

TERMS & CONDITIONS

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.

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 his own file, or for other purposes as may be authorized in writing by the Commission.

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.

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.

Contractor's Liability

Contractor agrees to and shall indemnify, hold harmless, and defend, with counsel of the Indemnitee's choosing, at Indemnitor's sole cost and expense, the Commission, the SDHC Limited Liability Companies, the Housing Authority, 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.

Insurance

(a) 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 shall obtain a single limit general liability insurance and automobile liability insurance in the minimum amount checked and initialed below. If nothing is checked or indicated below, the limit shall be One Million Dollars (\$1,000,000.00):

	Initials		Initials
<input checked="" type="checkbox"/>	General Liability	<input checked="" type="checkbox"/>	Workers Compensation
	\$1,000,000.00		\$1,000,000.00
	_____		_____
<input checked="" type="checkbox"/>	Automobile Liability	<input checked="" type="checkbox"/>	Other:
	\$500,000.00		
	_____		_____

(b) This coverage is in addition to workers compensation insurance and other insurance coverages required by law. The Commission, SDHC Limited Liability Companies, the Authority, and the City of San Diego (“City”), shall be named as certificate holders on all insurance policies and shall be named as additional insured on all general liability and automobile policies. The policies shall provide that coverage on all policies may not be canceled, amended, terminated or otherwise modified without thirty (30) days advance written notice to the Commission, SDHC Limited Liability Companies, the Authority, and the City. Coverage shall remain in full force and effect during the entire term of the policy and for such term thereafter as the Commission shall determine.

(c) If the box shown below, marked “Errors and Omissions” is checked and initialed, then professional errors and omissions liability coverage is also required in the amount stated below:

	Initials
<input checked="" type="checkbox"/>	Errors and Omissions
	\$1,000,000.00

(d) 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 Commission, SDHC Limited Liability Companies, the Housing Authority and/or the City of San Diego.

(e) 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 Commission, SDHC Limited Liability Companies, 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.

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.

Equal Opportunity Programs

During the performance of this Agreement, the Contractor agrees as follows:

(a) Contractor shall comply with all applicable local, state and federal Equal Opportunity Programs, as well as any other applicable local, state and federal law. Each month, the Contractor will report to the project manager, payments made to all vendors by month, contract to date and percentage of overall contract value.

(b) Contractor and each subcontractor, if any, shall fully comply with and shall submit a Report of San Diego County Workforce Report and Certificate of Compliance 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 or any other basis prohibited by law. 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 or any other basis prohibited by law.

(d) If any underrepresentation is found after submission of Contractor's Work Force Report, the Commission may request an Equal Employment Opportunity Plan (EEOPlan). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEOPlan has been approved by the Commission, the Contractor must adhere to said plan. In the case of multi-year contracts, the Contractor will be required to submit annual Work Force Reports and EEOPlan updates as requested.

(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, the Contractor may, at the election of the Commission, be barred from participating in Commission projects for not less than one year.

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.

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 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.

(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.

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.

Changes

The Commission and the SDHC Limited Liability Companies may, from time to time, request changes in the Specifications/Scope of Work of the Agreement to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon, by and between the parties, shall be incorporated into this Agreement.

Documents and Written Reports

The Contractor, when preparing any document or written report for or under the direction of the Commission, 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.

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.

Attorneys' 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.

Entire Agreement

This Agreement represents the sole and entire agreement between the Commission, the SDHC Limited Liability Companies, and Contractor and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party.

Partial Invalidity

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

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.

Interest of Member of Congress

No member or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise

therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

Interest of Current or Former Members, Officers, Employees

No member, officer or employee of the Commission, no member of the governing body of the locality in which the work is situated, no member of the governing body in which the Commission was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the assignment of work, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this section shall result in unilateral and immediate termination of this Agreement by the Commission.

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:

(i) The dangers of drug abuse in the workplace.

(ii) The Contractor's policy of maintaining a drug-free workplace.

(iii) Any available drug counseling, rehabilitation and employee assistance programs.

(iv) The penalties that may be imposed upon employees for drug abuse violations.

(c) Post the statement required by subdivision 221(a) in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

Plan of Operation

The Contractor shall submit to the Contracting Officer a complete plan of operations. The Contractor is responsible for notifying the Contracting Officer of any changes to the plan of operations.

Labor Provisions

It is the responsibility of the Contractor and the Contractor shall be fully aware of and shall comply with each and every requirement of State, Federal and Local law concerning the provision

of labor concerning this Agreement, including but not limited to, the payment of applicable wage rates, if any.

If checked, additional state prevailing wage terms are contained in Attachment No. 6.

If checked, additional federal prevailing wage terms are contained in Attachment No. 6.

