ORANGE COUNTY BOARD OF SUPERVISORS

Agenda Revisions and Supplementals

Note: *This supplemental agenda is updated daily showing items that have been added, continued, deleted or modified. No new supplemental items will be added to the agenda following close of business on Friday immediately prior to a Board meeting*.

February 10, 2026

PRESENTATIONS (9:00 a.m.)

Supervisor Nguyen will be presenting a resolution recognizing February 17, 2026, as "Lunar New Year"

Vice Chair Foley will be presenting a resolution recognizing January 30, 2026, through February 6, 2026, as "California Earned Income Tax Credit (CalEITC) Awareness Week"

DISCUSSION

9. Deleted

12. Deleted

24. Deleted

25. Revised Title:
County Executive Office - Approve grant applications/awards submitted *by Health Care Agency and Sheriff-Coroner and retroactive grant applications/awards submitted by Health Care Agency and OC Public Works* in 2/10/26 grant report and other actions as recommended - All Districts

26. Continued to 2/24/26, 9:30 a.m.

27. Revised Title:
County Executive Office - Acting as the Orange County Board of Supervisors and Orange County Flood Control District - Adopt 2026 Contract Policy Manual, effective ~~1/27/26~~ *2/10/26*; authorize County Executive Officer or designee to make changes under certain conditions; and adopt amended resolution authorizing Director of OC Public Works, Sheriff-Coroner or designees to advertise bids in accordance with Public Contract Code Sections 22037, 22032(c) and 20128.5 - All Districts (Continued from 1/27/26, Item S14B)

28. Deleted

CLOSED SESSION

CS-2. Continued to 2/24/26, 9:30 a.m.

THE FOLLOWING AGENDA ITEMS HAVE HAD CHANGES TO THEIR RECOMMENDED ACTIONS SINCE RELEASE OF THE AGENDA TO THE PUBLIC:

Items: 25 and 27

Document last updated: 2/10/2026 8:20 AM

ORANGE COUNTY BOARD OF SUPERVISORS

Agenda Revisions and Supplementals

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Supplemental Item(s)

S30A. **Supervisor Nguyen** - Audit Oversight Committee - Appoint Jason Schmitt, Huntington Beach, for term concurrent with 1st District Supervisor's term of office

S30B. **OC Community Resources - Acting as the Board of Supervisors and Orange County Housing Authority** - Consider proposed Regional Housing Needs Allocation Policy Options and select Option A, B or C; approve changes to policy and process for 2026 Supportive Housing Notice of Funding Availability (NOFA); authorize Director or designee to issue 2026 Supportive Housing NOFA ($20,891,948); utilize 100 Housing Choice, Mainstream and/or Veterans Affairs Supportive Housing Project-Based Vouchers; and return to the Board of Supervisors for funding commitments to individual projects; approve loan agreements for construction and permanent loan financing; and authorize Director or designee to make non-substantive changes under certain conditions - All Districts

S30C. **Sheriff-Coroner** - Approve contract MA-060-25011505 with Tetra Tech, Inc. for Hazard Mitigation Consultant Firm services, one-year term ($300,000); renewable for one additional one-year term; and authorize County Procurement Officer or Deputized designee to execute contract - All Districts

S30D. **Chair Chaffee** - Approve sponsorship of nonprofit Orange County Labor Federation, AFL-CIO from Fourth District events funds; approve addition or revision of events to FY 2025-26 County Events Calendar; make related findings under Government Code Section 26227; and authorize Auditor-Controller to make related payments

S30E. **Supervisor Sarmiento** - Approve sponsorship of various nonprofit entities from Second District events funds; approve addition or revision of events to FY 2025-26 County Events Calendar; make related findings under Government Code Section 26227; and authorize Auditor-Controller to make related payments

S30F. **Clerk of the Board** - Approve 2026 Chair appointments of Board Members to various Boards, Commissions and Committees; adopt resolution appointing Supervisor Katrina Foley to Orange County Fire Authority; approve appointments of Standby Officers for the Board of Supervisors and County Executive Officer pursuant to County's Continuity of Government Plan and Resolution No. 24-062; and adopt Fair Political Practices Commission Form 806 - Agency Report of Public Official Appointments - All Districts

SCS5. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - Pursuant to Government Code Section 54956.9(d)(1):
Name of Case: Orange County Power Authority v. County of Orange, Orange County Superior Court Case No. 30-2026-01542269-CU-BC-WJC

SCS6. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - Pursuant to Government Code Section 54956.9(d)(1):
Name of Case: Susan Smith and David Whiting v. County of Orange, et al., United States District Court Case No. 8:23-cv-02426-DOC-KES

Document last updated: 2/10/2026 8:20 AM

ORANGE COUNTY BOARD OF SUPERVISORS

Agenda Revisions and Supplementals

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SCS7. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - Pursuant to Government Code Section 54956.9(d)(1):
Name of Case: Mitchell Carr v. County of Orange, et al., Orange County Superior Court Case No. 30-2018-00970749-CU-PO-CJC

SCS8. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION - Pursuant to Government Code Section 54956.9(d)(1):
Name of Case: Maria Dolores Sebold v. County of Orange et al., Orange County Superior Court Case No. 30-2023-01336257-CU-PA-CJC

SCS9. **County Counsel** - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION - Pursuant to Government Code Section 54956.9(d)(2):
Number of Cases: One Case

Document last updated: 2/10/2026 8:20 AM

RECEIVED
2026 FEB -2 AM 11:26
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

MEMORANDUM

TO: Robin Stieler, Clerk of the Board

FROM: Supervisor Janet Nguyen, First District

DATE: January 27, 2026

RE: Resolution to Recognize February 17, 2026 as Lunar New Year

Please add the following presentation to the February 10, 2026 Board of Supervisors meeting:

Supervisor Janet Nguyen presenting a resolution recognizing February 17, 2026 as Lunar New Year.

Lunar New Year
By the authority of the Orange County Board of Supervisors, the following resolution is hereby issued:

WHEREAS, Lunar New Year is the most important holiday of the year among East and Southeast Asian cultures, including Vietnamese, Chinese, and Korean communities, among others; and

WHEREAS, Lunar New Year is observed on the first day of the first month of the Lunar Calendar and ranges between late January and mid-February on the Gregorian calendar. In 2026, Lunar New Year falls on February 17th; and

WHEREAS, the Lunar Calendar rotates through 12-year cycles, with each year representing an animal determined by the Great Race – a Chinese mythology that governs the Asian zodiac. Accordingly, Lunar New Year 2026 is the year of the Horse, the seventh animal of the 12-year cycle; and

WHEREAS, Lunar New Year is marked by traditions that vary across cultures, some of the commonalities include gathering with family and friends, honoring elders and ancestors, exchanging gifts of money, watching or participating in traditional dances and other cultural activities, cleaning the house, settling debts and dispute, and eating auspicious foods; and

WHEREAS, in Orange County nearly one-quarter of our residents are of Asian descent, with the majority originating from Vietnam, South Korea, China, and the Philippines, creating the largest communities within the cities of Westminster, Irvine, Anaheim, and Garden Grove; and

WHEREAS, Orange County is home to the largest diasporic community of Vietnamese outside of Vietnam, and every year, the nation's largest Lunar New Year "Tết" Festival is hosted in our community, welcoming thousands from near and far; and

WHEREAS, annual celebrations of Chūn Jié (Chinese New Year) and Seollal (Korean New Year) are also widely celebrated across Orange County, bringing together families and communities to honor their cultural traditions with joyous gatherings, festive feasts, and dynamic performances that showcase the richness of their heritage; and

WHEREAS, the celebration of Lunar New Year across communities in Orange County illustrates the county's rich cultural history and its commitment to promoting racial, religious and cultural diversity;

NOW, THEREFORE BE IT RESOLVED THAT THE ORANGE COUNTY BOARD OF SUPERVISORS join Asian and Pacific Islander communities throughout the county in celebrating February 17, 2026, as the beginning of the Lunar New Year and extends best wishes for a peaceful and prosperous Lunar New Year to all residents of Orange County.

RECEIVED
2026 FEB -2 AM 11:27
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

MEMORANDUM

To: Robin Stieler, Clerk of the Board

From: Vice Chair Katrina Foley, Fifth District

Date: January 26, 2026

RE: California Earned Income Tax Credit Week Presentation

Please add the following presentation to the February 10, 2026 Board of Supervisor meeting:

Vice Chair Foley presenting a resolution recognizing February as California Earned Income Tax Credit Awareness Week

OK

CalEITC Awareness Week

WHEREAS, *January 30, 2026 through February 6, 2026 is recognized as California Earned Income Tax Credit Awareness Week; and*

WHEREAS, *The California Earned Income Tax Credit (CalEITC), a refundable tax credit, was enacted in 2015, and along with the federal Earned Income Tax Credit (EITC), is one of the most effective tools we have to fight poverty for Californians.; and*

WHEREAS, *California has made even further expansions to impactful state tax credits by also establishing the Young Child Tax Credit (YCTC) in 2019 and the Foster Youth Tax Credit (FYTC) in 2022, which further help to provide meaningful support for families and individuals across the state; and*

WHEREAS, *Over 1 in 3 Californians struggle to meet basic needs, according to United Ways of California's Real Cost Measure report. Of the estimated 3.8 million households in California that fall below the Real Cost Measure, 97% have at least one working adult. The California Earned Income Tax Credit could help families improve their financial stability now and into the future; and*

WHEREAS, *54% of households in California with children under the age of six fall below the Real Cost Measure, and as of 2020, the YCTC is available to all CalEITC eligible families with children under 6; and*

WHEREAS, *Among those eligible for the CalEITC, 53% are Latino head of households, 54% are female head of households. The state EITC outreach and education ensures the most economically vulnerable Californians are reached; and*

WHEREAS, *Combined, the CalEITC, YCTC and FYTC, reach over 3.5 million families in California and deliver over $1.4 billion dollars in the last year alone to families earning less than $31,950 in tax year 2024. Studies show families spend these dollars on essentials, such as groceries, rent, or child care, and for every $1 spent on refundable tax credits, $1.80-$2.00 is spent directly back into local economies*

WHEREAS, *Research shows that the EITC can improve child and maternal health, and spur local economic growth. Children in families that receive the EITC perform better in both the short and the long-term;*

NOW, THEREFORE BE IT RESOLVED THAT THE ORANGE COUNTY BOARD OF SUPERVISORS *commends, honors, and recognizes CAlEITC Awareness Week during the week of January 30, 2026 through February 6, 2026. This celebration honors the importance of families accessing the California Earned Income Tax Credit and the federal Earned Income Tax Credit to provide meaningful support for families and individuals across the state.*

Continuation or Deletion Request

Date: **1/29/2026**

To: Clerk of the Board of Supervisors

From: **Veronica Kelley, Agency Director, Health Care Agency**

Re: ASR Control #: 25-000811, Meeting Date 2/10/26 Agenda Item No. # 9

Subject: **Approve Contract for Marketing and Public Relations Services**

☐ Request to continue Agenda Item No. # _____ to the _____ Board Meeting.

Comments:

☒ Request deletion of Agenda Item No. # 9

Comments:

Continuation or Deletion Request

Date: **1/29/2026**

To: Clerk of the Board of Supervisors

From: **Veronica Kelley, Agency Director, Health Care Agency**

Re: ASR Control #: 25-000501, Meeting Date 2/10/26 Agenda Item No. # 12

Subject: **Renewal of Contract for Re-Entry Success Center Services**

☐ Request to continue Agenda Item No. # _____ to the _____ Board Meeting.

Comments:

☒ Request deletion of Agenda Item No. # 12

Comments:

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Continuation or Deletion Request

Date: 02/05/2026

To: Clerk of the Board of Supervisors

From: **Michelle Aguirre, County Executive Officer** Signed by: Michelle Aguirre 7C8F38F3345C4E4...

Re: ASR Control #: 25-000855, Meeting Date 2/10/26 Agenda Item No. # 24

Subject: **Legislative Issues**

☐ Request to continue Agenda Item No. # _____ to the _____ Board Meeting.

Comments:

☒ Request deletion of Agenda Item No. #24

Comments:

RECEIVED
2026 FEB -6 AM 10:40
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

Agenda Item 25

AGENDA STAFF REPORT

ASR Control 25-000828

MEETING DATE:	02/10/26
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	All Districts
SUBMITTING AGENCY/DEPARTMENT:	County Executive Office (Approved)
DEPARTMENT CONTACT PERSON(S):	Peter DeMarco (714) 834-5777
	Andrea Foster (714) 834-2009

SUBJECT: Grant Applications/Awards Report

CEO CONCUR	**COUNTY COUNSEL REVIEW**	**CLERK OF THE BOARD**
Concur	No Legal Objection	Discussion 3 Votes Board Majority

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A **County Audit in last 3 years:** No

Levine Act Review Completed: N/A

Prior Board Action: N/A

RECOMMENDED ACTION(S):

Approve grant applications/awards as proposed and other actions as recommended.

1. Receive and File Grants Report

2. Approve Grant Award – Health Care Agency – Childhood Lead Poisoning Prevention Program – $2,981,712

3. Approve Retroactive Grant Award – Health Care Agency – Behavioral Health Continuum Infrastructure Program- Orange County Crisis Care Mobile Units (CCMU) Amendment – $4,837,204.57

4. Approve Retroactive Grant Award – OC Public Works – Measure M2 Regional Capacity Program (Project O) Arterial Capacity Enhancements (ACE) Los Patrones Parkway Extension Final Design – $5,000,000

5. Approve Grant Application – Sheriff-Coroner – FY 2026 Cannabis Tax Fund Grant Program - DUI/DUID Law Enforcement Project – $300,000

6. Approve Grant Application – Sheriff-Coroner – FY 2026 Cannabis Tax Fund Grant Program - Toxicology Driving Under the Influence (DUI) – $250,000

SUMMARY:

See the attached Grants Report.

BACKGROUND INFORMATION:

See the attached Grants Report.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A - Grants Report

Grants Report

DRAFT

County Executive Office/Legislative Affairs

February 10, 2026
Item No: 25

County of Orange Report on Grant Applications/Awards

The Grants Report is a condensed list of grant requests by County Agencies/Departments that allows the Board of Supervisors to discuss and approve grant submittals in one motion at a Board meeting. County policy dictates that the Board of Supervisors must approve all grant applications prior to submittal to the grantor. This applies to grants of all amounts, as well as to new grants and those that have been received by the County for many years as part of an ongoing grant. Receipt of grants $50,000 or less is delegated to the County Executive Officer. Grant awards greater than $50,000 must be presented to the Board of Supervisors for receipt of funds. This report allows for better tracking of county grant requests, the success rate of our grants, and monitoring of County's grants activities. It also serves to inform Orange County's Sacramento and Washington, D.C. advocates of County grant activities involving the State or Federal Governments.

On February 10, 2026, the Board of Supervisors will consider the following actions:

RECOMMENDED ACTIONS

Approve grant applications/awards as proposed and other actions as recommended.

ACTION ITEMS:

1. Receive and File Grants Report

2. Approve Grant Award – Health Care Agency – Childhood Lead Poisoning Prevention Program – $2,981,712

3. Approve Retroactive Grant Award – Health Care Agency – Behavioral Health Continuum Infrastructure Program- Orange County Crisis Care Mobile Units (CCMU) Amendment – $4,837,204.57

4. Approve Retroactive Grant Award – OC Public Works – Measure M2 Regional Capacity Program (Project O) Arterial Capacity Enhancements (ACE) Los Patrones Parkway Extension Final Design – $5,000,000

5. Approve Grant Application – Sheriff-Coroner – FY 2026 Cannabis Tax Fund Grant Program - DUI/DUID Law Enforcement Project – $300,000

6. Approve Grant Application – Sheriff-Coroner – FY 2026 Cannabis Tax Fund Grant Program - Toxicology Driving Under the Influence (DUI) – $250,000

If you or your staff have any questions or require additional information on any of the items in this report, please contact Andrea Foster at (714) 834-2009.

CEO-Legislative Affairs Office
Grant Authorization eForm

GRANT APPLICATION / GRANT AWARD

Today's Date:	February 3, 2026
Requesting Agency/Department:	Health Care Agency
Grant Name and Project Title:	Childhood Lead Poisoning Prevention Program
Sponsoring Organization/ Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Department of Public Health (CDPH) Childhood Lead Poisoning Prevention Branch (CLPPB)
Application Amount Requested:	$2,981,712
Application Due Date:	N/A
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	$2,981,712
Notification Date of Funding Awarded:	January 21, 2026
Is this an Authorized Retroactive Grant Application/Award? No	
Recurrence of Grant:	Yes
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	FYs 2023-2026 $5,503,830 FYs 2020-2023 $4,156,625
Does this grant require CEQA findings?	No
What Type of Grant is this?	**Award** - Allocation
County Match?	No
How will the County Match be fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Will this grant support a new or existing program?	Existing
Purpose of Grant Funds:	Provide summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.

Since 1993, the OC Health Care Agency (HCA) has received funding from the California Department of Public Health (CDPH) to operate the Childhood Lead Poisoning Prevention Program (CLPPP). CLPPP program services include: outreach and education activities, public health nursing case management services including identification of the cause and linkage to health care providers for children identified as having elevated blood lead levels. CLPPP funds support environmental health investigations to identify lead sources. Research has shown these efforts have supported decreased childhood exposure to lead. Program aims to reduce lead hazards where children live, play, learn and spend time.

Board Resolution Required? **Deputy County Counsel Name:**	No

Recommended Action(s)
(Please specify below)

The Health Care Agency requests that the Board of Supervisors:

1) Authorize the Health Care Agency to apply for the Childhood Lead Poisoning Prevention Program grant award, and delegate authority to the Health Care Agency Director, or designee, to execute the application and any forms needed for this application.

2) Accept the grant funding award from the **California Department of Public Health Childhood Lead Poisoning Prevention Branch** for the term of **July 1, 2026, through June 30, 2028**, in the amount of **$2,981,712.00.**

3) Authorize the Health Care Agency Director, or designee, to execute the Grant Award Agreement, upon review and approval by County Counsel, and delegate authority to the Health Care Agency Director, or designee, to sign and execute the Acceptance of Award, Agreement and/or any documents related to this award, and to make such future amendments thereto that do not change the Agreement amount by more than 10% of the original amount and/or make immaterial, ministerial changes to the Agreement.

Department Contact:	List the name and contact information (telephone, email) of the person to be contacted for further information.
Jennifer Sarin 714-834-4099 JSarin@ochca.com April Orozco 714-834-7799 AOrozco@ochca.com	
Name of individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant item:
Veronica Kelley	

OC health CARE AGENCY

OFFICE OF THE DIRECTOR

DEPARTMENT MEMO

Signed by:
Michelle Aguirre
7C8F38F3345C4E4...

TO: Michelle Aguirre, County Executive Officer

FROM: Veronica Kelley, DSW, LCSW, Agency Director
Lorraine Daniel, MPA, Assistant Agency Director

DATE: February 3, 2026

RE: *Retroactive Request to Apply for Behavioral Health Continuum Infrastructure Program-Orange County Crisis Care Mobile Units (CCMU) Amendment*

This memo is being submitted to request that the County Executive Officer place the subject grant award on the February 10, 2026, Board of Supervisors (Board) Meeting Agenda. The grant application was due to the Board before October 22, 2025. We were unable to meet earlier Board dates due to planning coordination with Department of Health Care Services (DHCS).

The Health Care Agency (HCA) was notified of an additional $4,837,204.57, with the contract term extended through June 30, 2026. HCA received this notice on December 23, 2025, and did not bring this item to the Board within the Grant Policy's 30-day window. DHCS requested confirmation of interest and indicated that counties would be notified when funds and contract amendments were available, with an anticipated timeline in January. HCA initially planned to present the grant award to the Board, but at this time, HCA Behavioral Health Services is still awaiting the award letter and contract amendment.

When awarded, the additional CCMU funds will only change the scope of work regarding allocation of new funds and the extended contract term. These funds will support HCA's ongoing efforts to strengthen mobile crisis response teams. HCA is simultaneously submitting an eForm to receive approval to accept the funding.

Please contact Ian Kemmer, Behavioral Health Services Director, at (714) 834-2160 if you have questions or need additional information.

CEO-Legislative Affairs Office
Grant Authorization eForm

GRANT APPLICATION / GRANT AWARD

Today's Date:	February 4, 2026
Requesting Agency/Department:	Health Care Agency
Grant Name and Project Title:	Behavioral Health Continuum Infrastructure Program- Orange County Crisis Care Mobile Units (CCMU) Amendment
Sponsoring Organization/ Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Department of Health Care Services
Application Amount Requested:	$4,837,204.57
Application Due Date:	N/A
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	$4,837,204.57
Notification Date of Funding Awarded:	December 23, 2025
Is this an Authorized Retroactive Grant Application/Award? Retroactive	
Recurrence of Grant:	No
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A
Does this grant require CEQA findings?	No
What Type of Grant is this?	**Award** - Non Competitive
County Match?	No
How will the County Match be fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Will this grant support a new or existing program?	Existing
Purpose of Grant Funds:	Provide summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.

On March 8, 2022, the Honorable Board of Supervisors approved HCA BHS to receive $200,000 in noncompetitive planning grant funds through the Behavioral Health Continuum Infrastructure Program (BHCIP) Round 1: Crisis Care Mobile Units (CCMU) with the goal of drafting an action plan with goals, objectives and strategies for building or expanding on the current Mental Health and Recovery Services (MHRS) mobile crisis infrastructure and capacity in OC.

On February 7, 2023, the Board approved HCA BHS to receive additional funding of $10,000,000 in CCMU funds. This funding has purchased vehicles, upgraded technology and tools for Crisis teams, and ultimately enhanced the BHS Crisis response system.

On February 16, 2024, the Board approved HCA BHS to submit a survey for non-competitive CCMU funds for additional $750,000. These funds supported the direct cost for staff in the Crisis Assessment Team (CAT) within BHS as part of the Mobile Crisis Benefit requirement and did not change the terms of the existing CCMU Program Funding Agreement.

On August 26, 2025, the Board approved HCA BHS to receive additional CCMU initiative funding from the California Department of Health Care Services (DHCS) in the amount of $1,868,399.84 and to extend the DHCS contract from July 1, 2025, through December 31, 2025. These funds were intended to further expand CCMU deliverables, including infrastructure development through equipment, team dispatch, and marketing.

On December 23, 2025, HCA BHS received notification of additional CCMU initiative funding availability from DHCS, with the opportunity to receive up to $4,837,204.57 and extend the contract through June 30, 2026. The intended use of these funds is to continue expanding CCMU infrastructure deliverables through data collection, equipment, team dispatch, and marketing.

Board Resolution Required? **Deputy County Counsel Name:**	No

Recommended Action(s)
(Please specify below)

Authorize the Health Care Agency Director, or designee, to accept the awarded grant funds for the Behavioral Health Continuum Infrastructure Program – Crisis Care Mobile Units Program Planning Grant in the amount of up to $4,837,204.57 and to execute all documents necessary to accept the grant funds and to extend the contract with the California Department of Health Care Services from contract date to through June 30, 2026.

Department Contact:	List the name and contact information (telephone, email) of the person to be contacted for further information.

