

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ("Agreement"), dated as of _____ ("Effective Date") is by and between the **SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION**, a public body corporate and politic (hereinafter "Commission"), and **BURBANK HOUSING CORPORATION**, a California nonprofit public benefit corporation ("Consultant"). Commission and Consultant are sometimes collectively referred to herein as the "parties" and singularly, as a "party."

R E C I T A L S

WHEREAS, Consultant represents that it is a duly qualified, low-income housing planner, developer and manager, with substantial experience in all aspects of low-income housing development, including, without limitation, the design, entitlement, funding, construction management, leasing, operation and management of such developments; and

WHEREAS, in the judgment of the Commission, it is necessary and desirable to employ the services of Consultant to provide all planning, entitlement, budgeting and other predevelopment work in its role as development manager for the proposed George's Hideaway Project (as defined below); and

WHEREAS, Commission was awarded funds from California Department of Housing and Community Development Homekey Program ("Homekey" or "Program") to purchase and redevelop that certain real property located in the County of Sonoma, Guerneville, California, comprising three (3) parcels being: (a) APN 072-220-027 which is commonly known as 18072 Hwy. 116; (b) APN 072-220-026 which is commonly known as 18084 Hwy. 116; and (c) 072-240-029 commonly known as 18094 Hwy. 116 (said three (3) parcels being herein collectively referred to as the "Site"); and

WHEREAS, the George's Hideaway Project ("Project") consists of potential redevelopment of existing improvements and construction of new improvements on the Property; said improvements currently envisioned to include: (a) twenty-one (21) permanent supportive housing units of various configurations; (b) a navigation center; (c) a kitchen; (d) a manager's unit; and (e) space for case management and other social services, as preliminarily envisioned on the site plan attached hereto as Exhibit A (said improvements being herein collectively referred to as the "Improvements"); and

WHEREAS, the parties hereby acknowledge that the site plan is preliminary and that the site plan may change as a result of the Scope of Work (as defined in Exhibit B); and

WHEREAS, Commission completed a competitive Request for Qualifications ("RFQ") process to identify and select a firm or firms which possessed the development capacity Commission required to advance and complete the Project; and

WHEREAS, Consultant (together with its consortium partner West County Community Services, a California nonprofit corporation, hereinafter referred to as "West County"), submitted the only response to the Commission on September 2022, and staff has determined that said consortium partnership is qualified to perform the services and develop the Project as contemplated by the RFQ; and

WHEREAS, Commission and Consultant desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1. Scope of Work.

1.1 Consultant's Specified Services. Consultant shall perform the services described in Exhibit B, attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit B and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit B, the provisions in the body of this Agreement shall control.

1.2 Cooperation With Commission. Consultant shall cooperate with Commission and Commission staff in the performance of all work hereunder.

1.3 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. Commission has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, including Homekey, it being understood that acceptance of Consultant's work by Commission shall not operate as a waiver or release. If Commission determines that any of Consultant's work is not in accordance with such level of competency and standard of care, Commission, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with Commission to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- a. Consultant shall assign only competent personnel to perform work hereunder. The Project Manager and primary point of contact upon the Effective Date shall be Rich Wallach. In the event that at any time Commission, in its sole discretion, desires the removal of any person or persons assigned by

Consultant to perform work hereunder, Consultant shall remove such person or persons upon receiving written notice from Commission.

- b. In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

2. **Payment.** Unless otherwise provided herein, payments all payments hereunder shall be made within the normal course of Commission business after presentation of an invoice in a form approved by the Commission for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the Commission.

3. **Term of Agreement.** The term of this Agreement shall be from the Effective Date to November 30, 2023 ("Initial Term"), unless terminated earlier in accordance with the provisions of Article 4 below. Depending on the status of the Project at the conclusion of the Initial Term, Commission and Consultant may elect to extend the Initial Term until May 30, 2024 upon written amendment to this Agreement which may be executed on behalf of Commission by its Executive Director.

4. **Termination**

4.1. **Termination Without Cause.** Notwithstanding any other provision of this Agreement, at any time and without cause, Commission shall have the right, in its sole discretion, to terminate this Agreement by giving 10 days written notice to Consultant.

4.2 **Termination for Cause.** Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Commission may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 **Delivery of Work Product and Final Payment Upon Termination.** In the event of termination, Consultant, within fourteen (14) days following the date of termination, shall deliver to Commission all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement, and shall submit to Commission an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 **Payment Upon Termination.** Upon termination of this Agreement by Commission, Consultant shall be entitled to receive full payment for all reimbursable expenses properly incurred hereunder; provided, however, that if Commission terminates the Agreement for cause pursuant to Section 4.1, Commission shall deduct from such amount the amount of

damage, if any, sustained by Commission by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate. Subject to the terms of this Section 4, the Board of Commissioners has the authority to terminate this Agreement on behalf of the Commission. In addition, and subject to the terms of Section 4, the Executive Director of the Commission, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the Commission.

5. Indemnification. Consultant agrees to accept all responsibility for loss or damage to any person or entity, including the Commission, and to indemnify, hold harmless, and release the Commission, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against the Commission or County based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent or contributory negligence on Commission's part, but to the extent required by law, excluding liability due to Commission's conduct. Commission shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit B, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work. The execution of this Agreement shall constitute Consultant's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not exceed the delegated signature authority of the Executive Director and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Executive Director in a form approved by County Counsel. The Board of Commissioners must authorize all other extra or changed work. The parties expressly recognize that Commission personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or

changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the Commission.

9. Representations of Consultant

9.1 Standard of Care. Commission has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by Commission shall not operate as a waiver or release.

9.2 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of Commission and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Commission provides its employees. In the event Commission exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform the Commission

9.4 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold Commission harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case Commission is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish Commission with proof of payment of taxes on these earnings.

9.5 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Commission for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 **Conflict of Interest.** Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by Commission, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a “Statement of Economic Interest” with Commission disclosing Consultant’s or such other person’s financial interests.

9.7 **Statutory Compliance/Living Wage Ordinance/Homekey.** Consultant agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Consultant expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Consultant understands this Project is funded by Project Homekey and agrees to comply with all Homekey requirements as applicable. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8 **Nondiscrimination.** Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the Commission’s Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.9 **HIV/AIDS Discrimination.** Consultant agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.10 **Assignment of Rights.** Consultant assigns to Commission all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to Commission in this Agreement, and to refrain from taking any action which would impair those rights. Consultant’s responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Commission may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of

Commission. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Commission.

9.11 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Commission. Commission shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to Commission all such documents, which have not already been provided to Commission in such form or format, as Commission deems appropriate. Such documents shall be and will remain the property of Commission without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Commission.

