

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“**Agreement**”) is made by and between the CITY OF FONTANA, a California municipal corporation, (“**SELLER**”) and SAN BERNARDINO COUNTY, a body corporate and politic of the State of California, (“**BUYER**”), each of them a “**Party**” and jointly the “**Parties**”, and is effective as of the date the last of the Parties executes this Agreement (“**Effective Date**”).

RECITALS

A. SELLER is the sole owner of fee simple interest in certain real property, consisting of approximately 1.65 acres of land, (“**Land**”) with an address of 11109 Jasmine Street, Fontana, CA 92337 and commonly identified as Assessor’s Parcel Number 0238-111-53-0000, as the Land is more particularly described in the legal description attached hereto as Exhibit “**A**,” on which certain improvements, including (without limitation) a building comprising approximately 35,347 total square feet (“**Building**”) is situated (unless referred to individually, the improved Land and the Building shall hereinafter collectively be referred to as the “**Property**.”)

B. SELLER agrees to sell and BUYER agrees to purchase the Property for exclusive use as a regional homeless housing and support services facility, subject to all the terms, conditions, and provisions as set forth in this Agreement.

AGREEMENT

Based upon the foregoing recitals, which are incorporated herein by this reference and made a part hereof, the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SELLER and BUYER agree as follows:

1. PURCHASE AND SALE OF THE PROPERTY.

1.1 Subject to all the terms, conditions, and provisions of this Agreement, and for the consideration herein set forth, SELLER agrees to sell to BUYER and BUYER agrees to purchase from SELLER, all of SELLER’s right, title, and interest to the Property.

1.2 **Purchase Price.** The total purchase price (“**Purchase Price**”) payable by BUYER to SELLER for all of SELLER’s right, title, and interest to the Property shall consist of: (a) ELEVEN MILLION SIX HUNDRED SIXTY-FOUR THOUSAND FIVE HUNDRED TEN AND 00/100 DOLLARS (\$11,664,510.00) (“**Base Price**”), plus (b) an improvement reimbursement to Seller of all third party costs and expenses incurred by SELLER in connection with pre-development costs including but not limited to the design, permitting, and procurement (the “**Pre-Development Costs**”) in addition to the costs of construction and installation of the Improvements (as later defined), provided that such reimbursement shall not exceed the amount of the Construction Bid including Pre-Development Costs approved in writing by BUYER during the Pre-Development Period plus any costs incurred by SELLER due to any Change Orders approved in writing by BUYER during the Construction Period, as the reimbursable amount is documented by invoices provided by SELLER to BUYER in Section 3.3.2 (the “**Improvement Reimbursement**”).

1.3 Deposits.

1.3.1 Independent Consideration. Within fifteen (15) Business Days (as defined in Section 7.10) of the Escrow Opening Date (as defined in Section 3.1), BUYER shall deliver to Escrow the sum of One Hundred and 00/100 Dollars (\$100.00) (the “**Independent Consideration Payment**”), as independent consideration for BUYER’s right to purchase the Property and to terminate this Agreement in accordance with the termination provisions stated herein, for SELLER’s execution, delivery, and performance of this Agreement. The Independent Consideration Payment is non-refundable, not applicable to the Purchase Price, and shall be retained by SELLER notwithstanding any other provision of this Agreement.

1.3.2 Intentionally Omitted.

1.3.3 Construction Deposit. If BUYER has not earlier terminated this Agreement, within fifteen (15) Business Days after the date BUYER receives written notice from SELLER of the occurrence of the Construction Contract Award Date (as defined in Section 2.5.1), Buyer shall deposit with the Escrow Holder the sum of Two Million Dollars (\$2,000,000) (the “Construction Deposit”). The Construction Deposit shall be non-refundable in all circumstances except as set forth in Sections 2.3, 2.6, and 2.8 of this Agreement.

1.4 Intentionally Omitted.

1.5 Escrow Holder/Title. The transaction contemplated in this Agreement shall be handled through escrow and the Parties agree to use Jeanne Gould, Escrow Officer, with an address of 18500 Von Karman Ave., Suite 600, Irvine, CA 92612 as the escrow officer (“**Escrow Holder**”) and Terrell Crutchfield, Title Officer with an address of 1250 Corona Point Court, Suite 200, Corona, CA 92879 as the title officer (“**Title Officer**”).

2. DUE DILIGENCE, TITLE REVIEW, PRE-DEVELOPMENT & CONSTRUCTION PERIODS.

2.1 Due Diligence Period. The “**Due Diligence Period**” shall be the sixty (60) calendar day period following the Effective Date for BUYER’s investigation of feasibility. BUYER and its agents, contractors, consultants, employees, representatives, engineers, and designees (collectively, “**BUYER’s Agents**”) shall have access to the Property at all reasonable times upon reasonable notice to SELLER until the expiration of the Due Diligence Period (or earlier termination of this Agreement) for purposes of conducting tests and inspections of the Property, including (without limitation) surveys and architectural, engineering, geotechnical and environmental inspections and tests. SELLER’s representative may elect to be present with BUYER or BUYER’s representative for any access to the Property, provided that such representative shall not unreasonably interfere with nor disrupt BUYER’s Due Diligence activities. All inspections shall be performed by BUYER at BUYER’s sole cost and expense. The inspections and investigations may include, without limitation, (i) a review of existing zoning, entitlement, planning or similar issues applicable to the Property; (ii) a review of the physical condition of the Property and the systems serving the Property; (iii) a review of the environmental condition of the Property, including a Phase I environmental site assessment and any proposal regarding a Phase II environmental site assessment. BUYER agrees not to conduct or cause to be conducted a Phase

If environmental site assessment or other invasive testing (meaning testing that involves boring into the ground) without the prior written consent of SELLER, which shall not be unreasonably withheld, delayed, or conditioned. Within five (5) Business Days after the Effective Date, SELLER shall deliver to BUYER, whether electronically or otherwise, copies of all plans (including, without limitation, as-built plans), surveys, specifications, studies, reports, test results, environmental assessments, Building condition assessments (including roof, structure, and building systems), existing leases, services, or other contracts for the Property, and other documents pertaining to the physical, geological, or environmental condition of the Property that is in the possession of or within the reasonable control of SELLER (collectively, “**Property Documents**”). SELLER makes no representation whatsoever about the content, accuracy, completeness or value of the Property Documents. All Property Documents will be provided to BUYER without warranty from SELLER regarding the accuracy or completeness of the information contained therein, and such documents may or may not be assignable to BUYER. The delivery of such reports and studies shall be subject to the proprietary rights of any engineer or other consultant preparing the same and any limitations on use imposed by them. BUYER assumes all risk of reviewing and understanding any and all information contained in the Property Documents. To the extent this Agreement has not been earlier terminated, BUYER and BUYER’s Agents shall continue to have access to the Property, subject to the limitations contained in this Section 2.1, after the Due Diligence Period to facilitate, as applicable, the Pre-Development Period (as later defined), the completion of the Improvements during the Construction Period (as later defined), and the Close of Escrow.

2.1.1 Intentionally Omitted.

2.2 Hazardous Materials; Indemnification. As used in this Agreement, “**Hazardous Materials**” includes petroleum, asbestos, radioactive materials or substances defined as “hazardous substances,” “hazardous materials” or “toxic substances” (or words of similar import) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), and under the applicable laws of California. BUYER must rely on its own investigation and not on any representation by SELLER regarding Hazardous Materials. BUYER shall rely solely upon its own investigation and inspection of the Property and the improvements thereon and upon the aid and advice of BUYER’s independent expert(s) in purchasing the Property, and shall take title to the Property without any warranty, express or implied, by SELLER or any employee or agent of SELLER. SELLER makes no representations regarding Hazardous Materials in, on or under the Property. SELLER’s knowledge and disclosures regarding Hazardous Materials are limited to the contents of the Property Documents. Except as provided below, BUYER hereby waives any and all claims against SELLER relating to the presence of Hazardous Materials on, under, or about the Property, whether known or unknown, except for claims arising from (a) SELLER’s intentional misrepresentation; or (b) SELLER’s failure to disclose known Hazardous Materials contained in the Property Documents. This waiver shall not apply to any Hazardous Materials introduced to the Property after the Effective Date, including any Hazardous Material resulting directly from SELLER’s construction of the Improvements.