Ian Kemmer 714-834-2160 ikemmer@ochca.com

Name of individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant item:

Veronica Kelley

County Administration South
601 North Ross Street
Santa Ana, CA 92701

P.O. Box 4048
Santa Ana, CA 92702

(714) 667-8800

info@ocpw.ocgov.com

OCPublicWorks.com

Administrative Services

OC Development Services

OC Facilities Design & Construction Management

OC Facilities Maintenance & CUF

OC Fleet Services

OC Construction

OC Environmental Resources

OC Operations & Maintenance

OC Infrastructure Programs

OC Survey

Date: January 20, 2026

To: County Executive Officer

From: Kevin Onuma
Director / Orange County Public Works

Subject: Retroactive Request for Award Approval for Orange County Transportation Authority Measure M2 Regional Capacity Program (Project O) Arterial Capacity Enhancements (ACE) Program Grant - Los Patrones Parkway Extension Final Design Project

OC Public Works requests that the County Executive Officer place the subject grant award on the February 10, 2026, Board of Supervisors Meeting Agenda. OC Public Works also requests retroactive approval to accept the grant award provided by the Orange County Transportation Authority Renewed Measure M (M2) Regional Capacity Program (Project O) Arterial Capacity Enhancement (ACE) Program, for the Los Patrones Parkway Extension Final Design Project. On December 24, 2025, the County was notified by the Orange County Transportation Authority Board of a $5M grant award for the Los Patrones Parkway Extension Final Design project.

The awarded grant funds of $5M will be used for the Final Design of the Los Patrones Parkway Extension project which proposes a 4.1-mile extension of Los Patrones Parkway from the current terminus at Cow Camp Road south to Avenida La Pata. The southerly extension of Los Patrones Parkway will fill a critical gap in the MPAH network, facilitating greater north-south connectivity in southern Orange County and providing alternative routes for local roadways to connect with State Route 241.

The M2-ACE grant amount requested is $5M and the 50% match will be fulfilled by proportional funds from RMV Community Development LLC via cooperative agreement.

If you have any questions, please contact Denise Garcia, Grant Manager at (714) 647-3996.

Thank you for your consideration,

DocuSigned by:
Kevin Onuma
0637C1ABB313470...

Kevin Onuma
Orange County Public Works
Director

1/21/2026 | 4:21 PM PST
Date

Approved: Digitally signed by Michelle Aguirre
Date: 2026.01.27 10:54:36 -08'00'

Michelle Aguirre
County Executive Officer

Date

CEO-Legislative Affairs Office
Grant Authorization eForm

GRANT APPLICATION / GRANT AWARD

Today's Date:	February 5, 2026
Requesting Agency/Department:	OC Public Works
Grant Name and Project Title:	Measure M2 Regional Capacity Program (Project O) Arterial Capacity Enhancements (ACE) Los Patrones Parkway Extension Final Design
Sponsoring Organization/ Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	Orange County Transportation Authority (OCTA)
Application Amount Requested:	$5,000,000
Application Due Date:	October 24, 2024
Board Date when Board Approved this Application:	October 22, 2024
Awarded Funding Amount:	$5,000,000
Notification Date of Funding Awarded:	December 24, 2025
Is this an Authorized Retroactive Grant Application/Award? Retroactive	
Recurrence of Grant:	Yes
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	1. Cow Camp Road – Segment 2A & 2B (Construction) - $14,778,770 2. Cow Camp Road – Segment 2 (Engineering Phase) - $3,250,000 3. Oso Parkway and Antonio Parkway Intersection Improvements - $792,669 4. Ortega Highway Widening Improvements - $1,950,000 5. Los Patrones Parkway Extension, Environmental Document/Pre-Design Phase - $1,875,000
Does this grant require CEQA findings?	No
What Type of Grant is this?	**Award** - Competitive
County Match?	Yes
How will the County Match be fulfilled? (Please include the specific budget)	Fund 174; County match will be fulfilled by proportional matching funds from Rancho Mission Viejo, approximately $925,000.
Will the grant/program create new part or full-time positions?	No
Will this grant support a new or existing program?	Existing
Purpose of Grant Funds:	Provide summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.
The Los Patrones Parkway Extension Project (LPPE) proposes a 4.1-mile extension of Los Patrones Parkway from the current terminus at Cow Camp Road south to Avenida La Pata. The southerly extension of Los Patrones	

Parkway will fill a critical gap in the MPAH network, facilitating greater north-south connectivity in southern Orange County and providing alternative routes for local roadways to connect with State Route 241.

The total project cost for final engineering design phase is estimated to be $10M. The grant application is requesting $5 million in funding with the 50% match of $5M to be fulfilled by proportional funds from Ranch Mission Viejo via a cooperative agreement.

Board Resolution Required? **Deputy County Counsel Name:**	No

Recommended Action(s)
(Please specify below)

1. Authorize the Director of OC Public Works, or designee, to sign and execute cooperative agreements, subsequent amendments, and any related documents with Orange County Transportation Authority;

2. Authorize the Director of OC Public Works, or designee, to sign and execute cooperative agreements, subsequent amendments, and any related documents with RMV Community Development LLC;

3. Authorize the Director of OC Public Works, or designee, to execute any actions necessary to obtain and invoice the grant funding provided by the Orange County Transportation Authority.

Department Contact:	List the name and contact information (telephone, email) of the person to be contacted for further information.

Denise Garcia 714-243-0577 Denise.Garcia@ocpw.ocgov.com
Jeff Ernst 714-647-3963 Jeff.Ernst@ocpw.ocgov.com

Name of individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant item:

Kevin Onuma

CEO-Legislative Affairs Office
Grant Authorization eForm

GRANT APPLICATION / GRANT AWARD

Today's Date:	February 3, 2026
Requesting Agency/Department:	Sheriff-Coroner
Grant Name and Project Title:	FY 2026 Cannabis Tax Fund Grant Program - DUI/DUID Law Enforcement Project
Sponsoring Organization/ Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Highway Patrol
Application Amount Requested:	$300,000
Application Due Date:	February 23, 2026
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	N/A
Notification Date of Funding Awarded:	N/A
Is this an Authorized Retroactive Grant Application/Award? No	
Recurrence of Grant:	No
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	N/A
Does this grant require CEQA findings?	No
What Type of Grant is this?	**Application** - Competitive
County Match?	No
How will the County Match be fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Will this grant support a new or existing program?	New
Purpose of Grant Funds:	Provide summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.
The Orange County Sheriff's Department seeks to increase awareness of the dangers of driving under the influence (DUI) and to combat the rising number of DUI and drug-impaired driving (DUID) cases in our community through this funding by increasing targeted patrol and enforcement activities. The program will support overtime DUI saturation patrols, travel expenses related to impaired driving and traffic safety training, and the acquisition of an evidence recorder and a specialized DUI enforcement patrol vehicle to reduce impaired driving deaths.	

Board Resolution Required? **Deputy County Counsel Name:**	No
Recommended Action(s) (Please specify below)	
Authorize the Sheriff-Coroner, or designee, to apply for and sign all necessary documents for the FY 2026 Cannabis Tax Fund Grant Program - DUI/DUID Law Enforcement Project.	
Department Contact:	List the name and contact information (telephone, email) of the person to be contacted for further information.
Captain Jack Ackerman (949) 425-1819 jdackerman@ocsheriff.gov Sergeant Kyle Ishii kishii@ocsheriff.gov (94) 283-0535	
Name of individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant item:
Captain Jack Ackerman / Sergeant Kyle Ishii	

CEO-Legislative Affairs Office
Grant Authorization eForm

GRANT APPLICATION / GRANT AWARD

Today's Date:	February 3, 2026
Requesting Agency/Department:	Sheriff-Coroner
Grant Name and Project Title:	FY 2026 Cannabis Tax Fund Grant Program - Toxicology Driving Under the Influence (DUI)
Sponsoring Organization/ Grant Source: (If the grant source is not a government entity, please provide a brief description of the organization/foundation)	California Highway Patrol
Application Amount Requested:	$250,000
Application Due Date:	February 23, 2026
Board Date when Board Approved this Application:	N/A
Awarded Funding Amount:	N/A
Notification Date of Funding Awarded:	N/A
Is this an Authorized Retroactive Grant Application/Award? No	
Recurrence of Grant:	Yes
If this is a recurring grant, please list the funding amount applied for and awarded in the past:	Grant Year / Amount 2021-2023 $467,700 2022-2024 $356,312 2023-2025 $512,050 2024-2026 $275,769 2025-2027 $225,000
Does this grant require CEQA findings?	No
What Type of Grant is this?	**Application** - Competitive
County Match?	No
How will the County Match be fulfilled? (Please include the specific budget)	N/A
Will the grant/program create new part or full-time positions?	No
Will this grant support a new or existing program?	Existing
Purpose of Grant Funds:	Provide summary and brief background on why the Board of Supervisors should accept this grant application/award, and how the grant will be implemented.

The Orange County Crime Laboratory analyzes all blood samples from traffic-safety related incidents for alcohol and drugs. To ensure it continues to provide efficient and up-to-date services to the County of Orange, the

laboratory plans to enhance its forensic alcohol and toxicology operations. This enhancement will involve replacing portable cases for breath alcohol instruments used by law enforcement during DUI field investigations, purchasing five uninterruptible power supply systems for these forensic instruments, and supporting staff overtime for the validation of methods, instrumentation, and equipment in the Toxicology and Forensic Alcohol sections.

Board Resolution Required? **Deputy County Counsel Name:**	No

Recommended Action(s)
(Please specify below)

Authorize the Sheriff-Coroner, or designee, to apply for and sign all necessary documents for the FY2026 Cannabis Tax Fund Grant Program - Toxicology Driving Under the Influence (DUI).

Department Contact:	List the name and contact information (telephone, email) of the person to be contacted for further information.

Director Stephanie Callian (714) 834-6380 scallian@ocsheriff.gov
Senior Manager Erin Nixt (714) 834-6392 enixt@ocsheriff.gov

Name of individual attending the Board Meeting:	List the name of the individual who will be attending the Board Meeting for this Grant item:

Director Stephanie Callian, Senior Manager Erin Nixt

Continuation or Deletion Request

Date: 2/5/26

To: Clerk of the Board of Supervisors

From: **Clerk of the Board of Supervisors**

Re: ASR Control #: 25-000690, Meeting Date 2/10/26 Agenda Item No. # 26

Subject: **Renewal and Amendment 3 to contract with Network Television Time Inc.**

☒ Request to continue Agenda Item No. # 26 to the 2/24/26 Board Meeting.

Comments:

☐ Request deletion of Agenda Item No. # _____

Comments:

RECEIVED
2026 FEB -5 AM 7:23
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

Docusign Envelope ID: 786280C6-5BE9-4002-A974-8F39D6FC1B3B

Revision to ASR and/or Attachments

RECEIVED
2026 FEB -5 AM 11:56
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

Date: 2/3/26

To: Clerk of the Board of Supervisors

CC: County Executive Office

From: **Michelle Aguirre, County Executive Officer** Signed by: Michelle Aguirre 1B08898A0E6A4FA...

Re: ASR Control #: N/A, Meeting Date 2/10/26, Item No. # 27

Subject: Revisions to the 2026 Contract Policy Manual

Explanation: County Executive Office requests the following:

1. Revise Recommended Action #1.
2. Modify ASR Subject.
3. Rename and replace Attachment A.
4. Replacement of Attachment B.

☒ Revised Recommended Action(s)

1. Approve the 2026 Contract Policy Manual, effective February 10, 2026, and authorize the County Executive Officer or designee to make minor, non-material changes as needed.

☒ Make modifications to the:

☒ Subject ☐ Background Information ☐ Summary ☐ Financial Impact

Revisions to the 2026 Contract Policy Manual

☒ Revised Attachments (attach revised attachment(s) and redlined copy(s))

Replace Attachment A – Contract Policy Manual - Redline

Replace Attachment B – Resolution

2024 REVISED CONTRACT POLICY MANUAL



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2026 CONTRACT POLICY MANUAL



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COUNTY OF ORANGE

CONTRACT POLICY MANUAL

Adopted by the
Orange County Board of Supervisors
~~September 24, 2024~~ February 10, 2026

~~Effective: October 1, 2024*~~

~~*Minor edits made June 24, 2025 and effective July 1, 2025~~

~~DONALD P. WAGNER~~ DOUG CHAFFEE
CHAIR~~MAN~~
~~THIRD~~ FOURTH DISTRICT

~~DOUG CHAFFEE~~ **KATRINA FOLEY**
VICE CHAIR~~MAN~~
~~FOURTH~~ FIFTH DISTRICT

JANET NGUYEN
SUPERVISOR
FIRST DISTRICT

VICENTE SARMIENTO
SUPERVISOR
SECOND DISTRICT

DONALD P. WAGNER
~~KATRINA FOLEY~~
SUPERVISOR
~~FIFTH~~ THIRD
DISTRICT

COUNTY OF ORANGE
CONTRACT POLICY MANUAL
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SECTION 1 – GENERAL RESPONSIBILITIES

SECTION 1.1

OFFICE OF THE COUNTY PROCUREMENT OFFICER

§1.1-101 Statute

(1) Title 3, Division 2, Part 2, Chapter 5, Article 7 (Secs. 25500 et seq.) of the California Government Code authorizes the County Board of Supervisors to employ a County Procurement Agent to perform certain duties on behalf of the County. These duties are defined in Government Code §25501 and the Codified Ordinances of the County of Orange, Title 1, Division 4, Article 2, Sections 1-4-12 through 1-4-38. Additional statutes, particularly those applicable to Public Works, Architect-Engineering and Real Estate contracts and procurements, have been further included herein as applicable, however all procurement procedures remain subject to all applicable laws whether or not expressly cited herein.

§1.1-102 Policy

(1) The County Procurement Agent, also referred to herein as the County Procurement Officer, shall establish methods and procedures necessary for the proper functioning of County procurement and contract oversight in an efficient, transparent and economical manner.

(2) All County procurement contracts shall be solicited and executed in accordance with the provisions of this Contract Policy Manual (CPM) unless otherwise authorized by the County Board of Supervisors.

§1.1-103 Ethical Statement

(1) The County Procurement Officer, as well as all those involved in County procurement shall discharge their duties in accordance with high ethical standards by practicing their profession with integrity, honesty, truthfulness, transparency, and adherence to the absolute obligation to safeguard the public trust.

§1.1-104 Scope

(1) It shall be the duty of the County Procurement Officer and others, as set forth herein, to purchase and establish contracts for the County of Orange, its offices, and any special district whose affairs and funds are under the supervision and control of the Board of Supervisors all services, materials, supplies, furnishings, equipment, livestock, and other personal property of whatever kind and nature required to conduct County business.

§1.1-105 Contracts Outside Scope of County Procurement Officer Authority

(1) Except as otherwise provided by statute or ordinance, or as otherwise delegated by the Board of Supervisors herein, the Board of Supervisors has delegated authority to the County Procurement Officer pursuant to the legal authority provided in §1.1-101 above. To the extent that the Board of Supervisors has delegated its authority to execute contracts contemplated herein to other department heads or their authorize representatives, those authorized representatives, with the exception of Real Estate Contracts, are required to be deputized by the County Procurement Officer and will avail themselves of the training opportunities provided by the Office of the County Procurement Officer.

(2) Notwithstanding procurement authority otherwise delegated herein, all contracts for goods and services that are not competitively solicited (including sole source contracts and any contracts with less than two (2) solicitation responses), or any nonstandard payment provisions of a contract, which have been requested, directed or otherwise initiated by an individual Member of the Board of Supervisors or their staff, shall require approval of the Board of Supervisors.

(3) Commencing on January 1, 2025:

a) Pursuant to Government Code Section 26227.5, all contracts, sponsorship agreements or grant agreements with community organizations or nonprofit organizations, which are entered into at the discretion and at the direction of an individual member of the Board, shall require approval of a majority of the Board.

i. The Board shall post on its internet website a log of appropriated district discretionary funds at the end of each quarter.

ii. The log shall be published in accordance with Government Code 26227.5

b) Pursuant to Government Code Section 25043, Board Members shall disclose a known family relationship with an officer or employee of a nonprofit entity before the Board appropriates money to, or approves a contract, sponsorship agreement or grant agreement with, that nonprofit entity.

§1.1-106 Delegation of Authority

(1) In this capacity, the County Procurement Officer may delegate their authority to other employees of the County of Orange, its offices, or any special districts whose affairs and funds are under the supervision and control of the Board of Supervisors.

a) These employees shall be those designated by department heads, and shall be trained under the direction of the County Procurement Officer and deputized as Deputy Procurement Agents to perform in the County Procurement Officer's capacity, except as otherwise provided herein.

b) The delegation of authority by the County Procurement Officer to Deputy Procurement Agents in no way grants authority to persons who have not been authorized by department heads.

§1.1-107 Authority to Procure

(1) Except as otherwise provided herein, no procurement of personal property, services, commodities (including cash alternatives and court-ordered commodities and services), food or travel by any person other than the County Procurement Officer or Deputy Procurement Agents shall be binding upon the County, or constitute a lawful charge against any County funds, except in emergencies and as may be otherwise provided through action by the Board of Supervisors.

(2) Employees responsible for procuring personal property, services and commodities on behalf of the County cannot also be responsible for approving requisitions for purchases, receiving the commodities purchased, or the approval/processing of invoices for payment for their department.

§1.1-108 Specific Duties

(1) Except as otherwise provided herein, or where statutes or ordinances dictate otherwise, the County Procurement Officer and Deputy Procurement Agents are authorized to carry out the specific duties listed in this manual plus any additional duties as provided by resolution of the Board of Supervisors, Codified Ordinances of the County of Orange, or laws of the State of California. The County Procurement Officer and Deputy Procurement Agents are authorized to:

a) Solicit and purchase all services, commodities, materials, supplies, furnishings, equipment, livestock, food, travel and other personal property of whatever kind and nature required to conduct County business, except in cases of emergency and as otherwise provided through Board of Supervisors action;

b) Negotiate, execute and oversee all Contracts, as detailed in Section 3 of this manual;

c) Execute Memoranda of Understanding (MOUs), as detailed in Section 3 of this manual;

d) Approve and confirm emergency purchases;

e) Encourage the procurement of "environmentally preferable" products in all solicitations, where practical, that are executed by the County in accordance with current federal and/or state regulations;

f) Review specifications written for the acquisition of services and commodities to ensure that they are not unnecessarily restrictive and provide the County with the benefits of open and fair competition; and,

g) Develop and maintain a procurement process which is fair, effective, and efficient.

§1.1-109 Responsibilities of the County Procurement Officer:

(1) The County Procurement Officer or authorized designee is responsible for the following:

a) Solicit bids/proposals for cooperative contracts used County and Region-wide by departments and other public entities.

b) Establish Procurement policies and procedures to be followed by departments:;

c) Establish policies and procedures to be followed by departments for the use of a Procurement Card Program to promote efficiencies for low dollar purchases;

d) Verify, on a periodic basis, that each Deputy Procurement Agent obtains insurance certificates and endorsements for department procurement contracts;

e) Identify and pursue other governmental department and other organizations cooperative procurement contracts, that may be executed, that would be beneficial for County use and where appropriate, make these contracts available for use by each department in accordance with Section 4.7 of this manual;

f) Manage a centralized program for the reuse of surplus County personal property to foster reuse by other departments in accordance with Section 1.6 of this manual;

g) Sell and dispose of personal property, including electronic equipment, no longer required for County use, in accordance with the current County "E-Waste Policy", as well applicable state, federal and county regulations;

h) Assist in identifying new advancements in technology and other innovations in public sector procurement that would be beneficial for County use, and working with the County's Chief Information Officer (CIO), as appropriate, implement these innovations for County-wide use;

i) Develop training materials and conduct training programs for Deputy Procurement Agents, their supervisors, and others, as designated by department heads that ensures a County-wide procurement process which is fair, effective and efficient, and ensures the integrity of the County's procurement process;

j) Deputize those trained in the procurement process when assured that they are adequately trained to perform with the delegated authority of the County Procurement Officer;

k) Provide assistance on a consultative basis, as requested by department heads or their designees, in the development of solicitations and contracts and the handling of vendor protests;

l) Review solicitations and contracts when so requested by department personnel;

m) Develop and implement a compliance monitoring plan with performance measures to review the procurement documents prepared by the Deputy Procurement Agents, and to report to the appropriate Procurement Council Representative with recommendations for corrective action

to ensure the County procurement process is fair, efficient, and compliant with legal requirements and County policies and procedures;

n) Chair the Procurement Council;

o) Convene and chair the Procurement Appeals Board;

p) Encourage County involvement in public procurement organizations in an effort to promote the public procurement profession through education and peer networking;

q) Amend this manual to include additional Board policy, as directed by the Board of Supervisors or the County Executive Officer;

r) Carry out the other duties and responsibilities as defined in this manual;

s) Implement and maintain a Procurement Procedure Manual consistent with this CPM to guide the procurement and management of all contracts in a manner consistent with law, in consultation with County Counsel; and

t) Amend this CPM to make clerical, ministerial, or other non-material edits, subject to review and approval of such clerical, ministerial, or other non-material edits by County Counsel, including updating provisions based on statutory authority that is cited in the CPM (e.g., statutory dollar triggers and limits, restrictions and authorizations). CPO will communicate to the Board any proposed increases to thresholds as a result of changes in statutory authority. All other changes will be made only as approved by the Board of Supervisors.

§1.1-110 Custodian of Documents

(1) All standardized procurement contract templates shall be the sole documents utilized for purposes of County business, except as otherwise approved by the County Procurement Office. Excluding Real Estate Contracts, and except as deemed necessary by OC Sheriff's Department for security and screening purposes, the County Procurement Officer shall be the custodian of these documents and provide the appropriate updates and controls and shall be authorized to modify, add or delete documents as necessary. All standardized contract templates, and any subsequent material changes thereto, shall require legal review and approval of County Counsel.

SECTION 1.1.1

DEPUTY PROCUREMENT AGENTS

§1.1.1-101 Policy

(1) Unless otherwise directed by the Board of Supervisors and/or the County Executive Officer and executed by the County Procurement Officer, or as otherwise set forth herein, department heads shall be fully responsible for the procurement of all services and commodities required for those operations under their direction, subject to the following conditions:

a) Employees referred by the heads of departments to receive training and certification as Deputy Procurement Agents will be the only persons authorized to procure services and commodities on behalf of their respective department.

b) Deputy Procurement Agents shall be trained and certified under the sole direction of the County Procurement Officer.

c) Deputy Procurement Agents shall follow the procurement policies established herein, as well as those procedures established by the County Procurement Officer as set forth in the Procurement Procedures Manual, to ensure a procurement system which is fair, effective, efficient, and in compliance with legal requirements and Board of Supervisors policy.

§1.1.1-102 Scope

(1) Except as otherwise provided in this manual or as directed by the Board of Supervisors, only those employees who are trained and deputized by the County Procurement Officer and authorized by their department head or designee, have the authority to procure services, commodities, etc., for the County pursuant to the CPM.

(2) Deputy Procurement Agents are required to use Regional Cooperative Agreements (RCAs) issued by the office of the County Procurement Officer unless justification has been provided and approved for use of an RCA Alternative.

(3) Deputy Procurement Agents may utilize other cooperative contracts issued by other governmental jurisdictions and organizations that have been approved and made available for use by the County Procurement Officer in accordance with Section 4.7 of this manual.

§1.1.1-103 Specific Duties

(1) The specific duties of the Deputy Procurement Agents are defined in Section 1.1 of this document, Office of the County Procurement Officer.

SECTION 1.2

PROCUREMENT COUNCIL

§1.2-101 Definition

(1) The Procurement Council will be chaired by the County Procurement Officer or authorized designee and comprised of the Procurement Manager or designee from each department. This council will meet regularly to discuss procurement issues and make recommendations regarding procurement policies, procedures and processes.

