLE 19. Substitution of Securities for Retained Funds: Pursuant to California Public Contract Code Section 22300, Contractor has the option to deposit securities with an escrow agent as a substitute for retention earnings required to be withheld by Commission pursuant to this Agreement. Alternatively, on written request of the Contractor, the Commission shall make payments of the retention earnings directly to an escrow agent. If Contractor exercises either option under this Article 19, Contractor and Commission shall enter into a written escrow agreement with the escrow agent governing the deposit and withdrawal of such securities and/or retention.

ARTICLE 20. Notices: Notices to the parties shall, unless otherwise requested in writing, be sent to the Commission and the Contractor at the addresses given above. Notices to the SDHC Limited Liability Companies may be made in writing to the Commission's attention.

ARTICLE 21. Facsimile Approved by General Counsel: Approval of the form of this Agreement and the attachments, if any, may be in the form of a facsimile approval by General Counsel for the Commission. The approval may be executed in counterpart and attached to the original Agreement.

ARTICLE 22. Status of Contractor: This Agreement calls for the performance of the services of the contractor as an independent contractor. Contractor will not be considered an employee of the Commission or any of the SDHC Limited Liability Companies for any purpose.

ARTICLE 23. Ownership of Materials and Documents: Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the Commission from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. However, the Contractor shall have the right to make duplicate copies of such materials and documents for its own files, or for other purposes as may be authorized in writing by the Commission.

ARTICLE 24. Non-Disclosure: The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the Commission. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the Commission or any of the SDHC Limited Liability Companies during the term of this Agreement or at any time thereafter except as authorized by the Commission.

ARTICLE 25. Conflict of Interest:

(a) For the duration of this Agreement, the Contractor will not act as a consultant or perform services of any kind for any person or entity which would conflict with the services to be provided herein, without the written consent of the Commission.

(b) A conflict occurs when circumstances, known to the Contractor, place the Commission or SDHC Limited Liability Companies and the Contractor's new client in adverse, hostile or incompatible positions wherein the interests of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego may be jeopardized. Contractor shall promptly notify the Commission in the event that such a conflict occurs.

(c) In the event of such a conflict, Contractor shall meet and confer with the Commission to agree upon modifications of its relationship with said new client or Commission in order to continue to perform services for said client and/or Commission and/or SDHC Limited Liability Companies without compromising the interests of either. Should no agreement regarding modification be reached, Commission or SDHC Limited Liability Companies may terminate this Agreement with Contractor.

(d) When consent has been given, Contractor shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Contractor for Commission and/or the SDHC Limited Liability Companies. Under no circumstances may Contractor convey, utilize, or permit to be utilized, confidential information gained through its association with Commission and the SDHC Limited Liability Companies for the benefit of any other client.

(e) Contractor agrees to alert every client for whom consent is required, to the existence of this conflict of interest provision and to include language in its agreement with said client which would enable Contractor to comply fully with its terms. This last paragraph shall

not apply to existing clients of the Contractor for which Contractor has previously received the Commission's consent.

(f) This Agreement may be unilaterally and immediately terminated by the Commission and/or the SDHC Limited Liability Companies if Contractor employs an individual who, within twelve months immediately preceding such employment, in their capacity as a Commission employee, participated in negotiations with or otherwise had an influence on the selection of the Contractor.

ARTICLE 26. Correction of Work: The performance of services by the Contractor shall not relieve the Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Commission and/or the interested SDHC Limited Liability Companies when such inaccuracies are due to the negligence of the Contractor, provided such work has not been accepted in writing by an authorized representative of the Commission or the interested SDHC Limited Liability Companies.

ARTICLE 27. Cost Records: In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Commission, the SDHC Limited Liability Companies, and/or to the appropriate federal agencies after reasonable notice, and at reasonable times.

ARTICLE 28. Subcontracting:

(a) No services covered by this Agreement shall be subcontracted without the prior written consent of the Commission and/or the interested SDHC Limited Liability Companies.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the Commission. Once this list has been approved, no changes to the list will be allowed except by written approval of the Commission and/or the interested SDHC Limited Liability Companies.

(c) The Contractor shall be as fully responsible to the Commission and/or the SDHC Limited Liability Companies for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him. Commission, in its discretion, may require Contractor to provide Commission with an executed release of all claims against the Commission, the Housing Authority, and the City, arising by virtue of this Agreement, which release shall be provided to Commission concurrently with a request for payment for services provided pursuant to this Agreement and shall include a statement that payments to all subcontractors and suppliers have been made.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, Commission requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the Commission and/or labor surplus areas are used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on

solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

#### ARTICLE 29. Assignability:

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission and the interested SDHC Limited Liability Companies. Commission may assign this Agreement or any portion of this Agreement to any entity that is wholly-owned by the Commission by giving written notice of such assignment to Contractor and provided that such assignment shall not change the terms of this Agreement.

(b) Claims for money due or to become due to the Contractor from the Commission and/or the SDHC Limited Liability Companies under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission and/or the interested SDHC Limited Liability Companies.

#### ARTICE 30. Documents and Written Reports:

The Contractor, when preparing any document or written report for or under the direction of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego, shall comply with the provisions of Government Code Section 7550; to wit,

“(a) Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers

and dollar amounts of such contracts and subcontracts relating to the preparation of such document or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

(b) When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.”

ARTICLE 31. Termination: This Agreement may be terminated by the Commission and/or any of the SDHC Limited Liability Companies on thirty (30) days’ written notice to the Contractor, the effective date of cancellation being the 30th day of said written notice with no further action required by either party.

ARTICLE 32. Attorney’s Fees and Costs: If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys’ fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

ARTICLE 33. Contract Work Hours and Safety Standards Act: In the event Contractor’s performance of this Agreement entails the use of laborers or mechanics, and the Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

ARTICLE 34. Section 3:

(a) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this Agreement agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject

to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The Contractor agrees to include the Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD-assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment subcontracts shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

ARTICLE 35. HUD-Program Specific Audit Requirement: 24 CFR 45-1 require that nonprofit institutions with combined receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totaling \$300,000 or more a year shall have an audit conducted in accordance with the requirement of OMB Circular A-133 or a program specific financial audit, depending on the amount of funds received and the number of programs. Nonprofit institutions having only outstanding HUD direct, guaranteed or insured loans that were made guaranteed or insured prior to the effective date of the part, are required to conduct audits in accordance with HUD program specific audit requirements.

ARTICLE 36. Prevailing Wage Requirements:

Each Job Order will designate whether federal prevailing wages or state prevailing wages are applicable to each Job Order. Each Job Order shall reference the applicable wage rates and all other applicable language concerning prevailing wages that will be applicable to any specific Job Order. Generally, the following provisions shall also apply, depending upon the source of funding, to wit: either federal or state/ local:

(a) If federal prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable federal prevailing wage laws.

(b) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable state prevailing wage laws.

(c) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with SB-854 with respect to any Job Order submitted on or after March 1, 2015, and/or any Agreement entered into after April 1, 2015:

(i) Labor Code Section 1725.5 requires that Contractor and its subcontractors register and qualify with the State of California Department of Industrial Relations (“DIR”) in order to bid on, be listed in a proposal for, or engage in the performance of any contract for a public work. In order to register with the DIR, Contractor and its subcontractors must pay an initial nonrefundable registration fee of \$300, pay an annual renewal fee each July 1 thereafter, and provide the specified information to establish eligibility. Contractor and its subcontractors must register with the DIR at <http://www.dir.ca.gov/dlse/dlsepublicworks.html>.

(ii) Contractor or its subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 (Labor Code Section 1771.1(a).) This Agreement is subject to cancellation absent proof of the Contractor and its subcontractor’s current registration to perform public work pursuant to Section 1725.5.

(iii) Additionally, Contractor and its subcontractors must furnish records as specified in labor Code Section 1776 to the California Labor Commissioner for the following:

(a) Projects for which the initial contract is awarded on or after April 1, 2015 (Lab. Code § 1771.4(c))

(b) All projects, whether new or ongoing, on or after January 1, 2016 (Lab. Code § 1771.4(c)(2)(d))

(c) Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records (Lab. Code § 1771.4(c)(2)(c))

(d) Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to June 20, 2014 (Lab. Code § 1771.4(c)(2)(a))

**ARTICLE 37. Insurance:** Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the Commission. Contractor agrees to the following:

(a) Contractor shall provide public liability and property damage insurance in the minimum amount of \$1,000,000 for injury to or death of one or more persons and/or property damage arising out of a single accident or occurrence, insuring against all liability of the SDHC Limited Liability Companies, the Commission, Contractor, its subcontractors and its authorized representatives, arising out of or in connection with the Contractor’s performance of work under this Agreement.

The Commission, the SDHC Limited Liability Companies, the Housing Authority of the City of San Diego and the City of San Diego, and each of them, shall each be named as additional insureds on policy endorsements for each Job Order.

(b) Contractor shall purchase and maintain in full force and effect worker's compensation insurance for contractors, subcontractors, employees, and agents in form and amount acceptable to the Commission during the full term of this Agreement.

(c) Contractor shall provide automobile liability insurance on owned and non-owned motor vehicles used in the performance of services as detailed in the Scope of Services, both on site or in connection therewith for a combined single limit for bodily injury and property damage of no less than \$500,000 per occurrence.

(d) All insurance required to be purchased and maintained by the Contractor shall name the Commission, the SDHC Limited Liability Companies, the Housing Authority and the City of San Diego as additional insured's and shall contain cross-liability endorsements.

(e) For any claims arising out of or in connection with Contractor's performance under this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the SDHC Limited Liability Companies, the Commission, the Housing Authority and/or the City of San Diego.

(f) The Contractor shall furnish to the Commission Certificates of Insurance evidencing the insurance carried in compliance with this Section. This Certificate shall contain a provision that at least thirty days prior written notice will be given to the Commission and the SDHC Limited Liability Companies in the event of cancellation, reduction, or nonrenewal of the insurance.

(g) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to waive all rights of subrogation against the SDHC Limited Liability Companies, the Commission, the Housing Authority, the City of San Diego, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

ARTICLE 38. Contract Governed by Laws of State of California: This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

ARTICLE 39. Dispute Resolution: All disputes that arise out of this Agreement shall be resolved in the Superior Court of San Diego, Downtown Branch.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

**Contractor:**

Good-Men Roofing & Construction, Inc.