2.3 Due Diligence Termination Right. If BUYER is not satisfied with the Property for any reason in BUYER’s sole and absolute discretion, BUYER may terminate this Agreement by

giving written notice of termination to SELLER (“**Due Diligence Termination Notice**”) with a copy to the Escrow Holder at any time on or before the expiration of the Due Diligence Period; in which case, neither Party shall have any further obligations to the other except for those obligations that survive the termination of this Agreement and BUYER shall reimburse any Improvement Reimbursement cost incurred by SELLER up to the termination date, as evidenced by invoices, proof of payment, and other documentation reasonably requested by BUYER. In the event that BUYER fails to deliver BUYER’s Due Diligence Termination Notice on or before the expiration of the Due Diligence Period, BUYER shall conclusively be deemed to have waived its right to terminate this Agreement pursuant to this Section 2.3, the Pre-Development Period shall continue in accordance with Section 2.5 of this Agreement. BUYER’s Director of the Real Estate Services Department (“**BUYER’s RESD Director**”) shall have the authority on behalf of BUYER to exercise BUYER’s termination right in this Section 2.3 by delivering the Due Diligence Termination Notice.

2.4 Review of Title.

2.4.1 Within five (5) calendar days after the Effective Date of this Agreement, SELLER shall provide BUYER with a preliminary title report issued within thirty (30) calendar days prior to the Effective Date by First American Title Company (“**Title Company**”) and such Title Company shall provide all underlying title documents (collectively, the “**Preliminary Title Report**”) and BUYER shall have the right to obtain a survey of the Property from a licensed surveyor sufficient to obtain an ALTA title insurance policy (“**Survey**”).BUYER’s review period for the Preliminary Title Report and the Survey shall mean the period from the Effective Date through the date that is thirty (30) Business Days after the Effective Date (“**BUYER’s Title Review Period**”).At any time during BUYER’S Title Review Period, BUYER shall notify SELLER in writing (“**BUYER’s Title Notice**”) of any objections BUYER may have to title exceptions or other matters contained in the Preliminary Title Report or Survey (“**Title Objections**”).If BUYER does not give such notice on or before the expiration of BUYER’s Title Review Period, then it shall conclusively be deemed that BUYER waives all Title Objections other than any delinquent taxes or assessments that encumber the Property, any deeds of trust, mortgages, or any other instruments that secure the repayment of funds that encumber the Property, or any judgments, liens or other monetary encumbrances that encumber the Property. If BUYER does timely provide BUYER’s Title Notice with Title Objections, SELLER shall have seven (7) Business Days after receipt thereof to notify BUYER that SELLER (a) will endeavor to cause or (b) elects not to cause any or all of the Title Objections disclosed therein to be removed or insured over by the Title Company in a manner reasonably satisfactory to BUYER. SELLER’s failure to notify BUYER within such seven (7) Business Day period as to any Title Objections that SELLER is willing to endeavor to cure or cause to be insured over shall be deemed an election by SELLER not to pursue such endeavor to remove or have the Title Company insure over such Title Objections. If SELLER notifies or is deemed to have notified BUYER that SELLER shall not endeavor to remove nor have the Title Company insure over any or all of the Title Objections, BUYER shall have seven (7) Business Days after the expiration of SELLER’s seven (7) Business Day period to respond to either (a) terminate this Agreement or (b) waive such Title Objections and proceed to Closing. If BUYER does not give notice within the said period, BUYER shall be deemed to have elected to waive the Title Objections pursuant to this Section 2.4. If SELLER elects to cure by removing or insuring over the Title Objections, and such removal or insurance procurement by SELLER will exceed the time for BUYER’s Title Review Period, then said Title

Review Period will automatically be extended in order to accommodate said title curing period (“**Extended BUYER’s Title Review Period**”), but shall not extend past the Closing Date and BUYER shall have the right to terminate this Agreement at any time during the Extended BUYER’s Title Review Period if the Title Objections are not cured in a manner reasonably satisfactory to BUYER.

2.4.2 BUYER shall have the right to request any supplement to the Preliminary Title Report or the Survey, and if any such supplement discloses any new materially adverse title or survey matters not disclosed to BUYER prior to the expiration of BUYER’s Title Review Period, the foregoing right of review and approval shall also apply to said new matter; provided, however, the period for BUYER to deliver BUYER’s Title Notice with respect to such new title matter shall be the later of (i) expiration of BUYER’s Title Review Period, or (ii) three (3) Business Days from receipt of the supplemental title report or survey and the underlying document(s) referenced therein.

2.5 Pre-Development Period. The “**Pre-Development Period**” shall be the one hundred twenty (120) calendar day period following the Effective Date, unless this Agreement is earlier terminated in accordance with Section 2.3. During the Pre-Development Period:

2.5.1 The Parties shall cooperate in good faith to finalize the plans and specifications and any other documents needed for the construction of the Improvements (collectively, “Construction Plans”), which SELLER shall use to obtain firm construction bids from qualified and licensed contractors to complete the construction of the Improvements. At the time SELLER submits the Construction Plans for first plan check to the relevant permitting authority, SELLER shall simultaneously provide BUYER with the same Construction Plans for review and comment. Thereafter, the Parties agree to meet periodically during the Pre-Development Period, as needed, but, at a minimum, as follows: (i) SELLER shall provide written notice to BUYER that SELLER has submitted the Construction Plans for second plan check to the relevant permitting authority and the Parties shall meet approximately one week after BUYER’s receipt of said notice regarding BUYER’s revisions to the Construction Plans; and (ii) SELLER shall provide written notice to BUYER of the date it intends to release a solicitation of bids for a construction contract for the Improvements and the Parties shall meet approximately one week after BUYER’s receipt of said notice but before the release date to confirm agreement on the Construction Plans to be included in the solicitation. Following the close of SELLER’s solicitation but before the date SELLER’s City Council awards a construction contract (“Construction Contract Award Date”) for the Improvements, SELLER shall provide written notice to BUYER of the bids received from all contractors based on the Construction Plans and specifying the bid that BUYER intends to award the construction contract (“Construction Bid”), which notice shall be provided by SELLER to BUYER by no later than five (5) Business Days before the expiration of the Pre-Development Period. The Pre-Development Period shall be extended day for day for every day late that the Construction Bid is delivered late to BUYER. In addition, at least five (5) Business Days prior to the commencement of the Construction Period, SELLER and BUYER shall participate in a final good-faith coordination meeting to confirm alignment on the final Construction Plans. SELLER shall consider BUYER’s comments in good faith, provided that SELLER retains final approval authority consistent with its municipal processes.

2.5.2 Program Contribution Agreement: BUYER shall negotiate a separate agreement (“Program Contribution Agreement”) among BUYER, the SELLER, and each of the Cities of Chino, Montclair, Rancho Cucamonga, Upland, Ontario, Chino Hills, and Rialto (collectively, the “**Cities**”) to set forth annual or other periodic payments from SELLER and each of the Cities to BUYER as contributions to BUYER’s operating expenses for programs to be provided at the Property and other terms and conditions that are satisfactory to BUYER.

2.5.2 Intentionally Omitted.

2.6 Pre-Development Period Termination Right. If, at any time on or before the expiration of the Pre-Development Period and provided that BUYER has not earlier exercised its Due Diligence Termination Right, BUYER is not satisfied for any reason in BUYER’s sole and absolute discretion with the Construction Plans prior to the date SELLER issues a solicitation for a construction contract for the Improvements, the Construction Bid, and/or the Program Contribution Agreement has not been fully executed by the BUYER, the SELLER, and each of the respective Cities, BUYER may terminate this Agreement by giving written notice of termination to SELLER (“**Pre-Development Termination Notice**”) with a copy to the Escrow Holder on or before the expiration of the Pre-Development. In the event this Agreement is terminated in accordance with this Section 2.6, neither Party shall have any further obligations to the other except for those obligations that survive the termination of this Agreement and BUYER shall reimburse any Improvement Reimbursement costs incurred by Seller up to the termination date, as evidenced by invoices, proof of payment, and other documentation reasonably requested by BUYER. BUYER’s Chief Executive Officer shall have the authority on behalf of BUYER to exercise BUYER’s termination right and deliver its Pre-Development Termination Notice in accordance with this Section 2.6. In the event that BUYER does not deliver a Pre-Development Termination Notice on or before the expiration of the Pre-Development BUYER shall conclusively be deemed to have waived its right to terminate this Agreement pursuant to this Section 2.6 and the Agreement shall proceed to the Construction Period pursuant to Section 2.7.