9.12 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other’s expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “Commercially reasonable” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party’s right to demand adequate assurance of future performance. Nothing in this Article limits Commission’s right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other; provided, however, Consultant shall have the right to assign its interest herein to a limited liability company in which Consultant is the managing member upon notice to Commission.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COMMISSION: Sonoma County Community Development Commission
Attn; Ray Tovar
1440 Guerneville Road

Santa Rosa, CA 95403-4107

TO: CONSULTANT: Burbank Housing Corporation
Attn: [REDACTED]
1425 Corporate Center Parkway
Santa Rosa, California 95407

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. **Miscellaneous Provisions.**

13.1 **No Waiver of Breach.** The waiver by Commission of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and Commission acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and Commission acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 **Consent.** Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 **No Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 **Applicable Law and Forum.** This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the Commission of Santa Rosa, in the County of Sonoma.

13.6 **Captions.** The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.7 **Merger.** This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8. **Survival of Terms.** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 **Time of Essence.** Time is and shall be of the essence of this Agreement and every provision hereof.

13.10. **Counterpart; Electronic Signatures.** The parties agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and together which when executed by the requisite parties shall be deemed to be a complete original agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered, be valid and effective for all purposes, and shall have the same legal force and effect as an original document. This Agreement, and any counterpart, may be electronically signed by each or any of the parties through the use of any commercially-available digital and/or electronic signature software or other electronic signature method in compliance with the U.S. federal ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code § 1633.1 et seq.), or other applicable law. By its use of any electronic signature below, the signing party agrees to have conducted this transaction and to execution of this Agreement by electronic means.

[Signatures Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: **BURBANK HOUSING CORPORATION,**
a California nonprofit public benefit corporation

By: _____

Its: _____

COMMISSION: **SONOMA COUNTY COMMUNITY
DEVELOPMENT COMMISSION,**
a public body corporate and politic

CERTIFICATES OF INSURANCE ON
FILE WITH AND APPROVED AS TO
SUBSTANCE FOR COMMISSION:

By: _____

APPROVED AS TO FORM FOR COMMISSION:

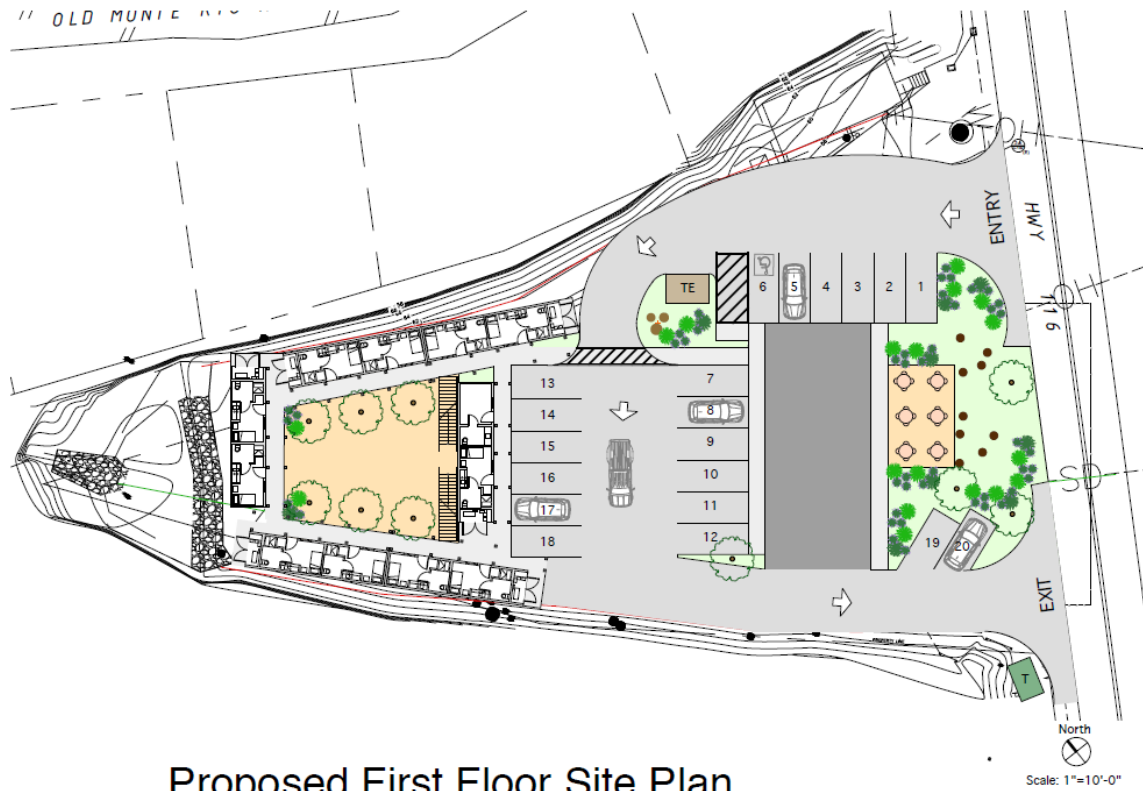
By: _____
County Counsel

Date: _____

EXHIBIT A

Site Plan

(Subject to Change as Design Progresses)



Proposed First Floor Site Plan

Exhibit B

SCOPE OF WORK & PAYMENT

GEORGE'S HIDEAWAY PROJECT

Predevelopment Phase

1. **Scope of Work in General.** Consultant shall deliver professional pre-development, design, entitlement, project management and related services for the Project, up to and including 100% construction drawings and an approved building permit for the Project with all other necessary entitlements in hand, ready for construction, and as further described in this Exhibit B. Consultant shall have full responsibility for any and all required architectural, engineering, consulting and inspection services necessary for the development of the Project, including, without limitation, architectural, geotechnical, civil, land surveying, hydrology, environmental, hazardous materials, traffic, biology, archeology, structural, mechanical, electrical, low voltage, life safety, landscape, elevator (if any), signage, acoustical and other services as provided herein, together with the responsibility to hire and manage all necessary subconsultants, the supervision and contract coordination of professional design services and related services, including the coordination thereof necessary to fulfill Consultant's responsibility to fully design and entitle the Project in accordance with all of the requirements of this Agreement. The scope of work described in this Section together with Consultant's detailed scope of work set forth below is collectively referred to herein as the "Scope of Work".

2. **Detailed Scope of Work**

A. **Definitions.** The following definitions for words or phrases shall apply when used in this Agreement:

"Architect": The architect(s) that the Consultant designates as being the architect(s) for all or a portion of the Project, including all consultants to the architect(s). The Architect is a member of the Design Team and is proposed to be Praxis Architects of Guerneville, California.

"Design Manager" or "Consultant": The Consultant as defined hereunder.

"Category" shall mean each of categories shown on Attachment 1.

"Contractor": The entity, including its subcontractors, and their sub-subcontractors that the Commission designates as being the entity that will construct the Project.

"Day(s)": Unless otherwise designated, "day(s)" means calendar day(s).