By: \_\_\_\_\_  
Galindo Gaspar, Jr., President

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

**Commission:**

SAN DIEGO HOUSING COMMISSION

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

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

**Approved as to Form:**

Christensen & Spath LLP

By: \_\_\_\_\_  
Charles B. Christensen  
General Counsel  
San Diego Housing Commission

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

Belden SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FNMA LLC, a California  
limited liability company  
By: San Diego Housing Commission, a public  
agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Southern SDHC FHA LLC, a California  
limited liability company  
By: San Diego Housing Commission, a public  
agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

**EXHIBIT A**  
**SAN DIEGO HOUSING COMMISSION SPECIAL PROVISIONS**  
**FOR**  
**NATIONAL JOINT POWERS ALLIANCE (NJPA) JOB ORDER CONTRACT (JOC)**  
**NUMBER CA-SD01CBC-081815-GMR**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT B**  
**PAYMENT AND PERFORMANCE BOND DOCUMENT**

For every Job Order issued by the Commission and/or interested SDHC Limited Liability Companies to the Contractor pursuant to this Agreement, in an amount greater than \$100,000, the Contractor shall be required to provide the Commission a Payment Bond and a Performance Bond. Each bond shall be in the amount of 100% of the total price of the Job Order.

**EXHIBIT C  
RELEASE OF LIEN**

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned certifies that all work required under this Agreement will be performed in accordance with the terms thereof, and that, provided the undersigned is paid in accordance with the terms of this Agreement, there will be no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Agreement.
  
2. That, in consideration of and conditioned upon the payment in full of the amount of this Agreement, as such amount may be adjusted as provided in the Agreement, the undersigned does hereby release the San Diego Housing Commission and the SDHC Limited Liability Companies from any and all claims arising under or by virtue of this Agreement, provided, however, the wrongful withholding of funds by the San Diego Housing Commission or the SDHC Limited Liability Companies shall not effect a release as to the funds wrongfully held.

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

BY \_\_\_\_\_  
(Contractor)

(Seal)

**EXHIBIT D**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) CONTRACT  
NUMBER CA-SD01CBC-081815-GMR**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT E**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) INVITATION FOR BID (IFB)  
NUMBER CA-SD01GCB-072115**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**SAN DIEGO HOUSING COMMISSION**

**AGREEMENT FOR**

**JOB ORDER CONTRACTING (JOC)  
INDEFINITE QUANTITY CONSTRUCTION SERVICES**

**WITH**

**THE AUGUSTINE COMPANY**

**AGREEMENT NO. JOC-16-02**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of September 2015, between The Augustine Company (“Contractor”), the San Diego Housing Commission (“Commission”) on its own behalf and on behalf of each limited liability company marked below, as the sole manager of such limited liability company, and as the managing agent of such limited liability company, and as the sole member of such limited liability company, each of which is a separate public agency within the state of California, for each of the residential properties owned by the entity, and each of the following:

- Belden SDHC FNMA LLC, a California limited liability company
- Central SDHC FHA LLC, a California limited liability company
- Central SDHC FNMA LLC, a California limited liability company
- Northern SDHC FHA LLC, a California limited liability company
- Northern SDHC FNMA LLC, a California limited liability company
- Southern SDHC FHA LLC, a California limited liability company

The above-selected entities shall be collectively referred to herein as the “SDHC Limited Liability Companies”. Each of the above SDHC Limited Liability Companies is registered as public agencies with the State of California.

THIS AGREEMENT (the “Agreement”), entered into the \_\_\_\_ day of September 2015,

between the Commission:

**SAN DIEGO HOUSING COMMISSION**  
1122 Broadway, Suite 300  
San Diego, California 92101  
(619) 231-9400

and the Contractor:

**THE AUGUSTINE COMPANY**  
2830 Via Orange Way, Suite H  
Spring Valley, CA 91978  
619-670-4466

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish, under this Job Order Contract (JOC) all construction labor, material, equipment and services, and perform and complete all construction work required on a Job Order by Job Order basis in accordance with the construction services tasks set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-SD02GCA-081815-AUG attached hereto as Exhibit D.

This Agreement shall not be effective unless and until the Agreement has been executed by the San Diego Housing Commission, SDHC Limited Liability Companies and the Contractor and the Agreement has been approved by the Board of Commissioners of the San Diego Housing Commission. This Agreement is entered into in accordance with the terms of San Diego Housing Commission Administrative Regulation number AR203.200 “Job Order Contracting” and is permitted under the provisions of both California State Law concerning Joint Powers Agreements and federal law allowing cooperative purchasing agreements, as referenced with San Diego Housing Commission Administrative Regulation AR-203.200. To the extent that compensation under this Agreement is anticipated to exceed the sum of \$500,000.00 per annum, this Agreement shall not be effective unless and until approved by the Housing Authority of the City of San Diego.

ARTICLE 2. Time of Performance:

a. Initial Term

This Agreement shall commence effective September \_\_\_\_\_, 2015 and continue through July 20, 2016.

b. Option to Extend Term

The President and Chief Executive Officer, or his or her delegated designee, of the Commission may, at his/her election, extend the term of this Agreement for three (3) additional one-year terms by giving written notice of the election to extend the Agreement to the Contractor in advance of the expiration of the prior term of the Agreement. Those additional one (1) year option terms would be, if exercised, as follows:

Option Period 1: July 21, 2016 through July 20, 2017

Option Period 2: July 21, 2017 through July 20, 2018

Option Period 3: July 21, 2018 through July 20, 2019

Only one (1) option may be exercised at any one time during any term of the Agreement. The option to extend the Agreement may be granted by the Commission in its sole discretion and is dependent upon the availability of funds and budget approval by the Housing Authority of the City of San Diego (“Housing Authority”) and the exercise of extension options by the National Joint Powers Alliance (NJPA) as detailed in Article 4 “Term of the Agreement” of NJPA contract No.CA-SD02GCA-081815-AUG .

Nothing contained in this Agreement shall require the Commission to exercise any or all of the options to extend the term of the Agreement. The options exist in favor of the Commission, at its sole option. All other terms and conditions of the Agreement during the option period(s) shall be as set forth in the Agreement and shall be unamended by the exercise of any option granted herein.

ARTICLE 3. Compensation: The Commission and/or SDHC Limited Liability Companies shall compensate the Contractor, on a Job Order by Job Order basis, in accordance with the contract pricing set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-SD02GCA-081815-AUG attached hereto as Exhibit D. The total maximum compensation for all services performed and all Job Orders issued pursuant to this Agreement shall not exceed the accumulated sum of FIVE HUNDRED THOUSAND AND NO/100 Dollars (\$500,000.00) annually. Contractor acknowledges that the Commission and/or SDHC Limited Liability Companies are under no obligation to procure any specific amount of services under this Agreement or to compensate Contractor for services rendered or expenses accrued under this Agreement in excess of the maximum compensation specified above.

It shall be the responsibility of the Contractor to monitor its activities to ensure that all work under the Job Orders issued pursuant to this Agreement may be completed, and no charges accrued in excess of the maximum compensation during the term of this Agreement. In the event that the work required cannot be completed within the amount specified, or it appears that the maximum compensation provided may be exceeded before the term of the Agreement expires, Contractor shall promptly notify the Commission and/or SDHC Limited Liability Companies.

Further, the Commission and/or SDHC Limited Liability Companies may cancel the Agreement, without cause, by written notice to the Contractor at any time during the term of the Agreement, or any extension thereto, in the event that the Commission, SDHC Limited Liability Companies and/or the Housing Authority of the City of San Diego ("Housing Authority") fails to appropriate funds for the rendition of services set forth in this Agreement. This right to cancel is in addition to the rights to terminate the Agreement as set forth in Article 31 of this Agreement.

ARTICLE 4. Indemnity: Subject only to the limitations of the applicable statutes of limitations as contained within applicable federal and state law, Contractor agrees to and shall indemnify, hold harmless, and defend, the Commission, SDHC Limited Liability Companies, the Housing Authority of the City of San Diego, the City of San Diego, and all commissioners, officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the "Indemnitees" or individually as an "Indemnitee") from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor's employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnitee or resulting from defects in design furnished by Indemnitee and Contractor will, if requested by Indemnitee, defend any such suits against Indemnitee(s), at the sole cost and expense of Contractor, with counsel of Indemnitee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Agreement to receive attorneys' fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Agreement.

ARTICLE 5. Governing Law: This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 6. Entire Agreement: This Agreement contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect.

ARTICLE 7. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 8. Severability: If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law. The performance to be rendered under this Agreement is divided into 7 parts, generally divided based on the party to whom goods or services are to be provided:  (1) Commission;  (2) Northern SDHC FNMA LLC;  (3) Northern SDHC FHA LLC;  (4) Southern SDHC FHA LLC;  (5) Central SDHC FNMA LLC;  (6) Central SDHC FHA LLC;  (7) Belden SDHC FNMA LLC. The breach of this Agreement by Contractor as to the Commission or any one of the SDHC Limited Liability Companies shall not affect the right of the remaining parties to receive goods and/or services pursuant to this Agreement. Furthermore, this Agreement may be severed by Commission and/or one or more of the SDHC Limited Liability Companies, with respect to goods or services provided to the severing party.

ARTICLE 9. Terminology: All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Agreement itself, and all references herein to paragraphs thereof are to this Agreement unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 10. Binding Agreement: Subject to any restrictions on the assignment of this Agreement or rights thereto, this Agreement shall inure to the benefit of and be binding upon Commission, SDHC Limited Liability Companies, and Contractor and their respective successors, assigns or transferees.

ARTICLE 11. Procedure for Resolving Disputes: In the event of a dispute concerning this Agreement, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 12. Time is of the Essence: Time is of the essence for all Job Order work issued under this Agreement, as per the Job Order schedule submitted by Contractor, on a Job Order by Job Order basis, and agreed upon by the Commission.

ARTICLE 13. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the Commission and/or SDHC Limited Liability Companies monies in accordance with the (if any) Liquidated Damages set forth in any issued Job Order as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the Commission and/or SDHC Limited Liability Companies.

ARTICLE 14. Agreement Documents and Order of Precedence: This Agreement between the Commission, SDHC Limited Liability Companies, and the Contractor shall consist of the following component parts. In the event of conflicting provisions of the Agreement exhibits, attachments and component parts, the following order of precedence shall apply:

- A. Any Job Order issued pursuant to this Agreement, including any Addenda, Scope of Work, Plans, Drawings, Technical Specifications, Conditions, Requirements, and Prevailing Wage Requirements attached thereto.
- B. This Agreement Instrument.
- C. Exhibit A “San Diego Housing Commission Special Provisions for National Joint Powers Alliance (NJPA) Job Order Contract (JOC) #CA-SD02GCA-081815-AUG.
- D. Exhibit B “Payment and Performance Bond Documents”.
- E. Exhibit C “Release of Lien Form”.
- F. Exhibit D “National Joint Powers Alliance (NJPA) contract number CA-SD02GCA-081815-AUG”.
- G. Exhibit E “National Joint Powers Alliance (NJPA) Invitation for Bid (IFB) number CA-SD02GCA-072115”

This Agreement instrument, together with the other documents enumerated in Article 14, form the Agreement and are as fully a part of the Agreement as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Agreement which each modifies.