§1.2-102 Specific Duties

(1) The Procurement Council will, among other duties:

a) Review and evaluate procurement policies and procedures;

b) Identify services and commodities appropriate for County-wide contracts;

c) Review potential operational areas for standardization;

d) Identify and discuss new operational concepts;

e) Evaluate resource-sharing to identify areas of mutual benefit among departments;

f) Assist in the identification, development, and implementation of new technology on a County-wide basis, when appropriate;

g) Disseminate and share information with their staff or department in a timely manner;

h) Discuss issues of concern in the procurement process;

i) Identify and discuss legislation and County policies that, if implemented, could potentially impact County procurement processes;

j) Develop and review performance measures for use by the County Procurement Officer in monitoring procurement processes; and,

k) Evaluate and provide feedback on the performance of department procurement operations on an ongoing basis.

SECTION 1.3

PROTEST

§1.3-101 Policy

(1) Any actual or prospective bidder or respondent who alleges an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Procurement Agent, as set forth herein.

(2) Section 4.3.1-104 shall govern procedures for Real Estate solicitation Protests and Appeals.

§1.3-102 Procedure

(1) All protests shall be typed under the protester's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:

a) The name, address and telephone number of the protester;

b) The signature of the protester or the protester's representative;

c) The solicitation number;

d) A detailed statement of the legal and/or factual grounds for the protest; and

e) The form of relief requested.

§1.3-103 Protest of Solicitation/Specifications

(1) All protests related to solicitation specifications must be submitted to the appropriate soliciting department's Deputy Procurement Agent no later than five (5) business days prior to the close of the solicitation. Protests received after the five (5) business day deadline will not be considered by the County.

a) In the event the protest of specifications is denied, and the protester wishes to continue in the solicitation process, they must still submit a bid or proposal prior to the close of the solicitation in accordance with the solicitation submittal procedures provided in the solicitation.

§1.3-104 Protest of Award of Contract – Invitation for Bid (IFB)

(1) In accordance with Section 4.2 of this manual protests related to the award of a contract based on the Invitation for Bid (IFB) process, a protest must be submitted no later than five (5) business days after the Notice of Intent to Award is provided by the Deputy Procurement Agent.

a) Protests relating to a proposed contract award received after the five (5) business day deadline will not be considered by the County.

b) If the five (5) business day period expires without the receipt of a protest, the department may move forward with the contract award or if necessary, file the item for approval by the Board of Supervisors.

§1.3-105 Protest of Award of Contract – Request for Proposals (RFP)

(1) Prior to the filing of an Agenda Staff Report (ASR) for award of contract, the Deputy Procurement Agent shall send a Notice of Intent to Award to all interested Parties which will initiate the protest period.

a) Vendors will have five (5) business days from the date of the notice in which to file a protest concerning the award of the contract.

b) Protests relating to a proposed contract award received after the five (5) business day deadline will not be considered by the County.

c) During the five (5) business day period, RFP information, including the final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.

d) If the five (5) business day period expires without the receipt of a protest, the department may move forward with the contract award or if necessary, filing the item for approval by the Board of Supervisors.

§1.3-106 Protest Process

(1) In the event of a timely protest, the County shall not proceed with the solicitation or award of the contract until the Deputy Procurement Agent issues a decision on the protest.

(2) Upon receipt of a timely protest, the Deputy Procurement Agent will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.

(3) The County may, after providing written justification, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protester's right to the protest procedures outlined herein.

(4) If the protester disagrees with the decision of the Deputy Procurement Agent, in accordance with Section 1.3-107, the protestor may submit a written notice to the Office of the County Procurement Officer requesting an appeal to the Procurement Appeals Board.

§1.3-107 Appeal Process

(1) If the protester wishes to appeal the decision of the Deputy Procurement Agent, the protester must submit, within three (3) business days from receipt of the Deputy Procurement Agent's decision, a written appeal to the Office of the County Procurement Officer.

(2) Within fifteen (15) business days, the County Procurement Officer will review all materials in connection with the appeal, assess the merits of the appeal and provide a written determination that shall contain their decision on whether the appeal shall be forwarded to the Procurement Appeals Board as described in Section 1.4 of this manual.

(3) The decision of the County Procurement Officer on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

SECTION 1.4

PROCUREMENT APPEALS BOARD

§1.4-101 Definition

(1) The Procurement Appeals Board is an administrative review board convened by the County Procurement Officer for the sole purpose of hearing vendor protests that have not been resolved at the department level.

§1.4-102 Purpose

(1) It will be the purpose of the Procurement Appeals Board to determine whether a solicitation or contract award is in accordance with applicable case law, statutes, code, County ordinances, policies and procedures, and accepted standards of fairness and ethics.

§1.4-103 Policy

(1) The County Procurement Officer has the authority to establish a Procurement Appeals Board. The Procurement Appeals Board will meet to hear vendor protests that have not been resolved at the department level.

a) Upon receipt of written determination by the County Procurement Officer that a hearing is to be convened, the protester and the County department will be given advanced notice of at least ten (10) business days prior to the hearing date, time and location.

b) No postponement of the hearing shall be granted, unless good cause is shown by the party seeking the postponement. Whether or not good cause exists shall be in the sole discretion of the County Procurement Officer.

§1.4-104 Composition

(1) The Procurement Appeals Board will be chaired by the County Procurement Officer or designee. The County Procurement Officer has the authority to request participation on the Procurement Appeals Board by specific County personnel. The Procurement Appeals Board shall be comprised of:

a) One (1) Deputy County Counsel to serve as legal counsel to the Procurement Appeals Board.

b) Three (3) Administrative or Executive Managers from various County departments. The County personnel selected for the Procurement Appeals Board shall have no conflict with the solicitation being protested.

c) One (1) Member of the Public - The County Procurement Officer shall also include a member of the public whenever reasonably possible. The non-County Procurement Appeals Board member shall be familiar with public procurement processes and ethical standards, including applicable State and county laws and ordinances, and shall be available on short notice so that protests can be resolved quickly.

§1.4-105 Conflict of Interest – Procurement Appeals Board

(1) Whenever a protest is considered by the Procurement Appeals Board, all members, including the outside member must sign a County Conflict of Interest Statement certifying that they have no conflict or apparent conflict of interest with the protest being heard.

§1.4-106 Procedures/Support

The County Procurement Officer may adopt administrative procedures as may be necessary in the execution of the Procurement Appeals Board functions. Any administrative support to the Procurement Appeals Board will be provided by the Office of the County Procurement Officer.

§1.4-107 No Right to Administrative Appeal

(1) The decision of the Procurement Appeals Board will be final and there shall be no right to further protest or appeal to the Board of Supervisors.

SECTION 1.5

COMPLIANCE MONITORING

§1.5-101 Policy

(1) The County Procurement Officer or designee shall regularly audit the procurement and contracts records and processes of all County departments. The frequency of such audits shall be determined at the discretion of the County Procurement Officer based on their assessment in the best interest of the County.

(2) The compliance monitoring of the department procurement and contracts records will be conducted to audit and enforce the procurement processes in accordance with County policies, procedures, and Best Practices and will not be construed to place responsibility for department procurement on the County Procurement Officer.

§1.5-102 Specific Duties

(1) The County Procurement Officer or designee shall select procurement and contract documents from each department for compliance monitoring. Selected documents will include a range of the procurement and contract types. Documents will be monitored using the following performance measures:

a) compliance with the Procurement Procedures Manual;

b) compliance with legal requirements and Board policy set forth in this manual;

c) cost effectiveness;

d) timeliness of procurement process;

e) operational efficiencies of processes used; and,

f) other policies, procedures, or Best Practices as determined by the County Procurement Officer.

§1.5-103 Audit Process

(1) The compliance process is intended to be educational and will be used to provide guidance and clarification for procurement policies, procedures and Best Practices.

(2) Upon completion of the audit, the County Procurement Officer or designee will provide the Department Procurement Council Representative a written Final Report that will include, where applicable, a summary of the Findings and Recommendations for corrective action. As part of the compliance process, departments will be expected to make necessary corrections to bring procurement processes into compliance.

(3) The County Procurement Officer shall submit a report to the department Procurement Council that contains general Findings and Recommendations and identifies areas that may require changes to ensure a procurement process that is fair, effective, efficient, and in compliance with legal requirements and Board of Supervisors policy.

SECTION 1.6

SURPLUS COUNTY PROPERTY

§1.6-101 Policy

(1) The County Procurement Officer shall establish methods and procedures necessary for the proper disposition of Surplus County Property. The methods and procedures shall be those that, in the County Procurement Officer's judgment, will return the best value to the County.

(2) The proper disposition of Surplus County Property must comply with the provisions of this manual and must be conducted in an efficient, transparent and economical manner.

§1.6-102 Definition

(1) Electronic Waste (E-Waste) is defined as an electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers and wireless phones and devices.

(2) Surplus County Department Property is defined as tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or other lawful means, that a County department has determined is no longer needed by the department.

(3) Surplus County Property is defined as Surplus County Department Property that the County Procurement Officer or designee has determined is not needed for public use by any other County department.

§1.6-103 Authority

(1) Codified Ordinances of the County of Orange, Title 1, Division 4, Article 2, Section 1-4-36, authorizes the County Procurement Officer or designee to sell or otherwise dispose of Surplus County Property in accordance with Sections 25503 through 25507, plus Sections 25372 and 26227, of the Government Code, unless otherwise directed by the Board of Supervisors.

§1.6-104 Disposition Methods

(1) A department must attempt to dispose of Surplus County Department Property through internal transfer to a claiming department, until the County Procurement Officer determines the Surplus County Department Property is not needed by any other County department. At that time, the Surplus County Department Property must be disposed of as Surplus County Property.

   a) Surplus County Department Property for which disposition is otherwise covered under law, regulation, code, or other Board of Supervisors policy are exempted from Section 1.6; provided that departments notify the County Procurement Officer or designee prior to disposition.

(2) Surplus County Property shall be disposed of by the following methods, in the order listed below:

   a) donation of Surplus County Property with a fair market value less than $10,000 per lot to the Orange County Department of Education, local government agencies, special districts, and not-for-profit organizations

   b) auction (non-electronic items) or e-waste recycling (electronic items)

   c) direct sale by department or by County Procurement Officer or designee

d) recycling

e) trash

(3) Departments may seek approval from the County Procurement Officer or designee for an exception to Section 1.6-104.

(4) The procedures for the disposition methods shall be those established by the County Procurement Officer as set forth in the Procurement Procedures Manual.

(5) When procuring personal property for which it is not necessary to advertise for bids, the County Procurement Officer or Deputy Procurement Agent may solicit and accept advantageous trade-in allowances for Surplus County Property that has a scrap value of less than ten thousand dollars ($10,000.00).

§1.6-105 Board Approval

(1) Approval from the Board of Supervisors is required prior to the donation of any Surplus County Property that is a capital asset or with an estimated market value that exceeds $10,000, with the exception of donations specified above in Section 1.6-104.

SECTION 1.6.1

DISPOSITION OF REAL PROPERTY BY SALE

§1.6.1-101 Definitions

(1) "County Exempt Surplus Land" is County Real Property which has been declared as exempt surplus land pursuant to applicable law.
(2) "County Real Property" is land owned by the County, or special districts whose affairs and funds are under the supervision and control of the Board of Supervisors, such as the Orange County Flood Control District or Orange County Housing Authority (Special Districts), in fee simple.
(3) "County Surplus Land" is County Real Property which has been declared as surplus land pursuant to applicable law.
(4) "HCD" shall mean the Department of Housing and Community Development for the state of California.

§1.6.1-102 Policy

(3) Unless otherwise directed by the Board of Supervisors, the Chief Real Estate Officer (CREO) shall establish methods and procedures necessary for the disposition by sale of County Real Property declared as County Surplus Land or County Exempt Surplus Land consistent with the Surplus Land Act, Government Code section 54220 *et seq*., and the Surplus Land Act Guidelines (Surplus Land Act).

(4) The methods and procedures shall be those that, in the CREO's judgment, will return the best value to the County or serve the County's best interests. The proper disposition of County Surplus Land must comply with the provisions of this manual and must be conducted in an efficient, transparent and economical manner.

(5) To administer and implement this policy, CEO Real Estate has implemented this procedure. It is important to determine that County agencies, departments, and districts have no need for the property before deeming the property to be County Surplus Property and holding discussions and negotiations with non-County public sector entities as mandated by Resolution No. 82-677. Notice, as set forth below, is therefore required to be provided to these County entities to determine this need.

§1.6.1-103 Real Property Need

The sale and disposition of certain types of County Real Property require unique procedures in addition to these otherwise required, including the following:

(1) County Exempt Surplus Land: This is land that is exempt from the Surplus Land Act pursuant to Section 103 of the Surplus Land Act Guidelines.

(2) OC Parks Real Property: The sale of any real property dedicated for, or deed restricted to, park purposes is subject to the provisions of the County Park Abandonment Law of 1959 [Government Code sections 25580-25588] or Orange County Codified Ordinance Section 2-5-301, as applicable. Except for limited circumstances authorized by applicable law, the park property dedication must be abandoned prior to sale of any such County Real Property.

§1.6.1-104 Notice to County Entities

(1) To determine the real property needs for the County, CEO Real Estate will prepare and distribute a "Notice of Availability of Surplus Land" (Form P8-5) to County agencies, departments, and districts governed by the Board of Supervisors, which describes the property and includes a map showing its

location. The notice shall request that if there is any interest in utilizing the property that notification be sent to CEO Real Estate within thirty (30) days of the notice date.

(2) If any County agency, department, or Special District expresses an interest in the County Real Property, the CREO and CEO Real Estate will coordinate with such agency, department, or Special District regarding their possible use of the property.

(3) If the property is not needed by a County agency, department, or district, in the reasonable discretion of the CREO, the property may be deemed surplus to the needs of the County internally and CEO Real Estate can proceed to appraise the property and proceed to the Board to have it declared County Surplus Real Property and for authority to provide notice in Section 1.6.1-107 to other public agencies pursuant to the Surplus Land Act.

§1.6.1-105 Appraisal of Real Property

(1) After County Real property has been determined internally to be surplus to the needs of the County, an appraisal must be done to determine the value of the property before it can be taken to the Board to have it declared County Surplus Real Property and offered for sale.

(2) Appraisal services are contracted out and CEO Real Estate keeps a list of qualified appraisers currently on retainer that can be contacted for appraisal services. There are two steps to the appraisal process. A self-contained, highest and best use appraisal shall be procured for the real property, followed by a review appraisal, which is essentially a review of the original appraisal by another appraiser.

§1.6.1-106 Request for Authorization to Solicit Bidder

(1) After real property has internally been determined to be surplus to the needs of the County and an appraisal has been completed, a request for a finding that the property is County Surplus Property, authority to provide notice to other public agencies under the Surplus Land Act (see Section 1.6.1-107, below) and solicit bids for the sale of the property will be submitted to the Board of Supervisors for approval.

(2) In the event that the property is County Exempt Surplus Land (see Section 1.6.1-108, below), the facts supporting such finding shall be presented to the Board and the Board requested to make such a finding by resolution.

(3) The Agenda Staff Report (ASR) requesting authority to solicit bids will be accompanied by a complete sales package recommended by CEO Real Estate for Board approval. The request will also indicate that the package has been approved as to form by County Counsel. At a minimum, the sales package will contain:

a) A "Notice of Availability and Intent to Dispose of Surplus Land" (see Section 1.6.1-107, below)

b) A copy of the Notice of Sale, which will give general information as to the terms of the sale, the time and place of the public sale, a description of the property to be sold, and the minimum acceptable bid. Attached to the Notice will be a map properly depicting the property to be sold.

c) A copy of the Offer and Agreement to Purchase Real Property. This Agreement shall include all the terms of sale.

d) The proposed bidding procedure.

(4) If allowed under the code section applicable to the sale, the ASR can include a request that the Board delegate authority to the CREO to execute the contract with the highest bidder. Otherwise, the final

sale will have to be brought back to the Board for approval. If this request is made, the ASR should also include a recommendation to the Board that "CEO Real Estate be authorized to return the deposits of unsuccessful bidders."

(5) CEO Real Estate may choose to utilize a broker or agent to solicit bids for the property and coordinate the bidding process, in which case authority to hire such broker shall be obtained from the Board of Supervisors as part of the ASR authorizing the sale.

§1.6.1-107 Notice to Other Public Agencies (Surplus Land Act Compliance)

A "Notice of Availability and Intent to Dispose of Surplus Land" (Form P8-5.1), either by sale, lease, or both, shall be prepared and presented to the Board (see Section 1.6.1-106, above), after it is determined that no County agency, department, or Special District has a need for the property. Once the Board has acted and found the property County Surplus Land (but not County Exempt Surplus Land), Government Code Section 54222 and County policy require that the notice be sent by certified mail or email to:

(1) The HCD, any local public entity within whose jurisdiction the land is located, as defined in Section 50079 of the Health and Safety Code and, upon written request, "Housing Sponsors" as defined in Section 50074 of the Health and Safety Code, for the purpose of developing low and moderate-income housing and any such sponsors who have notified HCD of their interest in surplus land that is located in Orange County or in all California counties. Priority is to be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(2) Any park and recreation department of any city and county within which the land is located. Park, Recreation and Open Space availability notices shall comply with the conditions and follow the requirements as described in Government Code Sections 54221(f)(2), 54222, and 54227(b).

(3) Any regional park authority having jurisdiction within the area in which the land is located.

(4) The State Resources Agency or any agency which succeeds its powers.

(5) The nonprofit neighborhood enterprise association corporation for the area if the land is within an area designated as an enterprise zone, pursuant to Section 7073 of the Government Code. Check with the Planning Department of the city to determine if such a zone and corporation exist.

(6) The city within which the land is situated. The notice should be addressed to the city manager or city administrator.

(7) The city managers or city administrator of any other city the boundaries of which are within three miles of the surplus land.

The most recent code sections should be checked to be sure that all currently required notifications are met. Public entities or nonprofit neighborhood enterprise association corporations must respond in writing within 60 days after their receipt of the notice. After notice is received from an entity desiring to purchase (or lease if offered) the land, the CREO will enter into good faith negotiations to determine if a mutually acceptable agreement can be reached. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than sixty (60) days, the land may be disposed of without further regard to Government Code Sections 54220, *et seq*. (Note: The RFP process for real estate is addressed in §4.3.1 of the CPM. Leases may require Surplus Land Act compliance. Please consult with County Counsel for assistance.)

§1.6.1-108 County Exempt Surplus Land

Government Code Section 54222.3 provides that County Exempt Surplus Land is exempt from the notification requirements of Section 54222. The Surplus Land Act is subject to several exemptions, some of the more common exemptions being land that is:

(1) Transferred to a public entity for public uses; or

(2) Less than 5,000 square feet in area;

(3) Less than the minimum legal residential building lot size, or 5,000 square feet in area, whichever is less; or

(4) Have no record access and be less than 10,000 square feet in area; and is not contiguous to land owned by a state or local agency which is used for park, recreational, open space or low and moderate income housing purposes, and is not located within an enterprise zone pursuant to Section 7073 nor a designated program area as defined in Section 7082 of the Government Code.

(5) If the surplus land is not sold to an owner of contiguous land, it is not considered exempt surplus land and notification must be given. The following properties are not considered exempt land and notification must be given, unless some other exemption applies (*see*, e.g. Government Code Section 54221(f)(1)(H)):

a) Land within the coastal zone.

b) Land within 1,000 yards of a historical unit of the State Park System.

c) Land within 1,000 yards of any property that has been listed on, or determined by the State Office of Historic Preservation to be eligible for, the National Register of Historic Places.

For further guidance on further exemptions, please consult with County Counsel. A finding that real property is County Exempt Surplus Property shall be made by the Board of Supervisors in a resolution, which shall be provided to HCD at least 30 days prior to a sale of the Exempt Surplus Property.

§1.6.1-109 Solicitation of Bids

(1) After the Board of Supervisors has declared the property to be County Surplus Property, authorized solicitation of bids for its sale and notices have been provided to applicable public agencies under the Surplus Land Act (see Section 1.6.1-107, above), the Notice of Sale will be given wide circulation by CEO Real Estate in order to reach as many potential buyers as feasible, including posting on applicable County websites.

(2) A list of all persons interested in buying surplus County real property is maintained by CEO Real Estate. Each person on this list is to be sent a Notice of Sale.

(3) Legal advertisements are to be made if required by applicable statutes affecting the property.

(4) Whenever necessary to reach potential buyers and when specifically approved by the Board of Supervisors, advertisements will be placed in newspapers and trade magazines.

(5) If appropriate, press releases covering the sale will be prepared by the CEO Real Estate staff member, approved by the CREO and forwarded to CEO Media Affairs for distribution.

(6) CEO Real Estate may choose to utilize a broker or agent to solicit bids for the property and coordinate the bidding process, in which case authority to hire such broker shall be obtained from the Board of Supervisors.

§1.6.1-110 Selection of the Successful Bidder

(1) Sealed Offers and Agreements to Purchase will be received by the CEO Real Estate and opened at a specified time.

(2) Immediately after the sealed Offers have been opened, a call for verbal bids will be made. At this time, all persons who have not already submitted bids and who wish to bid on the property will have the opportunity to enter the bid process upon presentation of the required bid deposit in the manner prescribed in the bid package.

(3) Once the verbal bidders have been identified, then the verbal bidding process will begin, with the requirement that the first verbal bid exceed the highest written bid by a predetermined percentage amount as set forth in the proposal package, as reasonably determined by the CREO.

(4) At the close of verbal bidding, the high bidder shall execute the Offer and Agreement to Purchase Real Property and shall be notified that the total sum to be paid outside of escrow is due and must be delivered to CEO Real Estate on or before the date specified in the purchase agreement.

(5) If the Board has not previously delegated the CREO to execute the agreement, the CEO Real Estate staff member will prepare an ASR that includes information concerning the number of bids received, the highest bidder, a financial resume, and other pertinent facts. The ASR shall be submitted to the Board at the earliest practicable date for final approval of the sale and permission to execute all applicable documents to close escrow, if any.

(6) The ASR shall include a recommendation to the Board of Supervisors that "CEO Real Estate be authorized to return the deposits of unsuccessful bidders."

(7) All procedures and record-keeping shall be closely adhered to so that all those wishing to purchase County property are given an equal opportunity. Every action the County takes must evidence that these procedures are open and fair to all prospective bidders.

SECTION 1.7

PROCUREMENT CARDS

§1.7-101 Definition

(1) Under the direction of the CEO, the County Procurement Officer shall oversee and administer the County's Procurement Card Program. Procurement cards are County credit cards issued to Deputized Procurement Agents to make purchases on behalf of the department in accordance with this CPM and the Procurement Procedures Manual.

§1.7-102 Authorized Use

(1) The Procurement Card is imprinted with the County of Orange logo and the cardholder's name. Cards may be used to procure services and commodities for County use only; using the card for personal purchases is strictly prohibited. Any employee who willingly uses the card for personal purchases shall be subject to:

a) reimbursing the County for all costs associated with the personal purchases,

b) having the card immediately revoked,

c) possible referral to the County District Attorney; and

d) further disciplinary action as authorized by applicable County procedures, up to and including termination from employment.

§1.7-103 Responsibilities

(1) Program Administrator: The Program Administrator is responsible for program questions, contract administration, account coordination, card issuance and cancellation, report management and review, and administrative training.

(2) Department Coordinator: Department heads and designees authorized to request new cards, modifications to card limits, cancel cards, and assign Approving Officials.

(3) Billing Officials: Department employee responsible for managing the billing, payment and approval processes for department procurements. Billing Officials cannot also be cardholders.

(4) Approving Official: Department employees authorized to approve payments for procurements made by department cardholders.

(5) Cardholders: County Deputy Procurement Agents authorized to make Procurement Card procurements on behalf of their assigned department in accordance with established program policy and procedures and applicable procurement policies and procedures.