2.7 Construction Period. Unless this Agreement is earlier terminated, the “Construction Period” shall be the one (1) year following the end of the Pre-Development Period. During the Construction Period, SELLER shall, at its sole cost and expense but subject to reimbursement through the Improvement Reimbursement portion of the Purchase Price: (a) award the construction contract for the Improvements in the amount of the Construction Bid based on the approved Construction Plans (“Construction Contract Award Date”), provided SELLER shall provide written notice to BUYER of the intended award date and the Parties shall meet approximately one week after BUYER’s receipt of said notice but before the intended award date to confirm the Parties’ agreement on the Construction Plans to be included in the contract, (b) complete the Improvements in accordance with the Construction Plans and the applicable terms and condition of this Agreement (including without limitation Exhibits “D” and “D-1”), with all punchlist items identified in writing by BUYER completed; (cc) provide to BUYER a certification from the Improvements Architect certifying that the Improvements have been completed in accordance with the Construction Plans; (dd) deliver to BUYER a final certificate of occupancy that has been issued by the applicable governmental authority(ies) for the Improvements and the Property; and (ee) obtain Buyer’s written acceptance of the Property as improved with the Improvements.

2.8 Construction Period Remedies. If SELLER is unable to complete the Improvements in accordance with this Agreement on or before the expiration of the Construction Period, as extended by any BUYER delay or force majeure events in accordance with Section 4.1 of Exhibit D of this Agreement, BUYER shall deliver to SELLER written notice specifying the specific portions of the Improvements that BUYER contends still require completion, and SELLER shall have one period of thirty (30) calendar days after receipt of such notice to complete the Improvements; provided, however, that if the Improvements cannot reasonably be completed within such thirty (30) calendar day period, SELLER shall have the right to commence the cure within that thirty (30) day period and thereafter diligently and continuously prosecute such cure to completion. If SELLER fails to complete the Improvements during said thirty (30) day period, BUYER may elect, as its exclusive remedy and in its sole discretion, to (i) complete the Improvements at SELLER's cost to be reimbursed upon Closing; in which case the Construction Period shall be extended for the period time necessary for BUYER to complete the Improvements, (ii) pursue damages for default pursuant to Section 5 of this Agreement, or (iii) terminate the Agreement by providing written notice to SELLER; in which case neither party shall have any further obligations to the other except those obligations that survive said termination and SELLER shall refund the Construction Deposit to BUYER within thirty (30) days after the termination date. BUYER's County Executive Officer shall have the authority on behalf of BUYER to provide the notice and to elect BUYER's remedy in this Section 2.8.

3. ESCROW.

3.1 Opening of Escrow; Closing Date. Closing of the sale of the Property shall take place through an escrow ("**Escrow**") to be established with the Escrow Holder referred to in Section 1.5. Escrow shall be deemed open upon the date BUYER delivers a fully executed copy of this Agreement to Escrow Holder ("**Escrow Opening Date**"), which shall occur by no later than five (5) Business Days after the Effective Date of this Agreement. Upon receipt of a fully executed copy of this Agreement, Escrow Holder shall execute the Escrow Holder's acceptance attached hereto and notify SELLER and BUYER of the escrow number it assigns to the Escrow. The Close of Escrow shall occur as soon as reasonably practicable following the expiration of the Construction Period, but in no event later than the date that is ten (10) Business days following the expiration of the Construction Period ("**Closing Date**"). The terms "**Close of Escrow**" and/or the "**Closing**" shall mean the consummation of the transactions contemplated by this Agreement to occur through the Escrow including SELLER conveyance of the Property to BUYER.

3.2 Escrow Instructions. This Agreement, together with any standard instructions of Escrow Holder, shall constitute the joint escrow instructions of BUYER and SELLER to Escrow Holder as well as an agreement between BUYER and SELLER. In the event of any conflict between the provisions of this Agreement and Escrow Holder's standard instructions, this Agreement shall prevail.

3.3 Deliveries by SELLER.

3.3.1 On or before 12:00 noon Pacific Time on the Business Day preceding the scheduled Closing Date, SELLER shall deliver to Escrow Holder: (i) the Grant Deed for the Property in substantially the form attached hereto as Exhibit "B" ("**Grant Deed**"), duly executed and acknowledged by SELLER; (ii) an original of the Closing Statement described in Section 3.5,

duly executed by SELLER; and (iv) all other documents reasonably required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement.

3.3.2 At least ten (10) Business Days preceding the scheduled Closing Date, SELLER shall deliver to Escrow Holder and BUYER invoices, proof of payment, liens releases, and any other documentation reasonably requested by BUYER to verify the amount of the Reimbursement Improvement in accordance Section 1.2 .

3.3.3 On or before 12:00 noon Pacific Time on the Business Day preceding the scheduled Closing Date, SELLER shall deliver to BUYER an assignment of all warranties for the Improvements.

3.4 Deliveries by BUYER. On or before 12:00 noon Pacific Time on the Business Day preceding the scheduled Closing Date, BUYER shall deliver to Escrow Holder: (a) the Purchase Price (being the Base Price plus the Improvement Reimbursement, provided that such reimbursement shall not exceed the amount of the Construction Bid including Pre-Development Costs approved in writing by BUYER during the Pre-Development Period plus any costs incurred by SELLER due to any Change Orders approved in writing by BUYER during the Construction Period, less Construction Deposit, (b) all escrow costs resulting from this Agreement, (d) an original of the Closing Statement described in Section 3.5, duly executed by BUYER, (e) the certificate of acceptance affixed to the Grant Deed, duly executed and acknowledged by BUYER, and (f) all other documents reasonably required by Escrow Holder to carry out and close the Escrow pursuant to this Agreement.

3.5 Closing Statement. No later than four (4) Business Days prior to the Closing Date, Escrow Holder shall prepare for approval by BUYER and SELLER a closing statement (“**Closing Statement**”) on Escrow Holder’s standard form indicating, among other things, Escrow Holder’s estimate of all closing costs and prorations made pursuant to this Agreement.

3.6 Closing, Recording and Disbursements. On the Closing Date, and provided all of SELLER Conditions to Closing and BUYER Conditions to Closing set forth in Sections 3.10.1 and 3.10.2 of this Agreement have been satisfied or waived in writing by the appropriate party, Escrow Holder shall take the following actions:

3.6.1 *Recording.* Escrow Holder shall cause the Grant Deed to be recorded with the Recorder’s Office in San Bernardino County, California.

3.6.2 *Delivery of Documents and Funds.* Escrow Holder shall deliver to BUYER all of the items listed in Section 3.3.1 above which were delivered by SELLER to Escrow, except that Escrow Holder shall be instructed to record the original Grant Deed with the Recorder’s Office in San Bernardino County, California upon Close of Escrow. Escrow Holder shall deliver the Purchase Price to SELLER by wire transfer as provided in written instructions to be furnished to Escrow Holder by SELLER prior to the Close of Escrow, together with one duplicate original of all of the items listed in Section 3.4 above on the Close of Escrow.

3.7 Taxes. Real property taxes, if any, will not be prorated between SELLER and BUYER in Escrow. Upon recordation of the Grant Deed, BUYER will request cancellation of the real property taxes for the Property pursuant to California Revenue and Taxation Code Section

4986.If current taxes have not yet been paid as of the Closing Date, then at Closing SELLER shall pay through Escrow or out of SELLER proceeds, the full amount of the installment applicable for the period in which Closing occurs. SELLER shall be entitled to a refund of any excess payment made to the taxing authority on account of the Property, including any taxes paid by SELLER and applicable to any period from and after the Closing Date. The taxing authority will notify SELLER of any refund due SELLER resulting from the subject acquisition after a review and any subsequent proration of the property tax assessment by the County Assessor. SELLER retains the right, following close of escrow, to apply to the County Tax Collector for refund pursuant to Revenue and Taxation Code Section 5096.7.