In the event of a conflict between the various documents referenced within Subparagraphs A through E, inclusive, the provisions of the document referenced within subparagraph A shall prevail over the conflicting provisions contained within documents referenced within subparagraphs B through E. In the event that a provision within a document referenced within subparagraph B conflicts with a provision or provisions within the documents referenced within subparagraphs C through E, then the provisions of the documents referenced within subparagraph B shall prevail. In the same fashion the provisions of the document referenced within subparagraph C shall prevail over conflicting provisions of documents contained within subparagraphs D through E. The same conflict provisions shall be applicable to conflicts between provisions within the document referenced in subparagraph D, over the conflicting provisions of the document referenced within subparagraph E.

ARTICLE 15. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

B. Establish a drug-free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace.
- 2) The Contractor's policy of maintaining a drug-free workplace.
- 3) Any available drug counseling, rehabilitation and employee assistance programs.
- 4) The penalties that may be imposed upon employees for drug abuse violations.

C. Post the statement required by subdivision A in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 16. Equal Opportunity Programs: During the performance of this Agreement, the Contractor agrees as follows:

A. Contractor shall comply with all applicable Equal Opportunity Programs as described in the applicable State and Federal law. Contractor shall submit such forms and information as shall be requested by the Commission from time to time to verify the Contractor's compliance with applicable law.

B. Certificate of Compliance (attached hereto in Exhibit A) with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state law and regulations hereinafter enacted.

C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin.

D. If any under representation is found after submission of Contractor's workforce report, the Commission may request an equal employment opportunity plan (EEO). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEO has been approved by the Commission, the Contractor must adhere to said plan. In case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEO updates as required.

E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, Contractor may, at the election of the Commission, be barred from participating in a Commission project for not less than one (1) year.

ARTICLE 17. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Agreement, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress in connection with 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 modification of a Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal appropriated funds have been 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 this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

C. Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and,

D. Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 USC 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

ARTICLE 18. Necessary Approvals:

A. In the event that the initial amount of this Agreement exceeds Five Hundred Thousand Dollars (\$500,000.00), this Agreement must be approved by the San Diego Housing Commission Board of Commissioners and the San Diego Housing Authority in order to be binding upon the Commission. In no event shall the Commission be bound by this Agreement, unless and until such approvals are obtained.

ARTICLE 19. Substitution of Securities for Retained Funds: Pursuant to California Public Contract Code Section 22300, Contractor has the option to deposit securities with an escrow agent as a substitute for retention earnings required to be withheld by Commission pursuant to this Agreement. Alternatively, on written request of the Contractor, the Commission shall make payments of the retention earnings directly to an escrow agent. If Contractor exercises either option under this Article 19, Contractor and Commission shall enter into a written escrow agreement with the escrow agent governing the deposit and withdrawal of such securities and/or retention.

ARTICLE 20. Notices: Notices to the parties shall, unless otherwise requested in writing, be sent to the Commission and the Contractor at the addresses given above. Notices to the SDHC Limited Liability Companies may be made in writing to the Commission's attention.

ARTICLE 21. Facsimile Approved by General Counsel: Approval of the form of this Agreement and the attachments, if any, may be in the form of a facsimile approval by General Counsel for the Commission. The approval may be executed in counterpart and attached to the original Agreement.

ARTICLE 22. Status of Contractor: This Agreement calls for the performance of the services of the contractor as an independent contractor. Contractor will not be considered an employee of the Commission or any of the SDHC Limited Liability Companies for any purpose.

ARTICLE 23. Ownership of Materials and Documents: Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the Commission from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. However, the Contractor shall have the right to make duplicate copies of such materials and documents for its own files, or for other purposes as may be authorized in writing by the Commission.

ARTICLE 24. Non-Disclosure: The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the Commission. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the Commission or any of the SDHC Limited Liability Companies during the term of this Agreement or at any time thereafter except as authorized by the Commission.

ARTICLE 25. Conflict of Interest:

(a) For the duration of this Agreement, the Contractor will not act as a consultant or perform services of any kind for any person or entity which would conflict with the services to be provided herein, without the written consent of the Commission.

(b) A conflict occurs when circumstances, known to the Contractor, place the Commission or SDHC Limited Liability Companies and the Contractor's new client in adverse, hostile or incompatible positions wherein the interests of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego may be jeopardized. Contractor shall promptly notify the Commission in the event that such a conflict occurs.

(c) In the event of such a conflict, Contractor shall meet and confer with the Commission to agree upon modifications of its relationship with said new client or Commission in order to continue to perform services for said client and/or Commission and/or SDHC Limited Liability Companies without compromising the interests of either. Should no agreement regarding modification be reached, Commission or SDHC Limited Liability Companies may terminate this Agreement with Contractor.

(d) When consent has been given, Contractor shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Contractor for Commission and/or the SDHC Limited Liability Companies. Under no circumstances may Contractor convey, utilize, or permit to be utilized, confidential information gained through its association with Commission and the SDHC Limited Liability Companies for the benefit of any other client.

(e) Contractor agrees to alert every client for whom consent is required, to the existence of this conflict of interest provision and to include language in its agreement with said client which would enable Contractor to comply fully with its terms. This last paragraph shall

not apply to existing clients of the Contractor for which Contractor has previously received the Commission's consent.

(f) This Agreement may be unilaterally and immediately terminated by the Commission and/or the SDHC Limited Liability Companies if Contractor employs an individual who, within twelve months immediately preceding such employment, in their capacity as a Commission employee, participated in negotiations with or otherwise had an influence on the selection of the Contractor.

ARTICLE 26. Correction of Work: The performance of services by the Contractor shall not relieve the Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Commission and/or the interested SDHC Limited Liability Companies when such inaccuracies are due to the negligence of the Contractor, provided such work has not been accepted in writing by an authorized representative of the Commission or the interested SDHC Limited Liability Companies.

ARTICLE 27. Cost Records: In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Commission, the SDHC Limited Liability Companies, and/or to the appropriate federal agencies after reasonable notice, and at reasonable times.

ARTICLE 28. Subcontracting:

(a) No services covered by this Agreement shall be subcontracted without the prior written consent of the Commission and/or the interested SDHC Limited Liability Companies.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the Commission. Once this list has been approved, no changes to the list will be allowed except by written approval of the Commission and/or the interested SDHC Limited Liability Companies.

(c) The Contractor shall be as fully responsible to the Commission and/or the SDHC Limited Liability Companies for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him. Commission, in its discretion, may require Contractor to provide Commission with an executed release of all claims against the Commission, the Housing Authority, and the City, arising by virtue of this Agreement, which release shall be provided to Commission concurrently with a request for payment for services provided pursuant to this Agreement and shall include a statement that payments to all subcontractors and suppliers have been made.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, Commission requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the Commission and/or labor surplus areas are used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on

solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

#### ARTICLE 29. Assignability:

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission and the interested SDHC Limited Liability Companies. Commission may assign this Agreement or any portion of this Agreement to any entity that is wholly-owned by the Commission by giving written notice of such assignment to Contractor and provided that such assignment shall not change the terms of this Agreement.

(b) Claims for money due or to become due to the Contractor from the Commission and/or the SDHC Limited Liability Companies under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission and/or the interested SDHC Limited Liability Companies.

#### ARTICE 30. Documents and Written Reports:

The Contractor, when preparing any document or written report for or under the direction of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego, shall comply with the provisions of Government Code Section 7550; to wit,

“(a) Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of such contracts and subcontracts relating to the preparation of such document or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

(b) When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.”

ARTICLE 31. Termination: This Agreement may be terminated by the Commission and/or any of the SDHC Limited Liability Companies on thirty (30) days’ written notice to the Contractor, the effective date of cancellation being the 30th day of said written notice with no further action required by either party.

ARTICLE 32. Attorney’s Fees and Costs: If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys’ fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

ARTICLE 33. Contract Work Hours and Safety Standards Act: In the event Contractor’s performance of this Agreement entails the use of laborers or mechanics, and the Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

ARTICLE 34. Section 3:

(a) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this Agreement agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The

notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The Contractor agrees to include the Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD-assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment subcontracts shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

ARTICLE 35. HUD-Program Specific Audit Requirement: 24 CFR 45-1 require that nonprofit institutions with combined receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totaling \$300,000 or more a year shall have an audit conducted in accordance with the requirement of OMB Circular A-133 or a program specific financial audit, depending on the amount of funds received and the number of programs. Nonprofit institutions having only outstanding HUD direct, guaranteed or insured loans that were made guaranteed or insured prior to the effective date of the part, are required to conduct audits in accordance with HUD program specific audit requirements.

ARTICLE 36. Prevailing Wage Requirements:

Each Job Order will designate whether federal prevailing wages or state prevailing wages are applicable to each Job Order. Each Job Order shall reference the applicable wage rates and all other applicable language concerning prevailing wages that will be applicable to any specific Job Order. Generally, the following provisions shall also apply, depending upon the source of funding, to wit: either federal or state/ local:

(a) If federal prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable federal prevailing wage laws.

(b) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable state prevailing wage laws.

(c) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with SB-854 with respect to any Job Order submitted on or after March 1, 2015, and/or any Agreement entered into after April 1, 2015:

(i) Labor Code Section 1725.5 requires that Contractor and its subcontractors register and qualify with the State of California Department of Industrial Relations (“DIR”) in order to bid on, be listed in a proposal for, or engage in the performance of any contract for a public work. In order to register with the DIR, Contractor and its subcontractors must pay an initial nonrefundable registration fee of \$300, pay an annual renewal fee each July 1 thereafter, and provide the specified information to establish eligibility. Contractor and its subcontractors must register with the DIR at <http://www.dir.ca.gov/dlse/dlsepublicworks.html>.

(ii) Contractor or its subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 (Labor Code Section 1771.1(a).) This Agreement is subject to cancellation absent proof of the Contractor and its subcontractor’s current registration to perform public work pursuant to Section 1725.5.