§1.7-104 Controls

(1) In addition to other internal controls and procedures as detailed in the Procurement Procedures Manual and Section 3.6 of this manual, use of County issued Procurement Cards are subject to the following controls:

a) 30-Day Purchase Limit per Card: Each card is established with a monthly, not-to-exceed amount predetermined by the Cardholder's department head or designee and approved by the County Procurement Officer. Except as set forth in this Section, there is no other limit on the card's monthly, not-to-exceed amount.

b) Single Purchase Limit per Card: Each card is established in the procurement card system with a single transaction limit that is controlled to ensure adherence to all policies and procedures.

c) Merchant Code Blocking: Every County issued Procurement Card is blocked to prohibit the Cardholder from making purchases from certain types of vendors.

(2) Department heads may impose additional restrictions on commodities or services that may not be procured using the Procurement Card.

§1.7-105 Adherence to Procurement Policy

(1) County procurement policies, as delineated in this manual and the Procurement Procedures Manual, may not be circumvented when using the Procurement Card. In accordance with County policies and procedures outlined herein, where appropriate Cardholders are required to obtain the appropriate number of price quotes before procuring and must document the quotes received with the transaction information and invoice.

SECTION 1.8

COUNTY OF ORANGE PROCUREMENT PREFERENCE POLICY

§1.8-101 Policy

(1) Purpose: To establish Orange County Board of Supervisors procedures to facilitate Orange County Local Small Business' (OCLSB) and Disabled Veteran Business Enterprises' (DVBE) ability to procure County contracts.

(2) In alignment of the County of Orange's Procurement Preference Policy (Preference Policy) with applicable law, the County Procurement Officer is hereby authorized to implement the preferences provided herein to increase the participation of certified OCLSB and DVBE businesses.

(3) The Preference Policy shall be applied to all procurements where competitive bidding (low bid or scored proposals) is required, except as otherwise provided herein or as otherwise required by Federal, State or County laws and regulations.

(4) The Preference Policy requirement is not applicable to Emergencies.

(5) To the extent required by federal law, preferences based on minority or gender status may be extended for federally funded procurements consistent with subsection (h) of the California Constitution, Article I, Section 31.

(6) Further rules and application of the Preference Policy for different types of procurements are referenced in the following sections: 3.1, 3.2, 3.3, 3.4, 3.6, 3.7, 4.5 and 4.7.

§1.8-102 Business Eligibility Requirements

(1) OCLSB Eligibility - To qualify as an OCLSB, a business shall meet a), b), and c) requirements below:

a) Local Business requirements:

i. maintains their principal center of operations (i.e. headquarters) within Orange County; and

ii. has:

1) a business address located in the County of Orange that is not a post office box, or
2) a valid business license or certificate of occupancy issued by the County of Orange or by an Orange County city, or other documentation acceptable to the County of Orange.

b) Small Business requirements:

i. must be certified as a Small Business by the State of California Department of General Services (DGS); and

c) Above requirements must be valid at the time of proposal submittal~~.~~ through the time of award of the contract. The terms and conditions of the contract shall additionally require the contractor to remain in compliance with the Local Business requirements (pursuant to subsection (a) above) through the term of the contract, including any extensions or renewals,

and shall provide that contractor's failure to comply may be construed by County as a material breach of the contract.

(2) DVBE Eligibility – To qualify as a DVBE, the DVBE must meet the following requirements:

a) must be certified as a DVBE by the State of California DGS; and
b) DGS DVBE requirements must be valid at the time of bid/proposal submittal~~.~~ through the time of award of the contract.

(3) Eligibility for Contractors Using OCLSB/DVBE Subcontractors – Prime contractors that do not otherwise meet the OCLSB/DVBE certification requirements may still qualify for OCLSB/DVBE preferences by virtue of their use of OCLSB/DVBE subcontractors. To qualify for the preferences by using certified OCLSB/DVBE subcontractor(s), twenty percent (20%) of the total proposed contract amount must be allocated to OCLSB and/or DVBE subcontractor(s) meeting the qualifications and certification requirements provided in subsections (1) and (2) above.

§1.8-103 Requests for Proposals

(1) A Contractor deemed qualified for the Preference Policy pursuant to one of the eligibility categories detailed in subsections (1), (2) and (3) of Section 1.8-102 above shall apply the five percent (5%) to the total cost. A-E services as defined in Section 3.4 and any other Public Works Procurements shall not include a DVBE preference.

(2) Except as applied to A-E services as defined in Section 3.4, a Contractor deemed qualified for the Preference Policy pursuant to more than one of the eligibility categories detailed in subsections (1) and (2) of Section 1.8-102 above, or a Contractor deemed eligible pursuant to subsection (3) of Section 1.8-102 that includes both certified OCLSB and DVBE subcontractors, shall apply the eight percent (8%) to the total cost.

(3) Any Request for Proposals that does not include cost as a scoring criteria shall instead apply the five percent (5%) or eight percent (8%) preference percentage pursuant to the eligibility requirements above to a scoring criteria in the RFP that makes up no more than twenty percent (20%) of the total RFP.

(4) If the final score of any OCLSB or DVBE matches the final score of a respondent who is not an OCLSB or DVBE, preference shall be given to the certified OCLSB or DVBE. If two or more OCLSBs and/or DVBEs have the same final score, the County shall determine the contract award based on the County's best interests. Notwithstanding these preference procedures, the Orange County Board of Supervisors reserves the right to award contracts in any other permissible manner in consideration of the County's best interests.

§1.8-104 Invitation for Bids / Low Bid Contracts

(1) For solicitations that are based on the lowest responsive and responsible bid, the preference to be granted to a certified bidder pursuant to Section 1.8-102 above shall be equal to five percent (5%) of the lowest bid. A-E Services as defined in Section 3.4 and any other Public Works Procurements shall not include a DVBE preference.

(2) Except as applied to Public Works Procurements, a bidder deemed qualified for the Preference Policy pursuant to both of the eligibility categories detailed in subsections (1) and (2) of Section 1.8-102 above, or a bidder deemed eligible pursuant to subsection (3) of Section 1.8-102 that includes both

certified OCLSB and DVBE subcontractors, the preference to be granted shall be equal to eight percent (8%) of the lowest bid.

(3) Such preference shall be applied to all certified bidders that requested the preference, even if the certified bidder is the lowest responsible bidder meeting specifications. The contract award shall be the bidder's original bid price, not the price used for bid evaluation purposes.

(4) In no instance shall any of the preference programs be combined to exceed a total of eight percent (8%), or a maximum of $100,000, in response to any County solicitation.

§1.8-105 Waivers/Limitations

(1) The County Procurement Officer or designee may consider a departmental request to waive the County of Orange Procurement Preference Policy requirement under special circumstances and/or if it is determined to be in the best interest of the County. Prior to approving a Preference Policy waiver request, the County Procurement Office will notify the Board of Supervisors of the request.

(2) The Preference Policy waiver request must be approved by the County Procurement Officer or designee and the Chief Financial Officer, on the form(s) approved and provided by the CPO, and shall be made part of the procurement file.

(3) The County of Orange Procurement Preference Policy requirements shall not apply when prohibited by this policy or applicable laws or regulations including, but not limited to, specific state or federal funded projects.

SECTION 2 – GENERAL RULES AND PROCEDURES

SECTION 2.1

ETHICS IN PUBLIC CONTRACTING - COUNTY EMPLOYEES

§2.1-101 Policy

(1) Public employment is a public trust. Public employees must discharge their duties impartially to assure fair, competitive access to government procurement by responsible contractors. Moreover, they shall conduct themselves in such a manner as to foster public confidence in the integrity of the County procurement process. Additional guidelines may be found in the County's *Procurement Ethics Manual* maintained by the Office of the County Procurement Officer.

§2.1-102 "Arm's Length" Principle

(1) All procurements must be "arm's-length" transactions; meaning that the parties to a transaction have no conflict of interest in the transaction. Arm's length transactions create an equitable contract that will stand up to legal scrutiny.

§2.1-103 General Standards of Ethical Conduct

(1) It is the duty of all County and Orange County Flood Control District employees to ensure fairness and transparency in contracting by complying with State and local laws and regulations, including those pertaining to conflicts of interest in four areas: (1) contracting (Government Code Sections 1090 et seq.); (2) incompatible activities (Government Code sections 1126 et seq.); (3) financial interests (Government Code Sections 87100 et seq. including regulations promulgated by the Fair Political Practices Commission (FPPC)); and (4) the County Gift Ban Ordinance (Sections 1-3-21 et seq. of the Orange County Codified Ordinances). These conflict of interest provisions are only briefly described here; any question arising from a potential conflict of interest or ambiguity under any of these provisions should be addressed to County Counsel.

(2) To the extent that violations of the ethical standards of conduct constitute violations of the Government Code, they shall be punishable as provided therein. Such sanctions shall be in addition to any other remedies which the County may pursue in its interest.

(3) The Code of Ethics and Commitment to County Public Service adopted by the Board of Supervisors states, "A public official or employee shall not meet or confer with a former County official or employee who is acting as a lobbyist within one (1) year following termination of the former official or employee from County employment."

(4) The Gift Ban Ordinance prohibits County officers and certain designated employees, as defined therein, from soliciting or accepting gifts from persons or entities doing or seeking business with the County. A County officer or someone who does business with the County who violates the Gift Ban Ordinance is subject to criminal liability, and designated employees are subject to discipline, including termination of employment. A more extensive discussion of the Gift Ban Ordinance is contained in a guide, which can be found on the County Counsel intranet site.

(5) Procurement documents including RFQs, RFPs, RFIs, RFAs, and IFBs will include language that prohibits contacting County staff by non-County interested parties during an active, ongoing procurement solicitation. Prospective bidders or respondents are not allowed to receive information concerning any solicitation details of the specific procurement process except through the Deputy Procurement Agent who is overseeing the procurement process. This prohibition extends to the prospective bidder's or respondent's employees, representatives, agents, lobbyists, attorneys, sub-consultants, or anyone else acting on the behalf of the interested party. Contacts that are prohibited include those with members of the evaluation panel, the County Executive Officer, and other County

staff; ***provided, however, this prohibition shall not extend to members of the County's Board of Supervisors and Countywide Elected Officials or members of their respective staffs.***

(6) If there are functions of a procurement activity that require multiple levels of approval (such as requisitions), the approvals must be from different authorized individuals to ensure a segregation of duties.

§2.1-104 Conflict of Interest

(1) The State of California Government Code addresses conflicts of interest as follows:

a) Section 87100: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

b) Section 87103: "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family, or on any of the following:

i. Any business entity in which the public official has a direct or indirect investment worth two thousand dollars ($2,000) or more.

ii. Any real property in which the public official has a direct or indirect interest worth two thousand dollars ($2,000) or more.

iii. Any source of income, other than gifts or other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars ($500) or more in value provided to, received by or promised to the public official within twelve months prior to the time when the decision is made.

iv. Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

v. Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars ($250) or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

vi. For purposes of this Section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."

c) Section 1090: (a) "Members of the legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. (b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a). (c) As used in this Section, 'district' means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

d) Any employees who, in the course of their employment, make, or participate in the making of, decisions which may potentially have a material effect on a financial interest of the employees are deemed 'designated employees' and are required to complete a Statement of

Economic Interests (Form 700) on an annual basis, when they assume employment with the County, and when they terminate employment with the County.

e) Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification with the County Procurement Officer or appropriate Deputy Procurement Agent and shall withdraw from further participation in the transaction involved. The employee may, at the same time, request through his department head an advisory opinion from County Counsel as to what further participation, if any, the employee may have in the transaction.

§2.1-105 Restrictions on Employment of Present and Former Employees

(1) A County public official or employee shall not meet or confer with a former County official or employee who is acting as a lobbyist within one (1) year following termination of the former official or employee from County employment. Moreover, no County official or employee shall engage in any business, transaction or activity, or have a financial interest, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

§2.1-106 Use of Confidential Information

(1) Confidential information is defined as that information which is available only because of one's status as a County employee. It shall be a breach of ethical standards for any employee or former employee to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of another person.

§2.1-107 Purchase of Surplus Material and Equipment

(1) For any employee who participates in the decision to put materials or equipment in surplus status, it shall be a breach of ethical standards for that employee or any members of that employee's immediate family to offer to purchase the same through sealed bid, auction, or any other manner, or request that acquisition be made on his or her behalf by another person or persons.

§2.1-108 Auction Techniques

(1) It shall be a breach of ethical standards for any employee to engage in the practice of auctioneering, a technique whereby one vendor is given the price offered by another vendor and asked to submit a lower bid. Bids offered by vendors will not be revealed to anyone until such time as all bids become public information.

§2.1-109 Purchase for Personal Use

(1) It shall be a breach of ethical standards for County employees to use the County's procurement personnel or facilities for personal transactions unless such transactions can be shown to be in the County's best economic interest.

§2.1-110 Equal Opportunity

(1) County employees shall ensure that all vendors receive an equal opportunity to do business with the County. This opportunity will be provided without regard to race, religion, sex, age, national origin, physical disability, or other classifications protected by law.

§2.1-111 Incremental Contracting

(1) Contracts shall not be intentionally split to avoid approval by the Board of Supervisors or to bypass solicitation requirements.

(2) "In any county, it is unlawful to split or separate into smaller work orders or projects any public works project for the purpose of evading the provisions of this article requiring public work to be done by contract after competitive bidding. Every person who willfully violates the provisions of this section is guilty of a misdemeanor." Public Contract Code §20123.5.

SECTION 2.2

ETHICS IN PUBLIC CONTRACTING - CONTRACTORS

§2.2-101 Conflict of Interest

(1) Upon County Counsel approval, the County shall require that a respondent to a solicitation provide, at the time it submits its response or bid, client lists, disclosure statements, or any other information that the County may require to determine if a respondent has a conflict of interest which:

a) May be detrimental to the County's interests and, therefore, would cause the County not to enter into a contract; or

b) May arise after award and during the performance required under a contract and, therefore, foreseeably could provide reason for termination of that contract.

(2) The County may require that a respondent provide the information described in Paragraph (1) above for each subcontractor a respondent has identified as likely to perform work on a given project.

(3) The County may also require that a respondent identify any present or potential future relationships or business interests, for both the respondent and any of its officers, which the respondent believes may give rise to a conflict of interest detrimental to the County's interests or which could require the County to terminate any contract after award.

(4) The County will be the sole judge in determining if such a conflict would preclude the County from entering into a contract or be reason for termination.

(5) By participating in any solicitation, respondents to a solicitation agree to furnish the required information as requested and accept the County's decision in regard to the existence of an actual or potential conflict of interest that would preclude award of a contract as final.

§2.2-102 Vendor/Contractor Code of Conduct

(1) Vendors shall independently and honestly prepare and submit bids or proposals without collusion or otherwise obtaining information about a competitor's bid or proposal.

(2) Prospective vendors shall truthfully disclose who owns and controls their company or firm, as well as the company or firm's current financial condition during solicitation and contract phases.

(3) Vendors shall not share price information with competitors for the purpose of manipulating the winning bid of the contract, also known as "price-fixing" or "bid-rigging or collusion".

(4) Vendors shall not submit low dollar bids with the expectation of making up the difference after the contract has been won through change orders or amended contracts.

(5) Strict observance of all local, state, and federal laws is a minimal requirement in all aspects of vendor/contractor conduct.

(6) Vendors must adhere to the County's gift ban limits.

(7) Failure to meet these standards could result in sanctions including, but not limited to, voidance of current or future contracts.

§2.2-103 Levine Act

(1) Government Code section 84308, a provision of the Political Reform Act known as the "Levine Act," generally prohibits campaign contributions of more than $250 by a party or a party's agent within the preceding 12 months of a proceeding, and within 12 months after there has been a final decision on the matter, to officials participating in a decision regarding a "license, permit, or other entitlement for use," which includes contracts and franchises. These restrictions do not apply pursuant to ~~labor, personal employment contracts, or contracts where the County has little, if any, discretion in choosing the contractor. For example, a circumstance where bidders submit fixed amounts in their bids and the County is required to award the contract to the lowest responsible bidder (such as public works contracts under the Public Contracts Code).~~ certain exemptions under Government Code section 84308(a)(4)(B), including:

(a) Competitively bid contracts that are required by law, County policy, or County rule to be awarded pursuant to a competitive process where the County has little, if any, discretion in choosing the contractor and includes, for example, a solicitation in which bidders submit fixed amounts in their bids and the County is legally required to award the contract to the lowest responsive, responsible bidder.
(b) Labor contracts.
(c) Personal employment contracts.
(d) Contracts valued under $50,000.
(e) Contracts where no party receives financial compensation.
(f) Contracts between two or more agencies.
(g) The periodic review or renewal of development agreements unless there is a material modification or amendment proposed to the agreement.
(h) Modification of or amendments to contracts that are listed as exceptions under this definition, other than competitively bid contracts unless the modifications or amendments to competitively bid contracts are non-material or the material modifications or amendments proposed to the contracts are valued at more than 10 percent of the value of the contracts or $50,000, whichever is less.
(i) Modification of or amendments to contracts that are exempt under this subparagraph, other than competitively bid contracts.

Licenses, permits, and contracts subject to the Levine Act must comply with the County's Levine Act Policy. Departments and Deputy Procurement Agents shall ensure compliance with the policy, including requiring that all applications and solicitations contain Levine Act notices and disclosures referenced in the policy. Failure of an applicant or a bidder to complete required disclosures may be a basis to reject an application or bid or deny the award of a contract.

SECTION 2.3

SURETY AND INDEMNIFICATION

§2.3-101 Definitions

(1) As used in this Section, the following terms have the meanings set forth:

a) Bid Bond: Used in conjunction with the bidding process. The bond acts as a guarantee that, if awarded the contract based on the bid submitted, the contractor will enter into a contract to perform the work at the price quoted. If the contractor declines to enter into a contract to perform the work at the agreed-upon price, the bid bond will reimburse the County the difference between the defaulting contractor's bid and the next lowest bid, up to the maximum amount covered under the bond.

b) Indemnification: The agreement of one party to assume financial responsibility for the liability of another party. The County's standard indemnification provision transfers the risk associated with the contract to the Contractor.

c) Insurance: A contractual relationship where an insurance company agrees, for a premium paid, to reimburse the insured or other party for a loss to a specified subject caused by designated hazards or risks.

d) Labor and Materials Bond: Labor and materials payment bond is an agreement in which security is provided by a surety company to the County on behalf of a contractor. Such bond guarantees the County that all bills for labor and materials contracted for and used by the contractor will be paid by the surety if the contractor defaults.

e) Performance Bond: A performance bond guarantees that the contractor will perform the work in accordance with the contract and related documents, thus protecting the County from financial loss up to the maximum amount covered under the bond in the event the contractor fails to fulfill its contractual obligations.

§2.3-102 Policy

(1) It is County policy for Deputy Procurement Agents, as well as those individuals with the delegated authority to issue contracts on behalf of their department and/or County, to assess the risks involved in the contract and to seek review/approval from the County's Risk Manager or designee when a vendor takes exceptions to the County's standard insurance requirements (as stated in §2.3-103).

(2) It is County policy for Deputy Procurement Agents, as well as those individuals with the delegated authority to issue contracts on behalf of their department and/or County, to assess the risks involved in the contract and to seek review/approval from the County's Risk Manager or designee and County Counsel for bonds and when a vendor limits its liability or takes exception to the County's indemnification clause (as stated below).

(3) Indemnification: Contractors doing business with the County will indemnify the County against losses, liabilities, and/or claims that arise from contractor's performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

(4) Insurance: Insurance will be required where the County may suffer risk of loss due to the nature of the work being performed. It will be the obligation of each department to research and include in the contracts the appropriate insurance requirements for each applicable circumstance as stated in §2.3-103, below.

a) No insurance is required for the following purchases:

i. emergency purchases (as consistent with Section 3.3-122(1)(a)(iii), when applicable),

ii. commodity purchases of $5,000 or less (regardless of method of delivery),

iii. off-the-shelf software products, including off-the-shelf software maintenance, or

iv. commodity purchases in excess of $5,000 that are delivered by third party common couriers to County.

b) For service purchases, no insurance is required for purchases of $5,000 or less unless the purchase is for:

i. maintenance services related to trades (e.g., plumber, electrician or carpenter) that are performed on County property/premise, or

ii. services described in §3.3-101(1) subsections (a), (f), (g) or (i).

If the department believes that a particular purchase falls under one of the exemptions above so as to not require insurance, the department may still seek County Risk Manager or designee's review and assessment regarding the appropriateness of including County's standard insurance requirements (as stated in §2.3-103, below) as part of that purchase.

(5) Bonds: Bid Bonds, Labor and Materials Payment Bonds, and Performance Bonds will be required from vendors in those situations where they are required by statute or ordinance or when less than faithful performance of the contract would create considerable loss to the County. In requiring bid and performance bonds, consideration will be given to the impact these requirements will have on the ability of small businesses to participate in the contracting process. Bond information should be submitted to CEO/Risk Management as early in the contract development process as possible. Submission of the bond information to CEO/Risk Management allows the confirmation that the bond issuer meets financial, rating, licensing and other legal criteria.

(6) Liquidated Damages: Liquidated damages clauses are enforceable if:(1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a "reasonable forecast" of the County's actual damage.

§2.3-103 Standard Insurance Requirements

(1) For standard insurance requirements, refer to the *Insurance Requirements and Reference Manual* maintained on the County Risk Management website: https://ocgov.sharepoint.com/sites/IntraRisk/SitePages/Contract-Insurance-Requirements.aspx

SECTION 2.4

PROCUREMENT REQUISITIONS

§2.4-101 Definition

(1) A request which authorizes the commencement of a procurement transaction and includes a description of the need and other information as specified by County Procurement Officer.

§2.4-102 Policy

(1) In compliance with Government Code 25501 and Orange County Codified Ordinance Sec. 1-4-26 - Requisition Procedure, each of the following provisions shall apply:

a) All purchases, rentals and contracts shall be made only upon receipt of proper written/authorized requisitions, which shall be supplied by the Procurement Officer to the several offices of the County.

b) No purchase order shall be issued unless approved budget appropriation is shown according to the budget procedure established by the Auditor-Controller and the County Executive Officer.

c) The head of any County office, department or institution or their duly designated assistant is hereby authorized to draw requisitions for purchases for such office, department or institution in accordance with current budget accounts.

d) Such head may delegate such authority to one or more of their deputies, assistants or employees within the department.

e) Requisitions must be fully approved (i.e., final and budget requisition approval) prior to procuring any goods and/or services otherwise this will be an Unauthorized Expenditure.

§2.4-103 Procedure

(1) An approved/signed requisition shall be submitted in advance to the County Procurement Officer or appropriate Deputy Procurement Agent for the processing of any procurement or contract transaction, in accordance with County procurement policies and procedures. A justification which explains the purpose of the purchase must be included in the requisition. Unless otherwise provided for in this manual, only those employees who are trained and deputized by the County Procurement Officer have the authority to procure for the County.

§2.4-104 Process

(1) Approved County requisitions shall be processed and executed in accordance with the procurement policies contained in this manual, as well as those Procurement procedures outlined in the Procurement Procedures Manual, established by the County Procurement Officer to be followed by departments.

