



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT

AGENDA ITEM No. ___ October 11, 2011

Chris Bazar
Agency Director

September 27, 2011



Linda M. Gardner
Housing Director

The Honorable Board of Supervisors
Administration Building
Oakland, CA 94612

224
W. Winton Avenue
room 108

Dear Board Members:

Hayward
California
94544-1215

**SUBJECT: AUTHORIZE CONTRACT No. 6651 WITH LEIDIG COURT, LLC.
FOR AFFORDABLE HOUSING TRUST FUND AND
NEIGHBORHOOD STABILIZATION PROGRAM 2 FUNDS FOR
THE WINGS AFFORDABLE HOUSING DEVELOPMENT**

phone
510.670.5404
fax
510.670.6378
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510.265.0253

RECOMMENDATION:

www.
acgov.org/cda

Authorize and execute Contract No. 6651 with Leidig Court, LLC. (Principal: Linda Mandoloni, Location: Hayward) to acquire and rehabilitate the WINGS Affordable Housing Project for the term October 1, 2011 through June 21, 2014 in the amount of \$600,000 (\$200,000 of Affordable Housing Trust Fund Program, and \$400,000 of Neighborhood Stabilization Program 2 funds).

SUMMARY/ DISCUSSION:

In 2009 Alameda County applied for and received grant funds under the American Reinvestment and Recovery Act of 2009 ("ARRA") under the Neighborhood Stabilization Program 2 ("NSP2"). The purpose of NSP2 is to assist in the redevelopment and rehabilitation of abandoned or foreclosed properties. Eden Housing, Inc., requested funds from Alameda County for the acquisition and rehabilitation of the WINGS affordable housing project.

The Alameda County Affordable Housing Trust Fund (Fund) was created in 1993 to increase affordable housing opportunities for lower income households. The money in the Fund comes from fees on market-rate residential developments negotiated as conditions of approval, repayment of loans from the Fund, and interest earned.

The WINGS project is a vacant 17-unit apartment complex including manager's unit and community space. There are 4 one-bedroom, 8 two-bedroom, and 3 three-bedroom units. The property is currently owned by Safe Environment to Violent Environments (SAVE), and was operated as transitional housing for victims of domestic violence from 1988 to 2008. Leidig Court, LLC will take over ownership and management of the building.

This contract will allow Leidig Court, LLC to continue to provide rental housing for low-income households while covering the costs of rehabilitation.

SELECTION CRITERIA AND PROCESS:

In January 2010, HCD, in coordination with the cities of Hayward, San Leandro and Fremont, released a Request for Proposals (RFP) on behalf of SAVE to locate another organization to purchase the WINGS Apartments. On March 1, 2010, two proposals were received, one from Eden Housing, Inc. and one from Allied Housing, Inc. Copies of the proposals were sent to SAVE as well as the cities of Hayward, San Leandro, and Fremont. In May 2010 the two proposals were discussed by representatives from the lender cities. The Eden proposal was better leveraged, with a \$500,000 commercial loan, and a faster timeline for purchase from SAVE. Based on these and various other factors, Eden Housing was selected as the new owner.

Eden Housing, Inc was recommended for funding by the Housing and Community Development Advisory Committee in January 2011 to complete the WINGS Apartments project.

The Auditor's Office of Contract Compliance has reviewed and issued Federal Funds Waiver # F271 for this contract.

FINANCING:

Funding for this contract and administration will come from Affordable Housing Trust Fund and Neighborhood Stabilization Program 2 funds already included in CDA's FY11-12 Budget. Encumbered amount may change due to the needs of project and/or changes in the project schedule. There is no Net County Cost as a result of this action.

Very truly yours,



Chris Bazar, Director
Community Development Agency

cc: Susan Muranishi, County Administrator
Richard Karlsson, Interim County Counsel
Patrick O'Connell, Auditor-Controller
Louie Martirez, County Administrator's Office
Andrea Weddle, Office of the County Counsel
U.B. Singh, CDA Finance Director

Attachments

**CONTRACT FOR THE USE OF NSP2 AND AHTF FUNDS BETWEEN
LEIDIG COURT LLC
AND
THE COUNTY OF ALAMEDA**

THIS CONTRACT FOR THE USE OF NSP2 AND AHTF FUNDS ("Contract" or "Agreement") made and entered into this 4th of October 2011 by and between the COUNTY of ALAMEDA, hereinafter referred to as "COUNTY" and LEIDIG COURT LLC hereinafter referred to as "CONTRACTOR".

WITNESSETH:

WHEREAS, the COUNTY has applied for and received funds from the United States Government under a grant program authorized by Title III of Division B of the Housing and Economic Recovery Act 2008 ("HERA" or the "Act"), Section 2301, and funded under the American Reinvestment and Recovery Act of 2009 ("ARRA") which included an allocation of funds for additional activities under Division B, Title III of the Housing and Economic Recovery Act of 2008 ("HERA"). The additional funds are referred to as the Neighborhood Stabilization Program 2 ("NSP2"). The purpose of NSP2 is to assist in the redevelopment and rehabilitation of abandoned or foreclosed properties. NSP2 is a component of the federal Community Development Block Grant Program under Title I of the Housing and Community Development Act of 1974, as amended ("CDBG"); and

WHEREAS, COUNTY is the lead agency of the Neighborhood Stabilization Program 2 Consortium and a recipient of NSP2 funds from the California Department of Housing and Community Development ("HCD"); and

WHEREAS, COUNTY established an Affordable Housing Trust Fund ("AHTF") for the purposes of supporting affordable housing throughout the county; and

WHEREAS, COUNTY and CONTRACTOR desire that COUNTY make NSP2 and AHTF funds available to the CONTRACTOR for the performance of the scope of work outlined in Exhibit A in the forms of loans (collectively, the "Loan"), as evidenced by the Loan Documents; and

WHEREAS, CONTRACTOR is willing and able to perform duties and render services which are determined by the COUNTY to be necessary or appropriate for the welfare of residents of the COUNTY; and

WHEREAS, COUNTY desires that such duties and services be provided by CONTRACTOR, and CONTRACTOR agrees to perform such duties and render such services, as more particularly set forth below.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED as follows:

I. DEFINITIONS AND NSP2 ELIGIBILITY

At the time this Contract is signed, the property for which the funds are used must be vacant, foreclosed, or abandoned according to HUD's definition below:

Foreclosed: A home or residential property has been foreclosed upon if any of the following conditions apply: a) the property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or b) the property owner is 90 days or more delinquent on tax payments, or c) under state, local, or tribal law, foreclosure proceedings have been initiated or completed, or d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP2 grantee, sub-recipient, contractor, developer, or end user.

Abandoned: A home or residential property is considered abandoned if any one of the following conditions apply: a) the mortgage, tribal leasehold, or tax payments are at least 90 days delinquent, or b) a code enforcement inspector has determined the property is not habitable and the owner had taken no corrective actions within the last 90 days of notice, or c) the property is subject to court-ordered receivership or nuisance abatement related to abandonment per state/local law meets a state definition of an abandoned home or residential property.