“Design Fees”: The total maximum amount of consideration payable to Consultant under this Agreement for the Scope of Work which is One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00)

“Design Funds”: The total amount indicated below by the Commission for the design of the Project which is One Million One Hundred Forty-Five Thousand Seven Hundred and No/100 Dollars (\$1,145,700.00).

“Design Team”: The architect(s), engineer(s), and other designer(s) that will design all or a portion of the Project, along with all consultants to the architect(s), engineer(s) or other designer(s), who have a responsibility to design all or a portion of the Project either directly or as a subconsultant or subcontractor.

“Monthly Design Fee”: The maximum amount per month Consultant may charge Commission hereunder for the Scope of Work which is Twelve Thousand and No/100 Dollars (\$12,000.00) per month. In no event shall the total of all Monthly Design Fees payable hereunder exceed the Design Fee.

“Phase(s)”: One or more of the time frames within which the Scope of Work may be authorized and performed as described below.

“Project”: Means the Project as defined above.

“Project Manager”: The Commission’s project manager and authorized representative for this Project, which initially shall be Ray Tovar.

“Service(s)” or “Work”: All labor, materials, supervision, services, tasks, and work that the Design Manager is required to perform and that are required by, or reasonably inferred from, this Agreement.

“Schedule” shall mean the schedule attached hereto as Attachment 2.

“Subconsultant(s)”: Any and all consultant(s), subcontractor(s), vendors or agent(s) employed by, retained by, or under contract(s) with the Design Manager for any portion of the Work.

B. **Scope of Work of Design Manager.** Design Manager shall provide the Scope of Work (as defined above) for the Project within the Design Funds for the Monthly Design Fee. The parties agree that the Design Manager’s Scope of Work described herein will be based on the Design Manager administering the design work of the Project. The Commission reserves the right to choose the delivery method for the Project. In the performance of Design Manager’s Services under this Agreement, Design Manager shall maintain direct communication with the Project Manager as the primary point of contact with the Commission. The Design Manager must also coordinate the Scope of Work with other Commission personnel and/or Commission’s designated representatives as may be requested

and desirable but must take primary direction from the Project Manager. If the Design Manager employs Subconsultant(s), the Design Manager must ensure that its contract(s) with its Subconsultant(s) include language notifying the Subconsultant(s) of the Commission's insurance, safety, and labor compliance programs, if any and Homekey requirements.

C. **Schedule of Work.** The Design Manager must commence the Scope of Work under this Agreement upon execution of this Agreement and must prosecute the Scope of Work diligently as described herein and in accordance with the Schedule.

D. **Fee and Method of Payment.** Commission will pay Design Manager a fee for services rendered and procured as described in Section 7, below. The Design Manager's Fee includes, without limitation, all costs for overhead; personnel; project delivery; administration; profit; travel within two hundred (200) miles of the Project location; offices; per diem expenses; and all deliverables, printing, and shipping, under the Agreement.

F. **Responsibilities And Services of Design Manager for Design of the Project.** Design Manager shall provide professional design management services relating to the Project as further described below.

(a) The Project includes Site development with the Improvements, including, without limitation, site preparation, utilities, landscape, hardscape, vehicular drives, surface parking, security barriers, fencing, gates, units, and ancillary offices. The Improvements include but are not limited to all building structures, enclosures, interior improvements, mechanical, electrical, telecommunication, audio visual, and security systems.

(b) The goals of the Project are for the overall design, construction and commissioning of the Improvements on the Site to serve those experiencing chronic homelessness under the guideline of Homekey. Design Manager's Scope of Work is intended to further these goals, whether or not the Design Manager is primarily responsible for achieving all of these goals.

(i) Design – The Project will serve as a mixed-used development consisting of a navigation center and supportive services building along with 21 permanent supportive housing units for households experiencing homelessness plus a manager's unit..

(ii) Schedule and Cost – The Project design will be completed within the Schedule and within the Design Funds. Where possible, project tasks should be concurrent.

(iii) Security – The Commission or its partners will be responsible for providing security during the design phase of the Project.

G. **Oversight**

(a) Design Manager must work with the Design Team; manage work related to the Project; monitor other members of the Design Team; and advise the Project Manager as to all material developments in the Project.

(b) Design Manager must develop reporting and forecasting methods acceptable to Commission and conforming to the requirements of the Program. Reports include, but are not limited to, monthly progress reports, review of schedules, cost control reports, and budget status reports. All proposed reporting and forecasting methods and report formats must be approved by the Project Manager, and after that approval, Design Manager must implement the approved reporting and forecasting methods.

(c) Design Manager must consult with and advise the Project Manager regarding possible construction delivery methods.

H. **Communication**. As directed by the Project Manager, Design Manager will be the primary point of contact with the Design Team and the Commission and will either initiate, respond to, or be part of all communications. In consultation with the Project Manager and according to Commission approved policies, procedures, forms, and reporting requirements for the Project, Design Manager will establish a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.

I. **Coordination**

(a) Design - Design Manager is not the Architect of the Project, but as indicated further herein, Design Manager will perform specific Services during all design Phases of the Project to assist, review, coordinate, opine and cooperate with the Design Team and all other design professional(s) of the Project.

(b) Construction - Design Manager is not the Contractor of the Project. As provided herein, Commission will separately contract with the Contractor(s) for the actual construction of the Project. As provided for herein, Commission, Consultant and West County seek to negotiate a separate agreement regarding the actual construction of the Project.

(c) Plan Review - In addition to performing its own plan reviews, constructability reviews, and value analyses, Predevelopment Manager must analyze the County of Sonoma Permits Sonoma (“Permits Sonoma”) plan checks and work with Design Team, Permits Sonoma and Commission to finalize and correct deficiencies and mistakes in the design documents.

(d) Risk Management – Predevelopment Manager must meet with the Project Manager and with the Commission’s Risk Management representative within ten (10) days of the Effective Date to discuss, and make recommendations regarding, the development and implementation of an effective risk management program for the Project.

J. **Subconsultants.** Predevelopment Manager may be required to contract for subconsultants, not to exceed the difference between Design Funds and Design Fees, for performance of Predevelopment Manager's Scope of Work. Nothing in the foregoing shall create any contractual relationship between the Commission and any Subconsultants employed by the Predevelopment Manager under terms of this Agreement.

K. **Cooperation.** Predevelopment Manager must cooperate with others employed by or contracted with the Commission for the design, coordination or management of other work related to the Project. Predevelopment Manager must schedule and attend regular meetings with the Project Manager and the Design Team.

L. **Design Components.** Predevelopment Manager must consult with the Project Manager and Design Team in the selection of materials, building systems, and equipment, as well as provide recommendations on construction feasibility actions designed to minimize adverse impacts of labor or material shortages, time requirements for procurement, installation and construction completion, and factors related to construction cost, including estimates of alternative designs and materials.

M. **Taking Minutes.** Predevelopment Manager must chair, conduct, and take minutes of periodic meetings between Project Manager and Predevelopment Manager, Project Manager and the Design Team, and attend meetings hosted by Commission on for the same purpose.