3.8 Payment of Costs. BUYER shall pay for the premium for the standard coverage owner's Title Policy referred to in Section 3.10.2(b), along with the cost of any endorsements or extended coverage to be as set forth therein. Any recording fees for the documents to be recorded under this Agreement and the escrow fee of Escrow Holder shall be paid by BUYER. However, if the Close of Escrow has not occurred by the Closing Date by reason of a default hereunder, the defaulting party shall bear all Escrow cancellation charges. All other costs and expenses of Escrow not specifically allocated in this Agreement shall be paid by BUYER. BUYER and SELLER shall each be solely responsible for payment of its own attorneys' fees and costs for this Agreement.

3.9 Information Report. Escrow Holder shall file and SELLER and BUYER agree to cooperate with Escrow Holder and with each other in completing any report ("Information Report") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. SELLER and BUYER also agree that SELLER and BUYER, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither SELLER nor BUYER shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

3.10 Conditions to Close of Escrow.

3.10.1 Conditions to SELLER Obligations. In addition to any other condition set forth in this Agreement in favor of SELLER, SELLER shall have the right to condition its obligation to convey the Property to BUYER and close the Escrow upon the satisfaction, or written waiver by SELLER, of each of the following conditions precedent on the Closing Date or such earlier time as provided for herein (collectively, the "**SELLER Conditions to Closing**"):

(a) *Delivery of Document and Funds.* BUYER shall have timely executed and deposited into Escrow all escrow and closing documents required to be submitted by BUYER in order to accomplish the close of Escrow for the Property. BUYER shall have deposited

with Escrow Holder the Purchase Price and the escrow and closing costs for which BUYER is responsible to pay and all other sums required of BUYER by this Agreement.

(b) *Representations and Warranties.* All representations and warranties made by BUYER in this Agreement are true and correct in all material respects on the Effective Date and as of the Closing as though made at each time.

(c) *No Default under the Agreement.* BUYER shall not be in default of any of its obligations under this Agreement (and shall not have received notice of a default hereunder which has not been cured) and no event shall have occurred that would constitute a default with the giving of notice or the passage of time.

3.10.2 Conditions to BUYER's Obligations. In addition to any other condition set forth in this Agreement in favor of BUYER, BUYER shall have the right to condition its obligation to purchase the Property and close the Escrow upon the satisfaction, or written waiver by BUYER, of each of the following conditions precedent on the Closing Date or such earlier time as provided for herein (collectively, the "**BUYER Conditions to Closing**"):

(a) *Delivery of Documents and Funds.* SELLER shall have timely executed and deposited into Escrow the Grant Deed, all escrow and closing documents required to be submitted by SELLER in order to accomplish the close of Escrow for the Property.

(b) *Title Policy.* The Title Company is unconditionally and irrevocably committed to issue to BUYER at Closing a CLTA standard coverage owner's title policy, or, upon BUYER's request, an ALTA extended coverage owner's policy of title insurance (provided BUYER shall be responsible for any survey costs associated therewith and BUYER must deliver an ALTA survey acceptable to the Title Company for the issuance of such extended coverage at least ten (10) Business Days prior to the Closing Date and BUYER shall be responsible for the additional cost of the extended coverage), insuring BUYER's title to the Property in the amount of the Purchase Price, subject only to the following (collectively, the "**Approved Title Exceptions**"): (i) the standard exceptions and exclusions from coverage contained in such form of the policy; (ii) real estate taxes not yet due and payable; (iii) matters created by, through or under BUYER; (iv) items disclosed by the Survey and Preliminary Title Report (including any supplements) and approved or deemed waived by BUYER pursuant to the title review provisions in Section 2.4, or, if BUYER fails to obtain the Survey, items which would be disclosed by an accurate, updated survey of the Property or a physical inspection of the Property; and (v) any Title Objections that neither SELLER nor the Title Company has agreed to remove from title or insure over ("**Title Policy**"). Notwithstanding anything to the contrary herein, if endorsements are required to cure defects in title and only if SELLER has agreed to provide such endorsements as a means of curing such title defects, then SELLER shall pay for such endorsements.

(c) *Property Condition and Possession.*

(i) The Improvements to the Property shall have been completed in accordance with this Agreement and the physical condition of the Property shall otherwise be in substantially the same condition on the Closing Date as on the Effective Date.

(ii) Intentionally Omitted.

(iii) BUYER shall be permitted to conduct a final inspection of the Property, including (but not limited) to the Building, within ten (10) Business Days after SELLER provides written notice of completion of the Improvements in accordance with Section 2.7.

(iv) At least ten (10) Business Days before the Closing Date, SELLER shall remove from the Property any and all of the personal property of SELLER and of all tenants, occupants, users, trespassers, and other third parties along with any and all debris and trash from the Property. SELLER shall deliver full possession of the Property in the foregoing condition to BUYER on the Closing Date free from any tenants, occupants, users, and trespassers.

(d) *CEQA*. The requirements under the California Environmental Quality Act, as amended (CEQA) shall have been complied with. If on or before the Closing Date, an environmental review determines that a conveyance of the Property from SELLER to BUYER is not permissible under the CEQA Guidelines, then escrow shall be terminated.

(e) *Non-Foreign Affidavit*. SELLER shall have executed and deposited into escrow a Non-Foreign Affidavit as required by federal law.

(f) *Representations and Warranties*. All representations and warranties made by SELLER in this Agreement are true and correct in all material respects on the Effective Date and as of the Closing as though made at each time.

(g) *No Default under Agreement*. SELLER shall not be in default of any of its obligations under this Agreement (and shall not have received notice of a default hereunder which has not been cured) and no event shall have occurred that would constitute a default with the giving of notice or the passage of time.

(h) *Encumbrances*. There are no encumbrances on the Property except for Approved Title Exceptions.

(i) *Contract Termination*. SELLER shall have canceled, assigned to Buyer, as required by this Agreement or requested in writing by BUYER, or terminated all agreements, contracts, leases, licenses, and use agreements relating to the Property with service providers, tenants, and other third parties and provided BUYER with written evidence of same.

(j) BUYER's compliance with any and all applicable funding requirements and/or State of California Housing and Community Development requirements, including grant funding requirements, that are applicable to BUYER's purchase of the Property.

(k) BUYER's compliance with any and all applicable laws, including, but not limited to Government Code Section 65402.

3.10.3 Satisfaction of Conditions. Where satisfaction of any of the foregoing conditions requires action by BUYER or SELLER, each party shall use its diligent efforts, in good faith, and at its own cost, to satisfy such condition.

3.10.4 Waiver. Each party may at any time or times, waive any of their respective Conditions to Closing in this Section 3.10, as set forth above, to their respective obligations hereunder, but any such waiver shall be effective only if contained in writing, signed, and delivered to the other party.

3.10.5 Escrow Termination. In the event each of the Conditions to Closing in this Section 3.10, as set forth above, is not fulfilled on the Closing Date or such earlier time period as provided for herein or waived, either party may at its option terminate this Agreement and the Escrow(s) opened hereunder, provided that party is not in default of this Agreement beyond any applicable notice and cure periods. No termination under this Agreement shall release any party then in default from liability for such default. In the event this Agreement is terminated, all documents and funds delivered to Escrow Holder shall be returned immediately to the respective parties.

4. REPRESENTATIONS AND WARRANTIES.

4.1 SELLER Representations and Warranties. SELLER hereby makes the following representations and warranties to BUYER as of the Effective Date, each of which is material and relied upon by BUYER in making its determination to enter into this Agreement and each of which is re-made each as of the Closing Date and shall survive the Closing Date.

(a) This Agreement and all documents executed by SELLER which are to be delivered to SELLER at the Closing are and at the time of Closing will be duly authorized, executed and delivered by SELLER, are and at the time of Closing will be legal, valid and binding obligations of SELLER enforceable against SELLER in accordance with their respective terms, and do not and at the time of Closing will not violate any provision of any agreement or judicial order to which SELLER is subject.