SECTION 3 - TYPES OF CONTRACTS

SECTION 3.1

COMMODITIES

§3.1-101 Definition

(1) Commodities include all supplies and equipment, equipment rentals and leases, certain types of software and software licenses costing less than $10,000 per unit, including tax and freight, and those costing $10,000 per unit or more. ~~with a useful life expectancy of less than one (1) year~~. Included in the definition of commodity contracts covered in this Section are the following:

a) Cash Alternatives: Cash alternatives, including gift cards and gift certificates, to purchase travel and food for non-employee County department clients receiving services from the County.

b) Equipment – Operating Rental/Lease: These contracts are in essence an extended rental contract under which the owner of the equipment allows the County to operate or otherwise make use of the equipment in exchange for periodic lease payments. These types of contracts are "Operating leases" and are characterized by short-term, cancelable terms. The lessor bears the risk of obsolescence and depreciation of the equipment. Operating leases are generally preferable when the county needs the equipment for a short period of time such as for minor office equipment, printers, copiers, and light-duty vehicles and related equipment. Not included in the definition are long-term, "capital," non-cancelable leases.

c) Recognition/Promotional Items: May include tangible items of nominal value and cost that bear the County logo or other County symbol. These items may include plaques, keychains, coffee mugs, pens, folders, calendars, or other nominally priced tokens of appreciation. All such items must be procured in accordance with all applicable laws, regulations and County policies and procedure, and under no circumstance shall any such items be purchased or used for campaign purposes.

d) Software/Licenses (Retail– Perpetual and Subscription): Contracts for proprietary software licenses where the software publisher grants the use of the software under the end-user license contract (EULA), but ownership of the software remains with the software publisher. These types of purchases typically include terms which define the uses of the software and number of users allowed.

i. Perpetual License - The right to use a software program indefinitely with payment of a single fee. License may or may not include a limited Software Maintenance period and/or the option to purchase ongoing Software Maintenance at the time of purchase or at a later date.

ii. Subscription License - The right to use a software as designed without customization for a determined fee, which includes general technical support, updates and upgrades to new versions or releases of the software (e.g. Software as a Service (SaaS) or Commercial Off the Shelf (COTS) software) irrespective of where the software is hosted. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics.

iii. Software Maintenance - Includes person-to-person communications regardless of the medium used to communicate: telephone support, on-line technical support, and/or technical expertise which are changed commercially.

e) Software Maintenance: Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the

operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for users' self-diagnostics. Software Maintenance as a product is billed at the time of purchase or on an annual basis.

f) Subscriptions/Databases/Cloud Computing: Contracts for access to on-line information, databases or remote servers to be used to enhance or support a County program or project. Contracts of this type involve no on-site visits or work by a vendor and are limited to the digital exchange of information for a predetermined fee.

g) Telecommunications/Data Communications: Contracts for technologies that enable the transmission, reception, and exchange of information and digital data between individuals, devices, systems, or networks, which may include wired or wireless connections to transmit data, such as the internet, telephone networks, data networks or satellite systems. These types of contracts typically include a monthly recurring charge for a predetermined fee. This definition does not include any contracts that may be procured under sections 3.4 or 3.5.

§3.1-102 Solicitation Considerations

(1) Solicitations for commodities shall be written so that critical factors associated with the acquisition shall be considered. These factors may include, but are not necessarily limited to the following:

a) Item capabilities - Will it carry out the functions for which it is being acquired?

b) Size, dimensions - Will it fit within the space where it is to be used?

c) Power requirements - Does the County possess the necessary mechanisms for powering the item as it requires?

d) Safety - Does the item meet all local, state, and federal safety requirements?

e) Pollution - Can the item be used without unnecessarily harming the environment? Does it require special Air Quality Management District permits?

f) Maintenance - Are service and spare parts readily available? Are maintenance contracts available?

g) Life cycle cost - What is the total cost of ownership including initial acquisition cost, cost of operating supplies, cost of maintenance, cost of required space, residual value, etc.?

h) Liability insurance - If the item is being installed by vendor, use the standard insurance requirements, as set forth in Section 2.3-103.

§3.1-103 Term of Contract

(1) The duration of all contracts for commodities shall be based upon the County's Best Interest. Consideration will be given to product availability, price volatility, and expectation of need. Except for contracts defined under Section 4.8 of this manual, in no case shall a commodity contract exceed five (5) years, except as specified in Section 3.1-104(2) below.

(2) All contracts will include a provision for cancellation by the County due to lack of funds, termination of requirement, termination for convenience, termination with cause or prices which no longer reflect reasonable market prices.

(3) Prior to renewal or extension of an existing contract, the department will document that performance of the contractor has been satisfactory.

§3.1-104 Contract Extensions

(1) Non-Board Contracts may be extended up to a five (5) year term without approval by the Board of Supervisors. The extension(s) may be issued by the Deputy Procurement Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed the Board of Supervisors approval threshold, while complying with solicitation thresholds.

(2) Board and non-Board contract extensions may be issued by the Deputy Procurement Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount) or other material changes to the contract.

§3.1-105 Contract Pricing

(1) Contracts will be written so that pricing is controlled and monitored during the contract period. This may be done in several ways, including, but not limited to the following:

a) A contract may show a firm price for the contract period.

b) A contract may show a percentage increase which will occur during the contract period.

c) A contract's prices may be tied to an index, such as the Consumer Price Index, during the contract period.

§3.1-106 Vendor Selection

(1) Selection of vendors for commodities will be based on the competitive process except Sole Source purchases as defined in Section 4.5 of this manual. Solicitations shall be made as follows:

a) Contracts $10,000 or less over the life of the contract	Minimum of one written quote
b) Contracts $10,001 to $25,000 over the life of the contract	Minimum of two written quotes
c) Contracts above $25,000 over the life of the contract	Written solicitation issued on County's bidding system

(2) Commodity purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.

(3) For commodities obtained through the IFB solicitation method as detailed in Section 4.2, awards in all cases will be made to the lowest responsive and responsible bidder.

(4) Consecutive contracts going back three (3) years for purchases that contain substantially the same scope shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.1-107 Public Bid Opening

(1) A public bid opening will be held at a time and place announced in the solicitation for purchases exceeding $100,000 annually.

a) The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.

b) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically available immediately after the bids close.

§3.1-108 Retroactive Contract and Amendments/Changes

(1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:

a) Retroactive contracts or contract overruns with a total value of $500 or less that have the approval of the department head.

b) Retroactive contracts or contract overruns that exceed $500 and are $10,000 or less that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the associated requisition.

c) Retroactive contracts or contract overruns with a total value exceeding $10,000 shall require approval by the Board of Supervisors.

(2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:

a) Contracts governed by separate rules and regulations that conflict with this policy.

b) Telephone services requests and emergency contracts in any amount.

c) Modifications for computer hardware/software maintenance to add licenses and/or users.

(3) Extra compensation or extra allowance to a Contractor after service has been rendered or a Contract has been entered into and performed in whole or in part are not allowed, pursuant to article XI, section 10 of the California Constitution.

§3.1-109 Contract Increases

(1) A contract's total expenditure may not increase by more than 30 percent (30%) of the original contract amount, unless it is demonstrated to be in the best interest of the County and reflective of good procurement practices and approved by the County Procurement Officer or designee.

a) Exemptions: Subordinate contracts issued against RCAs, and subordinate contracts issued against CPO approved cooperative programs, that are below the thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one or two written quotes) will not require approval from the County Procurement Officer or designee.

§3.1-110 Multiple Awards

(1) Awards of commodity contracts may be on an individual basis, a group basis, or on a low total bid basis for the total contract amount, whichever is determined to be in the County's best interest.

§3.1-111 Incremental Contracting

(1) Contracts shall not be split to avoid approval by the Board of Supervisors or to bypass competitive bidding requirements.

§3.1-112 Commodity Substitutions

(1) If a commodity in the contract is temporarily unavailable, upon approval by the County department administering the contract, the vendor may provide a substitute item, if the item is of equivalent or better quality and the price is the same or less than the price of the contract item.

§3.1-113 Emergencies

(1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate procurement action is required to prevent serious economic or other hardship to the County. When, due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Procurement Agent.

a) Emergency commodity purchases of $1,000 or less may be made using petty cash or procurement card, in accordance with Section 4.6 –Petty Cash Purchases.

b) For emergency commodity purchases exceeding $1,000, the requestor will contact the County Procurement Officer or the department Deputy Procurement Agent. The emergency will be described and the County Procurement Officer or Deputy Procurement Agent may, if so authorized, use a procurement card or may issue a contract number for an amount sufficient to resolve the immediate emergency.

c) No later than ten (10) business days from the request date, an approved requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Procurement Agent.

d) The requisition will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.

e) If the emergency occurs during other than normal business hours, the department is authorized to secure the commodities required and contact the County Procurement Officer or Deputy Procurement Agent on the next regular working day for issuance of a contract.

(2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.

§3.1-114 Board Approval – Sole Source

(1) Approval by the Board of Supervisors is required prior to the execution of a Sole Source Commodity Contract which costs more than $250,000 annually or exceeds a five (5) year term. Commodity contracts may not be Sole Sourced to avoid the bidding requirements contained in this Section. Refer to Section 4.5 – Sole Source Requests for additional policy concerning Sole Source purchases.

§3.1-115 Approval of Non-Standard Contract Terms

(1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of the commodity contract that includes non-standard terms in the indemnification contract provisions and/or limits the vendor's liability. This shall not apply to off-the-shelf software products and commodity purchases of $5,000 or less.

(2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of the commodity contract that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions. This shall not apply to off-the-shelf software products and commodity purchases of $5,000 or less.

§3.1-116 Contractor Name/Ownership Changes

(1) Except as provided herein, Board of Supervisors approval is required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another.

(2) Deputy Procurement Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel:

a) There is a change in the contractor company name only, but there is no change in the company's:
   i. ownership or control,
   ii. key staff identified in an existing contract, or
   iii. tax identification (e.g., EIN).

b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Procurement Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.

(3) Upon approval of County Counsel, Deputy Procurement Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.1-117 Indemnification

(1) Except for contracts in which Section 3.1-115 (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

§3.1-118 Insurance

(1) All contractors will provide the Deputy Procurement Agent administering the contract with a certificate of insurance and required endorsements unless such certificate and endorsements are not required as provided in §2.3-102(4) or waived by County's Risk Manager or authorized designee.

(2) For appropriate insurance levels and requirements, see Section 2.3-103.

§3.1-119 Opportunity Buy

(1) An "Opportunity Buy" is a situation where necessary commodities are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:

a) A detailed description of the commodity to be provided by the vendor and an explanation of the cost savings achieved;

b) Why the recommended vendor is the only one capable of providing the required commodities with back-up information included to support the justification;

c) Comparison of the recommended vendor's prices or fees to the general market with price and attach quotes for comparable items provided, if available; and,

(2) County Procurement Officer or designee approval is required for Opportunity Buys exceeding $1,000,000, and an Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.1-120 Federal and State Funding

(1) Should any portion of the funding for a commodities contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.

a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.1-121 Hybrid Contract Definition

(1) A hybrid contract is a contract which consists of multiple contract type purchases. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.

(2) Purchases that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Procurement Agent to determine the appropriate Service or Commodity solicitation process, which shall be documented and made a permanent part of the procurement folder.

(3) If the service portion of a hybrid contract exceeds an annual aggregate cost of $200,000, or the service portion of a sole source hybrid contract exceeds an annual aggregate cost of $75,000 or a five (5) year term, refer to Section 3.3-102 (1) a) and b) of this manual.

§3.1-122 Cash Alternative Purchases

(1) Deputy Procurement Agents are authorized to purchase Cash Alternatives in accordance with the Cash Alternative Procedures outlined in the Procurement Procedures Manual. County departments shall develop and maintain written Departmental Cash Alternative Procedures that are consistent with the Cash Alternative Procedures, and which set forth internal controls for the purchase and distribution of Cash Alternatives including procedures to ensure compliance with applicable tax requirements relating to the distribution of Cash Alternatives.

(2) The purchase of Cash Alternatives in amounts of more than $500 per unit must be approved by the County Procurement Officer or designee, other than the procuring Deputy Procurement Agent, and department head.

(3) Debit cards, such as a prepaid Visa or Mastercard, cannot be purchased as Cash Alternatives without approval of the Board of Supervisors.

§3.1-123 Subcontractors

(1) All contracts for goods and services shall include a contract provision requiring the County's prior express written consent to approve a contractor's proposed use of a subcontractor. DPAs shall conduct the appropriate due diligence and obtain any documentation necessary from a requesting contractor to confirm a subcontractor's qualifications to perform any contract or portion thereof, prior

to approving a contractor's request or submitting the request for Board approval. Board approved contracts shall require Board approval of any subsequent contractor requests to use subcontractors.

(2) If the original solicitation specifically precluded the use of subcontractors, then DPAs shall not consent to any subcontractors.

§3.1-124 Contractor Monitoring

(1) Contract monitoring is the means of providing oversight of the Contract post-procurement and includes contract compliance, deliverables or services, productivity, fiscal responsibility and records maintenance.

(2) The level of contract monitoring varies depending upon the type of commodities or service(s) contracted. Should funding for contracts derive from sources such as federal and/or state funding sources, the monitoring of contractors (including subrecipients to the extent mandated by applicable funding requirements and regulations such as Uniform Guidance) must be conducted in accordance with the applicable regulations and should be specified in the contract.

(3) All contracts for goods and services shall include a provision requiring contractors to remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the contract, and requiring contractors to provide annual confirmation of current and active status through term of the contract. DPAs shall confirm the vendor's current and active status prior to final execution of the contract. During the term of the contract, County shall annually obtain the relevant documentation and confirm the contractor's current and active registration status.

SECTION 3.2

CAPITAL ASSETS

§3.2-101 Definition

(1) Capital Assets are tangible property costing $10,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one (1) year. The Auditor-Controller is responsible for setting the Capital Asset amount and making a Capital Asset determination on questionable items.

§3.2-102 Used Equipment

(1) If opportunities arise to procure used equipment, such equipment may be procured without competitive bidding, provided all the following conditions are met:

a) The equipment being sold is under warranty or, in the case of an "as-is, where-is" purchase, there is an inspection by a qualified party who certifies that the condition of the item is acceptable and adequate for efficient County use.

b) The dealer of the equipment is qualified reputable dealer as verified through reference checks, or the equipment is being purchased from another governmental entity.

c) The selling price of the equipment is less than $100,000, including tax, installation, freight, applicable training, etc.

(2) Justification for the Sole Source purchase of used equipment must be documented and maintained as part of the procurement file.

(3) The procurement of used equipment is not a way to avoid the competitive bidding process for the acquisition of new equipment.

§3.2-103 Board Approval

(1) Unbudgeted Capital Assets:

a) Approval of the Board of Supervisors is required prior to the procurement of unbudgeted Capital Assets which cost more than $50,000 each.

b) Unbudgeted vehicle procurements of any amount require prior Board approval.

(2) Budgeted Capital Assets:

a) Budgeted Capital Assets within the budgeted amount approved by the Board require no further Board approval prior to procurement.

b) Board approval is required for budgeted Capital Assets when the cost exceeds the budgeted amount by more than 10% or $100,000, whichever is less. This requirement shall not apply to budgeted Capital Assets originally budgeted at $50,000 or less when the revised increased cost does not exceed $55,000.

(3) Sole Source Capital Assets:

a) Approval by the Board of Supervisors is required prior to the procurement of a Sole Source Capital Asset costing more than $75,000. Procurements may not be Sole Sourced to avoid the bidding requirements contained in this manual. For additional rules and guidelines, refer to Section 4.5 of this manual.

§3.2-104 Approval of Non-Standard Contract Terms

(1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a Capital Asset contract that includes non-standard terms in the indemnification contract provisions and/or limits vendor's liability.

(2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a Capital Asset contract that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions.

§3.2-105 Solicitation Considerations

(1) Solicitations for Capital Assets shall be written so that critical factors associated with the acquisition shall be considered. These factors may include, but are not necessarily limited to the following:

a) Item capabilities - Will item carry out the functions for which it is being acquired?

b) Size, dimensions - Will item fit within the space where it is to be used?

c) Power requirements - Does the County possess the necessary mechanisms for powering the item as it requires?

d) Safety - Does the item meet all local, state, and federal safety requirements?

e) Pollution - Can the item be used without unnecessarily harming the environment? Does it require special AQMD permits?

f) Certification/licensing Requirements – Does the Capital Asset being purchased require special licensing/certification/training for the operator?

g) Maintenance - Are service and spare parts readily available? Are maintenance contracts available?

h) Life cycle cost - What is the total cost of ownership including initial acquisition cost, cost of operating supplies, cost of maintenance, cost of required space, residual value, etc.?

i) Liability insurance - If the item is being installed by vendor, use the standard insurance requirements, as set forth in Section 2.3-103.

§3.2-106 Vendor Selection

(1) With the exception of Sole Source purchases, selection of vendors for Capital Assets shall be based on the competitive process. Solicitations shall be made as follows:

a) Contracts $10,000 or less over the life of the contract	Minimum of one written quote
b) Contracts $10,000 to $25,000 over the life of the contract	Minimum of two written quotes
c) Contracts above $25,000 over the life of the contract	Written solicitation issued on County's bidding system

(2) Capital Asset purchases that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded purchases.

(3) Awards will be made to the lowest responsive and responsible bidder or, in the case of negotiated procurement, the vendor with the most responsive proposal as determined by the County.

§3.2-107 Public Bid Opening

(1) A public bid opening will be held at a time and place announced in the bid solicitation for purchases exceeding $100,000.

a) The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.

b) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically available immediately after the bids close.

§3.2-108 Retroactive Contract and Amendments/Changes

(1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:

a) Retroactive contracts or contract overruns with a total value of $500 or less that have the approval of the department head.

b) Retroactive contracts or contract overruns that exceed $500 and are $10,000 or less that have the approval of the County Procurement Officer or designee & Chief Financial Officer on the associated requisition.

Retroactive contracts or contract overruns with a total value exceeding $10,000 shall require approval by the Board of Supervisors.

(2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval:

a) Contracts governed by separate rules and regulations that conflict with this policy.

b) Telephone services requests and emergency contracts in any amount.

c) Modifications for computer hardware/software maintenance to add licenses and/or users.

(3) Extra compensation or extra allowance to a Contractor after service has been rendered or a Contract has been entered into and performed in whole or in part are not allowed, pursuant to article XI, section 10 of the California Constitution.

§3.2-109 Indemnification

(1) Except for contracts in which Section 3.2-104 (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

§3.2-110 Insurance

(1) All contractors will provide the Deputy Procurement Agent administering the contract with a certificate of insurance and required endorsements unless such certificate and endorsements are not required as provided in §2.3-102(4) or waived by County's Risk Manager or designee.

(2) For appropriate insurance levels and requirements, see Section 2.3-103.

§3.2-111 Emergencies

(1) Emergencies are defined as those situations where the safety and/or welfare of County residents or employees is at stake and/or immediate procurement action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived, by the County Procurement Officer or Deputy Procurement Agent.

a) For emergency procurement of Capital Assets costing less than $75,000 emergency procedures under §3.1-113, Commodities, shall be followed.

b) When an emergency requiring the acquisition of a Capital Asset exceeding $75,000 arises, the department will first call the CEO to receive budget approval for the procurement; and

c) The County Procurement Officer or department Deputy Procurement Agent will issue a contract for an amount sufficient to resolve the immediate emergency.

d) If the item cost is over $75,000, a requisition with CEO approval shall be submitted to the County Procurement Officer or the Deputy Procurement Agent, as appropriate, within ten (10) working days of the emergency.

e) A memorandum from the department head or designee briefly detailing the emergency situation shall accompany the Procurement Request. This justification should become a permanent part of the procurement file.

(2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.

§3.2-112 Federal and State Funding

(1) Should any portion of the funding for a capital asset contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.

a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.2-113 Opportunity Buy

(1) An "Opportunity Buy" is a situation where necessary capital assets are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:

a) A detailed description of the capital asset to be provided by the vendor and an explanation of the cost savings achieved;

b) Why the recommended vendor is the only one capable of providing the required capital asset with back-up information included to support the justification;

c) Comparison of the recommended vendor's prices or fees to the general market with price and attach quotes for comparable items provided, if available; and,

(2) County Procurement Officer or designee approval is required for Opportunity Buys exceeding Board thresholds as specified in Section 3.2-103 (1) and (2) above. An Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head as soon as possible, after the purchase has been made. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.2-114 Subcontractors

(1) All contracts for goods and services shall include a contract provision requiring the County's prior express written consent to approve a contractor's proposed use of a subcontractor. DPAs shall conduct the appropriate due diligence and obtain any documentation necessary from a requesting contractor to confirm a subcontractor's qualifications to perform any contract or portion thereof, prior to approving a contractor's request or submitting the request for Board approval. Board approved contracts shall require Board approval of any subsequent contractor requests to use subcontractors.

(2) If the original solicitation specifically precluded the use of subcontractors, then DPAs shall not consent to any subcontractors.

§3.2-115 Contractor Monitoring

(1) Contract monitoring is the means of providing oversight of the Contract post-procurement and includes Contract compliance, deliverables or services, productivity, fiscal responsibility and records maintenance.

(2) The level of Contract monitoring varies depending upon the type of commodities or service(s) contracted. Should funding for contracts derive from sources such as federal and/or state funding sources, the monitoring of contractors (including subrecipients to the extent mandated by applicable funding requirements and regulations such as Uniform Guidance) must be conducted in accordance with the applicable regulations and should be specified in the Contract.

(3) All contracts for goods and services shall include a provision requiring contractors to remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the contract, and requiring contractors to provide annual confirmation of current and active status through term of the contract. DPAs shall confirm the vendor's current and active status prior to final execution of the contract. During the term of the contract, County shall annually obtain the relevant documentation and confirm the contractor's current and active registration status.

SECTION 3.3

SERVICE CONTRACTS

§3.3-101 Definition

(1) Service contracts encompass all contracts for services either with or without the furnishing of materials. Included in the definition of service contracts covered in this Section are the following:

a) Architect-Engineer ("A-E") Consultant Services: Services may include but are not necessarily limited to: investigations, report preparation, cost estimating, shop drawing review, CEQA documentation preparation, regulatory permit application and acquisition, archeology, geological and soils analysis, agronomy, limnology, biology, paleontology, material testing and inspection, real estate appraisal, and property acquisition services. Services also may include studies addressing engineering, architecture, facilities management, and environmental issues but **shall not** include design or construction drawings used for public works construction projects.

b) Booth/Table/Exhibit Use Services: A purchase or contract, that is not otherwise subject to Section 3.7 herein, for short-term use of booths, tables or space/room rentals that do not to exceed a cost of $10,000 and a term of use of five (5) days or less procured for County business purposes, including the provision of County services, education, public outreach, and recruitment.

c) Capital Leases (non-real estate): A long-term lease that transfers to the lessee most rights and obligations concerning the asset leased, and usually transfers ownership at the end of the lease.

d) Consultant Service Contracts: Are for those services which are of an advisory nature, which provide a recommended course of action or personal expertise, and which have an end product which is basically a transmittal of information. Consultant service contracts are issued in order to obtain professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required. All consultant service contracts shall contain a provision which prohibits "follow-on" projects that prevent the consultant from performing work related to any recommendations being formulated as a result of the consulting work.

e) Customized Software Maintenance: Software maintenance creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software.

f) Facilities and equipment services: Services which provide maintenance to existing facilities or equipment, including such services as janitorial and grounds maintenance, equipment maintenance and repair, etc. Prevailing wage shall be paid pursuant to Labor Code Section 1720 et seq., when applicable. Registration with the Department of Industrial Relations will be required, when applicable, pursuant to Labor Code Section 1771.1(a) and 1725.5.

g) Human Services: Human Services Contracts include all contracts for services that directly maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility, including food and travel. Included in the definition of Human Services Contracts are services provided in response to or in support of federal, state and/or local service mandates to provide health and human services to a target population.

h) Personnel or employee-related services: Services which provide benefit or assistance directly to employees, including services such as temporary employment, security, etc.

i) Professional Services: Services provided by licensed and/or technically trained professionals, including such services as, data processing, accounting, legal, medical, auditing, information-

technology (IT) related services that may or may not include: customized software/application, installation and implementation services, creation/development, design, implementation and/or integration of customized changes to software that are not included with the price of the software or software maintenance.

j) Revenue Generating Contracts (non-real estate): A contract for contractor-provided services on County premises in which the County does not pay a fee, but instead receives a portion of the revenues that are generated from the services such as vending machines, etc.