Vacant: Includes both vacant land and properties with vacant structures on the land.

The following terms have the following meanings:

"Loan Documents" means (i) a loan agreement between the COUNTY and CONTRACTOR, which sets forth the terms of the Loan, the manner in which NSP2 and AHTF funds are available to Developer, and the terms of repayment (the "Loan Agreement"), (ii) a promissory note for the NSP2 and AHTF funds in favor of the COUNTY, evidencing CONTRACTOR's promise to repay the Loan in accordance with the terms of the Loan Agreement; (iii) a deed of trust, giving the COUNTY a security interest in the Subject Property, and (iv) other ancillary documents, including, without limitation, escrow instructions and, if requested by COUNTY.

"NSP2 Subject Property Budget" means a Sources and Uses Budget in a form approved by the Housing Director, for each Subject Property, including the acquisition and rehabilitation costs and funding. This budget should clearly specify the amount of NSP2 funding for that specific property and, upon project completion, will include the actual costs at the end of the transaction.

"NSP2 Requirements" means the requirements as listed in the Notice of Funding Availability for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act of 2009 (Notice FR-5321-N-01, published May 5, 2009) (the "NSP2 Notice") and Corrections to the NSP2 Notice (Notice FR-5321-C-02, published June 11, 2009; Notice FR-5321-C-03, published November 9, 2009; and Notice FR-

5321-C-04, published January 29, 2010), guidance published by HUD, and any subsequent published amendments.

“Rehabilitation Costs” means costs incurred to rehabilitate a Subject Property after its acquisition, including material and labor, permits and fees, the Developer Fee, holding costs and other soft costs.

“Subject Property” means a property that (i) is a Qualifying Subject Property that satisfies the criteria set forth in this Agreement, and (ii) is purchased by CONTRACTOR.

II. STATEMENT OF WORK

CONTRACTOR will perform or arrange for the performance of the work under this Contract in the manner and time provided herein and in accordance with: the scope of work outlined in Exhibit A and the Program Budget, to be approved by the Housing Director or her designee; any specifications and drawings; and all related documents and provisions contained in Exhibit A, attached hereto and incorporated herein by reference.

III. COMMENCEMENT AND COMPLETION REQUIREMENTS

1. COUNTY has allocated six hundred thousand dollars (\$600,000) (\$400,000 in NSP2, and \$200,000 in AHTF) of funds to be expended as described in this Agreement. Unless an amendment to this Contract otherwise provides, that amount shall in no event be exceeded by CONTRACTOR at any given time, and COUNTY, shall under no circumstances be required to pay in excess of that amount. Payment shall be made pursuant to the terms and conditions set forth in Exhibit B, attached hereto and by this reference made a part hereof. Sums not so paid shall be retained by COUNTY.
2. The term of this Contract begins on October 1, 2011 and ends on June 21, 2014, or when all Contract terms have been completed.
3. All housing assisted through this Contract shall meet at a minimum the affordability requirements of 24 CFR 92.252(a), (c), (e), and (f). For all housing assisted through this Contract, CONTRACTOR agrees to execute a regulatory agreement that will be recorded and will specify a term of affordability that will last at least fifty-nine (59) years from the issuance of the certificate of occupancy.
4. CONTRACTOR shall abide by the Federal requirements specified in the CDBG Regulations and NSP2 Requirements governing use of the NSP2 Funds including, but not limited to the following the requirements set forth in Exhibit C. CONTRACTOR shall make documentation of such compliance available for review by COUNTY upon request.
5. CONTRACTOR shall maintain, at all times during the term of this Contract, the insurance and bonding documentation described in Exhibit D to this Contract, and shall comply with all other requirements set forth in that Exhibit.

6. CONTRACTOR agrees to comply with the requirements of the Section 3 Plan, attached hereto as Exhibit E.
7. CONTRACTOR agrees to comply with the property management standards required of all Federal grantees, attached hereto as Exhibit F.
8. CONTRACTOR agrees to execute the debarment and suspension certification required of all Federal grantees, attached hereto as Exhibit G.
9. **HOLD HARMLESS/INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend and indemnify the COUNTY, its Board of Supervisors, officers, employees and agents (collectively "Indemnitees") from and against any and all claims, losses, damages, liabilities or expenses, including reasonable attorney fees, incurred in the defense thereof, for the death or injury to any person or persons (including employees of CONTRACTOR OR COUNTY) or damage of any property (including property of CONTRACTOR or COUNTY) which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are proximately caused solely by the negligence or willful misconduct of any Indemnitee.
10. COUNTY, with prior written notice of fourteen (14) days to CONTRACTOR, may at any time during the term of this Contract conduct an evaluation of the CONTRACTOR's performance with respect to this Contract. Said evaluation shall cover both objectives and program of CONTRACTOR. CONTRACTOR shall maintain and retain records with respect to such objectives, program, and evaluations, and shall cooperate with COUNTY in making these or any other evaluation reports; CONTRACTOR shall permit access by COUNTY to the premises, shall furnish all information requested by COUNTY, and shall afford COUNTY access to all such records of CONTRACTOR.
11. CONTRACTOR shall be as fully responsible to COUNTY for the acts and omissions of any subcontractors, and of persons either directly or indirectly employed by them, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. CONTRACTOR may transfer interest in this Contract (whether by assignment or novation) with prior written approval of COUNTY, CONTRACTOR may assign its rights to receive compensation from the COUNTY for performance of this Contract to financial institutions for the purpose of securing financial resources, provided that written consent from the supervising department shall have first been obtained. No party shall, on the basis of this Contract, in any way contract on behalf of, or in the name of, the other party to this Contract, and any attempted violation of the provisions of this sentence shall confer no rights, and shall be void.
12. Neither the CONTRACTOR nor any of its employees shall by virtue of this Contract be an employee of COUNTY for any purpose whatsoever, nor shall it or they be entitled to any of the rights, privileges, or benefits of COUNTY employees. CONTRACTOR shall be deemed at all times an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Contract.

CONTRACTOR assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment.