(b) SELLER owns the Property in fee simple, subject to any agreements (oral or in writing) or leasehold interests disclosed by SELLER to BUYER in the Property Documents or identified in the Preliminary Title Report.

(c) SELLER has the full right, power, and lawful authority to sell the Property and undertake all obligations as provided herein. The execution, performance, and delivery of this Agreement by SELLER has been fully authorized by all requisite actions on the part of SELLER.

(d) To the best of SELLER's knowledge, there are no pending or threatened actions, suits, writs, injunctions, decrees, legal proceedings or governmental investigations against the Property, whether criminal, civil, or administrative and SELLER has not received any notices thereof.

(e) SELLER has not received any notices and has no knowledge of any violation or threatened violations of any laws, ordinances, rules, regulations, or requirements of any governmental agency, body or subdivision affecting or relating to the Property, whether criminal, civil, or administrative.

(f) SELLER is not the subject of a current or pending bankruptcy proceeding.

(g) SELLER has not received any notices and has no knowledge of any hazardous materials or waste (as defined by California Health and Safety Code Section 25100, et. seq., and/or 42 U.S.C. §9601, et. seq.) that exists at the Property or a violation of any environmental laws that exists at the Property.

(h) There are no Contracts that will be binding on the Property or BUYER after Closing except for warranties assigned for the Improvements to BUYER upon Closing.

4.1.2 BUYER's Representations and Warranties. BUYER hereby makes the following representations and warranties to SELLER as of the Effective Date, each of which is material and relied upon by SELLER in making its determination to enter into this Agreement and each of which is re-made as of the Closing Date and shall survive the Closing Date:

(a) BUYER has the full right, power, and lawful authority to purchase and accept the Property and undertake all obligations as provided herein and the execution, performance, and delivery of this Agreement by BUYER have been fully authorized by all requisite actions on the part of BUYER.

(b) This Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are and at the time of Closing will be duly authorized, executed and delivered by Buyer, are and at the time of Closing will be legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms, and do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is subject.

(c) Buyer has obtained all necessary authorizations, approvals and consents to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

5. DEFAULTS.

5.1 Institution of Legal Actions. Any legal action must be instituted in the Superior Court of San Bernardino County, State of California.

5.2 Rights and Remedies are Cumulative. Except as otherwise expressly provided in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

5.3 Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of any right it may have to institute and

maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.4 Damages Limitation. In no event shall either Party be liable to the other for consequential, incidental, exemplary punitive, or indirect damages arising out of this Agreement.

6. SELLER & BUYER COVENANTS

6.1 SELLER COVENANTS

6.1.1 Operation of Property. Subject to SELLER's completion of the Improvements in accordance with this Agreement, from the Effective Date until the Close of Escrow, SELLER shall operate and maintain the Property in a manner generally consistent with the manner in which SELLER has operated and maintained the Property prior to the Effective Date, ordinary wear and tear excepted.

6.1.2 Provide Copies of Notices. SELLER shall, from the Effective Date until the Close of Escrow, furnish BUYER with a copy of all notices received by SELLER from any governmental authority or other person or entity of any alleged violation of any law, statute, ordinance, regulation or order of any governmental or public authority relating to the Property or alleged defaults or other claims made by other persons or entities within five (5) Business Days following SELLER's receipt thereof.

6.1.3 Contracts. SELLER shall not assign any Contracts for the Property to BUYER upon Closing, except that SELLER shall assign any and all warranties for the Improvements to BUYER, and SELLER shall not execute any Contracts or renew any Contracts for the Property from and after the Effective Date until the Close of Escrow without the prior written approval of the BUYER.

6.2 BUYER COVENANT

6.2.1 Use Restriction. BUYER agrees that, for a period of ten (10) years after the Closing Date ("Restricted Period"), the use of the Property shall be restricted to a low barrier regional navigation center with homeless housing and support services facility ("Use Restriction"). If at any time during the Restricted Period, BUYER determines, in BUYER's sole discretion, that (i) continued operation of the Property as a low-barrier regional navigation center is no longer feasible due to termination of the Program Contribution Agreement or other insufficiency of ongoing financial support from partner cities, (ii) regional needs for homeless services have materially changed such that continued operation is no longer required, BUYER shall provide written notice to SELLER. Within thirty (30) days after such notice, the Parties shall meet and confer in good faith to determine mutually acceptable next steps regarding the use or disposition of the Property. The Parties acknowledge that potential options may include, but are not limited to the following:

(a) The Parties may mutually agree in writing to wind down operations and allow BUYER to repurpose the Property for another public-serving use.

(b) The Parties may agree that BUYER may downsize the navigation center to a scope appropriate for the needs of SELLER, and use the remaining portions for compatible public uses found to be appropriate by BUYER.

(c) BUYER may offer the Property for sale to SELLER at a mutually agreed depreciated value, with such valuation method to be negotiated in good faith.

6.2.2 The provisions of this Section 6.2.1 shall survive the Close of Escrow and remain in effect until the expiration of the Restricted Period; at which time the Use Restriction shall automatically expire and BUYER shall have the right to use the Property for any public serving purpose whatsoever.

7. MISCELLANEOUS.

7.1 Intentionally Omitted.

7.2 Indemnification.

(a) BUYER agrees to indemnify SELLER against, and to hold and save SELLER harmless from, all claims, demands, suits, actions, damages, obligations, liabilities, losses, costs and expenses, including but not limited to reasonable attorneys' fees and court costs, as a result of BUYER's gross negligence or willful misconduct in performing its due diligence inspections during the Due Diligence Period; provided, however, that BUYER will not be obligated to indemnify SELLER with respect to SELLER'S own negligence. The foregoing indemnity shall survive termination of this Agreement. BUYER shall not suffer or permit any mechanic's or materialmen's or other lien to stand against the Property in connection with any labor, materials or services furnished or claimed to have been furnished by or on behalf of BUYER in connection with or as a result of any due diligence inspections. If any such lien shall be filed against the Property, BUYER shall cause such lien to be discharged or bonded within thirty (30) days after BUYER's receipt of notice of such filing. Following any due diligence inspections, BUYER shall restore the Property to substantially its physical condition as existed prior to such inspection (except for any changes to the Property caused by SELLER, or its agents or employees or any ordinary wear and tear). Prior to BUYER's initial entry on the Property, BUYER or its consultant shall at its sole cost obtain a policy of liability insurance with a combined single limit in an amount not less than One Million Dollars (\$1,000,000), which may be satisfied by BUYER's program of self-insurance as a self-insured public entity; SELLER shall be named an additional insured on said policy; and BUYER or its consultants shall furnish to SELLER a certificate of insurance confirming such coverage.

(b) SELLER shall not suffer or permit any mechanic's or materialmen's or other lien to stand against the Property in connection with any labor, materials or services furnished or claimed to have been furnished by or on behalf of SELLER in connection with or as a result of any construction obligations performed by SELLER under this Agreement. If any such lien shall be filed against the Property, SELLER shall cause such lien to be discharged or bonded within thirty (30) days after SELLER's receipt of notice of such filing.

(c) SELLER agrees to indemnify BUYER against, and to hold and save BUYER harmless from, all claims, demands, suits, actions, damages, obligations, liabilities,

losses, costs and expenses, including but not limited to reasonable attorneys' fees and court costs, as a result of SELLER's gross negligence or willful misconduct at the Property or SELLER's breach of this Agreement resulting in bodily injury, property damages, or third party claims, including but not limited to the construction of the Improvements during the Construction Period and the presence or exacerbation of any Hazardous Materials resulting therefrom but only to the extent such Hazardous Materials were introduced to or exacerbated on the Property by SELLER or its contractors in the course of the construction of the Improvements; provided, however, that BUYER will not be obligated to indemnify SELLER to the extent of BUYER's own negligence. The foregoing indemnity shall survive termination of this Agreement. SELLER shall not suffer or permit any mechanic's or materialmen's or other lien to stand against the Property in connection with any labor, materials or services furnished or claimed to have been furnished by or on behalf of SELLER in connection with or as a result of the construction of the Improvements. If any such lien shall be filed against the Property, SELLER shall cause such lien to be discharged or bonded within thirty (30) days after SELLER's receipt of notice of such filing.