(iii) Additionally, Contractor and its subcontractors must furnish records as specified in labor Code Section 1776 to the California Labor Commissioner for the following:

(a) Projects for which the initial contract is awarded on or after April 1, 2015 (Lab. Code § 1771.4(c))

(b) All projects, whether new or ongoing, on or after January 1, 2016 (Lab. Code § 1771.4(c)(2)(d))

(c) Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records (Lab. Code § 1771.4(c)(2)(c))

(d) Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to June 20, 2014 (Lab. Code § 1771.4(c)(2)(a))

**ARTICLE 37. Insurance:** Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the Commission. Contractor agrees to the following:

(a) Contractor shall provide public liability and property damage insurance in the minimum amount of \$1,000,000 for injury to or death of one or more persons and/or property damage arising out of a single accident or occurrence, insuring against all liability of the SDHC Limited Liability Companies, the Commission, Contractor, its subcontractors and its authorized representatives,

arising out of or in connection with the Contractor's performance of work under this Agreement. The Commission, the SDHC Limited Liability Companies, the Housing Authority of the City of San Diego and the City of San Diego, and each of them, shall each be named as additional insureds on policy endorsements for each Job Order.

(b) Contractor shall purchase and maintain in full force and effect worker's compensation insurance for contractors, subcontractors, employees, and agents in form and amount acceptable to the Commission during the full term of this Agreement.

(c) Contractor shall provide automobile liability insurance on owned and non-owned motor vehicles used in the performance of services as detailed in the Scope of Services, both on site or in connection therewith for a combined single limit for bodily injury and property damage of no less than \$500,000 per occurrence.

(d) All insurance required to be purchased and maintained by the Contractor shall name the Commission, the SDHC Limited Liability Companies, the Housing Authority and the City of San Diego as additional insured's and shall contain cross-liability endorsements.

(e) For any claims arising out of or in connection with Contractor's performance under this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the SDHC Limited Liability Companies, the Commission, the Housing Authority and/or the City of San Diego.

(f) The Contractor shall furnish to the Commission Certificates of Insurance evidencing the insurance carried in compliance with this Section. This Certificate shall contain a provision that at least thirty days prior written notice will be given to the Commission and the SDHC Limited Liability Companies in the event of cancellation, reduction, or nonrenewal of the insurance.

(g) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to waive all rights of subrogation against the SDHC Limited Liability Companies, the Commission, the Housing Authority, the City of San Diego, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

ARTICLE 38. Contract Governed by Laws of State of California: This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

ARTICLE 39. Dispute Resolution: All disputes that arise out of this Agreement shall be resolved in the Superior Court of San Diego, Downtown Branch.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

**Contractor:**

The Augustine Company

By: \_\_\_\_\_  
Carol Rauscher, President

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

**Commission:**

SAN DIEGO HOUSING COMMISSION

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

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

**Approved as to Form:**

Christensen & Spath LLP

By: \_\_\_\_\_  
Charles B. Christensen  
General Counsel  
San Diego Housing Commission

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

Belden SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FNMA LLC, a California  
limited liability company  
By: San Diego Housing Commission, a public  
agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Southern SDHC FHA LLC, a California  
limited liability company  
By: San Diego Housing Commission, a public  
agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

**EXHIBIT A**  
**SAN DIEGO HOUSING COMMISSION SPECIAL PROVISIONS**  
**FOR**  
**NATIONAL JOINT POWERS ALLIANCE (NJPA) JOB ORDER CONTRACT (JOC)**  
**NUMBER CA-SD02GCA-081815-AUG**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT B**  
**PAYMENT AND PERFORMANCE BOND DOCUMENT**

For every Job Order issued by the Commission and/or interested SDHC Limited Liability Companies to the Contractor pursuant to this Agreement, in an amount greater than \$100,000, the Contractor shall be required to provide the Commission a Payment Bond and a Performance Bond. Each bond shall be in the amount of 100% of the total price of the Job Order.

**EXHIBIT C  
RELEASE OF LIEN**

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned certifies that all work required under this Agreement will be performed in accordance with the terms thereof, and that, provided the undersigned is paid in accordance with the terms of this Agreement, there will be no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Agreement.
  
2. That, in consideration of and conditioned upon the payment in full of the amount of this Agreement, as such amount may be adjusted as provided in the Agreement, the undersigned does hereby release the San Diego Housing Commission and the SDHC Limited Liability Companies from any and all claims arising under or by virtue of this Agreement, provided, however, the wrongful withholding of funds by the San Diego Housing Commission or the SDHC Limited Liability Companies shall not effect a release as to the funds wrongfully held.

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

BY \_\_\_\_\_  
(Contractor)

(Seal)

**EXHIBIT D**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) CONTRACT NUMBER  
CA-SD02GCA-081815-AUG**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT E**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) INVITATION FOR BID (IFB)  
NUMBER CA- SD02GCA-072115**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**SAN DIEGO HOUSING COMMISSION**  
**AGREEMENT FOR**  
**JOB ORDER CONTRACTING (JOC)**  
**INDEFINITE QUANTITY CONSTRUCTION SERVICES**  
**WITH**  
**VINCOR CONSTRUCTION, INC.**  
**AGREEMENT NO. JOC-16-01**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of September 2015, between Vincor Construction, Inc. (“Contractor”), the San Diego Housing Commission (“Commission”) on its own behalf and on behalf of each limited liability company marked below, as the sole manager of such limited liability company, and as the managing agent of such limited liability company, and as the sole member of such limited liability company, each of which is a separate public agency within the state of California, for each of the residential properties owned by the entity, and each of the following:

- Belden SDHC FNMA LLC, a California limited liability company
- Central SDHC FHA LLC, a California limited liability company
- Central SDHC FNMA LLC, a California limited liability company
- Northern SDHC FHA LLC, a California limited liability company
- Northern SDHC FNMA LLC, a California limited liability company
- Southern SDHC FHA LLC, a California limited liability company

The above-selected entities shall be collectively referred to herein as the “SDHC Limited Liability Companies”. Each of the above SDHC Limited Liability Companies is registered as public agencies with the State of California.

THIS AGREEMENT (the “Agreement”), entered into the \_\_\_\_ day of September 2015,

between the Commission:

**SAN DIEGO HOUSING COMMISSION**  
1122 Broadway, Suite 300  
San Diego, California 92101  
(619) 231-9400

and the Contractor:

**VINCOR CONSTRUCTION, INC.**  
1609 E. McFadden Avenue, Suite A  
Santa Ana, CA 92705  
714-558-8199

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish, under this Job Order Contract (JOC) all construction labor, material, equipment and services, and perform and complete all construction work required on a Job Order basis in accordance with the construction services tasks set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-SD02GCB-081815-VCI attached hereto as Exhibit D.

This Agreement shall not be effective unless and until the Agreement has been executed by the San Diego Housing Commission, SDHC Limited Liability Companies and the Contractor and the Agreement has been approved by the Board of Commissioners of the San Diego Housing Commission. This Agreement is entered into in accordance with the terms of San Diego Housing Commission Administrative Regulation number AR203.200 “Job Order Contracting” and is permitted under the provisions of both California State Law concerning Joint Powers Agreements and federal law allowing cooperative purchasing agreements, as referenced with San Diego Housing Commission Administrative Regulation AR-203.200. To the extent that compensation under this Agreement is anticipated to exceed the sum of \$500,000.00 per annum, this Agreement shall not be effective unless and until approved by the Housing Authority of the City of San Diego.

ARTICLE 2. Time of Performance:

a. Initial Term

This Agreement shall commence effective September \_\_\_\_\_, 2015 and continue through July 20, 2016.

b. Option to Extend Term

The President and Chief Executive Officer, or his or her delegated designee, of the Commission may, at his/her election, extend the term of this Agreement for three (3) additional one-year terms by giving written notice of the election to extend the Agreement to the Contractor in advance of the expiration of the prior term of the Agreement. Those additional one (1) year option terms would be, if exercised, as follows:

Option Period 1: July 21, 2016 through July 20, 2017

Option Period 2: July 21, 2017 through July 20, 2018

Option Period 3: July 21, 2018 through July 20, 2019

Only one (1) option may be exercised at any one time during any term of the Agreement. The option to extend the Agreement may be granted by the Commission in its sole discretion and is dependent upon the availability of funds and budget approval by the Housing Authority of the City of San Diego (“Housing Authority”) and the exercise of extension options by the National Joint Powers Alliance (NJPA) as detailed in Article 4 “Term of the Agreement” of NJPA contract No.CA-SD02GCB-081815-VCI.”

Nothing contained in this Agreement shall require the Commission to exercise any or all of the options to extend the term of the Agreement. The options exist in favor of the Commission, at its sole option. All other terms and conditions of the Agreement during the option period(s) shall be as set forth in the Agreement and shall be unamended by the exercise of any option granted herein.

ARTICLE 3. Compensation: The Commission and/or SDHC Limited Liability Companies shall compensate the Contractor, on a Job Order by Job Order basis, in accordance with the contract pricing set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-SD02GCB-081815-VCI attached hereto as Exhibit D. The total maximum compensation for all services performed and all Job Orders issued pursuant to this Agreement shall not exceed the accumulated sum of FIVE HUNDRED THOUSAND AND NO/100 Dollars (\$500,000.00) annually. Contractor acknowledges that the Commission and/or SDHC Limited Liability Companies are under no obligation to procure any specific amount of services under this Agreement or to compensate Contractor for services rendered or expenses accrued under this Agreement in excess of the maximum compensation specified above.

It shall be the responsibility of the Contractor to monitor its activities to ensure that all work under the Job Orders issued pursuant to this Agreement may be completed, and no charges accrued in excess of the maximum compensation during the term of this Agreement. In the event that the work required cannot be completed within the amount specified, or it appears that the maximum compensation provided may be exceeded before the term of the Agreement expires, Contractor shall promptly notify the Commission and/or SDHC Limited Liability Companies.

Further, the Commission and/or SDHC Limited Liability Companies may cancel the Agreement, without cause, by written notice to the Contractor at any time during the term of the Agreement, or any extension thereto, in the event that the Commission, SDHC Limited Liability Companies and/or the Housing Authority of the City of San Diego (“Housing Authority”) fails to appropriate funds for the rendition of services set forth in this Agreement. This right to cancel is in addition to the rights to terminate the Agreement as set forth in Article 31 of this Agreement.

ARTICLE 4. Indemnity: Subject only to the limitations of the applicable statutes of limitations as contained within applicable federal and state law, Contractor agrees to and shall indemnify, hold harmless, and defend, the Commission, SDHC Limited Liability Companies, the Housing Authority of the City of San Diego, the City of San Diego, and all commissioners, officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the “Indemnitees” or individually as an “Indemnitee”) from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor’s employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnitee or resulting from defects in design furnished by Indemnitee and Contractor will, if requested by Indemnitee, defend any such suits against Indemnitee(s), at the sole cost and expense of Contractor, with counsel of Indemnitee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Agreement to receive attorneys’ fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Agreement.