13. CONTRACTOR shall comply with all applicable laws, ordinances, and codes of Federal, State and local governments, in performing any of the work embraced by this Contract.
14. CONTRACTOR agrees to comply with all requirements which are now, or which may hereafter be, imposed by HUD or HCD for the NSP2 and AHTF Programs, as well as such requirements as may be imposed by the COUNTY or the Alameda County NSP2 Consortium or Alameda Urban County CDBG Jurisdiction. CONTRACTOR agrees that it will not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution in order to obtain any Federal funds under any Federal programs without prior written approval of COUNTY. Further, CONTRACTOR agrees that upon the return of any funds granted, loaned, or otherwise distributed by the CONTRACTOR that COUNTY paid to CONTRACTOR under this Contract, or the receipt of any funds by the CONTRACTOR as a direct result of any funds granted, loaned or otherwise distributed by the CONTRACTOR that COUNTY paid to CONTRACTOR under this Contract, CONTRACTOR shall return the funds to COUNTY, unless COUNTY otherwise directs in writing.
15. CONTRACTOR shall not, during the term of this Contract, without obtaining the written consent of COUNTY, permit any member of the governing board of the CONTRACTOR to perform for compensation any administrative or operational functions for the CONTRACTOR with respect to the performance of this Contract (including, but not by way of limitation, fiscal, accounting, or bookkeeping functions).
16. Rental units assisted with the NSP2 funds disbursed through this Contract must be maintained in compliance with the Housing Quality Standards established by the Alameda County NSP2 Consortium for the duration of the regulatory agreement executed in conjunction with the project.
17. CONTRACTOR shall not request disbursement of NSP2 funds pursuant to this Contract until the funds are needed for payment of eligible costs. The amount of each request shall be limited to the amount needed.
18. In conjunction with performance of this Contract, CONTRACTOR has been made cognizant of and will comply with, all applicable affirmative action, Equal Employment Opportunity Practices Provisions and equal opportunity guidelines and requirements of the federal, state or local government. CONTRACTOR will use its best efforts to utilize minority and female enterprises and ensure that minority and female-owned enterprises have equal opportunity to compete for subcontractor work under this Contract. CONTRACTOR shall maintain records documenting data on the race, ethnicity, and single-headed household status (by gender of household head) of households applying for or benefiting from NSP2-funded activities, on actions taken to affirmatively further fair housing, and on outreach to minority and female enterprises, including data indicating the

racial/ethnic or gender character of each business receiving a subcontract of twenty-five thousand dollars (\$25,000) or more paid with NSP2 funds.

19. CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free work place. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR within five (5) days thereafter shall notify the head of the COUNTY department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.

20.
 - A. Upon the expiration of this Agreement, Contractor shall transfer to County any NSP2 funds on hand at time of expiration and any accounts receivable attributable to the use of NSP2 funds.

 - B. Real property in excess of twenty-five thousand dollars (\$25,000), obtained in whole or in part with NSP2 funds must be used to meet one of the national objectives for a minimum of five (5) years after the expiration of this Agreement or disposed of in a manner that results in County being reimbursed at fair market value less value attributable to non-NSP2 expenditures.

21. Time is of the essence in each and all provisions of this Contract.

22. If, through any cause, and subject to prior written notice and not less than a 30-day opportunity to cure, CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this Contract, or if CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, COUNTY shall thereupon have the right to terminate this Contract by giving written notice to CONTRACTOR of such termination and specifying the effective date of such termination. Without prejudice to the foregoing, CONTRACTOR agrees that if, prior to the termination or expiration of this Contract, upon any final or interim audit by COUNTY, COUNTY finds that CONTRACTOR has failed to fulfill its obligations under this Contract in a timely and proper manner, that CONTRACTOR shall forthwith bring itself into compliance and shall pay to COUNTY forthwith whatever sums are so disclosed to be due to COUNTY (or shall, at COUNTY's election, permit COUNTY to deduct such sums from whatever amount remains undisbursed by COUNTY to CONTRACTOR pursuant to this Contract); if this Contract shall have terminated or expired, and it shall be disclosed upon such audit, or otherwise, that such failure shall have occurred, the CONTRACTOR shall pay to COUNTY forthwith whatever sums are so disclosed to, or determined by, COUNTY to be due to COUNTY, or shall, at COUNTY's election, permit the COUNTY to deduct such sums from whatever amounts remain undistributed by COUNTY to CONTRACTOR pursuant to this or any other contract between the COUNTY and CONTRACTOR. Anything in

this Contract to the contrary notwithstanding, COUNTY or CONTRACTOR shall have the right to terminate this Contract with or without cause at any time upon giving at least 30 days' written notice prior to the effective date of such termination, which may include termination by the CONTRACTOR prior to execution of the Loan Documents if CONTRACTOR is unable to obtain the necessary financing to make the Project financially feasible, as determined by the CONTRACTOR. This condition for termination of Agreement may be modified by mutual consent of both parties.

23. CONTRACTOR must undertake continuous quantitative and qualitative evaluation of the Scope of Services as specified in this Agreement and shall make quarterly written reports to COUNTY.

1. The quarterly written reports shall include, but shall not be limited to the following data elements:

a. Title of program, listing of components, description of activities/operations.

b. Service area (i.e., citywide, etc., including applicable census tracts).

c. Goals - the projected goals, indicated numerically, and also the goals achieved (for each report period). In addition, identify by percentage and description, the progress achieved towards meeting the specified goals; additionally, identify any problems encountered in meeting goals.

d. Beneficiaries - provide the following:

i) Total number of direct beneficiaries.

ii) Percent of total number of direct beneficiaries who are:

- Low and moderate income
- Low income
- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White
- American Indian or Alaska Native and White
- Asian and White
- Black or African American and White
- American Indian or Alaska Native and Black or African American
- Other (individuals who are not included above)

- Hispanic (ethnicity category that cuts across all races; if used, a race identified above must also be identified)
- Female Headed Households

e. Other data as required by County.

24. CONTRACTOR shall comply with Section 1605 of the American Recovery and Reinvestment Act (ARRA) which offers government-wide guidance at 2 CFR 176, with regards to the Buy American Program and the responsibilities and compliance requirements connected thereto. CONTRACTOR assumes responsibility for the acts of its employees and sub-contractors as they relate to the procurement of building materials in connection to the "Buy American" Program.

25. This Contract can be amended only by written agreement of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day first mentioned above.

COUNTY OF ALAMEDA

CONTRACTOR

By _____
President, Board of Supervisors

LEIDIG COURT LLC,
a California limited liability company
By: Eden Investments, Inc., its sole
member/manager