Contract Works 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 U.S.C. 3701 et seq.) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

Extension of Contract Term

(a) Provided, that the Contractor is not in default under the terms of this Agreement, the Chief Executive Officer of the Commission for itself and/or on behalf of the SDHC Limited Liability Companies, may extend the terms of the Agreement for a period, not to exceed ninety days, on the same payment schedule, terms and conditions, in effect on the date that the Agreement would otherwise have terminated, including the option period, if any. The option to extend the Agreement may not be exercised by the Contractor.

(b) The Agreement may not be extended for an aggregate period of more than ninety days, but may be exercised in multiple "Notices of Extension", of not less than seven days in duration, for each such notice. The Agreement may be extended by the Commission or any of the SDHC Limited Liability Companies by delivery of a Notice of Extension in writing to the Contractor and that the stated terms and conditions of the Agreement shall be adhered to by the parties during the term of the extension.

(c) Nothing contained herein, however, shall require the Commission or any of the SDHC Limited Liability Companies to exercise any option to extend the Agreement. During the extension of the Agreement, the Contractor shall provide the Commission and the SDHC Limited Liability Companies with additional certificates of insurance, if necessary, covering the term(s) of the extension.

(d) Notice of Extension may be served by the Commission for itself and/or on behalf of the SDHC Limited Liability Companies upon the Contractor not earlier than sixty days before the original termination date of the Agreement and not later than eighty-three days after the original termination date of the Agreement. Nothing contained herein shall be construed as granting the Contractor a right to compel the Chief Executive Officer of the Commission, for itself or on behalf of the SDHC Limited Liability Companies, to exercise the option to extend the Agreement.

(e) The Commission, the SDHC Limited Liability Companies and the Housing Authority hereby delegate the authority to the Chief Executive Officer of the Commission to pay compensation to Contractor, during the option period, on a pro rata basis, for any extension period, based upon the contract rate in effect on the date of the exercise of the extension.

(f) All contracts which are approved by the Commission and/or Housing Authority and include options for renewal may be renewed by the Chief Executive Officer or his/her designee at the previously stated terms for renewal. The Chief Executive Officer's authority to execute the option for renewal includes authorization to execute the required documents, identify appropriate funding source and authorize payment of funds for the continuation of services identified in the Scope of Services.

Statement of Economic Interest Disclosure Form (for consulting services only)

Contractor shall assure that each principal of the Contractor that is supervising the Contractor's work under this Agreement shall file a completed and executed Statement of Economic Interest Disclosure Form (Form 700) with the City Clerk's Office of the City of San Diego, a copy of which is attached to this Agreement, if applicable, at the following times:

- (a) Upon execution of this Agreement;
- (b) Annually on or before April 1 of each year;
- (c) Within thirty (30) days after completion of the Agreement.

Said form will be filed within ten days of written notice from the Commission to the Contractor.

Conflict between Agreement and Attachments

To the extent that the provisions of the Agreement and the Attachments and Schedules conflict, the following order of construction shall apply:

- (a) To the extent that the Agreement and any Attachments or Schedules conflict, the terms and conditions of the Agreement shall prevail; and,
- (b) To the extent that any Contract Attachment and any Schedule conflicts, the Contract Attachment shall prevail.

Section 3 Contract Clauses

(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 C.F.R. 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 C.F.R. 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 C.F.R. 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 C.F.R. 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 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. part 135.

(f) Noncompliance with HUD's regulations in 24 C.F.R. 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).

Audit Requirements

Where this Agreement is funded by federal funding, 24 CFR 84.26 requires that nonprofit institutions and institutions of higher education shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996, and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." All entities other

than non-profit institutions shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document.

Where this Agreement is funded by non-federal funds, Contractor shall be subject to audit requirements as set forth in the award document, if it exists. Otherwise Contractor shall adhere to those requirements as set forth in the Single Audit Act Amendments of 1996 and revised OMB Circular A-133.

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, or an employee of a Member 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, and the extension, continuation, renewal, amendment, or modification of any 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.

Severability

The performance to be rendered under this Agreement is divided into 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.

Energy Conservation.

Provided this Agreement uses Federal funds, Contractor hereby certifies compliance with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Disputes.

Provided that any source of funds for this Agreement is obtained from Federal sources, then this Agreement shall be subject to the Contract Disputes Act of 1978, as amended, (41 USC 601-613), and except as expressly otherwise provided in the Act, all disputes arising under or relating to this Agreement shall be resolved under the terms of this clause by litigation in State Court. If this Agreement is solely funded from Non-Federal funds, then all disputes shall be resolved by litigation in San Diego County Superior Court, Downtown Branch, after first attempting resolution of the dispute through non-binding mediation.

CONTRACT ATTACHMENT NO. __
PREVAILING WAGE NOTIFICATION

Check the option that applies:

- This project is utilizing **Federal Prevailing Wage MOD XX, XX/XX/XXXX**. The contractor will be responsible for paying the appropriate Federal wage rate for each trade/craft.