(2) Service contracts as defined in, and applied to, this section do not include Architect-Engineer Service Contracts (related to engineering and design of public projects), Public Works Construction Contracts, and Real Estate Contracts. For policies related to Architect-Engineer Service Contracts, refer to Section 3.4. For policies related to Public Works Construction Contracts, refer to Section 3.5. For policies related to Real Estate Contracts, refer to Sections 3.7 and 4.3.1.

§3.3-102 Board Approval

(1) Approval by the Board of Supervisors is required for all service contracts in accordance with the guidelines listed below.

a) Contracts Exceeding $200,000 – Approval by the Board of Supervisors is required for all service contracts and/or revenue generating contracts where for any year of the contract, the annual value to any one contractor exceeds $200,000, in accordance with Government Code Section 25502.5.

b) Sole Source Service Contracts – Approval by the Board of Supervisors shall be required for all Sole Source service contracts that exceed a total annual amount of $75,000 or a five (5) year term. Contracts may not be split to avoid this policy, including proposed successor contracts that contain substantially the same scope of work. Renewal of a Sole Source Service where no changes to the scope or the dollar amount of the contract will not require a new Sole Source approved form. For additional information and guidelines refer to Section 4.5 – Sole Source Requests.

§3.3-103 Approval of Non-Standard Contract Terms

(1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any contract for $200,000 or less that includes non-standard terms in the indemnification contract provisions and/or limits the vendor's liability. This shall not apply to service purchases of $5,000 or less, unless the contract contains an indemnification provision that requires the County to indemnify the vendor.

(2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of a contract for $200,000 or less that includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions. This shall not apply to service purchases of $5,000 or less.

§3.3-104 Contractor Name/Ownership Changes

(1) Except as provided herein, Board of Supervisors approval is required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another.

(2) Deputy Procurement Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel:

a) There is a change in the contractor company name only, but there is no change in the company's:

i. ownership or control,
ii. key staff identified in an existing contract, or
iii. tax identification (e.g., EIN).

b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Procurement Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.

(3) Upon approval of County Counsel, Deputy Procurement Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.3-105 Term

(1) The duration of a service contract will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.

(2) With respect to Board awarded contracts, the initial term of a service contract shall not exceed three (3) years, with a two-year renewable term, unless otherwise approved by the Board.

(3) In no case shall a service contract exceed five (5) years in duration unless the contract is specifically approved by the Board of Supervisors or is extended from the original contract term by one (1) year in accordance with Section 3.3-106 in this manual.

(4) Prior to renewal or extension of an existing contract, the department will document that performance of the contractor has been at least satisfactory.

§3.3-106 Contract Extensions

(1) Service Contracts may be extended up to a five (5) year term without approval by the Board of Supervisors. The extension may be issued by the Deputy Procurement Agent, without Board of Supervisors approval provided there are no monetary increases that cumulatively exceed the Board of Supervisors approval threshold, while complying with solicitation thresholds.

(2) Board and non-Board contract extensions may be issued by the Deputy Procurement Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount) or other material changes to the contract.

§3.3-107 Renewals

(1) Applicable to all service contracts with a value that exceeds $200,000 per year.

a) All renewals are subject to Board of Supervisors approval.

b) Agenda Staff Reports (ASRs) shall be filed on the Board's "Discussion Calendar" in accordance with the Board Rules of Procedure.

c) All service contract renewals shall be stated in the Recommended Action portion of the Agenda Staff Report (ASR) for consideration by the Board.

§3.3-108 Pricing

(1) Service contracts will be written with one of the following methods of pricing:

a) Cost per Task or Total Fixed Price: This is the preferred method of pricing service contracts.

b) Hourly Rate/Time and Materials: If service contracts are priced with an hourly rate, repetitive tasks should be given a fixed rate or "hours per job" guarantee. Materials are to be reimbursed on an actual cost basis unless otherwise justified.

c) Contract Prices Based on Cost Plus: Contracts priced on a "cost plus" fixed fee basis shall have a fixed fee for profit and overhead. Cost plus as a percentage of cost should be avoided whenever possible. Additionally, when compensation is primarily based on cost of labor as well as materials, the County will not use "cost plus percentage of cost" contract pricing without specific approval by the Board of Supervisors.

(2) The method for allowing increases in the unit rates, if any, during the contract period will be stated in the solicitation. Increases may be permitted on a fixed percentage basis to occur during the contract period or may be tied to published index prices, such as the Consumer Price Index.

§3.3-109 Vendor Selection

(1) With the exception of Sole Source service contracts, selection shall be based on the competitive process. Solicitations shall be made as follows:

a) Contracts $75,000 or less over the life of the contract	Minimum of one written quote
b) Contracts above $75,000 over the life of the contract	Written solicitation issued on County's bidding system

(2) Services that are below the solicitation threshold are not required to be competitively bid nor require a sole source justification for award, except as may be required for Federal or State funded procurements.

(3) Awards in Invitation for Bid solicitations will be made to the lowest responsive and responsible bidder as defined in Section 4.2-102 of this manual. In the case of a negotiated procurement, award shall be made to the vendor with the most responsive and responsible proposal as detailed in Section 4.3-114 of this manual.

(4) Consecutive contracts going back three (3) years for purchases that contain substantially the same scope shall not be issued to the same vendor using the written quote(s) solicitation method when the consecutive contracts' cumulative dollar amount exceeds the written solicitation threshold.

§3.3-110 Public Bid Opening

(1) A public bid opening will be held at a time and place announced in the solicitation for the procurement of services exceeding $200,000 annually. The amount of each bid, together with the name of each bidder, shall be recorded and made available for public inspection.

a) In cases where bids are submitted and tabulated electronically, bid openings will be considered public as long as the individual bids are electronically available immediately after the bids close.

§3.3-111 Retroactive Contract and Amendments/Changes

(1) Retroactive contracts or contract overruns are not permitted. If a retroactive contract or contract overrun occurs, it is invalid unless ratified by the Board of Supervisors or unless one of the following exemptions applies:

a) Retroactive contracts or contract overruns with a total value of $500 or less that have the approval of the department head.

b) Retroactive contracts or contract overruns that exceed $500 and are $10,000 or less that have the approval of the County Procurement Officer or designee and Chief Financial Officer on the associated requisition,

Retroactive contracts or contract overruns with a total value exceeding $10,000 shall require approval by the Board of Supervisors.

(2) Retroactive contracts in the following categories shall also be exempt from Board of Supervisors approval;

a) Contracts governed by separate rules and regulations that conflict with this policy.

b) Telephone services requests and emergency contracts in any amount.

c) Modifications for computer hardware/software maintenance to add licenses and/or users.

(3) Extra compensation or extra allowance to a Contractor after service has been rendered or a Contract has been entered into and performed in whole or in part are not allowed, pursuant to article XI, section 10 of the California Constitution.

§3.3-112 Adjustments to Contract Amount

(1) Decreases: The department Deputy Procurement Agents may decrease the amount of a contract without obtaining approval from the Board of Supervisors.

(2) Increases: With respect to non-Board awarded service contracts, cumulative contract increases may not exceed 10% of the original annual contract amount, unless authorized/approved by the County Procurement Officer or designee on the associated requisition. A request to increase the value of a non-Board awarded service contract can be made under the following circumstances:

a) The need for service could not be accurately projected and the percentage of increase does not justify rebidding.

b) An emergency exists which does not permit rebidding.

c) Special economic factors justify a contract increase.

(3) For Board awarded contracts, no increase exceeding the contingency amount will be permitted without approval by the Board of Supervisors.

(4) Exemptions: Subordinate contracts issued against RCAs, and subordinate contracts issued against CPO approved cooperative programs with a total aggregate contract amount below the thresholds requiring approval by the Board of Supervisors, and contracts awarded via informal solicitations (one written quote) will not require approval from the County Procurement Officer or designee.

§3.3-113 Contingency Funds

(1) When requesting approval for award of a service contract from the Board of Supervisors, a contingency amount may also be requested. Justification for this contingency will be presented to the Board of Supervisors in the Agenda Staff Report (ASR) in accordance with the following:

a) The total amount requested shall not exceed a total of 10 percent (10%) of the original amount for the first year of the contract.

b) This amount, if approved by the Board, may be used over the entire term of the contract.

c) Contingencies shall only be used to cover services already provided in the scope of work, or additional services substantially similar to those already provided in the scope of work, as set forth in the contract.

d) The use of the contingency amount is subject to approval requirements established by the County Procurement Officer.

§3.3-114 Multiple Awards

(1) Awards of service contracts may be broken up by individual service required, groups of related services required, or low total bid basis, whichever the County determines to be in its own best interest.

§3.3-115 Incremental Contracting

(1) Contracts shall not be split to avoid approval by the Board of Supervisors or to bypass competitive solicitation requirements.

§3.3-116 Indemnification

(1) Except for contracts in which Section 3.3-103 (1) applies, contractors doing business with the County will indemnify the County against losses, liabilities and/or claims that arise from contractor performance including, but not limited to, patent violations, copyright violations, unauthorized use of materials, wrongful acts, and injuries to persons or property, and any other loss, liability or claim unless stated otherwise in this manual.

§3.3-117 Insurance

(1) All service contractors will provide the Deputy Procurement Agent administering the contract with a certificate of insurance and required endorsements unless such certificate and endorsements are not required as provided in 2.3-102 (4) or waived by the County's Risk Manager or designee.

(2) For appropriate insurance levels and requirements, see Section 2.3-103.

§3.3-118 Bid and Performance Bond

(1) Where appropriate, the County will require bid and performance bonds to be provided. These bonds will guarantee that the contractors will enter into a contract and that the contract will be performed per the contract terms and conditions.

§3.3-119 Liquidated Damages

(1) Liquidated damages clauses are enforceable if:

a) damages are difficult to ascertain or estimate at the time the contract is formed; and

b) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable.

(2) Liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a "reasonable forecast" of the County's actual damages.

(3) Liquidated Damages Clause:

a) It is agreed by and between the Contractor and the County that if this Contract is not fully and completely performed within the terms of the contract, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that Contractor will pay to the County liquidated damages in a set amount for each and every day of delay as set forth in this document.

b) In the event the liquidated damages as set forth herein are not paid by the Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this contract.

c) This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.

d) If Contract is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays cause by the County, the time of performance of this Contract will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension.

e) If this Contract is not fully and completely performed within the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the Contractor a right to extra time for performance.

§3.3-120 Contract Administration

(1) All service contracts will be monitored for efficient performance by the project manager/department designee named in the contract documents. The service(s) to be provided will be clearly stated in the contract and it will be the job of the representative to monitor the contractor's performance to ensure that those services are provided in adherence to all contract requirements and expectations and, where applicable, all funding requirements are satisfied.

a) All contract deficiencies will be noted in writing to the contractor and sent to the County Procurement Officer or Deputy Procurement Agent, as appropriate.

b) No contractor will be paid in full for any service which has not been satisfactorily performed.

§3.3-121 Cancellation

(1) Any service contract may be canceled or terminated by the department Deputy Procurement Agents, as appropriate, without approval by the Board of Supervisors.

§3.3-122 Emergencies

(1) Emergencies are defined as those situations where the welfare of County residents is at stake and/or immediate procurement action is required to prevent serious economic or other hardship to the County. When due to the nature of the emergency, it is not possible or it is impractical to follow competitive bidding requirements, these requirements may be waived by the County Procurement Officer or Deputy Procurement Agent.

a) Process:

i. Emergency service purchases of $1,000 or less may be made using petty cash or procurement card, in accordance with Section 4.6- Petty Cash Purchases.

ii. For emergency service purchases over $1,000 the requestor will contact the County Procurement Officer or appropriate department Deputy Procurement Agent. The emergency will be described and the County Procurement Officer or Deputy Procurement Agent may use a procurement card, when so authorized, or may issue a contract for an amount sufficient to resolve the immediate emergency.

iii. The requestor will ensure and will confirm with the County Procurement Officer or Deputy Procurement Agent that the service contractor carries insurance.

iv. No later than ten (10) working days from the request date, an approved requisition referencing the purchase will be submitted to the County Procurement Officer or Deputy Procurement Agent. This requisition will be accompanied by a memorandum from the department head or designee briefly detailing the emergency situation. The justification will become a permanent part of the procurement file.

v. If the emergency occurs on other than normal working hours, the department is authorized to secure the services required and contact the County Procurement Officer or Deputy Procurement Agent on the next regular business day.

vi. For emergency purchases exceeding $200,000, an Agenda Staff Report will be filed with the Board of Supervisors by the department administering the contract as soon as possible, after the service is performed.

(2) County of Orange Procurement Preference Policy requirement is not applicable to Emergencies.

§3.3-123 Contract Planning and Coordination

(1) The County Procurement Office should evaluate Countywide contract inventories to ensure, where possible, departments are not duplicating efforts and to facilitate collaboration across departments to maximize efficiencies and effectiveness.

§3.3-124 Contracts for Outside Legal Counsel

(1) The Board of Supervisors has sole authority to select outside legal counsel. All department and district requests to employ outside legal counsel (other than CEO/Risk Management counsel and bond counsel) shall be presented to the Board by the Office of County Counsel. The hiring and management of outside legal counsel are governed by the principal policies and procedures titled County of Orange outside counsel policies and procedures adopted by the Board on August 6, 1991, and subsequently amended.

§3.3-125 HIPAA – Business Associate Language

(1) With the passage of the Health Insurance Portability and Accountability Act ("HIPAA") Protected Health Information ("PHI") has become a key legal consideration in the drafting of County contracts for departments subject to the HIPAA rules. For services to be performed in situations where either the County or a contractor under contract with the County are creating or working with PHI, the County approved business associate Sections covering HIPAA activities should be included in the governing contracts. Sections approved for use will be available on the County Procurement Office's intranet website at:

http://intra2k3.ocgov.com/procurement/

§3.3-126 Federal and State Funding

(1) Should any portion of the funding for a services contract be derived from federal and/or state funding sources, the solicitation process and selection of vendors must be conducted in accordance with the applicable federal and/or state regulations. In the event of a contradiction between County policy and federal and/or state requirements, the more restrictive method must be followed.

a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.3-127 Hybrid Contract Definition

(1) A hybrid contract is a contract which consists of multiple contract type procurements. For example, a contract for the purchase of a commodity and a service is considered a hybrid contract. The solicitation process will be based on the portion with the greater amount; however, each situation should be carefully considered and documented.

(2) Procurements that are evenly split between commodity and service should be reviewed on a case-by-case basis by the Deputy Procurement Agent to determine the appropriate solicitation process, which shall be documented and made a permanent part of the procurement folder.

(3) If the service portion of a hybrid contract exceeds an annual aggregate amount in excess of $200,000, refer to Section 3.3-102 (1) a) and b) of this manual.

§3.3-128 County of Orange Procurement Preference Policy Exemption

(1) Solicitations directed at non-profit organizations may be exempt from the County of Orange Procurement Preference Policy with approval of the County Procurement Officer, subject to any funding requirements associated with State or Federally funded contracts.

§3.3-129 Opportunity Buy

(1) An "Opportunity Buy" is a situation where necessary services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product/service to the one being solicited represents significant cost savings to the County. In the event this situation arises, the Department Head or designee shall prepare a written justification in support of the prompt action taken that shall become part of the permanent procurement file. The justification shall include:

a) A detailed description of the services to be provided by the vendor and an explanation of the cost savings achieved;

b) Why the recommended vendor is the only one capable of providing the required services with back-up information included to support the justification;

c) Comparison of the recommended vendor's prices or fees to the general market with price and attach quotes for comparable services provided, if available; and,

(2) County Procurement Officer or designee approval is required for Opportunity Buys exceeding Board thresholds as specified in Section 3.3-102 above. An Agenda Staff Report will be filed with the Board of Supervisors by the appropriate Department Head as soon as possible, after the purchase has been made. The Agenda Staff Report shall include all documentation and justification in support of the purchase.

§3.3-130 Subcontractors

(1) All contracts for goods and services shall include a contract provision requiring the County's prior express written consent to approve a contractor's proposed use of a subcontractor. DPA's shall obtain

any documentation necessary from a requesting contractor to confirm a subcontractor's qualifications to perform any contract or portion thereof, prior to approving a contractor's request or submitting the request for Board approval. Board approved contracts shall require Board approval of any subsequent contractor requests to use subcontractors.

(2) If the original solicitation specifically precluded the use of subcontractors, then DPAs shall not consent to any subcontractors.

§3.3-131 Contractor Monitoring

(1) Contract monitoring is the means of providing oversight of the Contract post-procurement and includes Contract compliance, deliverables or services, productivity, fiscal responsibility and records maintenance.

(2) The level of Contract monitoring varies upon the type of commodities or service(s) contracted. Should funding for contracts derive from sources such as federal and/or state funding sources, the monitoring of contractors (including subrecipients to the extent mandated by applicable funding requirements and regulations such as Uniform Guidance) must be conducted in accordance with the applicable regulations and should be specified in the Contract.

(3) All contracts for goods and services shall include a provision requiring contractors to remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the contract, and requiring contractors to provide annual confirmation of current and active status through term of the contract. DPAs shall confirm the vendor's current and active status prior to final execution of the contract. During the term of the contract, County shall annually obtain the relevant documentation and confirm the contractor's current and active registration status.

SECTION 3.4

ARCHITECT-ENGINEER SERVICE CONTRACTS

§3.4-101 General Responsibilities

(1) State and local law, including Public Contract Code Section 22034, Government Code Section 25502.5, Orange County Codified Ordinances Section 1-8-11 *et seq.*, and Orange County Codified Ordinances Section 1-4-12 *et* seq., provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide architectural and engineering services within specified dollar limits. Unless otherwise specified, all references in this section to "Director" shall mean the Director of OC Public Works, Sheriff-Coroner, John Wayne Airport or those qualified County officials or department designees identified by the Director of OC Public Works.

a) The employees designated by the Director to procure A-E service contracts and public works construction contracts shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Procurement Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.

b) The Deputy Procurement Agents shall procure A-E contracts and public works construction contracts at the direction of the Director or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with Sections 3.4, 3.5 and 3.6.

(2) Notwithstanding the Architect-Engineer (A-E) services as defined in Section 3.3 above, all other A-E service contracts, including those not requiring Board of Supervisors approval, shall be solicited and executed by the Director of OC Public Works, Sheriff-Coroner or those qualified County officials or department designees identified by the Director of OC Public Works, or the Sheriff-Coroner to solicit and execute A-E service contracts in accordance with this CPM, Resolutions of the Board of Supervisors and applicable law.

(3) It shall be the duty of the Director to procure all A-E service contracts and public works construction contracts and handle related protests and appeals, for the County of Orange, its agencies and departments, and the Orange County Flood Control District, and any other public entity that elects to adopt this section of the CPM. All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. If the Sheriff-Coroner determines it is in the best interests of the County for the Director of OC Public Works to procure a particular contract or type of contract, the Director of OC Public Works shall have the authority to procure such contracts.

(4) Although the Director has the responsibility to prepare and procure design and construction contracts, the contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director throughout design and construction, inspections, contract compliance, and payment processing; and working with the Director to identify the department's roles and responsibilities for each project.

§3.4-102 Definition

(1) Architect-Engineer (A-E) services for the purposes herein shall mean those services set forth in Government Code Section 4525, subdivisions (d), (e), and (f), include but are not limited to: architectural, landscape architectural, engineering, environmental, land surveying services, and

construction project management as well as incidental services that members of these professions may logically or justifiably perform. Environmental services are further defined to mean those services performed in connection with project development and permit processing that facilitates compliance with state and federal environmental laws.

(2) Services which are considered A-E services may include but are not limited to: investigations; design, plan and specification development; report preparation; cost estimation; shop drawing preparation and review; construction supervision; land survey; CEQA documentation preparation; and regulatory permit application preparation and permit acquisition.

(3) A-E services may also include other related services, including, but not limited to: archeology, geological and soils engineering, agronomy, limnology, biology, paleontology, construction claims consulting, material testing and inspection, real estate appraisal, and property acquisition services.

(4) If the service provided is a specialized service and performed by private architectural, landscape, engineering, environmental, land surveying, or construction project management, the contract should adhere to the procurement requirements set forth in this section.

§3.4-103 Statute

(1) Government Code Section 4525 *et seq.* (Mini-Brooks Act) governs contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms. These statutes establish a Qualifications-Based Selection (QBS) method that public agencies in California must use to contract for professional services. This method requires that such services be engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price. Accordingly, public agencies may not utilize competitive bidding for such services, except in the limited instances where the State or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest (Government Code §4529). In addition, the procedures adopted to implement the Mini-Brooks Act must assure maximum participation of small business firms as defined in Government Code Section 14837.

§3.4-104 Conflicts of Interest

The acceptance of submittals and execution of contracts with A-E firms are governed by the following restrictions:

(1) An A-E entity representing a private sector client with an interest in a County project may not also represent the County on the same project; and

(2) Notwithstanding Paragraph (1), an A-E entity may serve in both design and construction support roles on a given project if those roles were contemplated as part of the same contract.

(3) In most cases, an A-E entity that prepared design documents, including plans, specifications, cost estimates and reports, for a given project may not bid on that project as a construction contractor or construction manager. This general prohibition extends to sub-consultants of the prime A-E entity. However, an A-E, or its sub-consultants, that provided limited pre-design phase work to assist with scoping a project for bid need not be automatically excluded from bidding on the design-phase work, provided that all of the following conditions are met:

a) The A-E in question does not gain a competitive advantage over other bidders, and is not privy to confidential information, due to its pre-design phase services;

b) The A-E in question did not assist in preparing the actual bid documents;

c) The A-E in question is not involved in evaluating proposals for design-phases services and is not assisting the County in that evaluation; and

d) No County personnel or contractors who worked with the A-E in question on pre-design phase services are members of the panel evaluating submissions for design-phase work.

§3.4-105 Board of Supervisors Approval

(1) "In Counties having a population of 200,000 or more, the Board may authorize the procurement agent to engage independent contractors to perform services for the County or County officers, with or without the furnishing of material, when the annual aggregate cost does not exceed two hundred thousand dollars ($200,000)." Government Code Section 25502.5. Therefore, Board of Supervisor approval is required when the annual aggregate cost exceeds $200,000.

(2) Approval by the Board of Supervisors is required for all sole source A-E Service contracts that exceed a total annual amount of $75,000 or a five-year consecutive term, inclusive of any amendments, regardless of dollar amount.

§3.4-106 Contractor or Firm Name/Ownership Changes

(1) Except as provided herein, Board of Supervisors approval is required for Board awarded contracts where there is a change in a contractor's ownership or control resulting in the assignment of rights and responsibilities from one entity to another.

(2) Deputy Procurement Agents are authorized to approve the following changes to Board awarded contracts in the absence of a novation or other release from liability, and upon approval of County Counsel:

a) There is a change in the contractor company name only, but there is no change in the company's:

i. ownership or control,

ii. key staff identified in an existing contract, or

iii. tax identification (e.g., EIN).

b) There is a proposed assignment of the existing Board awarded contract to a different legal entity based on bankruptcy, merger, sale of the company (as opposed to a mere sale or acquisition of assets), restructuring or dissolution, and the Deputy Procurement Agent has determined that the proposed assignee is qualified to perform according to the terms of the contract and original solicitation requirements and any key staff identified in the contract remain unchanged.