Approved as to form: RICHARD R. KARLSSON
Office of the County Counsel

By: _____
Title: Sr. Deputy

By: _____
Linda Mandolini, Executive Director

Date: _____

Date: 9/26/11

LEIDIG COURT LLC
22645 Grand Street
Hayward, CA 94541-5031

Tax ID: 94-2995223

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

EXHIBIT A

**ALAMEDA COUNTY WORK PROGRAM
BETWEEN
ALAMEDA COUNTY HOUSING & COMMUNITY DEVELOPMENT PROGRAM
AND
LEIDIG COURT LLC**

1. CONTRACTOR shall use the NSP2 and AHTF funds subject to this Contract to acquire and rehabilitate the WINGS affordable housing project, located at 27751 Leidig Court, Hayward, CA. The property is an existing multi-unit property with sixteen (16) units and a community room. Under this Contract, the property will be developed into seventeen (17) rental units all of which will be NSP2 units. Of the seventeen (17) total units, nine (9) units will be restricted to families with incomes at or below 60% of Area Median Income at move-in with rents restricted to High HOME rents. The remaining eight (8) units will be restricted to families with incomes at or below 50% of Area Median Income at move-in with rents restricted to Low HOME rents. Refer to Section 7.J in this exhibit for instructions on handling over-income tenants.
2. CONTRACTOR shall meet all requirements outlined in the WINGS Request for Proposal (RFP) issued January 2010 and the NSP2 Requirements, unless otherwise approved by the Housing Director or her designee.
3. CONTRACTOR shall have primary responsibility for carrying out all phases of the development, including but not limited to, securing additional financing; obtaining planning approvals; construction; tenant relocation, if applicable; formulating a services plan appropriate for the disability of the residents; leasing and asset management for the term of the project regulatory agreement. All actions related to the development of the project shall be reviewed and approved by the Housing Director or her designee prior to commencement.
4. CONTRACTOR must have its own insurance. It should include general liability, auto, workers' compensation builder's risk, and property insurance. In the general liability and automobile coverage, the County needs to be named as additional insured. Ongoing insurance requirements after construction completion are outlined in the Regulatory Agreement.

If CONTRACTOR will hire subcontractors at a later date, it is the CONTRACTOR's responsibility to ensure that its subcontractors carry all insurance as required by the County prior to the start of the construction.

5. CONTRACTOR shall enter into and be bound by a Promissory Note, Regulatory Agreement, Deed of Trust, and Loan Agreement, which shall be referred to as LOAN DOCUMENTS. CONTRACTOR shall record against the property the Regulatory Agreement and Deed of Trust, which shall specify affordability and occupancy levels, term of affordability, maintenance and management standards, and other related

requirements as part of the funding and RFP. In the event of a conflict between this CONTRACT and the LOAN DOCUMENTS, the LOAN DOCUMENTS shall prevail. The Housing Director or her designee shall set the terms and conditions of such loan documents. Per the RFP, Contractor is responsible for paying the legal fees of preparing LOAN DOCUMENTS.

6. CONTRACTOR shall, to extent possible, meet specific time lines for the following tasks:

- | | |
|-------------------------------------------------|---------------|
| A. Begin Construction | January 2012 |
| B. Spend NSP2 funds | February 2012 |
| C. Construction Completion | May 2012 |
| D. Occupancy & Certification | July 2012 |
| E. Close-Out Report (see Exhibit B for details) | December 2012 |

7. CONTRACTOR shall comply with the following additional requirements:

A. **Relocation:** All Contracts funded with Federal and State funding must comply with the Federal Uniform Relocation and the State Relocation requirements.

B. **Davis-Bacon:** CONTRACTOR is responsible for wage requirements if applicable.

C. **Prevailing Wage:** CONTRACTOR shall pay State prevailing wages if applicable.

D. **Competitive Bidding:** COUNTY requires competitive bidding of all construction and professional services contracts arising from the use of its funds.

E. **Construction Contract:** For record keeping purposes, the following items are required to be submitted prior to construction start:

- a. Inspection Reports for Rehab Projects
- b. Final Work Write Up – Cost Estimation
- c. Contractor Bid Documents
- d. Results of Bids
- e. Contractor Eligibility Form
- f. Contractor’s Certificate of Insurance
- g. Evidence of Contractor Licensure
- h. Debarment List
- i. Pre-Construction Conference Report
- j. Lead-based Paint Compliance Documentation
- k. New Construction or Rehabilitation Contract
- l. Notice to Proceed
- m. Asbestos Report

During Construction, the following are required to be submitted as part of the monthly reporting requirements:

1. Approved Change Orders
2. Contractor Payment Requests
3. Payment Certifications

After Construction Completion, and prior to release of retention, the following are required to be submitted to HCD as part of the close-out report:

1. Documentation of Final Inspection
2. Lien Release and Final Lien Waivers for GC and all Sub-contractors
3. Receipt of Final Payment Form
4. Certificate of Occupancy
5. Notice of Completion

F. **Section 504 Disabled and Senior Access:** CONTRACTOR must meet the requirements of the Americans with Disabilities Act and the Fair Housing Act, among other local, state, and federal laws. Projects with any federal funds must also meet the more stringent accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR 100.205 and Part 8). Section 504 sets minimum percentages of accessible units, and calls for fully accessible common areas, among its numerous requirements. For federally funded projects, 5% of the total number of units must be accessible to people with physical disabilities, and an additional 2% of units must be accessible to people with auditory and visual disabilities, as defined in the Uniform Federal Accessibility Standards (UFAS). CONTRACTOR and project architect must make a written certification of compliance with Section 504, Title 24, ADA, and the Federal Fair Housing Act. Title 24, ADA, and the Federal Fair Housing Act will also impose accessibility requirements on buildings

G. **Fair Housing Marketing/Lease:** CONTRACTOR must submit a Preliminary Management Plan and Fair Marketing Plan. A Final Management and Marketing Plan will be required 100 days prior to construction completion and a Management Contract must be submitted to HCD 90 days prior to construction completion. The final Marketing Plan must be approved prior to beginning rent-up activities, including marketing flyers and application materials. CONTRACTOR must adopt tenant selection policies and criteria as required by 24 CFR 92.253.

The lease between a tenant and CONTRACTOR of a rental unit assisted with HOME funds must be not for less than one year, unless by mutual agreement between the tenant and the owner. Contractor must abide by all lease terms required by 24 CFR 92.253.

H. **Lead-Based Paint:** The use of lead-based paint on HCD funded projects is prohibited. Testing and abatement of lead-based paint in rehabilitation projects may be required. Projects typically must follow the federal guidelines, which require notification to prospective residents of potential lead-based paint hazards, among other requirements.

I. **Non Discrimination:** CONTRACTOR must agree not to discriminate on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, HIV/AIDS, or any other arbitrary basis in the course of carrying out contracted activities, as well as in the ongoing operations and management of the project for the full term of the

regulatory agreement, except that occupancy shall be limited to households headed by a developmentally-disabled adult, as described by Section 1 of this exhibit.