N. **Accuracy of Work Product.** Predevelopment Manager is responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other services furnished by Predevelopment Manager under this Agreement as well as coordination with all master plans, studies, reports, and other information provided by the Commission to Predevelopment Manager. Predevelopment Manager must, without additional compensation, correct or revise any errors or omissions in the deliverables it generates.

O. **Monthly Reports.** Predevelopment Manager must provide to the Project Manager with a monthly Project report. Monthly reports including the following, as a minimum:

- (i) The status of the Project and an update on Project activities;
- (ii) A comparison of the Project Budget to costs incurred and estimated through the date of the report;
- (iii) A comparison of the Project Schedule to the work actually completed through the date of the report;
- (iv) Any revision to the Project Schedule or Project Budget made during the month covered by the report;
- (v) A summary of change orders made during the month covered by the report;
- (vi) The status of submittals;

- (vii) The status of any governmental requirements and activities required to facilitate approval of the Project;
- (viii) Any other reports concerning the Project as the Commission may reasonably request; and
- (ix) Pictures, videos, plans, sketches, proposed add/alts and other documentation to form the basis for a visual representation and record of the progress.

The reports enumerated above in this Section are herein referred to as the “Monthly Reports”.

P. **Construction Cost.** In addition to its other duties related to budgeting and estimating, the Predevelopment Manager must perform the following tasks related to the Construction Cost.

(i) Predevelopment Manager must independently develop, review, validate and reconcile the estimated Construction Cost with the Design Team and the Project Manager, at the completion of each of the following Phases:

- (a) Prior to certification that Working Drawings are 50% complete.
- (a) Prior to certification that Working Drawings are 90% complete.
- (a) Prior to certification that Working Drawings are 100% complete.

(ii) The Construction Cost may include allowances, contingencies, additive/alternates and other amounts.

(iii) Predevelopment Manager must work cooperatively with the Design Team and the Project Manager so that the construction cost of the work designed by the Design Team will not exceed the Construction Cost, as may be adjusted with the Commission’s Executive Director’s written approval as authorized by the Board of Commissioners.

(iv) Predevelopment Manager must notify the Project Manager at any time the Predevelopment Manager believes the estimated construction cost of the work as designed by the Design Team will exceed the Construction Cost.

Q. **Project Budget.** At the same time that it is developing, reviewing and reconciling the Construction Cost, the Predevelopment Manager must perform the same for the Project Budget. The Predevelopment Manager must coordinate with the Design Team and the Project Manager while performing these activities.

R. **Independent Estimate.** Predevelopment Manager must obtain an independent estimate of all components of the Project Budget at the end of each Phase. This estimate must be based on all costs that a prudent and experienced designer and contractor

would incur, as well as known facts, construction tasks, supplemental judgments, and other economic analyses necessary to support the design decision.

S. **Contractor Selection.** As requested by the Commission, Predevelopment Manager shall cooperate in the process of selecting and retaining a Contractor including, without limitation, reviewing and revising the request for qualifications or other solicitation documents.

T. **[Reserved.]**

U. **Labor Code Compliance.** Predevelopment Manager acknowledges and understands that the State monitors and enforces compliance with Labor Code requirements through statutorily authorized programs. Predevelopment Manager must ensure that all subcontractors, and other consultant's providing labor are in compliance with the State's requirements for contractor registration, payment of prevailing wages and use of apprentices in the design of the Project. Predevelopment Manager also acknowledges that, for purposes of Labor Code section 1725.5, some of its Services may be a public work to which Labor Code section 1771 applies. That portion of the Services is therefore subject to compliance monitoring and enforcement by the Department of Industrial Relations. Predevelopment Manager must comply with Labor Code section 1725.5, including without limitation the registration requirements.

V. **Coordination with Special Consultants.** Predevelopment Manager must coordinate the Commission's other consultants and vendors that are performing these services (e.g., Predevelopment Manager must establish and maintain a schedule of all environmental and archeological investigations, testing, etc.). In addition, Predevelopment Manager will assist the Commission in procuring these scopes of work or services when required.

- (i) Ground contamination or hazardous material analysis.
- (ii) Any asbestos testing, design or abatement.
- (iii) Historical significance report.
- (iv) Soils investigation.
- (v) Geotechnical hazard report.
- (vi) Topographic survey, including utility locating services.
- (vii) Other items specifically designated as the Commission's responsibilities under this Agreement.
- (viii) As-built documentation or permit submittals from previous construction projects involving the Site.

W. **Working Drawings Phase**

(i) **Provision of Services.** Predevelopment Manager must provide all of the Services in this Section with respect to the Working Drawings Phase.

(ii) **Meetings.** Predevelopment Manager must attend all planning, programming and site planning meetings related to the Project.

(iii) **Constructability and Plan Reviews.**

(a) The Predevelopment Manager must conduct constructability reviews and site verifications of the Project when Working Drawings are 90% complete.

(b) The Predevelopment Manager must review the design documents for code compliance, clarity, consistency, constructability, and coordination. The Predevelopment Manager must also make recommendations to the Project Manager with respect to constructability, construction cost sequence of construction, construction duration and separation of the contracts for various projects into categories of the work. However, the Predevelopment Manager is not responsible for providing, nor does the Predevelopment Manager control, the Project design, or the contents of the design documents.

3. **Maximum Payments to Consultant and Subcontractors.** Total payments to Consultant, the Design Team and all subcontractors under this Agreement shall not exceed One Million One Hundred Twenty-Three Thousand Two Hundred and No/100 Dollars (\$1,123,200.00) (“Design Funds”), which includes Consultant’s Design Fees which shall not exceed Twelve Thousand and No/100 Dollars (\$12,000.00) per month (“Monthly Design Fee”), up to a maximum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) in total Monthly Design Fees during the Term of this Agreement (“Design Fees”) as shown on Attachment 1. The Scope of Work shall be performed such that payments for any Category set forth in Attachment 1 do not exceed the total for such Category in Attachment 1. All consideration due hereunder shall be paid to Consultant in accordance with Section 7 of this Exhibit B.

4. **Assumption of Existing Project-Related Contracts.** As soon as practicable after the Effective Date, Consultant shall assume, to the extent possible, all existing Project-related contracts between West County Community Services, a California nonprofit public benefit corporation, and any third party.

5. **Commission Approval Required for Each Subcontract.** Before entering into any subcontract or allowing any work to commence under any subcontract between Consultant and a third party (“Subcontract”), Consultant shall first obtain the Commission’s prior written approval, as to the scope of work, financial, contractual and other terms contained in such Subcontract, which approval shall not be unreasonably withheld, conditioned or delayed. When requesting approval for a Subcontract, Consultant shall

provide a true and correct copy of the proposed Subcontract, with all exhibits and addenda, in final form to Commission for its review.