ARTICLE 5. Governing Law: This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 6. Entire Agreement: This Agreement contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect.

ARTICLE 7. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 8. Severability: If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law. The performance to be rendered under this Agreement is divided into 7 parts, generally divided based on the party to whom goods or services are to be provided:  (1) Commission;  (2) Northern SDHC FNMA LLC;  (3) Northern SDHC FHA LLC;  (4) Southern SDHC FHA LLC;  (5) Central SDHC FNMA LLC;  (6) Central SDHC FHA LLC;  (7) Belden SDHC FNMA LLC. The breach of this Agreement by Contractor as to the Commission or any one of the SDHC Limited Liability Companies shall not affect the right of the remaining parties to receive goods and/or services pursuant to this Agreement. Furthermore, this Agreement may be severed by Commission and/or one or more of the SDHC Limited Liability Companies, with respect to goods or services provided to the severing party.

ARTICLE 9. Terminology: All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Agreement itself, and all references herein to paragraphs thereof are to this Agreement unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 10. Binding Agreement: Subject to any restrictions on the assignment of this Agreement or rights thereto, this Agreement shall inure to the benefit of and be binding upon Commission, SDHC Limited Liability Companies, and Contractor and their respective successors, assigns or transferees.

ARTICLE 11. Procedure for Resolving Disputes: In the event of a dispute concerning this Agreement, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 12. Time is of the Essence: Time is of the essence for all Job Order work issued under this Agreement, as per the Job Order schedule submitted by Contractor, on a Job Order by Job Order basis, and agreed upon by the Commission.

ARTICLE 13. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the Commission and/or SDHC Limited Liability Companies monies in accordance with the (if any) Liquidated Damages set forth in any issued Job Order as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the Commission and/or SDHC Limited Liability Companies.

ARTICLE 14. Agreement Documents and Order of Precedence: This Agreement between the Commission, SDHC Limited Liability Companies, and the Contractor shall consist of the following component parts. In the event of conflicting provisions of the Agreement exhibits, attachments and component parts, the following order of precedence shall apply:

- A. Any Job Order issued pursuant to this Agreement, including any Addenda, Scope of Work, Plans, Drawings, Technical Specifications, Conditions, Requirements, and Prevailing Wage Requirements attached thereto.
- B. This Agreement Instrument.
- C. Exhibit A “San Diego Housing Commission Special Provisions for National Joint Powers Alliance (NJPA) Job Order Contract (JOC) #CA-SD02GCB-081815-VCI.
- D. Exhibit B “Payment and Performance Bond Documents”.
- E. Exhibit C “Release of Lien Form”.
- F. Exhibit D “National Joint Powers Alliance (NJPA) contract number CA-SD02GCB-081815-VCF”.
- G. Exhibit E “National Joint Powers Alliance (NJPA) Invitation for Bid (IFB) number CA-SD02GCB-072115”

This Agreement instrument, together with the other documents enumerated in Article 14, form the Agreement and are as fully a part of the Agreement as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Agreement which each modifies.

In the event of a conflict between the various documents referenced within Subparagraphs A through E, inclusive, the provisions of the document referenced within subparagraph A shall prevail over the conflicting provisions contained within documents referenced within subparagraphs B through E. In the event that a provision within a document referenced within subparagraph B conflicts with a provision or provisions within the documents referenced within subparagraphs C through E, then the provisions of the documents referenced within subparagraph B shall prevail. In the same fashion the provisions of the document referenced within subparagraph C shall prevail over conflicting provisions of documents contained within subparagraphs D through E. The same conflict provisions shall be applicable to conflicts between provisions within the document referenced in subparagraph D, over the conflicting provisions of the document referenced within subparagraph E.

ARTICLE 15. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

B. Establish a drug-free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace.
- 2) The Contractor's policy of maintaining a drug-free workplace.
- 3) Any available drug counseling, rehabilitation and employee assistance programs.
- 4) The penalties that may be imposed upon employees for drug abuse violations.

C. Post the statement required by subdivision A in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 16. Equal Opportunity Programs: During the performance of this Agreement, the Contractor agrees as follows:

A. Contractor shall comply with all applicable Equal Opportunity Programs as described in the applicable State and Federal law. Contractor shall submit such forms and information as shall be requested by the Commission from time to time to verify the Contractor's compliance with applicable law.

B. Certificate of Compliance (attached hereto in Exhibit A) with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state law and regulations hereinafter enacted.

C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin.

D. If any under representation is found after submission of Contractor's workforce report, the Commission may request an equal employment opportunity plan (EEOP). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEOP has been approved by the Commission, the Contractor must adhere to said plan. In case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEOP updates as required.

E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, Contractor may, at the election of the Commission, be barred from participating in a Commission project for not less than one (1) year.

ARTICLE 17. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Agreement, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress in connection with 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 modification of a Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal appropriated funds have been 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 this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

C. Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and,

D. Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 USC 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

ARTICLE 18. Necessary Approvals:

A. In the event that the initial amount of this Agreement exceeds Five Hundred Thousand Dollars (\$500,000.00), this Agreement must be approved by the San Diego Housing Commission Board of Commissioners and the San Diego Housing Authority in order to be binding upon the Commission. In no event shall the Commission be bound by this Agreement, unless and until such approvals are obtained.

ARTICLE 19. Substitution of Securities for Retained Funds: Pursuant to California Public Contract Code Section 22300, Contractor has the option to deposit securities with an escrow agent as a substitute for retention earnings required to be withheld by Commission pursuant to this Agreement. Alternatively, on written request of the Contractor, the Commission shall make payments of the retention earnings directly to an escrow agent. If Contractor exercises either option under this Article 19, Contractor and Commission shall enter into a written escrow agreement with the escrow agent governing the deposit and withdrawal of such securities and/or retention.

ARTICLE 20. Notices: Notices to the parties shall, unless otherwise requested in writing, be sent to the Commission and the Contractor at the addresses given above. Notices to the SDHC Limited Liability Companies may be made in writing to the Commission's attention.

ARTICLE 21. Facsimile Approved by General Counsel: Approval of the form of this Agreement and the attachments, if any, may be in the form of a facsimile approval by General Counsel for the Commission. The approval may be executed in counterpart and attached to the original Agreement.

ARTICLE 22. Status of Contractor: This Agreement calls for the performance of the services of the contractor as an independent contractor. Contractor will not be considered an employee of the Commission or any of the SDHC Limited Liability Companies for any purpose.

ARTICLE 23. Ownership of Materials and Documents: Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the Commission from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. However, the Contractor shall have the right to make duplicate copies of such materials and documents for its own files, or for other purposes as may be authorized in writing by the Commission.

ARTICLE 24. Non-Disclosure: The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the Commission. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the Commission or any of the SDHC Limited Liability Companies during the term of this Agreement or at any time thereafter except as authorized by the Commission.

ARTICLE 25. Conflict of Interest:

(a) For the duration of this Agreement, the Contractor will not act as a consultant or perform services of any kind for any person or entity which would conflict with the services to be provided herein, without the written consent of the Commission.

(b) A conflict occurs when circumstances, known to the Contractor, place the Commission or SDHC Limited Liability Companies and the Contractor's new client in adverse, hostile or incompatible positions wherein the interests of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego may be jeopardized. Contractor shall promptly notify the Commission in the event that such a conflict occurs.

(c) In the event of such a conflict, Contractor shall meet and confer with the Commission to agree upon modifications of its relationship with said new client or Commission in order to continue to perform services for said client and/or Commission and/or SDHC Limited Liability Companies without compromising the interests of either. Should no agreement regarding modification be reached, Commission or SDHC Limited Liability Companies may terminate this Agreement with Contractor.

(d) When consent has been given, Contractor shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Contractor for Commission and/or the SDHC Limited Liability Companies. Under no circumstances may Contractor convey, utilize, or permit to be utilized, confidential information gained through its association with Commission and the SDHC Limited Liability Companies for the benefit of any other client.

(e) Contractor agrees to alert every client for whom consent is required, to the existence of this conflict of interest provision and to include language in its agreement with said client which would enable Contractor to comply fully with its terms. This last paragraph shall

not apply to existing clients of the Contractor for which Contractor has previously received the Commission's consent.

(f) This Agreement may be unilaterally and immediately terminated by the Commission and/or the SDHC Limited Liability Companies if Contractor employs an individual who, within twelve months immediately preceding such employment, in their capacity as a Commission employee, participated in negotiations with or otherwise had an influence on the selection of the Contractor.

ARTICLE 26. Correction of Work: The performance of services by the Contractor shall not relieve the Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Commission and/or the interested SDHC Limited Liability Companies when such inaccuracies are due to the negligence of the Contractor, provided such work has not been accepted in writing by an authorized representative of the Commission or the interested SDHC Limited Liability Companies.

ARTICLE 27. Cost Records: In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Commission, the SDHC Limited Liability Companies, and/or to the appropriate federal agencies after reasonable notice, and at reasonable times.

ARTICLE 28. Subcontracting:

(a) No services covered by this Agreement shall be subcontracted without the prior written consent of the Commission and/or the interested SDHC Limited Liability Companies.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the Commission. Once this list has been approved, no changes to the list will be allowed except by written approval of the Commission and/or the interested SDHC Limited Liability Companies.

(c) The Contractor shall be as fully responsible to the Commission and/or the SDHC Limited Liability Companies for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him. Commission, in its discretion, may require Contractor to provide Commission with an executed release of all claims against the Commission, the Housing Authority, and the City, arising by virtue of this Agreement, which release shall be provided to Commission concurrently with a request for payment for services provided pursuant to this Agreement and shall include a statement that payments to all subcontractors and suppliers have been made.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, Commission requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the Commission and/or labor surplus areas are used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on

solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

#### ARTICLE 29. Assignability:

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission and the interested SDHC Limited Liability Companies. Commission may assign this Agreement or any portion of this Agreement to any entity that is wholly-owned by the Commission by giving written notice of such assignment to Contractor and provided that such assignment shall not change the terms of this Agreement.

(b) Claims for money due or to become due to the Contractor from the Commission and/or the SDHC Limited Liability Companies under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission and/or the interested SDHC Limited Liability Companies.

#### ARTICE 30. Documents and Written Reports:

The Contractor, when preparing any document or written report for or under the direction of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego, shall comply with the provisions of Government Code Section 7550; to wit,

“(a) Any document or written report prepared for or under the direction of a state or local agency,

which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of such contracts and subcontracts relating to the preparation of such document or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

(b) When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.”

ARTICLE 31. Termination: This Agreement may be terminated by the Commission and/or any of the SDHC Limited Liability Companies on thirty (30) days’ written notice to the Contractor, the effective date of cancellation being the 30th day of said written notice with no further action required by either party.