- J. **Annual Recertification of Tenant Income:** CONTRACTOR is required to re-examine tenant incomes annually to ensure that tenants continue to meet the income requirements of HCD funding programs. As required by the Regulatory Agreement, rent schedules and utility allowances, including any increases, must be reviewed and approved annually by HCD. In the event that a tenant's income exceeds 60% or 50% of Area Median Income, as applicable, CONTRACTOR must follow the guidelines in the Regulatory Agreement for maintaining the correct number of HOME units and setting tenants' rents. Projects that are also assisted with Low Income Housing Tax Credits or MHP will be subject to those relevant rules regarding over-income tenants. Rents and tenant incomes will be annually reviewed for compliance by HCD.
- K. **Section 3:** CONTRACTOR is required, to the greatest extent possible, to provide training, employment and other economic opportunities arising in connection with federally-funded housing or other public construction projects to low-and very low-income persons residing in the program/project service area. To the extent possible, subcontracts must be awarded to business concerns that are owned by persons residing in program/project service area and that will employ low-and very low-income persons who reside in the service area. CONTRACTOR is required to notify Section 3 residents of employment opportunities. This includes posting notices for hiring of new positions in areas where Section 3 residents will be able to access the information. CONTRACTOR's General Contractors and Sub-contractors must do the same when hiring. CONTRACTOR is required to notify General Contractors and their Sub-contractors of these Section 3 requirements. In addition, annual reporting requirements are due annually in May, on all opportunities generated under this requirement. Please refer to Exhibit D.
- L. **Reporting:** CONTRACTOR shall be responsible to HCD for ongoing reports on the progress and condition of the project.
- a. **During Construction** CONTRACTOR shall provide information on the progress of the project to HCD as part of request for funding.
 - b. **Close Out Report** Before the County shall release retention, Contractor shall provide the following close out materials
 - i. MBWBE & Section 3 reporting form
 - ii. Rent-up report
 - iii. Cost certification/project audit/Final Sources and Uses
 - iv. Certificate of Occupancy
 - v. Final Management Plan
 - vi. Final Affirmative Fair Marketing Plan and outreach materials
 - vii. Final Relocation Report (if applicable)
 - viii. Final Report on Section 504 (list of which units are accessible)
 - ix. Final Report on Title 24
 - x. Funding Source Close-out Report

- c. **Quarterly Reports** For the first year after the project is completed, CONTRACTOR shall submit to HCD quarterly reports not more than 60 days after the end of each quarter. These reports shall include, any information listed in Section 30 of the CONTRACT, financial statements, operating budgets, actual vs. budget, tenancy reports and a cash flow proforma. These requirements are more clearly detailed in the regulatory agreement.
- d. **Annual Reports** After the first year, or when the Housing Director or her designee determines, an annual report must be submitted not more than 180 days after the end of the fiscal year. These reports must include financial statements, operating budgets, actual vs. budget, tenancy reports and a cash flow proforma, Section 3, MBWBE reports. These requirements are more clearly detailed in the regulatory agreement.

EXHIBIT B

**CONDITIONS FOR PAYMENT BETWEEN
ALAMEDA COUNTY HOUSING AND COMMUNITY DEVELOPMENT
AND CONTRACTOR**

1. BUDGET

Before disbursement of Contract funds may be made, CONTRACTOR shall establish a budget, to be approved in writing by the Housing Director of her designee, specifying by line item the expenditures to be made with Alameda County funds. Once a budget is approved by the County, changes may be made only with a written request to be approved by the Housing Director or her designee in advance of a request for disbursement of funds.

2 METHOD OF PAYMENT

All requests for a funding draw or reimbursement will be in a format approved by the County.

- a. All requests for a funding draw or reimbursement shall be on Contractors letterhead, contain an original authorized signature, invoice number, total amount requested and amounts towards each line item on the approved budget. This document shall be called an "Invoice", and shall track disbursements made by budget line item, current requests, and amount remaining in the budget line item.

Line Item	Total Budget	Previous Requests	Current Request	Balance Remaining
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- b. All invoices shall be paid on a funding draw or reimbursement basis, and be made no more than monthly with supporting documentation of actual costs incurred during the period of time covered by the invoice. If under a specific line item, Contractor has more than one form of back up or supporting documentation, Contractor must summarize the documentation and include a subtotal of items which add up to the line item total. Invoices must be properly organized and are subject to return to Contractor if they are not.
- c. Requests for funding draw or reimbursement must be received within 60 days of the end of each month or period covered.
- d. All funds disbursed to CONTRACTOR must be expended within fifteen (15) days of approval of the receipt of funds. The final disbursement shall be requested by CONTRACTOR not less than sixty (60) days before project completion.

- e. Any adjustments made by the fiscal auditors at the year-end audit, under the AICPA guidelines and other relevant federal regulations should be brought to the attention of County staff for reconciliation.
- f. CONTRACTOR is responsible for reporting any matching funds used on this project which do not originate from HCD sources. These funds can include funding to cover staff who are working on this project, but paid from another source of funds.

3. REQUESTS FOR ADJUSTMENTS TO BUDGET LINE ITEMS

Once the line item budget has been approved, there can be no more than four (4) requests for adjustments to the budget during the Contract period, including any final adjustments done at the end of the project, unless otherwise approved by the Housing Director or her designee, which approval shall not be unreasonably withheld. Any change in the budget that results in lower costs shall be communicated to COUNTY immediately. If Housing Director or her designee determines that the total amount of funds under this Contract exceeds the amount necessary to complete the project, Housing Director or her designee may adjust the Contract accordingly. The budget amendment should be on letterhead, must contain an original signature, and must track the requested change by line item, showing original budget amount, balance expended to date, remaining funding by each line item, the amount to be moved between line items, and the final new budget amount. Budget amendments take between two and three weeks to process, and must be processed prior to receipt of an invoice requesting funding under the new budget. The Housing Director or her designee reserves the right to deny any budget modification request.

4. COMPLIANCE WITH FEDERAL REGULATIONS

Contractor's administrative procedures must be in compliance with the following regulations:

- A. OMB Circular A-122, Cost Principles for Non-Profit Organizations.
- B. OMB Circular A-110, Uniform Administrative Requirements for Grant and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
- C. Paragraph (b) of Section 570.502 of sub-part J of 24 CFR 85, Common Rule of Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.
- D. Section 44.6 of 24 CFR Part 44 (Non-Federal Government Audit Requirements), Common Rule of Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.
- F. The Contractor shall follow audit requirements of the Single Audit Act and OMB Circular A-128.

5. PUBLIC RECOGNITION OF FUNDING

Contractor will publicly recognize the funding provided by the Alameda County Housing and Community Development Department (HCD) and in all newspaper articles and any other public relations opportunities related to this project. HCD staff and members of the Board of Supervisors will be invited to participate in the groundbreaking and grand opening ceremonies, if held.

6. RETENTION OF FUNDS

HCD will retain \$10,000 of the Contract amount until receipt of close-out documents. Close-out documents include:

- i. MBWBE & Section 3 forms
- ii. Rent-up report
- iii. Cost certification/project audit/Final Sources and Uses
- iv. Certificate of Occupancy & recorded Notice of Completion
- v. Lien Releases, and final payment certification
- vi. Final Building Department Inspection
- vii. Final Management Plan
- viii. Final Affirmative Fair Marketing Plan and outreach materials
- ix. Final Relocation Report (if applicable)
- x. Final Report on Section 504 (list of which units are accessible)
- xi. Final Report on Title 24

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

EXHIBIT D

CDBG REGULATIONS AND NSP2 REQUIREMENTS

I. ADMINISTRATIVE REQUIREMENTS

A. Financial Management.

1. Accounting Standards. CONTRACTOR shall comply with 24 CFR 84.21-28 and OMB Circular A-110 and shall adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles. CONTRACTOR shall administer its program in conformance with the applicable sections of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" and 24 CFR Part 570.502 for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping.