6. **Prevailing Wage Requirements.** Consultant shall comply with the applicable provisions of California Labor Code Sections 1720.2 and 1770 et seq, regarding general prevailing wages. In addition, all subcontracts shall include a provision requiring compliance by subcontractor with California Labor Code Sections 1720.2 and 1770 et seq, regarding general prevailing wages.

7. **Payment.** Commission shall pay the Management Fee and other Design Funds, for the Scope of Work (including the cost of subcontracts), in arrears, as provided below.

7.1 **Funding Requests**

7.1.1 **Project Account.** Consultant shall open, within ten (10) days of the Effective Date, a project bank account at a reputable bank (“Bank”), with **insert account requirements** (“Project Account”) into which Commission shall initially deposit Two Hundred Thousand and No/100 Dollars (\$200,000.00) (“Minimum Balance”) and from which Consultant may make withdrawals to: (A) pay itself the Monthly Design Fee; and (B) pay amounts due under any Commission-approved Subcontract. Thereafter, Commission shall replenish the account, on a monthly basis as needed to maintain a Two Hundred Thousand Dollar (\$200,000) balance, pursuant to Section 7.1.3, below. Consultant shall provide Commission with a true and correct copy of every monthly statement issued by the Bank for the Project Account.

7.1.2 **Funding Requests/Monthly Statement.** Once per calendar month, no later than the seventh (7th) day of each calendar month, Consultant shall submit to Commission a funding request (“Funding Request”) which shall detail: (A) the Monthly Design Fee deducted from the Project Account for the previous calendar month; and (B) other Design Funds, by Category (as defined in in Attachment 1), which Consultant has expended from the Project Account during the previous calendar month under approved Subcontracts. Together with the Funding Request, Consultant shall deliver copies of invoices and other information to enable Commission to make an informed judgement whether the expenditures were made in accordance with this Agreement. In addition to the Funding Request, Consultant shall also deliver to Commission the Monthly Reports together with a monthly statement (the “Statement”) detailing: (A) all Monthly Design Fees paid to itself and all Design Funds expended from the Project Account, both for the previous calendar month, all prior calendar months (by month), and Project to-date; and (B) a forecast of the Design Funds needed by Category for the current month (“Forecast”). The Statement shall accurately reflect all expenditures made by Consultant for all Categories, and it shall be certified to be true and correct by Consultant.

7.1.3 **Replenishment of Project Account.** Provided Commission approves the Funding Request, the Statement and the Forecast, as described and defined above, then Commission shall replenish the Project Account in an amount necessary: (A) for Consultant to pay, to the extent not available in the Project Account, all previously approved

Monthly Design Fees and Subcontract costs; (B) the amount of the approved Forecast; and (C) to maintain the Minimum Balance.

7.1.4 **Other Requirements.** Consultant shall not submit Funding Requests to Commission more frequently than once each calendar month unless Commission has given its prior written consent in each instance. Each Funding Request shall constitute Consultant's representation and warranty to Commission that all disbursements made to date as well as those being currently requested were and will be utilized in compliance with the applicable Funding Requests unless Consultant has notified Commission in writing to the contrary and Commission has approved such deviation in writing.

8. **Adjustment of Category Amounts**

8.1 **Category Adjustments.** Commission staff may reallocate funding between or among Categories, with input from Design Manager, and as actual costs are incurred, upon written notice to Consultant. Design Manager may also submit requests to Commission staff to reallocate funding between or among Categories.

8.2 **Total Budget Amount Adjustment.** In no event shall Commission staff be authorized to increase total Design Funds, without the independent review, consideration and approval of the Board of Commissioners, whose approval may or may not be granted, for any reason or for no reason.

ATTACHMENT 1

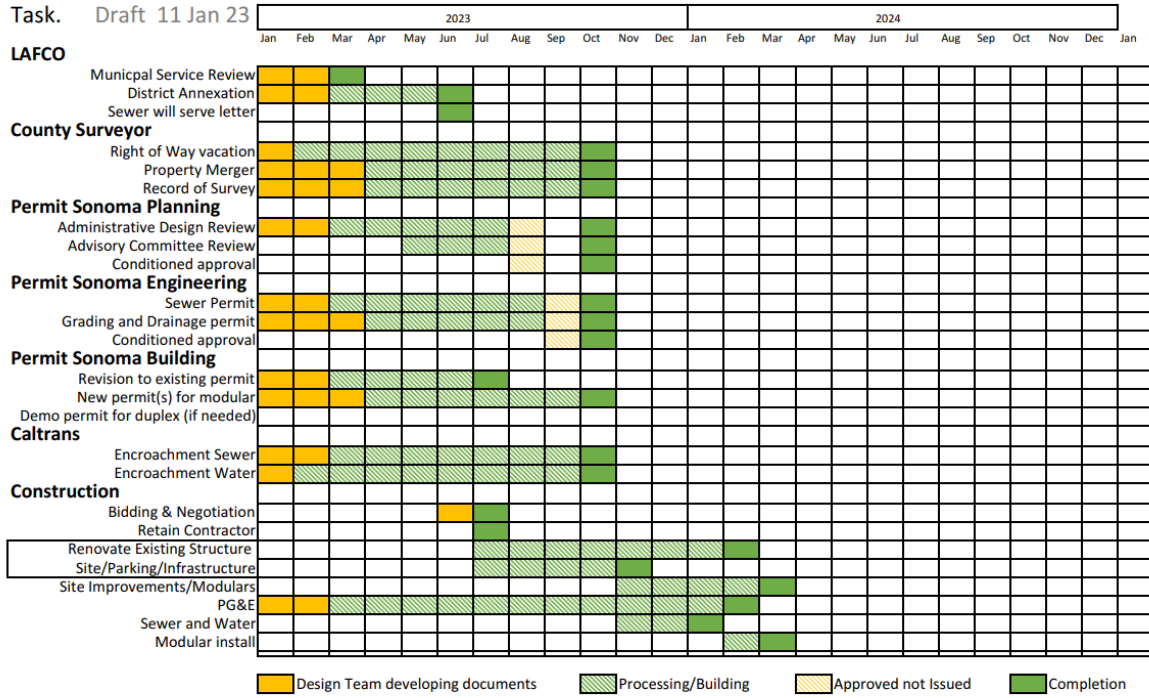
Categories/Maximum Amounts

Category	Maximum Amount
Architecture and Design	\$ 202,500
Engineering	\$ 138,750
Consultants	\$ 72,500
Modular Home Design	\$ 100,000
Legal	\$ 75,000
Permits	\$ 314,200
Design Fee	\$ 120,000
Other Costs	\$ 242,750
Total	\$ 1,265,700

“Category” shall mean each of the Project cost rows in the above table.