SELLER: City of Fontana
Attn: City Manager
8353 Sierra Ave
Fontana, CA 92335

with a copy via email to:
Best Best & Krieger LLP
Attn: Ruben Duran
2855 E. Guasti Road, Suite 400
Ontario, CA 91761

BUYER: San Bernardino County
c/o Real Estate Services Department
Attention: Brandon Ocasio, Manager of Acquisitions
385 North Arrowhead Avenue, 3rd Floor
San Bernardino, CA 92415-0180
with a courtesy copy via email to:
brandon.ocasio@res.sbcounty.gov

7.3 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be delivered by either (a) personal delivery, (b) a reliable overnight courier service that provides a receipt showing the date and time of delivery, including (but not limited to) Federal Express, or (c) registered or certified U.S. Mail, postage prepaid, return receipt requested. A courtesy copy of any notices delivered in accordance with this subsection shall be concurrently sent via e-mail to the e-mail address identified below, provided that such courtesy e-mail is not intended, nor shall it be deemed to substitute as the effective means of notice delivery or alter the effective date of such notice. Notices shall be addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other party hereto:

Each notice shall be deemed delivered on the date received or the date the recipient refuses to accept receipt if delivered by personal delivery or by overnight courier service, or on the date of receipt or the date the recipient refuses to accept receipt as disclosed on the return receipt if by mail in accordance with this Section 7.3. The parties to this Agreement and their respective successors and assigns shall have the right from time to time, and at any time during the term of this Agreement, to change their respective notice addresses.

7.4 Relationship Between SELLER and BUYER. It is hereby acknowledged that the relationship between SELLER and BUYER is not that of a partnership or joint venture and that SELLER and BUYER shall not be deemed or construed for any purpose to be the agent of the other.

7.5 Attorneys' Fees. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This subsection shall not apply to those costs and attorneys' fees directly arising from any third-party legal action against a party hereto and payable under Section 7.13 ("Real Estate Brokerage Commission").

7.6 Successors and Assigns; Assignment. This Agreement shall bind and inure to the benefit of SELLER and BUYER and their respective successors and permitted assigns. This Agreement shall not be assigned or otherwise transferred without the prior written consent of BUYER. Any change in control or ownership of SELLER shall be deemed an assignment requiring BUYER's consent for purposes of this Agreement.

7.7 Entire Agreement, Waivers, and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. Any amendment or modification to this Agreement must be in writing and executed by SELLER and BUYER.

7.8 Prohibited Persons and Transactions. SELLER represents to BUYER that it is not a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

7.9 Executive Order N-6-22 Russia Sanctions. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the "EO") regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies

and their contractors (including by agreement or receipt of a grant) to terminate agreements with, and to refrain from entering any new agreements with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined by the County or the State that SELLER is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Agreement. SELLER shall be provided advance written notice of such termination, allowing SELLER at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of BUYER.

7.10 Computation of Time. In the event that the day on which a party is required to take any action under the terms of this Agreement is a holiday, Saturday or Sunday, such action shall be taken on the next succeeding business day. A “**Business Day**” is any day on which the offices of the San Bernardino County, California Recorder are open to the public for business. The last day of any period of time described herein shall be deemed to end at 5:00 p.m., Pacific Time. A calendar day is any day of the year, including weekends and holidays. **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT.**

7.11 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California, without regard to conflict-of-interest principles.

7.12 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

7.13 Real Estate Brokerage Commission. BUYER and SELLER respectively represent and warrant that no real estate broker or agent is or will be involved in this transaction on behalf of BUYER or SELLER, respectively. Each Party agrees to indemnify and hold the other harmless from and against all liabilities, costs, damages, and expenses, including, without limitation, reasonable attorneys’ fees, resulting from any claims for fees, payment, or commissions due to a broker of third-party resulting from a breach of each party’s respective representations and warranties in this Section 7.13.

7.14 Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on both parties hereto, notwithstanding that both parties are not signatories to the original or the same counterpart. If authorized by law, the parties shall be entitled to manually sign and transmit this Agreement by electronic means (whether by facsimile, PDF or email transmission) and are entitled to electronically sign and transmit this Agreement via DocuSign, Adobe Sign, or other similar digital signature software, which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

7.15 Exhibits. Exhibits “A,” “B,” “C,” and “D” are attached to this Agreement and are incorporated herein by this reference and made a part hereof.

7.16 No Withholding as Foreign Seller. SELLER represents and warrants to BUYER that SELLER is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code section 1445 and that it will deliver to BUYER on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

8 GOVERNING BOARD APPROVAL: This Agreement is subject to and shall have no force or effect until and unless first approved by the governing boards of both SELLER and BUYER and executed by an authorized signatory for each party.

[Signatures on next page]

IN WITNESS WHEREOF, SELLER and BUYER have entered into this Agreement as of the date last set forth below.

BUYER:
SAN BERNARDINO COUNTY

SELLER:
CITY OF FONTANA

By _____
:
Dawn Rowe, Chair
Board of Supervisors

By: _____
Matthew Ballantyne
City Manager

Date: _____

Date: _____

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

LYNNA MONELL, Clerk of the Board of
Supervisors

Attest:

By _____
:
Deputy

By: _____
Germaine Key, City Clerk

Date: _____

Date: _____

Approved as to Legal Form:

Approved as to Legal Form:

LAURA FEINGOLD, County Counsel
San Bernardino County, California

Ruben Duran, City Attorney
City of Fontana

By _____
:
Agnes Cheng
Deputy County Counsel

By: _____
Jessica Lomakin
Special Counsel

Date: _____

Date: _____

ACCEPTANCE BY ESCROW HOLDER

The undersigned hereby acknowledges that it has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

First American Title
Jeanne Gould, Escrow Officer
18500 Von Karman Ave., Suite 600
Irvine, CA 92612

By: _____
Jeanne Gould, Escrow Officer
First American Title

Escrow No. _____

EXHIBIT "A"

Legal Description of the Land

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows:

Parcel 2 of Parcel Map No. 16613, in the City of Fontana, County of San Bernardino, State of California, as per map filed in [Book 209, Pages 71 and 72](#), inclusive, of Parcel Maps, in the office of the County Recorder of said county.

Excepting therefrom an undivided 1/2 interest in and to the net proceeds of all oil and mineral rights and benefits therefrom, as reserved in the deed from Mahel Shoenhair, a married woman, recorded September 25, 1934 in [Book 1000, Page 31](#), official records.

Any right of entry in said land under and by reason of said reservation was quit claimed to the then record owners of said land by the then record owner of said rights, by deed recorded April 24, 1953 in [Book 3155, Page 342](#), official records.

APN: 0238-111-53-0-000

EXHIBIT "B"
FORM OF GRANT DEED
(conveyance document)

Follows this page

RECORDING REQUESTED BY:
San Bernardino County
Real Estate Services Department
385 N. Arrowhead Ave., 3rd Floor
San Bernardino, CA 92415-0180

WHEN RECORDED MAIL TO:
Same as above

RECORDER: EXEMPT:
This instrument is for the benefit of the San Bernardino County and is entitled to be recorded without fee subject to Govt. Code 27383 and 6103, and Rev. & Tax Code 11922

A.P.N: 0238-111-53-000	GRANT DEED	Dept. Code: XXXX
------------------------	-------------------	------------------

The undersigned grantor(s) declare(s):
DOCUMENTARY TRANSFER TAX \$0.00 Conveyance to Government Entity. R&T 11922
 computed on full value of property conveyed, or
 computed on full value less liens and encumbrances remaining at the time of sale
 Unincorporated Area City of Fontana

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Fonanta, a California municipal corporation,

hereby GRANT(S) to **SAN BERNARDINO COUNTY, a body corporate and politic of the State of California,** the following real property in the City of Fontana, San Bernardino County, State of California:

SEE EXHIBIT "A", LEGAL DESCRIPTION

**GRANTOR:
CITY OF FONTANA**

By: EXHIBIT VERSION - DO NOT EXECUTE
Matthew Ballantyne, City Manager

Dated: _____

EXHIBIT "A" TO GRANT DEED

Legal Description of the Land

Real property in the City of Fontana, County of San Bernardino, State of California, described as follows:

Parcel 2 of Parcel Map No. 16613, in the City of Fontana, County of San Bernardino, State of California, as per map filed in [Book 209, Pages 71 and 72](#), inclusive, of Parcel Maps, in the office of the County Recorder of said county.