1. Records to be Maintained. CONTRACTOR shall maintain all records required by the federal regulations specified in 24 CFR Part 570.506 and NSP2 Requirements, and satisfactory to COUNTY staff, and that are pertinent to the activities to be funded under this Agreement. Such records include but are not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the NSP2 program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with NSP2 assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Records documenting compliance with the changes in use restrictions specified in 24 CFR Part 570.505 (for any properties that are retained).
- g. Financial records as required by 24 CFR Part 570.502, 24 CFR 84.21-28 and OMB Circular A-110; and
- h. Other records necessary to document compliance with Subpart K of 24 CFR 570 and NSP2 Requirements.

2. Retention. CONTRACTOR shall retain all financial records, supporting documents, statistical records, and all other records pertinent to services performed and expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement, or after the resolution of all litigation, claims, Federal audits, negotiation or other actions that involve any of the records cited, whichever occurs later. CONTRACTOR shall retain records for non-expendable property acquired with funds under this Agreement for five (5) years after final disposition of such property. Because the term of affordability under this Agreement is fifty-nine (59) years, CONTRACTOR shall retain records for a minimum of sixty-four (64) years.

3. National Objectives. CONTRACTOR shall maintain documentation that demonstrates that the activities carried out with funds provided under this Agreement meet the low/moderate/middle income (LMMI) national objective under NSP2.

4. Close-Outs. CONTRACTOR's obligation to COUNTY does not end until all close-out requirements are completed. Close-out period requirements include, but are not limited to: submission of close-out report, making final payments, disposing of Subject Property assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to COUNTY), and determining the custodianship of records.

5. Audits & Inspections. All CONTRACTOR records with respect to any matters covered by this Agreement are to be made available to COUNTY and HUD at any time during normal business hours, as often as COUNTY or HUD deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by CONTRACTOR within thirty (30) days after notice of the deficiencies is delivered to CONTRACTOR. Failure of CONTRACTOR to comply with the above audit requirements constitutes a violation of this Agreement and may result in the withholding of future payments. CONTRACTOR hereby agrees to have an annual audit conducted in accordance with current COUNTY policy concerning CONTRACTOR audits and OMB Circular A-133.

C. Reporting and Payment Procedures.

1. Budgets. CONTRACTOR shall cause any budgets associated with the Subject Property to include all sources of funding, the amount of each funding source, and the expenditures to be met by each funding source. COUNTY and CONTRACTOR may agree to revise such budgets from time to time in accordance with existing COUNTY policies.

2. Program Income. CONTRACTOR shall report monthly any program income as defined at 24 CFR 570.500(a) generated by activities carried out with NSP2 funds made available under this Agreement. CONTRACTOR shall cause its use of program income to comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, CONTRACTOR may only use such income during the Agreement term for activities permitted under the Loan Documents, NSP2 Requirements and shall reduce requests for additional funds requested pursuant to this Agreement by the amount of any such program income balances on hand. CONTRACTOR shall return any unused program income to COUNTY upon expiration or earlier termination of this Agreement,

unless otherwise provided in the Loan Documents. Any interest earned on cash advances from the U.S. Treasury is not program income and CONTRACTOR shall remit such income promptly to COUNTY.

3. Indirect Costs. If indirect costs are charged, CONTRACTOR shall develop an indirect cost allocation plan for determining the appropriate share of administrative overhead costs allocable to the Subject Property and shall submit such plan to COUNTY for approval.

4. Funding Procedures. COUNTY shall make funds available to CONTRACTOR for the predevelopment activities and acquisition of the Subject Property in accordance with the terms of this Agreement of the Loan Documents. Any unused funds revert back to COUNTY. NSP2 funding may be adjusted by COUNTY in accordance with the terms of the applicable Loan Agreement.

5. Progress Reports. CONTRACTOR shall submit regular progress reports to COUNTY in the form, content and frequency required by COUNTY. The progress reports must be submitted at least quarterly, unless otherwise directed by COUNTY. CONTRACTOR shall submit a final progress report no later than thirty (30) days after the expiration or earlier termination of this Agreement.

D. Procurement; Use and Reversion of Assets.

CONTRACTOR shall comply with the procurement and use and reversion of asset provisions set forth in the Loan Documents, as applicable.

II. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights.

1. Compliance. CONTRACTOR shall comply with all State and local civil rights laws and regulations, as well as Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, the Fair Housing Amendment Act of 1988, Sections 104 (b) and 109 of Title I of the Housing and Community Project Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination. CONTRACTOR shall comply with the non-discrimination in employment and contracting opportunities laws, regulations and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279, and the applicable non-discrimination provisions in Section 109 of the Housing and Community Project Act of 1974, and may not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, or status with regard to public assistance. CONTRACTOR shall take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and

selection for training, including apprenticeship. CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

3. Confidentiality. Subject to the requirements of the California Public Records Act and the Federal Freedom of Information Act, CONTRACTOR understands that information collected regarding actual or potential renters of the Subject Property under this Agreement is private and the use or disclosure of such information, when not directly connected with CONTRACTOR's obligations hereunder, is prohibited by law. CONTRACTOR shall comply, and shall cause its employees to comply, with all applicable State and Federal statutes and regulations respecting confidentiality, including but not limited to, all statutes and regulations that require confidentiality as to the identity of individuals, their records, and services provided them, and assures that:

a. All applications and records concerning any individual made or kept by CONTRACTOR or any public officer or agency in connection with the administration of or relating to services provided under this Agreement is confidential, to the extent permitted by law, and will not be open to examination for any purpose not directly connected with the administration of such service, unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible guardian, and

b. No person may publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required by law or in the administration of such service. CONTRACTOR shall inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.

4. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, CONTRACTOR shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that COUNTY and the United States are beneficiaries of and entitled to enforce such covenants. CONTRACTOR, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

5. Section 504. CONTRACTOR agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) which prohibits discrimination against individuals with disabilities or handicaps in any Federally-assisted program. COUNTY shall provide CONTRACTOR with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action.

1. Approved Plan. CONTRACTOR agrees that it is committed to carrying out, pursuant to COUNTY's specifications, an Affirmative Action Program that is in keeping with the principles provided in President's Executive Order 11246 of September 24, 1965. CONTRACTOR shall submit a plan for the Affirmative Action Program to COUNTY for approval prior to the disbursement of any funds to CONTRACTOR.

2. WBE/MBE. CONTRACTOR will use its best efforts to afford small businesses, minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "small business" means a business that meets the criteria set forth in section (a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women-owned business enterprise" means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-American, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native American. CONTRACTOR may rely on documentation of certification from another public agency or written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records. CONTRACTOR shall furnish and cause each of its sub-contractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by COUNTY, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. EEO/AA Statement. CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions. CONTRACTOR shall include the provisions of Section A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions are binding upon each sub-contractor or vendor.