ATTACHMENT 2

Schedule



CONTRACT INSURANCE REQUIREMENTS

With respect to performance of work under this Agreement, Burbank shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

Commission reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Burbank from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers Compensation and Employers Liability Insurance

- a. Required if Burbank has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If Burbank currently has no employees as defined by the Labor Code of the State of California, Burbank agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

2. General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Burbank maintains higher limits than the specified minimum limits, Commission requires and shall be entitled to coverage for the higher limits maintained by Burbank.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Commission. Burbank is responsible for any deductible or self-insured retention and shall fund it upon Commission's written request, regardless of whether Burbank has a claim against the insurance or is named as a party in any action involving the Commission.

- d. Sonoma County Community Development Commission and the County of Sonoma shall be endorsed as additional insureds for liability arising out of operations by or on behalf of the Burbank in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Burbank and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii. Certificate of Insurance.

3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Burbank currently owns no autos, Burbank agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

4. Professional Liability/Errors and Omissions Insurance

- a. Minimum Limits: \$1,000,000 per claim or per occurrence; \$1,000,000 annual aggregate.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Commission.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- e. Required Evidence of Insurance: Certificate of Insurance.

5. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A: VII.

6. Documentation

- a. The Certificate of Insurance must include the following reference: George's Hideaway ERNA.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Burbank agrees to maintain current Evidence of Insurance on file with Commission for the entire term of this Agreement and any additional periods if specified in Sections 1 – 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is:

Commission: Sonoma County Community
 Development Commission
 1440 Guerneville Road
 Santa Rosa, CA 95403
 Phone: (707) 565-7505
 Attention: Executive Director

County: Sonoma County
 575 Administration Drive, Suite 104A
 Santa Rosa, CA 95403
 Phone: (707) 565-2431
 Attention: County Administrator

- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Burbank shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

7. Policy Obligations

Burbank's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

8. Material Breach

If Burbank fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Commission, at its sole option, may terminate this Agreement and obtain damages from Burbank resulting from said breach. Alternatively, Commission may purchase the required insurance, and without further notice to Burbank, Commission may deduct from sums due to Burbank any premium costs advanced by Commission for such insurance. These remedies shall be in addition to any other remedies available to Commission.

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT BETWEEN
SONOMA COUNTY COMMUNITY DEVELOPMENT COMMISSION AND
WEST COUNTY COMMUNITY SERVICES
(GEORGE'S HIDEAWAY)

This Exclusive Right to Negotiate Agreement (this "Agreement") is entered into as of _____, 2023 (the "Effective Date"), by and between the Sonoma County Community Development Commission, a public body, corporate and politic (the "Commission"), and West County Community Services, a California nonprofit public benefit corporation ("West County"). The Commission and West County (sometimes collectively referred to as the "Parties" or individually as a "Party") have entered into this Agreement on the basis of the following facts:

RECITALS

- A. On April 18, 2022, the Commission acquired the property at 18084 CA-Highway 116 in the Town of Guerneville (the "Property") using Russian River Redevelopment Capital funds and County's Homeless Housing Assistance and Prevention funds.
- B. On July 28, 2022 the Commission received an award from the State of California Housing and Community Development Department's Homekey-2 Program for the acquisition, development, and management of the Property. West County is a co-applicant to the Homekey-2 award and is the management and lead service provider for the Project.
- C. On July 25, 2022, the Commission issued a Request for Qualifications soliciting qualifications and conceptual proposals from qualified developers for the Property renovation, construction, management and ownership after conversion to permanent supportive housing ("Project").
- D. On September 26, 2022, Commission received a joint response to the RFQ from West County and Burbank Housing Development Corporation ("Burbank"). The response included a partnership between these two agencies wherein Burbank would assist in the development of the Project and with the ultimate goal of West County being the owner and operator of the Property.
- E. The Commission has negotiated a Professional Services Agreement ("PSA") with Burbank to provide pre-development services including management of consultants and other related services necessary to secure permits and entitlements and prepare the Property for development.
- F. An Exclusive Right to Negotiate Agreement is a recommended document to facilitate the negotiation of a Disposition and Development Agreement (DDA). Following the execution of an Exclusive Right to Negotiate Agreement, Commission staff will bring back before the Board of Commissioners said DDA for consideration by the Board of Commissioners.

- G. The purpose of this Agreement is to establish procedures and standards for the negotiation by the Commission and West County of a DDA pursuant to which the Commission would convey the Property to West County and West County would own and operate the Project on the Property according to the terms of the Homekey-2 Standard Agreement.
- H. As more fully set forth in Section 3.1, the Parties acknowledge and agree that this Agreement in itself does not grant West County the right to develop the Project, nor does it obligate either Party to any activities or costs to develop the Project, except for the actions and negotiations contemplated by this Agreement, nor does it obligate the Commission to dispose of any part of the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

ARTICLE 1.

EXCLUSIVE NEGOTIATIONS RIGHT

Section 1.1 Good Faith Negotiations.

(a) The Commission and West County shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, the terms of a DDA for the development of the Project on the Property. During the Negotiating Period, the Parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of a mutually satisfactory DDA.

(b) Among the issues to be addressed in the negotiations are the purchase price for the Property, design, parking, and aesthetic considerations of the Project (including appropriate means of access), the development schedule for the Project, financing of the Project, management of the Project, and the provision of improvements related to the Project. The amount, timing, method, source and other terms of any Commission financial assistance toward development of the Project, if any, shall be determined through the negotiating process for the DDA.

Section 1.2 Negotiating Period.

(a) Subject to earlier termination pursuant to specific provisions of this Agreement, the negotiating period (the "Negotiating Period") under this Agreement shall be one hundred and eighty (180) days, commencing on the Effective Date (as set forth in the Opening Paragraph of this Agreement), which may be extended on the Commission's behalf for up to an additional one hundred eighty (180) days by the Commission's Executive Director if, in the Executive Director's sole and absolute judgment, sufficient progress toward a mutually acceptable DDA has been made during the initial one hundred and eighty (180) day negotiating

period to merit such extension. An initial extension can be granted by the Commission Executive Director through written notice to West County and without formal amendment to this Agreement. The Negotiating Period may be further extended or modified in writing by the Commission's Executive Director on behalf of the Commission and by West County by formal amendment of this Agreement.

(b) If the Parties are unable to reach agreement and execute and deliver a DDA by the expiration of the Negotiating Period, then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except that the provisions of Sections 2.5 and 3.4 shall survive any termination. If a DDA is executed by the Commission and West County then, upon such execution, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA.

Section 1.3 Exclusive Negotiations. During the Negotiating Period, the Commission shall not negotiate with any entity, other than West County, regarding development of the Project or acquisition of the Property, or solicit or entertain bids or proposals to do so.