ARTICLE 32. Attorney’s Fees and Costs: If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys’ fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

ARTICLE 33. Contract Work Hours and Safety Standards Act: In the event Contractor’s performance of this Agreement entails the use of laborers or mechanics, and the Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

ARTICLE 34. Section 3:

(a) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this Agreement agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site

where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The Contractor agrees to include the Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD-assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment subcontracts shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

ARTICLE 35. HUD-Program Specific Audit Requirement: 24 CFR 45-1 require that nonprofit institutions with combined receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totaling \$300,000 or more a year shall have an audit conducted in accordance with the requirement of OMB Circular A-133 or a program specific financial audit, depending on the amount of funds received and the number of programs. Nonprofit institutions having only outstanding HUD direct, guaranteed or insured loans that were made guaranteed or insured prior to the effective date of the part, are required to conduct audits in accordance with HUD program specific audit requirements.

ARTICLE 36. Prevailing Wage Requirements:

Each Job Order will designate whether federal prevailing wages or state prevailing wages are applicable to each Job Order. Each Job Order shall reference the applicable wage rates and all other applicable language concerning prevailing wages that will be applicable to any specific Job Order. Generally, the following provisions shall also apply, depending upon the source of funding, to wit: either federal or state/ local:

(a) If federal prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable federal prevailing wage laws.

(b) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable state prevailing wage laws.

(c) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with SB-854 with respect to any Job Order submitted on or after March 1, 2015, and/or any Agreement entered into after April 1, 2015:

(i) Labor Code Section 1725.5 requires that Contractor and its subcontractors register and qualify with the State of California Department of Industrial Relations (“DIR”) in order to bid on, be listed in a proposal for, or engage in the performance of any contract for a public work. In order to register with the DIR, Contractor and its subcontractors must pay an initial nonrefundable registration fee of \$300, pay an annual renewal fee each July 1 thereafter, and provide the specified information to establish eligibility. Contractor and its subcontractors must register with the DIR at <http://www.dir.ca.gov/dlse/dlsepublicworks.html>.

(ii) Contractor or its subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 (Labor Code Section 1771.1(a).) This Agreement is subject to cancellation absent proof of the Contractor and its subcontractor’s current registration to perform public work pursuant to Section 1725.5.

(iii) Additionally, Contractor and its subcontractors must furnish records as specified in labor Code Section 1776 to the California Labor Commissioner for the following:

(a) Projects for which the initial contract is awarded on or after April 1, 2015 (Lab. Code § 1771.4(c))

(b) All projects, whether new or ongoing, on or after January 1, 2016 (Lab. Code § 1771.4(c)(2)(d))

(c) Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records (Lab. Code § 1771.4(c)(2)(c))

(d) Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to June 20, 2014 (Lab. Code § 1771.4(c)(2)(a))

ARTICLE 37. Insurance: Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the Commission. Contractor agrees to the following:

(a) Contractor shall provide public liability and property damage insurance in the minimum amount of \$1,000,000 for injury to or death of one or more persons and/or property damage arising

out of a single accident or occurrence, insuring against all liability of the SDHC Limited Liability Companies, the Commission, Contractor, its subcontractors and its authorized representatives, arising out of or in connection with the Contractor's performance of work under this Agreement. The Commission, the SDHC Limited Liability Companies, the Housing Authority of the City of San Diego and the City of San Diego, and each of them, shall each be named as additional insureds on policy endorsements for each Job Order.

(b) Contractor shall purchase and maintain in full force and effect worker's compensation insurance for contractors, subcontractors, employees, and agents in form and amount acceptable to the Commission during the full term of this Agreement.

(c) Contractor shall provide automobile liability insurance on owned and non-owned motor vehicles used in the performance of services as detailed in the Scope of Services, both on site or in connection therewith for a combined single limit for bodily injury and property damage of no less than \$500,000 per occurrence.

(d) All insurance required to be purchased and maintained by the Contractor shall name the Commission, the SDHC Limited Liability Companies, the Housing Authority and the City of San Diego as additional insured's and shall contain cross-liability endorsements.

(e) For any claims arising out of or in connection with Contractor's performance under this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the SDHC Limited Liability Companies, the Commission, the Housing Authority and/or the City of San Diego.

(f) The Contractor shall furnish to the Commission Certificates of Insurance evidencing the insurance carried in compliance with this Section. This Certificate shall contain a provision that at least thirty days prior written notice will be given to the Commission and the SDHC Limited Liability Companies in the event of cancellation, reduction, or nonrenewal of the insurance.

(g) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to waive all rights of subrogation against the SDHC Limited Liability Companies, the Commission, the Housing Authority, the City of San Diego, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

ARTICLE 38. Contract Governed by Laws of State of California: This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

ARTICLE 39. Dispute Resolution: All disputes that arise out of this Agreement shall be resolved in the Superior Court of San Diego, Downtown Branch.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

**Contractor:**

Vincor Construction, Inc.

By: \_\_\_\_\_  
Vincent Cortes, President

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

**Commission:**

SAN DIEGO HOUSING COMMISSION

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

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

**Approved as to Form:**

Christensen & Spath LLP

By: \_\_\_\_\_  
Charles B. Christensen  
General Counsel  
San Diego Housing Commission

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

Belden SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

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

Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

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

Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

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

Richard C. Gentry  
President & Chief Executive Officer

Southern SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

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

Richard C. Gentry  
President & Chief Executive Officer

**EXHIBIT A**  
**SAN DIEGO HOUSING COMMISSION SPECIAL PROVISIONS**  
**FOR**  
**NATIONAL JOINT POWERS ALLIANCE (NJPA) JOB ORDER CONTRACT (JOC)**  
**NUMBER CA-SD02GCB-081815-VCI**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT B**  
**PAYMENT AND PERFORMANCE BOND DOCUMENT**

For every Job Order issued by the Commission and/or interested SDHC Limited Liability Companies to the Contractor pursuant to this Agreement, in an amount greater than \$100,000, the Contractor shall be required to provide the Commission a Payment Bond and a Performance Bond. Each bond shall be in the amount of 100% of the total price of the Job Order.

**EXHIBIT C  
RELEASE OF LIEN**

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned certifies that all work required under this Agreement will be performed in accordance with the terms thereof, and that, provided the undersigned is paid in accordance with the terms of this Agreement, there will be no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Agreement.
  
2. That, in consideration of and conditioned upon the payment in full of the amount of this Agreement, as such amount may be adjusted as provided in the Agreement, the undersigned does hereby release the San Diego Housing Commission and the SDHC Limited Liability Companies from any and all claims arising under or by virtue of this Agreement, provided, however, the wrongful withholding of funds by the San Diego Housing Commission or the SDHC Limited Liability Companies shall not effect a release as to the funds wrongfully held.

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

BY \_\_\_\_\_  
(Contractor)

(Seal)

**EXHIBIT D**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) CONTRACT NUMBER  
CA-SD02GCB-081815-VCI**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT E**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) INVITATION FOR BID (IFB)  
NUMBER CA-SD02GCB-072115**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**SAN DIEGO HOUSING COMMISSION**

**AGREEMENT FOR**

**JOB ORDER CONTRACTING (JOC)  
INDEFINITE QUANTITY CONSTRUCTION SERVICES-ROOFING SERVICES**

**WITH**

**SYLVESTER ROOFING COMPANY, INC.**

**AGREEMENT NO. JOC-16-03**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of September 2015, between Sylvester Roofing Company, Inc. (“Contractor”), the San Diego Housing Commission (“Commission”) on its own behalf and on behalf of each limited liability company marked below, as the sole manager of such limited liability company, and as the managing agent of such limited liability company, and as the sole member of such limited liability company, each of which is a separate public agency within the state of California, for each of the residential properties owned by the entity, and each of the following:

- Belden SDHC FNMA LLC, a California limited liability company
- Central SDHC FHA LLC, a California limited liability company
- Central SDHC FNMA LLC, a California limited liability company
- Northern SDHC FHA LLC, a California limited liability company
- Northern SDHC FNMA LLC, a California limited liability company
- Southern SDHC FHA LLC, a California limited liability company

The above-selected entities shall be collectively referred to herein as the “SDHC Limited Liability Companies”. Each of the above SDHC Limited Liability Companies is registered as public agencies with the State of California.

THIS AGREEMENT (the “Agreement”), entered into the \_\_\_\_ day of September 2015,

between the Commission:

**SAN DIEGO HOUSING COMMISSION**  
1122 Broadway, Suite 300  
San Diego, California 92101  
(619) 231-9400

and the Contractor:

**SYLVESTER ROOFING COMPANY, INC.**  
2593 Auto Parkway  
Escondido, CA 92029  
760-743-0048

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish, under this Job Order Contract (JOC) all construction labor, material, equipment and services, and perform and complete all construction work required on a Job Order by Job Order basis in accordance with the construction services tasks set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-SD01R-081815-SRC attached hereto as Exhibit D.

This Agreement shall not be effective unless and until the Agreement has been executed by the San Diego Housing Commission, SDHC Limited Liability Companies and the Contractor and the Agreement has been approved by the Board of Commissioners of the San Diego Housing Commission. This Agreement is entered into in accordance with the terms of San Diego Housing Commission Administrative Regulation number AR203.200 "Job Order Contracting" and is permitted under the provisions of both California State Law concerning Joint Powers Agreements and federal law allowing cooperative purchasing agreements, as referenced with San Diego Housing Commission Administrative Regulation AR-203.200. To the extent that compensation under this Agreement is anticipated to exceed the sum of \$500,000.00 per annum, this Agreement shall not be effective unless and until approved by the Housing Authority of the City of San Diego.

ARTICLE 2. Time of Performance:

a. Initial Term

This Agreement shall commence effective September \_\_\_\_\_, 2015 and continue through July 20, 2016.

b. Option to Extend Term

The President and Chief Executive Officer, or his or her delegated designee, of the Commission may, at his/her election, extend the term of this Agreement for three (3) additional one-year terms by giving written notice of the election to extend the Agreement to the Contractor in advance of the expiration of the prior term of the Agreement. Those additional one (1) year option terms would be, if exercised, as follows:

Option Period 1: July 21, 2016 through July 20, 2017

Option Period 2: July 21, 2017 through July 20, 2018

Option Period 3: July 21, 2018 through July 20, 2019

Only one (1) option may be exercised at any one time during any term of the Agreement. The option to extend the Agreement may be granted by the Commission in its sole discretion and is dependent upon the availability of funds and budget approval by the Housing Authority of the City of San Diego ("Housing Authority") and the exercise of extension options by the National Joint Powers Alliance (NJPA) as detailed in Article 4 "Term of the Agreement" of NJPA contract No.CA-SD01R-081815-SRC.