Excepting therefrom an undivided 1/2 interest in and to the net proceeds of all oil and mineral rights and benefits therefrom, as reserved in the deed from Mahel Shoenhair, a married woman, recorded September 25, 1934 in [Book 1000, Page 31](#), official records.

Any right of entry in said land under and by reason of said reservation was quit claimed to the then record owners of said land by the then record owner of said rights, by deed recorded April 24, 1953 in [Book 3155, Page 342](#), official records.

APN: 0238-111-53-0-000



SAN BERNARDINO COUNTY
CERTIFICATE OF ACCEPTANCE

APN: 0238-111-53-0000

This is to certify that the interest in real property conveyed by the within the instrument to San Bernardino County, a body corporate and politic of the State of California, is hereby accepted by the undersigned officer/agent on behalf of the Board of Supervisors pursuant to authority conferred by resolution of the Board of Supervisors adopted on March 27, 2012, and the Grantee consents to recordation thereof by its duly authorized officer/agent.

Dated: _____

By: _____

Terry W. Thompson, Director

Real Estate Services Department

EXHIBIT “C”
INTENTIONALLY OMITTED

EXHIBIT "D"

ADDITIONAL TERMS DURING CONSTRUCTION PERIOD

In addition to the applicable terms of the Agreement, the following terms shall be applicable during the Construction Period:

1. Construction of the Improvements.

1.1 Improvements. SELLER shall construct, or cause to be constructed by a general contractor approved by BUYER ("Improvements Contractor"), the Improvements in accordance with the approved Construction Plans and subject to the terms and conditions of this Exhibit and the applicable terms of the Agreement, provided that the Improvements Architect and Engineers (or any affiliated entities) shall not be the Improvement Contractor. The Construction Contract between SELLER and the Improvements Contractor shall guarantee the Completion of the Improvements, including any punchlist items in accordance with Section 2.1 of this Exhibit D by no later than the expiration of the Construction Period. In procuring a Improvements Contractor for the Improvements at the Property, SELLER shall comply with all federal, state, and local laws concerning competitive bidding for public works projects as defined by the California Public Contract Code and shall ensure that any contract awarded to the Improvement Contractor contains all necessary terms required by applicable law including but not limited to the requirement to pay prevailing wages, registration with the Department of Industrial Relations, and holding all necessary licenses. Contracts between the Improvement Contractor and any subcontractor shall also be required to contain all legally necessary provisions.

1.2 Change Orders by BUYER. In the event that BUYER requests modifications to the Construction Plans during the Construction Period that increase the cost of construction of the Improvements, and provided that such modifications are elective in nature and are not required as a result of any professional errors or omissions in the Construction Plans, BUYER hereby agrees to pay such incremental cost at the Close of Escrow, provided that BUYER has first approved said increase in writing. In the event that BUYER requests modifications to the Construction Plans following the approval thereof by BUYER during the Construction Period, which in either case reduce the cost of construction of the Improvements, SELLER shall apply the savings in Construction Costs to be reimbursed by BUYER in accordance with this Agreement.

1.3 Change Orders by SELLER. SELLER shall not make any modifications to the approved Construction Plans during the Construction Period without the prior written approval of BUYER in its sole and absolute discretion nor any modifications to the approved Construction Plans which would result in an increase or decrease of the costs of construction of the Improvements, without the prior written approval of BUYER in its sole and absolute discretion.

1.4 BUYER's Access. SELLER agrees that BUYER, its employees, project managers, consultants and representatives (collectively, "BUYER Representatives"), shall have access to the Property at all reasonable times with reasonable notice to SELLER during the construction of the Improvements for the purpose of inspecting the construction of the Improvements and attending meetings with SELLER, the Improvements Contractor and the Improvements Architect, and BUYER Representatives shall have the right to inspect the construction of the Improvements and

ascertain that the Improvements are being performed in accordance with the approved Construction Plans. SELLER shall cause any portion of the Improvements reasonably ascertained by BUYER and verified by the Improvements Architect as not in conformance with the approved Construction Plans to be corrected to conform to such approved drawings to the reasonable satisfaction of BUYER. SELLER further agrees that, upon commencement of the Improvements, it will notify the BUYER's RESD Director in writing of the identity, place of business, and business telephone number of the person(s) who shall be the Improvements Architect's representative(s) during the progress of the Work. Notwithstanding the foregoing, SELLER's primary contact for purposes of construction of the Improvements shall be Phil Burum and BUYER's primary contact for purposes of construction is set forth in Section 4.2 of this Exhibit.

1.5 Quality of Work and Materials. All materials, parts and equipment furnished by SELLER and/or its contractor(s), subcontractors and material suppliers shall be new, high grade and free from defects and imperfections in a manner consistent with industry standards for comparable projects. SELLER and/or its contractor(s), subcontractors and material suppliers shall have the right to make substitutions of materials, equipment, or finishes of comparable quality and utility upon prior written approval of BUYER. Except as set forth in Section 4.3 of this Exhibit, SELLER makes no warranty, express or implied, with respect to any materials or equipment incorporated into the Improvements, and Buyer's sole recourse shall under any applicable warranties of manufacturers, suppliers, or contractors as assigned to BUYER.

1.6 BUYER's Completion of IT and Communications Work. Subject to SELLER's completion of the necessary portion of the Work of the related Improvements (as defined in Schedule 1), BUYER shall complete the installation of all furniture, fixtures, equipment, IT, communications and audio visual cabling and equipment desired by BUYER. SELLER shall provide BUYER with the construction schedule to facilitate BUYER's installation.

2. Completion of the Improvements.

2.1 Completion. Subject to the terms and provisions of this Section 2.1 and Section 4.1 of this Exhibit D, SELLER shall complete or cause the Completion of the Improvements, including any punchlist items, by no later than the expiration of the Construction Period, as defined in the Agreement ("Completion Deadline"). For purposes of this Agreement, "Completion" shall occur with respect to the Improvements when (a) the Improvements have been completed in accordance with Construction Plans and the applicable terms and condition of this Agreement (including without limitation Exhibits "D" and "D-1"), with all punchlist items identified in writing by BUYER completed; (b) the Improvements Architect issues a certificate to BUYER certifying that the Improvements have been completed in accordance with Construction Plans; (c) a final certificate of occupancy has been issued by the applicable governmental authority(ies) for the Improvements and the Property and has been delivered to the BUYER; and (d) BUYER has accepted the Property as improved by the Improvements.

2.2 Intentionally Omitted.

3. Remedies.

3.1 Failure to Achieve Completion. In the event SELLER fails to completion of the Improvements by the Completion Date, the BUYER shall have the remedies set forth in Section 2.8 of the Agreement.

4. Miscellaneous Provisions.

4.1 Delays and Force Majeure. SELLER shall not be responsible for any delays in completion of the Improvements to the extent an actual delay has occurred resulting from: (i) force majeure events (including proclaimed emergencies or disasters, labor disputes, material shortages where comparable substitutes are not available, acts of god, extraordinary governmental restrictions, or other similar events beyond SELLER's reasonable control), (ii) BUYER's failure to fulfill its obligations under this Agreement, including failure to provide any BUYER required consents or approvals, provided that SELLER shall first give BUYER notice of such delay and provide BUYER with a reasonable time to fulfill its obligations; or (iii) any changes to the Improvements requested by BUYER subsequent to its approval of the applicable document in the Construction Plans. Notwithstanding anything to the contrary, SELLER shall first notify BUYER in writing of any alleged force majeure delay for the BUYER's evaluation as to the applicability of this provision.

4.2 SELLER's Representative and BUYER's Representative. SELLER hereby designates Phil Burum as its "SELLER's Representative" with respect to the matters regarding the construction of the Improvements, who until further notice to BUYER, shall have full authority and responsibility to act on behalf of SELLER for such matters. BUYER hereby designates the BUYER's Chief Executive Officer or his authorized designee as its "BUYER's Representative" with respect to the matters regarding the construction of the Improvements, which designee, until further notice to SELLER, shall have full authority and responsibility to act on behalf of BUYER for such matters. A copy of all notices required to be sent to BUYER hereunder shall be sent to BUYER at 385 North Arrowhead Ave, 3rd Floor, San Bernardino, California 92415-0180, Attention: Real Estate Services Director.