Section 1.4 Good Faith Deposit. In consideration for this Agreement and in lieu of and as an alternate to a cash good faith deposit, West County has undertaken to use its own financial resources to retain legal, financial and other consultants to assist West County and Commission in the negotiation of the DDA and planning of the Property, and such funds expended by West county shall be considered West County's good faith deposit (the "Good Faith Deposit"). As consideration for the Commission's execution of this Agreement, West County by this Agreement shall provide the Commission with copies of all reports, studies, analyses, correspondence and similar documents prepared or commissioned by West County with respect to this Agreement and the Project, all as more fully set forth in Section 2.5. If this Agreement is terminated without execution of a DDA for any reason, then the work product generated by West County by expenditure of the Good Faith Deposit shall be provided to Commission at no charge as required under Section 2.5 hereof.

Section 1.5 Identification of West County Representatives and Development Team.

(a) Negotiating Representatives. West County's representatives to negotiate the DDA with the Commission are Tim Miller and _____. West County's negotiating representatives may be changed by written notice to the Commission.

(b) Development Team. The Parties' acknowledge that the identity and quality of the team that will oversee, monitor, and manage the day-to-day pre-development and construction of the Project is important to the completion of the tasks set forth in Article 3 below, and in seeking to negotiate a mutually acceptable DDA. The Commission has negotiated and intend to enter a Professional Services Agreement with Burbank to act as the Development Manager for the Project. The following shall constitute initial members of the team for the Project:

Development Manager: Burbank

Architect: Praxis Architects

Legal Counsel:

Section 1.6 Identification of Commission Representatives. The Commission's representative to negotiate the DDA with West County is the Executive Director, the Interim Executive Director or their designee. The Commission Executive Director has ultimate staff authority to make decisions related to this Agreement that can be made at the staff level, and to make staff recommendations to the Commission in connection with decisions related to this Agreement to be made at the Commission level. The Commission's negotiating representatives may be changed by written notice to West County.

Section 1.7 Overview; Schedule. To facilitate negotiation of the DDA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in Article 2 within the specific times set forth in the milestone schedule set forth in the attached Exhibit B (the "Schedule"), and within an overall timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period. The Schedule may be modified from time to time (including modification of dates for completion of specified actions and/or addition of further actions) without formal amendment of this Agreement by written document executed by West County and the Commission Executive Director or the Executive Director's designee.

ARTICLE 2. NEGOTIATION TASKS AND DDA PROVISIONS

Section 2.1 Proposed Term Sheet. Within the time set forth in the Schedule, West County shall provide Commission with a proposed non-binding term sheet (the "Proposed Term Sheet") containing proposed business and financial terms as a starting point for negotiation of the DDA. Within the time set forth in the Schedule, Commission shall provide West County with any written comments regarding the Proposed Term Sheet. Thereafter, the parties shall conduct negotiation of the DDA taking into account the Proposed Term Sheet and any Commission comments.

Section 2.2 This section purposely left blank

Section 2.3 Purchase Price or other Financial Consideration for the Property; Commission Financial Contribution. The Commission and West County shall seek to agree upon the purchase price for the Property, and the nature, timing and amount of any Commission financial contribution to the Project consistent with the requirements of the Homekey Standard Agreement. It is the parties' intent that any mutually acceptable Commission financial contribution to be included in a DDA shall be in a form or forms authorized for funding by the Commission pursuant to the California's Homekey Program Rules and Regulations.

Section 2.4 Reports; Treatment of Documents Upon Termination.

(a) Reports. Unless otherwise waived by the Commission, West County shall provide the Commission with copies of all reports, studies, analyses, plans, correspondence and similar documents, but excluding financial or confidential or proprietary information, prepared or commissioned by West County, or its designee with respect to this Agreement and the Project, promptly upon their completion. Unless otherwise waived by West County, the Commission shall provide West County with copies of all reports, studies, analyses, plans, correspondence and similar documents, but excluding financial or confidential or proprietary information, prepared or commissioned by The Commission, or its designee with respect to this Agreement and the Project, promptly upon their completion

(b) While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, West County acknowledges that the Commission will need sufficient, detailed information about the proposed Project (including, without limitation the financial information to make informed decisions about the content and approval of the DDA. The Commission will work with West County to maintain the confidentiality of proprietary information subject to the requirements imposed on the Commission by the Public Records Act (Government Code Section 7920.505 et seq.). West County acknowledges that the Commission may share information provided by West County of a financial and potential proprietary nature with third party consultants and Commission and Board of Supervisors or Commissioners as part of the negotiation and decision making process, it being understood that such third party consultants and Commission and Board of Supervisors shall be under the same requirements and standards as set forth above in this subsection (a).

(c) Treatment of Documents Upon Termination. If this Agreement is terminated without the execution of a DDA, the Commission's rights with respect to the information submitted by West County under this Agreement shall be as set forth in the Assignment of Documents pursuant to this Section 2.4.

Section 2.5 CEQA Review.

(a) Within the time set forth in the Schedule, the Commission (in consultation with the County) shall determine the type of documentation required pursuant to CEQA for the processing of a DDA, Purchase and Sale Agreement and the land use entitlements for the Project, and shall specify in writing the type and scope of any such CEQA documentation (the "CEQA Document"), and the identity of the proposed preparer of the CEQA Document (consultant or staff). West County shall reasonably assist the Commission in its determination by providing information about the Project, as requested. The Commission shall seek and consider in good faith West County or its consultants' input regarding the need for and scope of any CEQA Document, and the proposed preparer of and Budget for any such CEQA Document.

At its cost, the Commission (in cooperation with any responsible agency) shall cause preparation of the CEQA Document as promptly as possible consistent with satisfaction of state and local CEQA guidelines for the preparation of the CEQA Document. So long as West County and Commission staff have otherwise concurred upon the terms of a proposed Purchase and Sale Agreement and a DDA for presentation to the Board of Commissioners, the Parties shall cooperate in good faith to establish any reasonably necessary modifications to the Schedule

and any reasonably necessary extension to the Negotiating Period in accordance with Section 1.2 to accommodate the time necessary to complete the CEQA Document for consideration by the Board of Commissioners in connection with their consideration of approval of the Purchase and Sale Agreement and the DDA

(b) If the Board of Commissioners, in its sole discretion, determines that the approval of the DDA requires non-feasible mitigation measures, or fails to yield benefits that outweigh significant unavoidable impacts, or the Board of Commissioners otherwise determines, in its sole discretion, not to make any finding required by CEQA as a prerequisite to approval of the DDA, either Party may terminate the Agreement. Upon such termination, neither party shall have any further rights or obligations under this Agreement, except that any provision of this Agreement that is specified to survive termination shall remain in effect and binding upon the Parties.

(c) The Parties intend this Agreement to reflect the basic understanding between them, but agree that the transaction contemplated herein shall be subject to the execution of a mutually acceptable, definitive, and final DDA to be negotiated, and subject to the approval of the Commission's Board. This Agreement does not constitute a legally binding commitment to a specific project or the Development.

Section 2.6 Progress Reports. None required.

Section 2.7 Relocation.