C. Employment Restrictions.

1. Prohibited Activities. CONTRACTOR is prohibited from using funds provided herein or personnel employed in the administration of the Subject Property for: political activities; sectarian, or religious activities; lobbying; political patronage; or nepotism activities. CONTRACTOR agrees that no funds provided and no personnel employed as a result of this Agreement will be used in any way in the conduct of political activities in violation of Chapter 15 of Title V United States Code (the Hatch Act).

2. OSHA. In the event employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, such employees are not required or permitted to work, to be trained, or to receive services in buildings or surroundings or under working conditions that are unsanitary, hazardous or dangerous to the participants' health or safety.

3. Right to Know. Participants employed or trained for inherently dangerous occupations, e.g., fire or police jobs, will be assigned to work in accordance with reasonable safety practices.

4. Labor Standards. CONTRACTOR agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a-276a-5), the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C 327 *et seq*), the Copeland "Anti-Kickback" Act (40 U.S.C. 276c) and all other applicable Federal, State and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. CONTRACTOR shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation will be made available to COUNTY for review upon request.

CONTRACTOR agrees that, except with respect to the rehabilitation, or construction of, property designed for residential use for less than eight (8) households, all CONTRACTORS engaged under contracts in excess of \$2,000.00 for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by COUNTY pertaining to such agreements and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR, Parts 1, 3, 5, 6, and 7 governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by State or local law, nothing hereunder is intended to relieve CONTRACTOR of its obligation, if any, to require payment of the higher wage. CONTRACTOR shall cause or require to be inserted in full, in all such agreements subject to such regulations, provisions meeting the requirements of this paragraph.

5. "Section 3" Clauses.

a. **Compliance.** Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued thereunder prior to the execution of this Agreement, is a condition of the Federal financial assistance provided under this Agreement and binding upon COUNTY, CONTRACTOR and any sub-contractors. Failure to fulfill these requirements will subject COUNTY, CONTRACTOR and any sub-contractors, their successors and assigns, to those sanctions specified by the agreement through which Federal assistance is provided. CONTRACTOR certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements. CONTRACTOR further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Project Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that

provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

CONTRACTOR further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low-and very low-income persons residing within the metropolitan area in which the NSP2-funded Subject Property is located; where feasible, priority should be given to low-and very low-income persons within the service area of the Subject Property or the neighborhood in which the Subject Property is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the NSP2-funded Subject Property is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the Subject Property is located, and to low- and very low-income participants in other HUD programs.

CONTRACTOR certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

b. **Notifications.** CONTRACTOR agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. **Subcontracts.** CONTRACTOR will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the sub-contractor is in violation of regulations issued by the grantor agency. CONTRACTOR will not subcontract with any sub-contractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub-contractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

6. **Use of Debarred or Ineligible Contractors.** CONTRACTOR shall not use funds provided under this Agreement directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or sub-contractor during any period of debarment, suspension, or placement in ineligible status under the provisions of 24 CFR Part 24.

D. Conduct.

1. **Assignability.** CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of COUNTY thereto; provided, however, that claims for money due or to become due to CONTRACTOR from COUNTY under this Agreement may be assigned to a bank, trust company, or other

financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to COUNTY.

2. Conflict of Interest. CONTRACTOR agrees to abide by the provisions of 24 CFR 84.42 and 24 CFR 570.611 with respect to conflicts of interest, which include (but are not limited to) the following:

a. CONTRACTOR shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. No employee, officer or agent of CONTRACTOR shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. CONTRACTOR covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by CONTRACTOR hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of COUNTY or CONTRACTOR.

3. Subcontracts.

a. **Approvals.** CONTRACTOR may not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of COUNTY prior to the execution of such subcontract.

b. **Monitoring.** CONTRACTOR shall monitor all subcontracted services on a regular basis to assure contract compliance. CONTRACTOR shall summarize the results of monitoring efforts in written reports that are supported by documented evidence of follow-up actions taken to correct any areas of noncompliance.

c. **Content.** CONTRACTOR shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. **Selection Process.** CONTRACTOR shall undertake to ensure that all subcontracts let in the performance of this Agreement are awarded on a fair and open competitive basis in accordance with applicable procurement requirements. CONTRACTOR shall forward executed copies of all subcontracts to COUNTY along with documentation concerning the selection process.

4. Copyright. If this Agreement results in any copyrightable material or inventions, COUNTY and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, the work or material for government purposes.

5. Lobbying. CONTRACTOR hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

c. It will require that the following language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-contractors shall certify and disclose accordingly;

"This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

6. Religious Organization. CONTRACTOR agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j).

III. ENVIRONMENTAL CONDITIONS

A. Air and Water. CONTRACTOR shall comply with the following regulations insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. 7401, et seq.
- Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.
- National Environmental Policy Act of 1969.

- HUD Environmental Review Procedures (24 CFR Part 58).

B. Flood Disaster Protection. CONTRACTOR shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement, and shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint. CONTRACTOR agrees that any activities with regard to residential structures with assistance provided under this Agreement are subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, and applicable Sub-Parts. Such regulations pertain to all CDBG-assisted housing and require that all purchasers, occupants, and owner-occupants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification must point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. Such regulations further provide that a Lead Hazard Evaluation be conducted; that Lead Hazard reduction be undertaken should lead hazard be identified; and that occupants be provided written notice regarding results of Lead Hazard Evaluation and Lead Hazard Reduction.

D. Historic Preservation. CONTRACTOR shall comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a Federal, State, or local historic property list.

EXHIBIT E

ALAMEDA COUNTY AFFIRMATIVE ACTION PLAN UNDER SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

PURPOSE

To insure that to the greatest extent feasible, projects financed by the Alameda County Housing and Community Development Department provide business and employment opportunities for low income residents and low income business concerns in Alameda County funded with Federal funding overseen by HCD, including HOME, Community Development Block Grant Funds and HOPWA funding.