4.3 Construction Warranties. SELLER represents and warrants the Improvements, including any warranty of condition, quality, design, fitness for a particular purpose or merchantability, for a period of one year after the Completion Date. In addition, SELLER agrees to assign to BUYER all such warranties and guaranties relating to the Improvements at the Close of Escrow.

EXHIBIT “D-1”

PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Scope of Work in the Contract requires the payment of prevailing wages and compliance with the following requirements:

- 1. Determination of Prevailing Rates.** Pursuant to California Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at <https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.
- 2. Payment of Prevailing Rates.** Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.
- 3. Prevailing Rate Penalty.** The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the County for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to Labor Code section 1775, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.
- 4. Ineligible Contractors.** Pursuant to the provisions of Labor Code sections 1777.1 and 1771.1(o), the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <https://www.dir.ca.gov/dlse/debar.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been

paid to a debarred subcontractor by a contractor on the project shall be returned to the County. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

5. Payroll Records:

- a. Pursuant to Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
 - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County and the Division of Labor Standards Enforcement of the DIR;
 - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
 - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such

a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.

- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from progress payments then due to the Contractor. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- c. At least monthly (at least once every 30 days), the Contractor and all subcontractors must submit electronic certified payroll records online to the Labor Commissioner, in a format prescribed by the Labor Commissioner. The County reserves the right to require Contractor and all subcontractors to submit certified payroll to the Labor Commissioner more frequently than monthly.
 - i. A contractor or subcontractor who fails to furnish electronic certified payroll records to the Labor Commissioner as required by Labor Code section 1771.4, is subject to a penalty by the Labor Commissioner of one hundred dollars (\$100) per day, until such payroll records are furnished, not to exceed a total penalty of five thousand dollars (\$5,000) per project.
 - ii. This requirement does not apply to public works projects \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work. However, the Contractor must still keep accurate certified payroll records and retain those records, as specified in Labor Code section 1776, for at least three years after completion of the work.

- 6. **Limits on Hours of Work.** Pursuant to Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40)

hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

7. **Penalty for Excess Hours.** The Contractor shall pay to the County a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.
8. **Jobsite Notices.** This project is subject to compliance, monitoring, and enforcement by the DIR. As required by the DIR, Contractor is required to post jobsite notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
9. **Registration with the DIR (Labor Code section 1725.5)**
 - a. Contractor must be registered with the DIR to bid or submit a proposal on this project, unless the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirement for bid purposes only as allowed under Labor Code sections 1771.1(a) and 1725.5(f).
 - i. An inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:
 - 1) The subcontractor is registered prior to the bid opening.
 - 2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee.
 - 3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

- b. Contractor must be registered with the DIR (unless an exception applies) to be awarded a contract or perform any work on this project. No contractor or subcontractor may be awarded a contract for a public work project or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5 (unless an exception applies).
 - i. A contract entered into with any contractor or subcontractor in violation Labor Code section 1725.5 shall be subject to cancellation.
 - ii. If the Labor Commissioner determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with Labor Code section 1771.1, the contractor or subcontractor is subject to civil penalties of one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000), payable to the state. Contractor may also be subject to additional penalties, up to an additional \$10,000, for entering into a contract with an unregistered subcontractor.
 - iii. Where a contractor or subcontractor engages in the performance of any public work contract without having been registered with the DIR, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or subcontractor on all public works until they are registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work. Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner shall be paid at their regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days. Failure of a contractor or subcontractor to observe a stop order issued and served upon them is guilty of a misdemeanor punishable by imprisonment in county jail up to 60 days or by a fine of up to ten thousand dollars (\$10,000), or both.
- c. To qualify for registration with the DIR, Contractor must meet all requirements listed in [Labor Code Section 1725.5](#).
- d. Registration with the DIR is not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation, or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS

1. State Public Works Apprenticeship Requirements:

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable trades or crafts (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training contributions for each apprenticeable hour employed on the Contract to either the local training fund or the California Apprenticeship Council; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exemption is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Scope of Work shall be paid the prevailing rate of per diem wages for apprentices in the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Unless otherwise provided by a collective bargaining agreement, when the Contractor requests the dispatch of an apprentice to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, Contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.
- c. Only apprentices, as defined in Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training, or the rules and regulations of the California Apprenticeship Council.

2. Compliance with Labor Code section 1777.5 requires all public works contractors to:

- a. Submit Contract Award Information (DAS-140) to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted must include the contractor’s name, address, telephone number and state license number; the full name and

address of the public work awarding body; the exact location of the public work site; the date of the contract award; an estimate of journeyman hours to be performed under the contract; the number of apprentices proposed to be employed; and the approximate dates the apprentices would be employed.

- b. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
- c. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice (to do this use DAS Form 142)*.
- d. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
- e. Contractors who are already approved to train apprentices (i.e. check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.
- f. Contractors who are NOT approved to train apprentices (i.e. those that check either “Box 2” or “Box 3” on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- g. Employ Registered Apprentices
 - i. Labor Code section 1777.5 requires that a contractor performing work in an “apprenticeable” craft or trade must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman, not including overtime hours. If Contractor has agreed to be covered by an apprenticeship program’s standards, Contractor must employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, which cannot be less than the 1 to 5 ratio required above.
 - ii. Contractor must attempt, to the greatest extent possible, to employ apprentices during the same time period that the journeyman in the same craft or trade are employed at the jobsite. This ratio shall be met prior to the Contractor’s completion of work on the project. “Apprenticeable” crafts or trades are denoted with a pound symbol “#” in front of the craft or trade name on the prevailing wage determination.

- iii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
 - iv. Contractors may use the “DAS-142” form for making a request for the dispatch of an apprentice.
 - v. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
 - vi. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
 - vii. Apprentices employed to fulfill the requirements of Labor Code section 1777.5 must be registered apprentices who are training under apprenticeship standards that include the work processes that the Contractor will perform on the project. Where a Contractor employs apprentices under the rules and regulations of the California Apprenticeship Council, apprentices must, at all times work under the direct supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- h. Make Training Fund Contributions
- i. Contractors performing in apprenticeable crafts or trades on public works projects, must make training fund contributions to the California Apprenticeship Council, in the amount established by the Director of the Department of Industrial Relations as the prevailing amount for apprenticeship training contributions in the area of the public works site.
 - ii. Contractors may use the “CAC-2” form for submittal of their training fund contributions.
 - iii. Contractors may take as a credit for payments to the Council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project.

- iv. Training fund contributions are due and payable on the 15th day of the month for work performed during the preceding month.
- i. Submit a Verified Statement within 60 Days of Conclusion of Work Under the Contract
 - 1) Each contractor and subcontractor must submit a verified statement of the journeyman and apprentice hours performed on the contract, which information shall be public and retained by the apprenticeship programs for 12 months.

3. Exemptions to Apprenticeship Requirements:

- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
 - i. Contractors performing in non-apprenticeable crafts. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
 - ii. When the Contractor has a direct contract with the public agency that is under \$30,000.
 - iii. When the project is 100% federally-funded and the funding of the project does not contain any city, county, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).
 - iv. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720 et seq.

4. Exemption from Apprenticeship Ratios:

- a. The Administrator of Apprenticeship may grant a certificate exempting the Contractor from the 1-to-5 ratio set forth in this Section if Contractor can show that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen
- b. An apprenticeship program has the discretion to grant a certificate to a participating contractor or contractor association which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:

- i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
 - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
 - iii. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
 - iv. Assignment of an apprentice to any work performed under the Contract documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- c. When an exemption from subsection b. above is granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, provided they are already covered by the local apprenticeship standards.

5. Contractor's Compliance:

- a. The responsibility for compliance with this Section for all apprenticeable trades or crafts is solely and exclusively that of the Contractor. Violations of Labor Code section 1777.5 are subject to penalties pursuant to Labor Code section 1777.7, as determined by the Labor Commissioner.