(3) Upon approval of County Counsel, Deputy Procurement Agents are authorized to approve a change in contractor name or ownership for non-Board awarded contracts.

§3.4-107 Term

(1) If the A-E services to be completed under a given contract are related to a specific project, the contract term shall be based upon a reasonable estimate of time required for the project. This estimate shall be made by County staff and shall be subject to negotiation with the A-E entity.

(2) If the A-E services to be completed are not project-specific, the initial term of the contract term shall not exceed three years, unless otherwise approved by the Board of Supervisors.

(3) Notwithstanding the provisions of Paragraph (2) above, contracts for A-E services that are not project-specific and were not required to be awarded by the Board of Supervisors, the term of such contracts shall not exceed three ~~five (5~~3) years, unless otherwise extended in accordance with Section 3.4-112.

§3.4-108 Firm Selection Methods

Selection shall be based on a competitive process with the exception of those covered in Section 5, below. The method used depends upon the scope of work, the services required, the size of the project or potential projects, the complexity of projects, and the time available for selection. A-E services as defined in this section shall not include a DVBE preference. The Director or designee has the discretion to choose which selection method will be utilized. The A-E procurement methods are:

(1) Request for Qualifications:

The Request for Qualifications (RFQ) method is used primarily for establishing capacity contracts through a qualification-based selection of A-E services when future services are necessary from numerous firms for an undefined project scope of services as required by A-Es of the same or similar discipline. An RFQ will be advertised and firms will submit a Statement of Qualifications (SOQ).

a) Establishment of the Qualified Vendor List and On-Call Contracts

The firm is required to submit an SOQ in response to an RFQ. A minimum score is established as a pass point for respondents to qualify for inclusion in the Qualified Vendor List (QVL). An evaluation panel scores the respondents' SOQs with all responsive SOQs meeting the minimum pass point, those who meet the minimum will be included in the QVL. The highest scored respondents may, at the discretion of the evaluation panel and based on the County needs, be invited for interviews for determining which firms will be recommended for on-call contracts with a maximum, not to exceed amount of $3,000,000. The amount shall include a justification of anticipated work, with an additional 20% for unforeseen work. ~~specific dollar amounts~~. The Director may use the QVL for various services as required. The QVL ~~is~~ ~~typically~~ will be solicited ~~at least once~~ every three ~~to five~~ years to ~~give~~ allow additional firms an opportunity to participate. At the time A-E services are required:

i. For contracts up to an annual aggregate cost of $200,000, a contract may be issued to a QVL firm by negotiating the fee and scope of work, or a task order may be issued against an existing on-call contract awarded from an RFQ.

ii. Contracts over an annual aggregate cost of $200,000 per year may also be awarded to a QVL firm, by negotiated contract, however, Board of Supervisors approval will be required.

iii. For services with an annual aggregate cost of over $200,000 a contract task order may be issued against an existing on-call contract awarded from an RFQ with a maximum not to exceed amount of $1,000,000 without further Board approval.

b) Additional Use of Qualified Vendor List

The QVL may also be utilized as the first step of the two-step solicitation process defined in Subsection (4), below. A request to submit proposals on a specific scope of work can be sent to all firms on the QVL and the proposals will be evaluated based on the established criteria set forth in the request.

(2) Request for Proposals

The Request for Proposals (RFP) method is used for projects with a defined scope, such as a one-time well defined project, or for repetitive services with a defined scope. In this method, firms may be required to submit a technical proposal and may be required to submit a price proposal. Proposals by all firms are evaluated by an evaluation panel based on criteria outlined in the RFP. The evaluation panel scores the proposals. The preliminary scores will be tallied and included on the consolidated score sheets. An additional tallied calculation will be conducted with the highest and lowest panelist scores eliminated. The results of this calculation shall be included in the

consolidated score sheet as the final score. Final price negotiations may begin with the firm having the highest evaluation scores. The contract may be awarded to one firm for project specific services or for repetitive services that may be required over the term of the contract. The selection and award of these contracts will require approval by the Board of Supervisors when exceeding the thresholds in Section 3.4-105.

(3) Request for Qualifications/Request for Proposals (Two-Step)

The Request for Qualifications/Request for Proposals (RFQ/RFP) method is generally used for larger projects and when the scope of work is complex or unusual or where innovative approaches to the project may be of value. This method requires a firm to submit an SOQ in response to an RFQ. Responding submittals are scored by an evaluation panel, which then prepares a list of the most qualified firms. Those most qualified firms are then invited to respond to an RFP issued by the County. Submitted proposals are then evaluated by an evaluation panel based on the criteria outlined in the RFP and the highest ranked firm is recommended for award to the Board of Supervisors.

(4) Competitive Bidding

If the services needed are of a technical nature, well defined, and involve only limited professional judgment, the Invitation for Bid (IFB) process is allowed. Examples of where the IFB process may be appropriate include but are not limited to: drafting of as-built or record drawings, drafting of standard plans, certain laboratory testing, and certain survey services. All awards resulting in a contractor receiving more than an aggregate amount of $200,000 per year of non-Board approved contracts will require Board of Supervisors approval.

(5) Sole Source Contracts:

a) "Sole source contracts" are contracts that are excused from competitive bidding when (1) the service requested is proprietary, or (2) the County's business needs require expeditious award of a contract without competitive bidding. Approval by the Board of Supervisors is required for award of all sole source contracts that exceed an annual amount of $75,000 or a three ~~five~~ (~~5~~3) year consecutive term (Note: firms that are listed on a current Qualified Vendor List have participated in the competitive bidding process, and do not require sole source justification for contract award. However, contracts awarded from a Qualified Vendor List may still require approval by the Board of Supervisors if they exceed the thresholds in Government Code § 25502.5).

(6) One-Time Contracts:

a) In such cases where firms from an existing Qualified Vendor List cannot be utilized, contracts that do not exceed $75,000 are considered "one-time" contracts and are not required to be competitively bid nor require a sole source justification for award. Alternate submittals should be obtained to ensure the County has validated firm qualifications and competitive pricing.

§3.4-109 Guidelines for Selecting Firms from Established Contract Lists

(1) For multiple award contracts, the following factors are to be utilized prior to deciding which A-E firm will be requested to perform the necessary services:

a) **Expertise:** Applicable expertise of the firm to best perform the specific scope of the services identified.

b) **Capacity:** Review of the firm's necessary staff and equipment availability to perform the specific scope of services identified within the County's requested time period.

c) **Price:** Review of the estimated level of effort and resulting cost to complete the services identified.

d) **Utilization:** When the above factors are substantially the same, and in the case of equivalent costs for identified services, the County may consider the amount of work each firm has previously performed under the current contract.

e) **Performance:** If poor performance becomes an issue for a specific firm, that firm may receive fewer requests for identified services to protect the County from resulting quality or safety issues.

§3.4-110 Quarterly Usage Report

(1) A quarterly usage report from the previous quarter will be submitted by the Director to the Board of Supervisors for all On-Call Contracts, via a Board Memo.

§3.4-111 Amendments

(1) Within the limited authority granted by the Board of Supervisors, the Director or Director's designee may amend the contract allowing additional work that is related to, and is of a similar nature to, the original scope, as long as the additional work does not exceed the value of the contract approved by the Board of Supervisors.

(2) If an increase to an A-E service contract is necessary, the estimated not-to-exceed amount will be agreed upon in writing before beginning the additional work.

(3) If an A-E service contract has not been approved by the Board of Supervisors, any change to the Contract that increases the annual aggregate amount beyond $200,000 must be approved by the Board of Supervisors.

(4) Subject to restrictions set forth in Paragraph (3) above, increases of the A-E service contract amount for services within a contract's existing scope of work may be granted by the Director or Director's designee without Board of Supervisor's approval where the increased amount does not exceed 25 percent of the existing contract price or $200,000 annually, whichever is less.

(5) Amendments to an A-E service contract exceeding the Director's authority as described above must be submitted to the Board of Supervisors for approval.

(6) Amendments to an A-E service contract require Board of Supervisors approval when there is a major change in the scope of the contract or the change would result in a major delay that significantly differs from the original period of performance as agreed upon in the contract.

§3.4-112 Extensions

(1) Notwithstanding Section 3.4-111, at the Director's discretion, with the concurrence of County Counsel and for the sole purpose of completing work already commenced, the Director may extend the term of a Board-awarded or non-Board awarded A-E service contract for a period of not more than one (1) year so long as there is no increase in cost to the County, change in the scope of work, or any other material change to the contract.

§3.4-113 Insurance

All recommendations for award of a contract for A-E services shall include information by the appropriate department indicating that either:

(1) Professional liability insurance is required, County's professional liability insurance coverage requirements have been met by the A-E firm; or

(2) Good cause exists to allow the A-E firm to be exempt from the County's liability insurance requirements, with an explanation justifying the exemption.

§3.4-114 State and Federal Grant Projects

(1) All applicable State or Federal Regulations will be followed for projects involving State or Federal grants. Standard County contract language and procurement documents may be modified as necessary to meet the eligibility requirements for State or Federal programs.

a) On federally funded projects, DPAs will be required to consult the System for Award Management (SAM) at SAM.gov to comply with funding source requirements.

§3.4-115 Prevailing Wage

(1) Construction-related work performed under A-E service contracts may meet the definition of "public works" under Labor Code § 1720 et seq. Contracts for A-E services shall include provisions for prevailing wages where mandated by law. Registration with the Department of Industrial Relations will be required, when applicable, pursuant to Labor Code Section 1771.1(a) and 1725.5.

SECTION 3.5

PUBLIC WORKS CONSTRUCTION CONTRACTS

§3.5-101 General Responsibilities

(1) State and local law, including Public Contract Code Section 22034, Government Code Section 25502.5, Orange County Codified Ordinances Section 1-8-11 *et seq.*, and Orange County Codified Ordinances Section 1-4-12 *et* seq., provide for delegation of authority by the Board of Supervisors to appropriate officials to engage contractors to provide public works construction projects within specified dollar limits. Unless otherwise specified, all references in this section to "Director" shall mean the Director of OC Public Works, Sheriff-Coroner, John Wayne Airport or those qualified County officials or department designees identified by the Director of OC Public Works. "Director" shall also mean the John Wayne Airport Director for purposes of procurement of one-time public works projects of $60,000 or less, or the amounts provided by Public Contract Code Section 22032(a) and for the procurement and utilization of Job Order Contracts pursuant to §3.5-114 below.

a) The employees designated by the Director to procure A-E service contracts and public works construction contracts, shall be trained under the direction of the County Procurement Officer, adhere to the methods, policies and procedures established by the County Procurement Officer and deputized as Deputy Procurement Agents to exercise the authority delegated to the County Procurement Officer by the Board of Supervisors as authorized by law.

b) The Deputy Procurement Agents shall procure A-E contracts and public works construction contracts at the direction of the Director or his or her designee(s), including overseeing the processes for the selection of architects, engineers, and construction contractors, entering into design and construction contracts on behalf of the County, and handling related protests and appeals, as allowed by statute and in accordance with Sections 3.4, 3.5 and 3.6.

(2) Director or designees shall pursue project delivery methods in accordance with the Public Contract Code and methods available through agreements with other governing entities (for example, via a Joint Powers Authority) in order to obtain cost savings for or limit liability of the County.

(3) The Director or designees shall have the authority to issue change orders. Changes shall not exceed the limits as stated in Public Contract Code Section 20142. The Board of Supervisors may also delegate additional change order authority to individual officials and their designees when approving specific contracts.

(4) The contracting department is responsible for: identifying the scope of the project; budgeting and funding of the project, including and ensuring the project meets any applicable requirements relating to the funding source; providing support to the Director or designee throughout design and construction, inspections, contract compliance, and payment processing; and working with the Director or designee to identify the department's roles and responsibilities for each project.

§3.5-102 Definition

(1) As used in this CPM, "public works," "public works contract", "public works construction contract" or "public works project" shall share the same meaning as "public project" as defined in Public Contract Code Section 22002(c). As of the publication of this CPM, "public project" is defined as:

a) Public works contract or public works project means any of the following:

i. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds;

ii. Painting or repainting of any publicly owned, leased, or operated facility.

b) "Maintenance work" as defined in Public Contract Code Section 22002(d) is not a public works contract for the purposes of this CPM. Maintenance work includes all of the following:

i. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose;

ii. Minor repainting;

iii. Resurfacing of streets and highways at less than one inch;

iv. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; and

v. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

(2) Prevailing wage shall be paid pursuant to Labor Code Sections 1720 *et seq.*

§3.5-103 Purpose and Scope

(1) The purpose of this section is to provide guidelines for the solicitation and procurement of public works contracts. The scope of this section covers all public works contracts issued by all departments and agencies under the budgetary jurisdiction of the Board of Supervisors.

§3.5-104 Statute

(1) Public works contracts shall be issued in accordance with the provisions of the Public Contract Code Sections 22000 *et seq*., also known as the Uniform Public Construction Cost Accounting Act (the Act), and on forms approved for use by County Counsel.

(2) The provisions of the Act relative to bidding procedures supersede the procedures contained within the code that would otherwise apply to specific projects or public entities.

(3) Amendments or revisions to the code sections affecting this policy and resulting procedures may be directly incorporated into this CPM when enacted by the California Legislature without further action of the Board of Supervisors.

§3.5-105 Contract Methodology

(1) On projects with a total value of ~~$60~~75,000 or less, or the amount provided by Public Contract Code Section 22032(a), the County may complete the work pursuant to Public Contract Code Section 22032(a) utilizing the employees of a public agency by force account, through a negotiated contract, or by purchase order.

§3.5-106 Design-Bid-Build

(1) The Design-Bid-Build method splits construction projects into three (3) distinct phases: (1) design, (2) solicitation and (3) construction. During the design phase, the local agency prepares detailed project plans and specifications using its own employees or by hiring outside architects and engineers, as specified in Section 3. The solicitation and construction phases are specified within this Section.

(2) Public Contract Code Sections 20100 *et seq*. delineates the requirements and procedures that local

officials must follow when awarding public works contracts.

(3) The County of Orange utilizes the Design-Bid-Build method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract. When using this method, it is required to utilize the prequalification process per Sections 3.5-115 through 3.5-118.

§3.5-107 Invitation for Bid (IFB) Process

(1) Public works contracts with a value of $2200,000 or less, or the amount provided by Public Contract Code Section 22032(c), may be procured by using informal bidding procedures as set forth in Public Contract Code Section 22032 and Orange County Codified Ordinances 1-8-10 through 1-8-14.

(2) Unless the product or service is proprietary, all contracts with a value of between $6075,000 and $2200,000 or less, or those amounts provided by Public Contract Code Section 22032, shall be selected using the following informal bidding procedures:

a) The Director shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the Director.

b) All contractors on the list for the category of work being bid or all construction trade journals specified in Public Contract Code Section 22036, or both, shall be mailed or emailed a notice inviting informal bids unless the product or service is proprietary.

c) All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten (10) calendar days before bids are due.

d) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.

e) If all bids received are in excess of $2200,000, the Board of Supervisors may, by adoption of a resolution by a four-fifths vote, award the contract, at $235,000212,500 or less, to the lowest responsible bidder, if it determines the cost estimate of the agency or department was reasonable. These limits shall be equal to the amounts provided by Public Contract Code Section 22034(d) if such amounts are higher than those found herein.

(3) The Director or designee shall approve plans, specifications, working details for its public works projects, and shall issue contracts for all public works contracts with a value of $2200,000 or less.

(4) Regarding public works contracts with a value of more than $7560,000, or the amount provided by Public Contract Code Section 22032(a), which are not Construction Manager at-Risk or Design-Build contracts, the County must award each contract to the lowest responsive, responsible bidder, except under one of the following circumstances:

a) The County may award the contract to the bidder of its choice if the two lowest bids are equal per Public Contract Code 22038(b).

b) The County may reject any bids presented, furnish a written notice to the apparent low bidder and then:

i. Abandon the advertised public works project or re-advertise for bids in the manner described in the Act per Public Contract Code Section 22038(a)(1); or

ii. Declare, by passage of a resolution with four-fifths approval of the Board of Supervisors, that the work can be performed more economically by employees of the County, and

have the project performed by force account which is work ordered on a construction project without an existing contract on its cost, and performed with the understanding that the contractor will bill the owner according to the cost of labor, materials, and equipment, plus a certain percentage for overhead and profit.

c) If no bids are received by formal or informal bid procedure, the County may have the work performed by employees of the County by force account or negotiated contract in accordance with Public Contract Code Section 22038(c).

(5) Public works contracts valued at over $2200,000, or over the amount provided by Public Contract Code Section 22032(c), shall be solicited using formal bid procedures as provided by Public Contract Code 22037. The project, plans, and specifications shall be adopted by the Board of Supervisors, unless delegated. The invitation for bids shall be authorized by the Board of Supervisors, unless delegated, and advertised by the Director or designee. The contract shall be awarded by the Board of Supervisors. The approved contract shall be executed by the Board of Supervisors unless the authority has been clearly delegated and authorized to others by the Board of Supervisors.

(6) Emergency projects shall be performed in accordance with Public Contract Code Section 22035 or 22050, as applicable.

§3.5-108 Change Orders

(1) The Director or designee may approve contract cost increases limited to:

a) $5,000 per change for contracts up to $50,000;

b) 10 percent of the original contract amount per change for contracts from $50,000 to $250,000; and

c) $25,000 per change for contracts in excess of $250,000, plus 5 percent of the original contract amount in excess of $250,000 up to a total maximum amount of $210,000 in accordance with Public Contract Code Section 20142(b).

(2) Changes in excess of the limits specified above require Board of Supervisors approval.

(3) Any material change that significantly alters the contract scope of work will require Board of Supervisors approval. Reallocation of funds from one item of work to another with zero net change in the contract amount only requires Board of Supervisors approval where the character of the work in each item is significantly changed from the original scope.

(4) The Director or designee shall adhere to County procedures for:

a) Reviewing change requests;

b) Negotiating change order with the contractor;

c) Obtaining legal review and approval of change orders, where appropriate; and

d) Preparing written documentation on change orders.

§3.5-109 State and Federal Grant Projects

(1) All applicable State or Federal Regulations will be followed for projects involving State or Federal grants. Standard County contract language and procurement documents may be modified as necessary to meet the eligibility requirements for State or Federal programs.

a) On federally funded projects, DPAs will be required to consult the System for Award

Management (SAM) at SAM.gov to comply with funding source requirements.

§3.5-110 Alternate Project Delivery Methods

(1) Alternate Project Delivery Methods shall include Design-Build (DB), Progressive Design-Build (PDB), Construction Manager at-Risk (CMAR), and Job Order Contract (JOC).

(2) It is the policy of the County of Orange to solicit in full and open competition and award contracts that are consistent with the nature and requirements of the specifications or services to be procured utilizing the most efficient and effective project delivery method.

(3) The purpose of this section is to provide an overview of the County's options and alternate project delivery methods of contracting for construction, architectural, engineering, and construction-related services. The scope of this section covers Architect-Engineering (A-E) service contracts and/or public works construction contracts.

(4) This section establishes the available options and applicable statutory provisions for alternate project delivery methods for utilization by each County department. Alternate project delivery methods involve utilizing qualifications as the primary criteria for selection of construction services as an "alternate" to a price-based selection (or low bid/Design-Bid-Build).

§3.5-111 Design-Build

(1) Design-Build (DB) is a qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS and pursuant to statute, the contract is awarded either to the lowest responsible bidder or by best value to a single entity known as the DB Entity. In contrast to Design-Bid-Build, DB relies on a single point of responsibility contract and is used to minimize risks for the project owner and to shorten the delivery schedule by overlapping the design phase and construction phase of a project.

(2) Chapter 4 commencing with Public Contract Code Section 22160 provides the general authority for DB procurement by local agencies. With Board of Supervisors approval, the County may use DB contracts for public works projects in excess of $1,000,000, except for projects on the state highway system, and may award such contracts either to the lowest responsible bidder or by best value. Best value means a value determined by objective criteria related to price, features, functions, life- cycle costs, experience, and past performance.

(3) Public Contract Code Section 22161(g)(1) defines "project" for the purposes of DB procurement as the construction of a building or buildings and improvements directly related to the construction of a building or buildings, county sanitation wastewater treatment facilities, and park and recreational facilities, but does not include the construction of other infrastructure, including, but not limited to, streets and highways, public rail transit, or water resources facilities and infrastructure. For a county that operates wastewater facilities, solid waste management facilities, or water recycling facilities, "project" also includes those facilities.

(4) Unless subsequently amended, Public Contract Code Section 22169 provides that the statutes authorizing DB contracting are repealed as of January 1, 2025.

(5) Pursuant to Public Contract Code Section 22162.6, in addition to those projects permitted to be delivered by DB under Public Contract Code Section 22161(g)(1), DB contracts may also be used to deliver the following types of projects in Orange County:

a) Flood protection improvements

b) Harbor and beach improvements

c) Bikeway improvements

The County is limited to no more than one (1) DB project per year valued in excess of $5,000,000 of the types listed in Subsections (a-c) above. Public Contract Code Section 22162.6(c).

(6) Pursuant to Public Contract Code Section 22162.6, in addition to the requirements set forth in Section 22164, for a project authorized under Section (5) above, the County shall be responsible for the performance of, and County employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The County shall also be the responsible agency for, and County employees in Orange County Public Works may perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the County of Orange.

(7) Orange County Flood Control District may use the Design-Build project delivery method to design, build and perform projects for flood protection improvements. Public Contract Code Section 22162.7(a). The District may perform no more than twelve (12) such projects with a dollar value greater than $5 million prior to January 1, 2025. Public Contract Code Section 22162.7(c).

(8) Pursuant to Public Contract Code Section 22162.7, in addition to the requirements set forth in Section 22164, for a project authorized under Section (7) above, the Orange County Flood Control District shall be responsible for the performance of, and County employees in Orange County Public Works may perform, project development services, including performance specifications, preliminary engineering, procurement services and the preparation of project reports, and construction inspection services, excluding specialty bridge inspections. The County shall also be the responsible agency for, and County employees in Orange County Public Works may perform, the preparation of documents that may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering quality of materials, equipment, and workmanship, preliminary plans, and any other information deemed necessary to describe adequately the needs of the Orange County Flood Control District.

(9) The DB method of project delivery affords a more collaborative approach, which may provide benefits, such as reducing project cost, expediting project completion, or providing design features, not achievable through the design-bid-build process. In addition, DB may yield cost efficiencies by shifting certain liability and risk for cost containment and project completion with the design-builder.