Nothing contained in this Agreement shall require the Commission to exercise any or all of the options to extend the term of the Agreement. The options exist in favor of the Commission, at its sole option. All other terms and conditions of the Agreement during the option period(s) shall be as set forth in the Agreement and shall be unamended by the exercise of any option granted herein.

ARTICLE 3. Compensation: The Commission and/or SDHC Limited Liability Companies shall compensate the Contractor, on a Job Order by Job Order basis, in accordance with the contract pricing set forth in the Construction Task Catalog (CTC) included in the National Joint Powers Alliance (NJPA) contract number CA-SD01R-081815-SRC attached hereto as Exhibit D. The total maximum compensation for all services performed and all Job Orders issued pursuant to this Agreement shall not exceed the accumulated sum of FIVE HUNDRED THOUSAND AND NO/100 Dollars (\$500,000.00) annually. Contractor acknowledges that the Commission and/or SDHC Limited Liability Companies are under no obligation to procure any specific amount of services under this Agreement or to compensate Contractor for services rendered or expenses accrued under this Agreement in excess of the maximum compensation specified above.

It shall be the responsibility of the Contractor to monitor its activities to ensure that all work under the Job Orders issued pursuant to this Agreement may be completed, and no charges accrued in excess of the maximum compensation during the term of this Agreement. In the event that the work required cannot be completed within the amount specified, or it appears that the maximum compensation provided may be exceeded before the term of the Agreement expires, Contractor shall promptly notify the Commission and/or SDHC Limited Liability Companies.

Further, the Commission and/or SDHC Limited Liability Companies may cancel the Agreement, without cause, by written notice to the Contractor at any time during the term of the Agreement, or any extension thereto, in the event that the Commission, SDHC Limited Liability Companies and/or the Housing Authority of the City of San Diego (“Housing Authority”) fails to appropriate funds for the rendition of services set forth in this Agreement. This right to cancel is in addition to the rights to terminate the Agreement as set forth in Article 31 of this Agreement.

ARTICLE 4. Indemnity: Subject only to the limitations of the applicable statutes of limitations as contained within applicable federal and state law, Contractor agrees to and shall indemnify, hold harmless, and defend, the Commission, SDHC Limited Liability Companies, the Housing Authority of the City of San Diego, the City of San Diego, and all commissioners, officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the “Indemnitees” or individually as an “Indemnitee”) from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor’s employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnitee or resulting from defects in design furnished by Indemnitee and Contractor will, if requested by Indemnitee, defend any such suits against Indemnitee(s), at the sole cost and expense of Contractor, with counsel of Indemnitee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Agreement to receive attorneys’ fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Agreement.

ARTICLE 5. Governing Law: This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 6. Entire Agreement: This Agreement contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect.

ARTICLE 7. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 8. Severability: If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law. The performance to be rendered under this Agreement is divided into 7 parts, generally divided based on the party to whom goods or services are to be provided:  (1) Commission;  (2) Northern SDHC FNMA LLC;  (3) Northern SDHC FHA LLC;  (4) Southern SDHC FHA LLC;  (5) Central SDHC FNMA LLC;  (6) Central SDHC FHA LLC;  (7) Belden SDHC FNMA LLC. The breach of this Agreement by Contractor as to the Commission or any one of the SDHC Limited Liability Companies shall not affect the right of the remaining parties to receive goods and/or services pursuant to this Agreement. Furthermore, this Agreement may be severed by Commission and/or one or more of the SDHC Limited Liability Companies, with respect to goods or services provided to the severing party.

ARTICLE 9. Terminology: All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Agreement itself, and all references herein to paragraphs thereof are to this Agreement unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 10. Binding Agreement: Subject to any restrictions on the assignment of this Agreement or rights thereto, this Agreement shall inure to the benefit of and be binding upon Commission, SDHC Limited Liability Companies, and Contractor and their respective successors, assigns or transferees.

ARTICLE 11. Procedure for Resolving Disputes: In the event of a dispute concerning this Agreement, the same shall be resolved in San Diego Superior Court, Downtown Branch.

ARTICLE 12. Time is of the Essence: Time is of the essence for all Job Order work issued under this Agreement, as per the Job Order schedule submitted by Contractor, on a Job Order by Job Order basis, and agreed upon by the Commission.

ARTICLE 13. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the Commission and/or SDHC Limited Liability Companies monies in accordance with the (if any) Liquidated Damages set forth in any issued Job Order as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the Commission and/or SDHC Limited Liability Companies.

ARTICLE 14. Agreement Documents and Order of Precedence: This Agreement between the Commission, SDHC Limited Liability Companies, and the Contractor shall consist of the following component parts. In the event of conflicting provisions of the Agreement exhibits, attachments and component parts, the following order of precedence shall apply:

- A. Any Job Order issued pursuant to this Agreement, including any Addenda, Scope of Work, Plans, Drawings, Technical Specifications, Conditions, Requirements, and Prevailing Wage Requirements attached thereto.
- B. This Agreement Instrument.
- C. Exhibit A “San Diego Housing Commission Special Provisions for National Joint Powers Alliance (NJPA) Job Order Contract (JOC) #CA-SD01R-081815-SRC.
- D. Exhibit B “Payment and Performance Bond Documents”.
- E. Exhibit C “Release of Lien Form”.
- F. Exhibit D “National Joint Powers Alliance (NJPA) contract number CA-SD01R-081815-SRC”.
- G. Exhibit E “National Joint Powers Alliance (NJPA) Invitation for Bid (IFB) number CA-SD01R-072115”

This Agreement instrument, together with the other documents enumerated in Article 14, form the Agreement and are as fully a part of the Agreement as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Agreement which each modifies.

In the event of a conflict between the various documents referenced within Subparagraphs A through E, inclusive, the provisions of the document referenced within subparagraph A shall prevail over the conflicting provisions contained within documents referenced within subparagraphs B through E. In the event that a provision within a document referenced within subparagraph B conflicts with a provision or provisions within the documents referenced within subparagraphs C through E, then the provisions of the documents referenced within subparagraph B shall prevail. In the same fashion the provisions of the document referenced within subparagraph C shall prevail over conflicting provisions of documents contained within subparagraphs D through E. The same conflict provisions shall be applicable to conflicts between provisions within the document referenced in subparagraph D, over the conflicting provisions of the document referenced within subparagraph E.

ARTICLE 15. Drug-Free Workplace: Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

A. Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

B. Establish a drug-free awareness program to inform employees about all of the following:

- 1) The dangers of drug abuse in the workplace.
- 2) The Contractor's policy of maintaining a drug-free workplace.
- 3) Any available drug counseling, rehabilitation and employee assistance programs.
- 4) The penalties that may be imposed upon employees for drug abuse violations.

C. Post the statement required by subdivision A in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

ARTICLE 16. Equal Opportunity Programs: During the performance of this Agreement, the Contractor agrees as follows:

A. Contractor shall comply with all applicable Equal Opportunity Programs as described in the applicable State and Federal law. Contractor shall submit such forms and information as shall be requested by the Commission from time to time to verify the Contractor's compliance with applicable law.

B. Certificate of Compliance (attached hereto in Exhibit A) with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state law and regulations hereinafter enacted.

C. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin.

D. If any under representation is found after submission of Contractor's workforce report, the Commission may request an equal employment opportunity plan (EEO). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEO has been approved by the Commission, the Contractor must adhere to said plan. In case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEO updates as required.

E. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, Contractor may, at the election of the Commission, be barred from participating in a Commission project for not less than one (1) year.

ARTICLE 17. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Agreement, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress in connection with 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 modification of a Federal contract, grant, loan or cooperative agreement;

B. If any funds other than Federal appropriated funds have been 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 this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

C. Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and,

D. Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 USC 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

ARTICLE 18. Necessary Approvals:

A. In the event that the initial amount of this Agreement exceeds Five Hundred Thousand Dollars (\$500,000.00), this Agreement must be approved by the San Diego Housing Commission Board of Commissioners and the San Diego Housing Authority in order to be binding upon the Commission. In no event shall the Commission be bound by this Agreement, unless and until such approvals are obtained.

ARTICLE 19. Substitution of Securities for Retained Funds: Pursuant to California Public Contract Code Section 22300, Contractor has the option to deposit securities with an escrow agent as a substitute for retention earnings required to be withheld by Commission pursuant to this Agreement. Alternatively, on written request of the Contractor, the Commission shall make payments of the retention earnings directly to an escrow agent. If Contractor exercises either option under this Article 19, Contractor and Commission shall enter into a written escrow agreement with the escrow agent governing the deposit and withdrawal of such securities and/or retention.

ARTICLE 20. Notices: Notices to the parties shall, unless otherwise requested in writing, be sent to the Commission and the Contractor at the addresses given above. Notices to the SDHC Limited Liability Companies may be made in writing to the Commission's attention.

ARTICLE 21. Facsimile Approved by General Counsel: Approval of the form of this Agreement and the attachments, if any, may be in the form of a facsimile approval by General Counsel for the Commission. The approval may be executed in counterpart and attached to the original Agreement.

ARTICLE 22. Status of Contractor: This Agreement calls for the performance of the services of the contractor as an independent contractor. Contractor will not be considered an employee of the Commission or any of the SDHC Limited Liability Companies for any purpose.

ARTICLE 23. Ownership of Materials and Documents: Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the Commission from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. However, the Contractor shall have the right to make duplicate copies of such materials and documents for its own files, or for other purposes as may be authorized in writing by the Commission.

ARTICLE 24. Non-Disclosure: The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the Commission. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the Commission or any of the SDHC Limited Liability Companies during the term of this Agreement or at any time thereafter except as authorized by the Commission.

ARTICLE 25. Conflict of Interest:

(a) For the duration of this Agreement, the Contractor will not act as a consultant or perform services of any kind for any person or entity which would conflict with the services to be provided herein, without the written consent of the Commission.

(b) A conflict occurs when circumstances, known to the Contractor, place the Commission or SDHC Limited Liability Companies and the Contractor's new client in adverse, hostile or incompatible positions wherein the interests of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego may be jeopardized. Contractor shall promptly notify the Commission in the event that such a conflict occurs.

(c) In the event of such a conflict, Contractor shall meet and confer with the Commission to agree upon modifications of its relationship with said new client or Commission in order to continue to perform services for said client and/or Commission and/or SDHC Limited Liability Companies without compromising the interests of either. Should no agreement regarding modification be reached, Commission or SDHC Limited Liability Companies may terminate this Agreement with Contractor.