1. Alameda County is required to report to HUD annually on results of the Section 3 program. Specifically, HCD must:
 - facilitate employment/training opportunities for Section 3 residents;
 - notify Section 3 residents of employment and training opportunities
 - Endeavor to reach HUD's stated goals:
 - a) 30% Section 3 new hires
 - b) 10% of contracts to Section 3 businesses
2. HUD defines what qualifies as a Section 3 Resident and Business Concerns as:
 - Section 3 Resident - A resident of a public housing unit or a low to moderate-income person residing in the area in which the HUD-assisted project is located
 - Section 3 Business Concern-A business
 - Owned by Section 3 resident(s), or
 - Employs a substantial number of Section 3 residents (30% of permanent FTE position), or
 - Subcontracts with business concerns owned by or employing Section 3 residents (at least 25% of dollar award of all subcontracts).
3. The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
4. Each Contractor is required to notify Section 3 residents of employment opportunities. This includes posting notices for hiring of new positions in areas where Section 3 residents will be able to access the information. It is also required that General Contractors and Sub-contractors who are paid as part of the overall project must do the same when hiring for their construction jobs.
5. In all sub-contracts for work paid for with funds from this Contract over \$10,000, the

following clause (referred to as the Section 3 Clause), will be included:

- a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
6. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate actions, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
7. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but not before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
8. The contractor agrees to publish and advertise all new employment opportunities and subcontracting opportunities with the following types of organizations:
- a) Labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
 - b) Workforce Investment Board "One Stop Career Centers"
 - c) Other low income training organizations.
9. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

10. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 405e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

SECTION 3 EMPLOYMENT PLAN

NAME OF CONTRACTOR: LEIDIG COURT LLC

Services to be Provided: Rehabilitation of affordable housing for low income households

Contract Amount: \$600,000

Contract amount does not exceed Section 3 dollar threshold. Section 3 requirements do not apply.

Contract does not include housing rehabilitation, housing construction or other public construction. Section 3 requirements do not apply.

Section 3 requirements do apply. Contractor has been notified of Section 3 requirements and has completed the anticipated work force analysis below.

The following work force is anticipated to be necessary to satisfactorily complete this work:

Job Classifications Existing Work Force Anticipated New Hires

All new hires of the Contractor, and all new hires of all sub-contractors to the General Construction Contractor.

CONTRACTOR agrees to undertake a good faith effort to comply with all of the provisions of Section 3 of the Housing and Urban Development Act of 1968.

Contractor
LEIDIG COURT LLC

By: Eden Investments, Inc., its sole member/manager



Linda Mandolini Executive Director

Date

9/26/11

EXHIBIT F
PROPERTY MANAGEMENT STANDARDS

1. This attachment prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments. Federal grantor agencies shall require State and local governments to observe these standards under grants from the Federal Government and shall not impose additional requirements unless specifically required by Federal law. The grantees shall be authorized to use their own property management standards and procedures as long as the provisions of this attachment are included.

2. The following definitions apply for the purpose of this attachment:
 - a. Real property. Real property means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

 - b. Personal property. Personal property means property of any kind except real property. It may be tangible -- having physical existence, or intangible -- having no physical existence, such as patents, inventions, and copyrights.

 - c. Nonexpendable personal property. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

 - d. Expendable personal property. Expendable personal property refers to all tangible personal property other than nonexpendable property.

 - e. Excess property. Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs.

3. Each Federal grantor agency shall prescribe requirements for grantees concerning the use of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:
 - a. The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

 - b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

 - c. When the real property is no longer needed as provided in a. and b., above, the grantee shall return all real property furnished or purchased wholly with Federal

grant funds to the control of the Federal grantor agency. In the case of property purchased in part with Federal grant funds, the grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

4. Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Federal Government or acquired with Federal funds are set forth below:

a. Nonexpendable personal property acquired with Federal funds. When nonexpendable personal property is acquired by a grantee wholly or in part with Federal funds, title will not be taken by the Federal Government except as provided in paragraph 4a(4), but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(1) The grantee shall retain the property acquired with Federal funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Federal funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with other Federal grants it has received in the following order of priority:

(a) Other grants of the same Federal grantor agency needing the property.

(b) Grants of other Federal agencies needing the property.

(2) When the grantee no longer has need for the property in any of its Federal grant programs, the property may be used for its own official activities in accordance with the following standards:

(a) Nonexpendable property with an acquisition cost of less than \$500 and used four years or more. The grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) All other nonexpendable property. The grantee may retain the property for its own use provided that a fair compensation is made to the original grantor agency for the latter's share of the property. The amount of compensation shall be commuted by applying the percentage of Federal participation in the grant program to the current fair market value of the property.

(3) If the grantee has no need for the property, disposition of the property shall be made as follows:

- (a) Nonexpendable property with an acquisition cost of \$1,000 or less. Except for that property which meets the criteria of (2)(a) above, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed in accordance with (iii) below.
 - (b) Nonexpendable property with an acquisition cost of over \$1,000. The grantee shall request disposition instructions from the grantor agency. The Federal agency shall determine whether the property can be used to meet the agency's requirement. If no requirement exists within that agency, the availability of the property shall be reported to the General Services Administration (GSA) by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal grantor agency shall issue instructions to the grantee within 120 days and the following procedures shall govern:
 - (i) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.
 - (ii) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Federal grantor agency for such costs incurred in its disposition.
 - (iii) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed by applying the percentage of Federal participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain \$100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expense.
4. Where the grantor agency determines that property with an acquisition cost of \$1,000 or more and financed solely with Federal funds is unique, difficult, or costly to replace, it may reserve title to such property, subject to the following provisions:
- (a) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.
 - (b) The grantor agency shall issue disposition instructions within 120 days after the completion of the need for the property under the Federal grant for which it was acquired. If the grantor agency fails

to issue disposition instructions within 120 days, the grantee shall apply the standards of 4a(1), 4a(2)(b) and 4a(3)(b).

- b. Federally-owned nonexpendable personal property. Unless statutory authority to transfer title has been granted to an agency, title to Federally-owned property (property to which the Federal Government retains title including excess property made available by the Federal grantor agencies to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the grantor agency for further agency utilization or, if appropriate, for reporting to the General Services Administration for other Federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of Federal agency review.
5. The grantees' property management standards for nonexpendable personal property shall also include the following procedural requirements.
 - a. Subject Property records shall be maintained accurately and provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the grantor agency for its share.
 - b. A physical inventory of property shall be taken and the results reconciled with the property records or least once every two years to verify the existence, current utilization, and continued need for the property.
 - c. A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.
 - d. Adequate maintenance procedures shall be implemented to keep the property in good condition.
 - e. Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.
 6. When the total inventory value of any unused expendable personal property exceeds \$500 at the expiration of need for any Federal grant purposes, the grantee may retain the property or sell the property as long as he compensates the Federal Government for its share in the cost. The amount of compensation shall be computed in accordance with 4a(2)(b).
 7. Specified standards for control of intangible property are provided as follows:
 - a. If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Federal grant, such fact shall be promptly and fully reported to the grantor agency. Unless there is prior agreement between the

grantee and grantor on disposition of such items, the grantor agency shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery -- including rights under any patent issued thereon -- shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and Statement of Government Patent Policy as printed in 36 F.R. 16889).

- b. Where the grant results in a book or copyrightable material, the author or grantee is free to copyright the work, but the Federal grantor agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

EXHIBIT G

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION
For Procurements Over \$25,000**

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessary result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Contract. Signing this Contract on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: LEIDIG COURT LLC

By: Eden Investments, Inc., its sole member/manager

By: _____

Linda Mandolini Executive Director

SIGNATURE: _____

DATE: _____

9/26/11

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