NOTE: Federal Prevailing Wages are applicable to any Contracts/Purchase Orders greater than \$2,000.

Federal Labor Provisions – HUD Form 5370C, Section II

Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

(a) All maintenance laborers and mechanics employed under this Agreement in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)

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

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

- (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Agreement or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Agreement all or part of the wages required under this Agreement, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Commission or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
- (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the Commission and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;
 - (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
 - (iii) A training/trainee program that has received prior approval by HUD.
- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in this Contract Attachment Section 104, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the Commission, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's

own motion, upon referral of the Commission, or upon request of the Contractor or subcontractor(s).

- (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the Commission or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the Commission or HUD. The request shall set forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate Commission or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).
 - (ii) The Commission or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.
 - (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.
- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this Contract Attachment 104. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the Commission, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms “laborers” and “mechanics” includes watchmen and guards.

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Contract Attachment 104 and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Agreement, is inapplicable to the work funded by Federal funds and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the work funding by Federal Funds within the Agreement whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

- This project is utilizing **State Prevailing Wage XXXX-X**. The contractor will be responsible for paying the appropriate State/Local wage rate for each trade/craft.

NOTE: State Prevailing Wages are applicable to any Contracts/Purchase Orders greater than \$1,000.

A. Contractor shall comply with the prevailing wage requirements and restrictions, obligations, requirements, and penalties of Section 1770 et seq. of the Labor Code, which requires the payment of prevailing wages to appropriate work classifications in all bid specifications and subcontracts.

B. Contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates, which Contractor will post at the job site in a visible location in accordance with Labor Code Section 1773.2

C. Contractor shall comply with the payroll record keeping and availability requirement of Section 1776 of the Labor Code.

D. Contractor shall make travel and subsistence payments and follow holiday schedule in accordance with Section 1773.2 of the Labor Code.

E. Contractor must employ registered apprentice on all public works projects in accordance with Labor Code 1777.5.

F. Contractor is prohibited from accepting or extracting kickbacks from employees' wages under Labor Code 1778.

G. Upon work completion, Contractor will be required to sign and notarize an Affidavit of Compliance with California Prevailing Law, California Labor Codes Sections 1720-1815, which will be provided by the San Diego Housing Commission.

H. If discrepancies are discovered by either an audit of certified payroll records and/or employee interviews, payment may be withheld until such actions are corrected.

I. The following requirements apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into or after April 1, 2015:

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 bid 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 \$400, 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/Public-Works/PublicWorks.html>.

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 as defined in Labor Code § 1720, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform Public Work pursuant to Labor Code § 1725.5 at the time the contract is awarded. A contract entered into with a Contractor or subcontractors who failed to register as required herein shall be subject to cancellation as set forth in Labor Code § 1771.1.

The project is subject to compliance monitoring and enforcement by the DIR and Commission, as set forth in Section 1771.4 of the Labor Code. On a weekly basis, the Contractor and its subcontractors shall furnish records, in a format prescribed by the

Labor Commission and as specified in Labor Code § 1776, to the Commission and California Labor Commissioner for the following:

- a. Projects for which the initial contract is awarded on or after April 1, 2015. (Labor Code § 1771.4(c)(2)(B))
- b. All projects, whether new or ongoing, on or after January 1, 2016. (Labor 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. (Labor 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. (Labor Code § 1771.4(c)(2)(A))

Contractor shall post job site notices as prescribed by Labor Code § 1771.4(a)(2).

REQUIRED PREVAILING WAGE DOCUMENTS

Items listed below will be required for all Contractors at the time of award until project completion.

- Certified Payroll Reports are to be submitted on the A-1-131 Form and/or Prism will be utilized for submission of Certified Payroll Reports.
- Proof of fringe benefit payments.
- Proof of payments to employees.
- Apprentices are required if an apprentice-able trade. (if applicable)

The following Labor Compliance documents are available at www.sdhc.org/doing-business-with-us/labor-compliance and are required prior to commencing work on site.

- Authorized Signatory
- Authorization for Payroll Deductions (if applicable)
- Fringe Benefit Statement
- List of Trades and/or Crafts
- Public Works Contract Award Information (DAS 140, if applicable)
- Request for Dispatch of Apprentice (DAS 142, if applicable)
- Training Fund Contribution Form (CAC, if applicable)

Each Contractor, general, sub or tier shall submit one original and one copy certified payroll report to the San Diego Housing Commission on a weekly basis. Each record should be complete, accurate and signed with a wet signature, in “blue” ink.

CONTRACTOR:

Name: _____

Title: _____

Signature: _____

Date: _____

DIR Registration # (If State/Locally-Funded): _____