(d) When consent has been given, Contractor shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Contractor for Commission and/or the SDHC Limited Liability Companies. Under no circumstances may Contractor convey, utilize, or permit to be utilized, confidential information gained through its association with Commission and the SDHC Limited Liability Companies for the benefit of any other client.

(e) Contractor agrees to alert every client for whom consent is required, to the existence of this conflict of interest provision and to include language in its agreement with said client which would enable Contractor to comply fully with its terms. This last paragraph shall

not apply to existing clients of the Contractor for which Contractor has previously received the Commission's consent.

(f) This Agreement may be unilaterally and immediately terminated by the Commission and/or the SDHC Limited Liability Companies if Contractor employs an individual who, within twelve months immediately preceding such employment, in their capacity as a Commission employee, participated in negotiations with or otherwise had an influence on the selection of the Contractor.

ARTICLE 26. Correction of Work: The performance of services by the Contractor shall not relieve the Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Commission and/or the interested SDHC Limited Liability Companies when such inaccuracies are due to the negligence of the Contractor, provided such work has not been accepted in writing by an authorized representative of the Commission or the interested SDHC Limited Liability Companies.

ARTICLE 27. Cost Records: In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Commission, the SDHC Limited Liability Companies, and/or to the appropriate federal agencies after reasonable notice, and at reasonable times.

ARTICLE 28. Subcontracting:

(a) No services covered by this Agreement shall be subcontracted without the prior written consent of the Commission and/or the interested SDHC Limited Liability Companies.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the Commission. Once this list has been approved, no changes to the list will be allowed except by written approval of the Commission and/or the interested SDHC Limited Liability Companies.

(c) The Contractor shall be as fully responsible to the Commission and/or the SDHC Limited Liability Companies for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him. Commission, in its discretion, may require Contractor to provide Commission with an executed release of all claims against the Commission, the Housing Authority, and the City, arising by virtue of this Agreement, which release shall be provided to Commission concurrently with a request for payment for services provided pursuant to this Agreement and shall include a statement that payments to all subcontractors and suppliers have been made.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, Commission requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the Commission and/or labor surplus areas are used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on

solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

#### ARTICLE 29. Assignability:

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission and the interested SDHC Limited Liability Companies. Commission may assign this Agreement or any portion of this Agreement to any entity that is wholly-owned by the Commission by giving written notice of such assignment to Contractor and provided that such assignment shall not change the terms of this Agreement.

(b) Claims for money due or to become due to the Contractor from the Commission and/or the SDHC Limited Liability Companies under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission and/or the interested SDHC Limited Liability Companies.

#### ARTICE 30. Documents and Written Reports:

The Contractor, when preparing any document or written report for or under the direction of the Commission, the SDHC Limited Liability Companies, the Housing Authority, or the City of San Diego, shall comply with the provisions of Government Code Section 7550; to wit,

“(a) Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of such contracts and subcontracts relating to the preparation of such document or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

(b) When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.”

ARTICLE 31. Termination: This Agreement may be terminated by the Commission and/or any of the SDHC Limited Liability Companies on thirty (30) days’ written notice to the Contractor, the effective date of cancellation being the 30th day of said written notice with no further action required by either party.

ARTICLE 32. Attorney’s Fees and Costs: If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys’ fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

ARTICLE 33. Contract Work Hours and Safety Standards Act: In the event Contractor’s performance of this Agreement entails the use of laborers or mechanics, and the Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

ARTICLE 34. Section 3:

(a) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this Agreement agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The

notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The Contractor agrees to include the Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD-assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment subcontracts shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

ARTICLE 35. HUD-Program Specific Audit Requirement: 24 CFR 45-1 require that nonprofit institutions with combined receipts of Federal financial assistance and outstanding Federal direct, guaranteed or insured loan balances totaling \$300,000 or more a year shall have an audit conducted in accordance with the requirement of OMB Circular A-133 or a program specific financial audit, depending on the amount of funds received and the number of programs. Nonprofit institutions having only outstanding HUD direct, guaranteed or insured loans that were made guaranteed or insured prior to the effective date of the part, are required to conduct audits in accordance with HUD program specific audit requirements.

ARTICLE 36. Prevailing Wage Requirements:

Each Job Order will designate whether federal prevailing wages or state prevailing wages are applicable to each Job Order. Each Job Order shall reference the applicable wage rates and all other applicable language concerning prevailing wages that will be applicable to any specific Job Order. Generally, the following provisions shall also apply, depending upon the source of funding, to wit: either federal or state/ local:

(a) If federal prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable federal prevailing wage laws.

(b) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with all applicable state prevailing wage laws.

(c) If state prevailing wage requirements apply, as specified in any Job Order issued pursuant to this Agreement, Contractor shall comply with SB-854 with respect to any Job Order submitted on or after March 1, 2015, and/or any Agreement entered into after April 1, 2015:

(i) Labor Code Section 1725.5 requires that Contractor and its subcontractors register and qualify with the State of California Department of Industrial Relations (“DIR”) in order to bid on, be listed in a proposal for, or engage in the performance of any contract for a public work. In order to register with the DIR, Contractor and its subcontractors must pay an initial nonrefundable registration fee of \$300, pay an annual renewal fee each July 1 thereafter, and provide the specified information to establish eligibility. Contractor and its subcontractors must register with the DIR at <http://www.dir.ca.gov/dlse/dlsepublicworks.html>.

(ii) Contractor or its subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 (Labor Code Section 1771.1(a).) This Agreement is subject to cancellation absent proof of the Contractor and its subcontractor’s current registration to perform public work pursuant to Section 1725.5.

(iii) Additionally, Contractor and its subcontractors must furnish records as specified in labor Code Section 1776 to the California Labor Commissioner for the following:

(a) Projects for which the initial contract is awarded on or after April 1, 2015 (Lab. Code § 1771.4(c))

(b) All projects, whether new or ongoing, on or after January 1, 2016 (Lab. Code § 1771.4(c)(2)(d))

(c) Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records (Lab. Code § 1771.4(c)(2)(c))

(d) Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to June 20, 2014 (Lab. Code § 1771.4(c)(2)(a))

ARTICLE 37. Insurance: Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the Commission. Contractor agrees to the following:

(a) Contractor shall provide public liability and property damage insurance in the minimum amount of \$1,000,000 for injury to or death of one or more persons and/or property damage arising out of a single accident or occurrence, insuring against all liability of the SDHC Limited Liability Companies, the Commission, Contractor, its subcontractors and its authorized representatives, arising out of or in connection with the Contractor’s performance of work under this Agreement. The Commission, the SDHC Limited Liability Companies, the Housing Authority of the City of San Diego and the City of San Diego, and each of them, shall each be named as additional insureds on policy endorsements for each Job Order.

(b) Contractor shall purchase and maintain in full force and effect worker's compensation insurance for contractors, subcontractors, employees, and agents in form and amount acceptable to the Commission during the full term of this Agreement.

(c) Contractor shall provide automobile liability insurance on owned and non-owned motor vehicles used in the performance of services as detailed in the Scope of Services, both on site or in connection therewith for a combined single limit for bodily injury and property damage of no less than \$500,000 per occurrence.

(d) All insurance required to be purchased and maintained by the Contractor shall name the Commission, the SDHC Limited Liability Companies, the Housing Authority and the City of San Diego as additional insured's and shall contain cross-liability endorsements.

(e) For any claims arising out of or in connection with Contractor's performance under this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the SDHC Limited Liability Companies, the Commission, the Housing Authority and/or the City of San Diego.

(f) The Contractor shall furnish to the Commission Certificates of Insurance evidencing the insurance carried in compliance with this Section. This Certificate shall contain a provision that at least thirty days prior written notice will be given to the Commission and the SDHC Limited Liability Companies in the event of cancellation, reduction, or nonrenewal of the insurance.

(g) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to waive all rights of subrogation against the SDHC Limited Liability Companies, the Commission, the Housing Authority, the City of San Diego, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

ARTICLE 38. Contract Governed by Laws of State of California: This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

ARTICLE 39. Dispute Resolution: All disputes that arise out of this Agreement shall be resolved in the Superior Court of San Diego, Downtown Branch.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

**Contractor:**

Sylvester Roofing Company, Inc.

By: \_\_\_\_\_  
Doug Sylvester, President

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

**Commission:**

SAN DIEGO HOUSING COMMISSION

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

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

**Approved as to Form:**

Christensen & Spath LLP

By: \_\_\_\_\_  
Charles B. Christensen  
General Counsel  
San Diego Housing Commission

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

Belden SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FNMA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Central SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FHA LLC, a California limited liability company

By: San Diego Housing Commission, a public agency

Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Northern SDHC FNMA LLC, a California  
limited liability company  
By: San Diego Housing Commission, a public  
agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

Southern SDHC FHA LLC, a California  
limited liability company  
By: San Diego Housing Commission, a public  
agency  
Its: Managing Member

By: \_\_\_\_\_  
Richard C. Gentry  
President & Chief Executive Officer

**EXHIBIT A**  
**SAN DIEGO HOUSING COMMISSION SPECIAL PROVISIONS**  
**FOR**  
**NATIONAL JOINT POWERS ALLIANCE (NJPA) JOB ORDER CONTRACT (JOC)**  
**NUMBER CA-SD01R-081815-SRC**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT B**  
**PAYMENT AND PERFORMANCE BOND DOCUMENT**

For every Job Order issued by the Commission and/or interested SDHC Limited Liability Companies to the Contractor pursuant to this Agreement, in an amount greater than \$100,000, the Contractor shall be required to provide the Commission a Payment Bond and a Performance Bond. Each bond shall be in the amount of 100% of the total price of the Job Order.

**EXHIBIT C  
RELEASE OF LIEN**

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned certifies that all work required under this Agreement will be performed in accordance with the terms thereof, and that, provided the undersigned is paid in accordance with the terms of this Agreement, there will be no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Agreement.
  
2. That, in consideration of and conditioned upon the payment in full of the amount of this Agreement, as such amount may be adjusted as provided in the Agreement, the undersigned does hereby release the San Diego Housing Commission and the SDHC Limited Liability Companies from any and all claims arising under or by virtue of this Agreement, provided, however, the wrongful withholding of funds by the San Diego Housing Commission or the SDHC Limited Liability Companies shall not effect a release as to the funds wrongfully held.

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

BY \_\_\_\_\_  
(Contractor)

(Seal)

**EXHIBIT D**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) CONTRACT  
NUMBER CA-SD01R-081815-SRC**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**

**EXHIBIT E**

**NATIONAL JOINT POWERS ALLIANCE (NJPA) INVITATION FOR BID (IFB)  
NUMBER CA-SD01R-072115**

**[TO BE ATTACHED UPON HOUSING COMMISSION BOARD APPROVAL]**