(a) As of the date of this Agreement, no current tenant or occupant of the Property is a "displaced person" under any applicable local, state, and federal statutes and regulations, (including without limitation California Government Code Section 7260 et seq., and accompanying regulations). The Commission, with respect to relocation planning, advisory assistance, and payment of monetary benefits, is not obligated to perform any relocation activities.

Section 2.8 Due Diligence. During the Negotiating Period, West County shall conduct due diligence activities, including but not limited to planning, soils report, hazardous materials report, financial feasibility and title adequacy.

(a) Physical Adequacy Determination. Upon delivery of an Unsuitability Notice by West County, this Agreement shall be terminated without further action of any party, and thereafter no party shall have any further duties, obligations, rights, or liabilities under this Agreement.

(b) Right of Entry. The Commission hereby grants West County a right of entry to enter the Property to perform the physical adequacy determination described above which shall terminate with the termination of this Agreement. West County shall indemnify, defend (with counsel reasonably acceptable to Commission and the County) and hold harmless the Commission, the County, and their directors, board members, officers, contractors, agents and employees against any claims made against them which arise out of the activities of West County or its, contractors, subcontractors, agents, employees, licensees, invitees or guests on or

concerning the Property during the term of this Agreement. The foregoing indemnity shall survive termination of this Agreement, but shall not extend to any claim arising solely from the Commission or County's gross negligence or intentional acts.

(c) Title Adequacy Determination. Within thirty (30) days following the Effective Date, the Commission shall cause a reputable title company to issue a Preliminary Title Report (the "Report") on the Property to West County. If West County objects to any exception appearing on the Report or should any title exception arise after the date of the Report, West County may object to such exception, provided such objection is made to the Commission in writing on or before 5 o'clock P.M. on the thirtieth (30th) day following the date West County receives the Report. If West County objects to any exception to title, the Commission, within thirty (30) days of receipt of Developer's objection shall notify Developer in writing whether the Commission elects to: (1) cause the exception to be removed of record; (2) obtain a commitment from the title company for an appropriate endorsement to the policy of title insurance to be issued to West County, insuring against the objectionable exception; or (3) terminate this Agreement unless West County elects to take title subject to such exception. If any party elects to terminate this Agreement pursuant to this Section, no party shall thereafter have any obligations to or rights against the others hereunder, except as set forth in Section 3.8. If West County fails to provide any notification to the Commission regarding this matter prior to expiration of the time period set forth herein, the condition set forth in this Section shall be deemed satisfied, this Agreement shall continue in effect, and the condition of title at closing under any executed DDA shall be as set forth in the Report. The parties hereby acknowledge and agree to cooperate to address cross easements and other reciprocal easement rights that may be necessary to accommodate development of the Property and address the use of the adjacent property, without need for any additional noticing requirements under this Section.

ARTICLE 3. GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement.

(a) This Agreement shall not obligate either the Commission or West County to enter into a DDA or to enter into any particular DDA. By execution of this Agreement, the Commission is not committing itself to or agreeing to undertake any conveyance, disposition, or use of the Property. Execution of this Agreement by the Commission is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent Commission and Board of Supervisors action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the Commission and, if required by law, the Board of Supervisors, following conduct of all legally required procedures, and executed by duly authorized representatives of the Commission and West County. Until and unless a DDA has been approved by the Commission, and executed by the Commission and West County, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to

enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document.

Section 3.2 Notices. Formal notices, demands and communications between the Commission and West County shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

Commission: Sonoma County Community
Development Commission
1440 Guerneville Road
Santa Rosa, CA 95403
Phone: (707) 565-7542
Attention: Interim Executive Director

WEST COUNTY: 16390 Main Street
Guerneville, CA 95446
Phone: (707) 823-1640
Attention: Executive Director

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 3.3 Waiver of Lis Pendens. It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Insurance. With respect to performance of work under this Agreement, at all times during the term of this Agreement West County shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described in Exhibit E, attached hereto and incorporated herein by this reference.

Section 3.5 Costs and Expenses. Each Party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each Party's obligations under this Agreement.

Section 3.6 No Commissions. The Commission shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA that may result from this Agreement. The Commission represents that it has engaged no broker, agent or finder in connection with this transaction. West County shall defend and hold the Commission harmless from any claims by any broker, agent or finder retained by West County.

Section 3.7 Defaults and Remedies.

(a) Default. Failure by a Party to negotiate in good faith as provided in this Agreement or failure by a Party to observe any other material provision of this Agreement shall constitute an event of default hereunder.

The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured fifteen (15) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by either Party, the non-defaulting Party may as its exclusive remedies: (1) terminate this Agreement, and (2) seek specific performance, including payment of attorney's fees pursuant to Section 3.8 below. In no event shall either party be entitled to monetary damages (other than attorney's fees associated with enforcement of a specific performance action), as a result of an uncured default by either Party. Following such termination, neither Party shall have any further right, remedy or obligation under this Agreement; provided, however, that the provisions of Sections 2.4 and 3.5 shall survive such termination.

Section 3.8 Attorneys' Fees. The prevailing Party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other Party.

Section 3.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of Sonoma County.

Section 3.10 Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the subject matters of this Agreement. This Agreement may be modified only in writing and only if approved and signed all Parties.

Section 3.11 Assignment. West County may not transfer or assign any or all of its rights or obligations under this Agreement without the Commission's prior written approval. Any such attempted transfer or assignment in violation of the preceding sentence shall be void.

Section 3.12 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the Commission and West County and no other person shall have any right of action under or by reason of this Agreement.

Section 3.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 3.14 Actions By The Commission. Except with respect to the ultimate approval of a DDA and the making of any statutorily required findings in connection with a DDA approval (which ultimate approval and statutory findings may be made exclusively by the Commission and the Board of Supervisors), whenever this Agreement calls for or permits the approval, consent, extension of time, authorization or waiver of the Commission, the approval,

consent, extension of time, authorization, or waiver of the Commission Executive Director or the Executive Director's designee shall constitute the approval, consent, extension of time, authorization or waiver of the Commission without further action of the Commission; provided however, that nothing in this Section shall prohibit the Commission Executive Director from seeking Commission approval for any such approval, consent, extension of time, authorization or waiver.

Section 3.15 Authority. Each Party represents and warrants to the other that the signatory below has full authority to execute this Agreement on behalf of such Party, and that this Agreement constitutes the valid and binding obligation of such Party.

[Signature Page Follows.]

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, by the Parties on the date first above written.

WEST COUNTY:

WEST COUNTY COMMUNITY SERVICES, a
California nonprofit public benefit corporation

By: _____
Tim Miller, Executive Director

COMMISSION:

SONOMA COUNTY COMMUNITY
DEVELOPMENT COMMISSION, a public body
corporate and politic

By: _____
Rhonda Coffman, Interim Executive Director

APPROVED AS TO FORM:

By: _____
Aldo Mercado,
Deputy County Counsel