(10) DB projects must progress in a four-step process: Scope Development, Request for Qualification of DB Entities, Requests for Proposal, and Evaluation of Proposals and Selection of DB Entities:

a) **Scope Development**
The County prepares a set of documents defining the scope of the project, generally called performance specifications and plans. These performance specifications and any plans shall be prepared by a design professional duly licensed and registered in California. If the County retains an architect or engineer to assist in the development of the scope or other project-specific documents for a design-build project, that architect or engineer is not eligible to participate in the preparation of a submittal with any DB Entity for that project.

b) **Request for Qualification (RFQ) Process**
When utilizing DB, the County shall initially use the RFQ process to identify the most qualified respondents. Only those entities that are selected through RFQ process will be allowed to submit proposals in response to the County's subsequent DB Request for Proposal. Pursuant to Public Contract Code Section 22164, the RFQ must include:

i. Identification of the basic scope and needs of the project or contract;

ii. The expected cost range;

iii. Methodology that will be used to evaluate the Statement of Qualifications (SOQ) and the procedure for final selection of the DB Entity;

iv. Significant factors that the agency expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price related factors; and,

v. Any other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity.

c) **Request for Proposal (RFP) Process**

Based on the performance specifications and plans, the County shall prepare an RFP inviting those respondents identified as most qualified through the RFQ process to submit competitive sealed proposals. Pursuant to Public Contract Code Section 22164(d), the RFP must include:

i. The basic scope and needs of the project, the estimated cost of the project, and other information deemed necessary by the County to inform interested parties of the opportunity;

ii. The methodology that will be used by the County to evaluate proposals, specifically if the contract will be awarded to the lowest responsive, responsible respondent or whether it will be awarded based on best-value and other criteria, and significant objective factors that the County reasonably expects to consider in evaluating proposals, including cost or price and non-price-related factors; and

iii. The relative importance of weight assigned to each criteria specifically whether evaluation factors other than cost or price are significantly more than, approximately equal to, or less important than cost or price.

If the County reserves the right to hold negotiations with respondents, it must specify as such in the RFP and must include applicable rules and procedures to be observed by the County to ensure that any negotiations are conducted in good faith.

d) **Evaluation of Proposals and Selection**

Final selection of the DB Entity may be based on either a competitive bidding process resulting in lump-sum bids, with the award being made to the lowest responsible respondent, or based upon best value and other criteria. When the best-value method is selected, competitive proposals must be evaluated using only the criteria and selection procedures identified in the RFP and shall progress as specified by Public Contract Code Section 22164(f). Proposals shall be evaluated by using only the criteria and selection procedures identified in the RFP. Consideration must be given to each of the following: price, technical design, construction experience, life-cycle costs for at least 15 years, skilled labor force availability, and acceptable safety record.

Once the evaluation is complete, the responsive respondents are scored and the recommendation of award of the highest ranked respondent whose proposal is determined and documented to be most advantageous is made to the Board of Supervisors.

If the County chooses to reserve the right to hold discussions or negotiations with responsive respondents, such right will be specified in the RFP. Applicable rules and procedures to be observed by the County will be published separately or incorporated into the RFP to ensure that any discussions or negotiations are conducted in good faith.

Pursuant to Public Contract Code Section 22167, if the County elects to award a DB contract, retention proceeds withheld by the County from the DB Entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids per Public Contract Code.

§3.5-112 Progressive Design-Build

(1) Progressive Design-Build (PDB) a project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest feasible stage of the project. The contract is awarded based on best value to a single entity known as the design-build entity (DBE). The Guaranteed Maximum Price (GMP) developed using this delivery process should better reflect the actual cost to construct the project.

(2) Chapters 4.1 and 4.7 commencing with Public Contract Code Sections 22170 and 22185, respectively, provide the general authority for PDB procurement by local agencies. With Board of Supervisors approval, the County may use PDB contracts for public works projects subject to certain conditions and must award such contracts using a best value determination. Best value means a value determined by objective criteria that may include, but are not limited to, price, features, function, life-cycle costs, experience, and past performance.

(3) Section 22170(d) defines "design-build project" for the purposes of PDB procurement under Chapter 4.1 as "any project that treats, pumps, stores, or conveys water, wastewater, recycled water, advanced treated water, or supporting facilities using the progressive design-build construction procurement process." Section 22171 permits a local agency to procure PDB contracts and use the PDB contracting process for up to 15 public works projects in excess of five million dollars ($5,000,000) for each project.

(4) Public Contract Code Section 22174 provides that the statutes authorizing PDB contracting under Chapter 4.1 are repealed as of January 1, 2029.

(5) Section 22185(d)(1) defines "design-build project" for the purposes of PDB procurement under Chapter 4.7 as "any project using the progressive design-build construction procurement process described in this chapter, but does not include projects on state-owned or state-operated facilities." Section 22185.1 permits a local agency to procure PDB contracts and use the PDB contracting process for up to 15 public works projects in excess of five million dollars ($5,000,000) for each project.

(6) Public Contract Code Section 22185.11 provides that the statutes authorizing PDB contracting under Chapter 4.7 are repealed as of January 1, 2030.

(7) PDB projects must progress in a three-step process: Scope Development, Request for Qualifications, and Evaluation of Proposals and Selection of DB Entities:

a) **Scope Development**

The County prepares a set of documents defining the scope of the project, generally called performance specifications and plans. These performance specifications and any plans shall be prepared by a design professional duly licensed and registered in California. If the County retains an architect or engineer to assist in the development of the scope or other project-specific documents for a design-build project, that architect or engineer is not eligible to participate in the preparation of a submittal with any PDB entity for that project. The performance specifications and plans shall include documentation of the size, type, and desired design character of the project and any other information deemed necessary to describe adequately the local agency's needs, and any other information deemed necessary by the County.

b) **Request for Qualification (RFQ) Process**

When utilizing PDB, the County shall use the RFQ process to select the DBE to execute the project. The RFQ must include:

i. The performance specifications and plans as described above;
ii. The expected cost range;
iii. Methodology that will be used to evaluate the Statement of Qualifications (SOQ) submitted by the Respondents and the procedure for final selection of the DBE;
iv. Significant factors that the agency expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other non-price related factors. The County may require that a preliminary cost estimate be included in the contractor's response and consider those costs in evaluating the SOQ; and,
v. And any other information deemed necessary by the contracting agency to inform interested parties of the contracting opportunity.

The County may also identify specific types of subcontractors that shall be included in the DBE's SOQ.

All the information required above shall be certified under penalty of perjury by the contractor and its general partners or joint venture members.

A contractor shall not be evaluated for selection unless the entity provides an enforceable commitment to the local agency that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, unless certain requirements as provided for by statute are met.

c) **Evaluation of Proposals and Selection**

Final selection of the DBE must be based upon best value to the County. At the close of the solicitation period, the County shall review the SOQs and may evaluate SOQs based solely upon the information provided in each SOQ received. The County may also interview some or all of the Respondents to further evaluate their qualifications for the project.

Once the evaluation is complete, the responsive respondents are scored and the recommendation of award of the highest ranked Respondent whose proposal is determined and documented to be the best value is made to the Board of Supervisors.

If the County chooses to reserve the right to hold discussions or negotiations with any Respondents, such right will be specified in the RFQ. Applicable rules and procedures to be observed by the County will be published separately or incorporated into the RFQ to ensure that any discussions or negotiations are conducted in good faith.

Pursuant to Public Contract Code Section 22172.4 and Section 22185.7, if the County elects to award a PDB contract, retention proceeds withheld by the County from the DBE shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids per Public Contract Code.

(8) After selecting a DBE based on qualifications, the County may enter into a contract and direct the DBE to begin design and preconstruction activities sufficient to establish a GMP for the project. Upon agreement of the GMP for the project, the County, at its sole and absolute discretion, may amend its contract with the DBE to contract for the remaining design, preconstruction, and construction activities sufficient to complete and close out the project, consistent with the GMP. In the event that there are unforeseen site conditions, the County may amend its contract with the DBE accordingly and consistent with the guaranteed maximum price, to enable the entity to complete the remaining design, preconstruction, and construction activities sufficient to complete and close out the project.

(9) If the County and the DBE do not reach agreement on a GMP, or the County otherwise elects not to amend the DBE's contract to complete the remaining work, the County may solicit proposals to complete the project from Respondents that submitted SOQs. The local agency may also, upon written determination that it is in the best interest of the County to do so, formally solicit proposals from other entities, and contract award shall be made on a best value basis.

(10) Reporting Requirements: The Public Contract Code requires the County to submit a report to the Legislature on the use of the PDB process. Public Contract Code Section 22172.5 requires the report to be submitted no later than January 1, 2028 for PDB use on projects that fall under the definition of a design-build project under Public Contract Code Section 22170(d). Public Contract Code Section 22185.8 requires the report to be submitted no later than December 31, 2028 for PDB use on projects that fall under the definition of a design-build project under Public Contract Code Section

§3.5-113 Construction Manager at-Risk

(1) Construction Manager at-Risk (CMAR) is an alternate project delivery method which entails a commitment by the Construction Manager at-Risk Entity (CMARE) to deliver the project within a Guaranteed Maximum Price (GMP). The CMARE acts as a consultant to the County in the development and design phases ("preconstruction services") and as a general contractor during construction.

(2) SB328 (2013) amended Public Contract Code Section 20146, allowing counties to use CMAR for vertical construction. SB 914 (2018) expanded existing statute to allow counties, as well as other public entities for which the members of a county's board of supervisors make up the membership of the governing legislative body (e.g., the Orange County Flood Control District), to use CMAR to deliver horizontal projects, in addition to vertical projects, subject to some limitations.

(3) Pursuant to Public Contract Code 20146, A county with approval of the board of supervisors, or a public entity, with approval of its governing body, may utilize CMAR construction contracts for the erection, construction, alteration, repair, or improvement of any infrastructure, excluding roads, and including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, owned or leased by the county. A CMAR construction contract may be used only for projects in the county in excess of one million dollars ($1,000,000) and may be awarded using either the lowest responsible bidder or best value method to a CMARE that possesses or that obtains sufficient bonding to cover the contract amount for construction services and risk and liability insurance as may be required by the county or public entity. Any payment or performance bond written for the purposes of this section shall be written using a bond form developed by the county or public entity.

(4) CMAR may not be used to construct roads. PCC 20146(a).

(5) The authority to use CMAR terminates by operation of law on January 1, 2029, unless a later enacted statute deletes or extends that date. Public Contract Code Section 20146(h).

(6) A CMAR contract is procured through a Request for Proposal (RFP) process, which results in a qualification based, competitively procured contract that guarantees the cost of a project and furnishes Construction Management services, including preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration. Unlike DB, when utilizing a CMAR contract the County retains control of the entire design process.

(7) On a CMAR project, the County typically retains the CMARE before or during design. The CMARE provides a contractor's perspective during design, assists in value engineering, and performs quality control to reduce common design problems such as coordination and

constructability issues. The construction documents are divided into separate "trade packages" suitable for competitive bidding as separate contracts. The CMARE selects the trade contractors through procedures established by the County, and is responsible for scheduling, coordinating and completing the project for a GMP.

(8) The CMARE is typically paid a fixed sum for its preconstruction services and receives a fee, calculated as a percentage of hard construction cost (e.g., labor, materials), for services during construction. The CMARE may also provide site services for the project, such as security and sanitation, and may, in some cases, perform portions of the work. If it does so, payment for that work may be in addition to the fees charged for preconstruction services.

(9) The overall price for construction of the project, either a lump sum or GMP, is usually established late in the design phase or after all trade contracts have been bid. The price should change only if the County modifies the project, regulatory changes increase the cost of the work, or unexpected site conditions appear. As with other contracting methods, the County may prequalify the CMARE and/or subcontractors or set minimum qualifications requirements (which do not score but merely qualify the CMARE and subcontractors). It is important that a CMAR contract clearly identifies the risks the County would shift to the CMARE, and that the County's staff is well trained to use the contract to enforce those responsibilities.

(10) Selection of the CMARE should be by best value, where "best value" means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price.

§3.5-114 Job Order Contracts - Contracts for Repair, Remodeling, or other Repetitive Work

(1) **Annual Job Order Contract**

a) An individual annual contract for repair, remodeling, or other repetitive work competitively bid through the Invitation for Bid (IFB) process, based on unit prices, including, but not limited to, an annual Job Order Contract (JOC) is a firm fixed price, unit priced, indefinite delivery, indefinite quantity contract designed to accomplish projects as defined in Public Contract Code Section 20128.5. Per statute, these contracts shall not include the performance of design or contract drawing services.

b) Public Contract Code Section 20128.5 provides the statutory authority for these contracts for repair, remodeling, or other repetitive work only, and may not be used for new construction. Unit-price contracts may only be up to one year in duration.

c) The Board of Supervisors delegates to the Director the ability to advertise and utilize annual JOCs awarded by the Board of Supervisors with an annual maximum not to exceed amount of $3,000,000 to perform activities described in Public Contract Code Section 20128.5.

d) Per Public Contract Code Section 20128.5, annual JOCs may be awarded up to $3,000,000 plus an annual Consumer Price Index adjustment based on the California Consumer Price Index published by the California Department of Industrial Relations.

e) Per Public Contract Code Section 20128.5, annual JOCs may not be used for new construction. Annual JOCs may only be used for repair, remodeling, or other repetitive work to be done according to unit prices. Annual JOCs shall only be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work provided by the County. "Unit price" as used herein means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.

f) No task orders may be issued against an annual JOC after expiration of the term of contract; provided, however, that the Director may extend the term of a Job Order Contract for a period of six (6) months for the sole purpose of completing any work or project already ordered prior to the expiration of the original term of the annual JOC when work has already commenced on that work or project. No new task orders may be issued against an annual JOC after expiration of the original term of the contract, except that work already ordered by task order and commenced prior to expiration of the original term of the annual JOC contract may be modified by supplemental task order so long as (a) the modification does not substantially alter the character of the work already in progress, (b) the changes ordered in all supplemental task orders do not result in an increase in cost of more than 50% in aggregate above that of the original task order, and (c) the supplemental task order does not extend the time to perform the contemplated work beyond six (6) months past the expiration of the original term of the annual JOC. Task Orders shall not exceed $1,000,000.

g) The annual JOC program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate requirements, if applicable. A UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project by project basis.

h) Contractors bid on adjustment factors for work performed during normal working hours and non-normal working hours. These adjustment factors will be applied against the prices set forth in the unit price book and are used to price out fixed price work orders by multiplying the adjustment factors by the unit prices and quantities. Subcontractor's rates are subject to the prime contractor's bid factors. The contractor with the lowest composite factor will be considered the apparent low bidder.

i) Subcontractors proposed to be used to perform work under a prime contractor's contract must be identified in a potential contractor's bid, if known at time of bid, or must be approved in writing by the County if identified at a later date. All subcontractor costs and labor are subject to the prime contractor's adjustment factor.

j) After a contract is awarded, the County will conduct a meeting with the contractor to determine the actual work to be done for each project or task order to be performed under the contract. The contractor will be issued a request for task proposal and will be required to develop a proposal for the work required. The contractor will submit its proposal to the County and this proposal will be evaluated. If the contractor's proposed units are found reasonable, a work order may be issued at the agreed-upon units, which when multiplied by the unit price and appropriate contract adjustment factor will establish the firm fixed price for the task order.

k) California Environmental Quality Act (CEQA): Annual JOCs are awarded to the lowest responsive, responsible bidder based on plans and specifications for typical work. Based on the fact that the County may award an annual JOC without having identified the specific tasks that are to be performed, or their potential environmental impacts, the contracting department must perform a basic CEQA analysis of tasks subsequently ordered under the contract in case those tasks trigger the need for a new CEQA declaration or finding. Applicable CEQA findings must be included in the file for the project.

(2) **Best Value Job Order Contract**

a) An individual annual contract for repair, remodeling, or other repetitive work solicitated via a best value construction contracting method, based on unit prices including, but not limited to, a best value Job Order Contract (JOC), is a firm fixed price, unit priced, indefinite quantity contract designed to accomplish applicable projects as defined in Public Contract Code Section 20155(e). Per statute, these contracts shall not include the performance of design or contract drawing services.

b) Starting January 1, 2025, Public Contract Code Section 20155(e) provides the statutory authority for these contracts for repair, remodeling, or other repetitive work only, and may not be used for new construction. These contracts are annual contracts that may be extended or renewed for two subsequent annual terms. The authority to use Public Contract Code Section 20155(e) shall be repealed on January 1, 2030.

c) The Board of Supervisors delegates to the Director the authority to advertise and utilize best value JOC awarded by the Board of Supervisors with an annual maximum not to exceed amount of $3,000,000 to perform activities described in Public Contract Code Section 20155(e).

d) Per Public Contract Code Section 20155(e)(1) and (2), these contracts may be awarded up to $3,000,000 adjusted annually to reflect the percentage change in the California Consumer Price Index published by the California Department of Industrial Relations. These contracts may be extended or renewed for two subsequent annual terms and a maximum of six million dollars ($6,000,000) over the subsequent two terms of the contract. Contract values shall be adjusted annually to reflect the percentage change in the California Consumer Price Index.

e) Per Public Contract Code Section 20155(e)(1), best value JOC may not be used for new construction. Best value JOC may only be used for repair, remodeling, or other repetitive work to be done according to unit prices. Best value JOC shall only be awarded on the basis of best value and shall be based on plans and specifications for typical work provided by the County. "Unit price" as used herein means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.

f) No task orders may be issued against a best value JOC after expiration of the term of the contract, including any extensions or renewals; provided, however, that the Director may extend the term of a best value JOC for a period of six (6) months for the sole purpose of completing any work or project already ordered prior to the expiration of the term of the best value JOC when work has already commenced on that work or project. No new task orders may be issued against a best value JOC after expiration of the term of the contract, except that work already ordered by task order and commenced prior to expiration of the term of the best value JOC contract may be modified by supplemental task order so long as (a) the modification does not substantially alter the character of the work already in progress, (b) the changes ordered in all supplemental task orders do not result in an increase in cost of more than 50% in aggregate above that of the original task order, and (c) the supplemental task order does not extend the time to perform the contemplated work beyond six (6) months past the expiration of the term of the best value JOC. Task Orders shall not exceed $1,000,000.

g) The best value JOC program is carried out by either developing in house, or contracting out for the professional services for, the development and customization of a Unit Price Book (UPB) and technical specifications for typical work. A UPB includes pre-priced construction tasks that are specifically tailored for the type of work that the County intends to accomplish and includes labor, material and equipment costs. All unit prices incorporate federal labor standards including Davis-Bacon requirements and other Federal and State wage rate requirements, if applicable. A

UPB is work-segment based and incorporates local activity, climate, and geographic features. Technical specifications take into account quality of materials and workmanship, performance specifications, and detailed specifications furnished on a project-by-project basis.

h) Per Public Contract Code Section 20155.3, when soliciting best value JOC, the County is required to utilize the prequalification process per Sections 3.5-115 through 3.5-118. Once prospective bidders have been prequalified, a best value JOC is procured through a Request for Proposal (RFP) process as described by Section 4.3. A best value JOC is awarded using the best value method. "Best value" means a procurement process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications. Per Public Contract Code Section 20155.3(e), adjustment factors submitted by bidders shall not be revealed to the evaluation committee reviewing qualifications prior to completion and announcement of that committee's decision.

i) The best value criteria shall be applied to the annual contract for construction services, rather than to an individual, specific project. The County shall use the following criteria when soliciting best value JOC: demonstrated management competency, financial condition, labor compliance, safety record, and relevant experience.

j) Contractors submit pricing for adjustment factors for work performed during normal working hours and non-normal working hours. These adjustment factors will be applied against the prices set forth in the unit price book and are used to price out fixed price work orders by multiplying the adjustment factors by the unit prices and quantities. Subcontractor's rates are subject to the prime contractor's bid factors.

k) Subcontractors proposed to be used to perform work under a prime contractor's contract must be identified in a potential contractor's bid, if known at time of bid, or must be approved in writing by the County if identified at a later date. All subcontractor costs and labor are subject to the prime contractor's adjustment factor.

l) After a contract is awarded, the County will conduct a meeting with the contractor to determine the actual work to be done for each project or task order to be performed under the contract. The contractor will be issued a request for task proposal and will be required to develop a proposal for the work required. The contractor will submit its proposal to the County and this proposal will be evaluated. If the contractor's proposed units are found reasonable, a work order may be issued at the agreed-upon units, which when multiplied by the unit price and appropriate contract adjustment factor will establish the firm fixed price for the task order.

m) California Environmental Quality Act (CEQA): Best value JOC are awarded based on plans and specifications for typical work. Based on the fact that the County may award a best value JOC without having identified the specific tasks that are to be performed, or their potential environmental impacts, the contracting department must perform a basic CEQA analysis of tasks subsequently ordered under the contract in case those tasks trigger the need for a new CEQA declaration or finding. Applicable CEQA findings must be included in the file for the project.

n) Reporting Requirements: Before March 1, 2029, the Board of Supervisors will submit a report to the Legislature, as required by Public Contract Code Section 20155.7, detailing the effectiveness and outcomes of the Best Value JOC process.

§3.5-115 Prequalification Criteria

(1) Public Contract Code Section 20101 authorizes the County to establish procedures to prequalify prospective bidders for the construction of public works projects.

(2) In order to prequalify, prospective bidders are required to complete and submit standard prequalification documents and provide specified supporting documentation verified under penalty of perjury by the contractor as set forth in this CPM. Only prospective bidders that are prequalified may bid on the project.

(3) Prequalification cannot be used to score prospective bidders, but only to determine whether they meet minimum project qualification requirements such that they would be eligible to submit proposals for a specific project.

(4) Purposes of Prequalification:
   a) To ensure that the County obtains qualified contractors who have the proven capability and the experience to complete projects similar to the project being considered.
   b) To prevent poor project quality and late delivery (going over budget and/or over schedule) due to the lowest bidder's inexperience or ineptitude.

(5) Use of Prequalification:

The County will require prequalification of prospective prime contractors for the following types of public works contract construction bid packages:

   a) Single specific projects identified by Department Heads as suitable for prequalification due to uniqueness or complexity of all or a portion of the project.

   b) All large projects (estimated construction cost over $5,000,000). If the Director determines that prequalification is not in the best interests of the County for such a project, then the corresponding request for Board of Supervisors action should recommend proceeding without prequalification and provide a justification.

(6) Formally bid projects under $5,000,000 will be prequalified by a streamlined prequalification process, unless the Director determines that prequalification is not in the best interest of the County, then the corresponding request for Board action should recommend proceeding without prequalification and provide supporting justification.

(7) Projects involving the use of the state or Federal Funds may not be able to utilize the prequalification process. A review of specific funding source guidelines is necessary to determine allowance or to establish an alternate process.

§3.5-116 Prequalification of Subcontractors

(1) Nothing in this section shall preclude the County from prequalifying or disqualifying a subcontractor. The Director may prequalify subcontractors as determined to be in the best interest of the County. However, the disqualification of a subcontractor by the County does not disqualify an otherwise prequalified potential prime contractor. If a subcontractor is not qualified, the potential prime contractor will be given an opportunity to replace that subcontractor with another, which may either be a new subcontractor subject to prequalification, or a subcontractor already prequalified by the County, at the prime contractor's discretion.

(2) Per Public Contract Code Section 20101(a), prospective bidders seeking prequalification are required to submit to the County completed prequalification documents, which include the Prequalification Questionnaire and all the documents required.. This Prequalification Questionnaire and financial statement shall be verified by oath when provided to the County.

(3) Pursuant to Public Contract Code Section 20101, the submitted Prequalification Questionnaire and financial statement are not public records and are not open to public inspection. They shall be kept confidential to the extent permitted by law. However, the contents may be disclosed to third parties for purpose of verification or investigation of the statements contained therein or in a hearing.

Finally, Public Contract Code Section 20101 provides that the names of prospective bidders applying for prequalification status are public records subject to disclosure, and the first page of the Prequalification Questionnaire shall be used for this purpose. Agencies unsure about whether any information is disclosable under the Public Records Act should seek the advice of County Counsel.

a) Each prospective bidder will be determined as either qualified to bid as to each bid package for which it requested prequalification or not qualified based on the County uniform rating system. No rating other than a positive or negative qualification determination shall be established by this process. The contracting department will evaluate the completed Prequalification Questionnaire and supporting documents to determine whether the prospective bidder is qualified or not qualified to bid on the bid packages identified in the Prequalification Questionnaire.

b) It is mandatory that prospective bidders who intend to submit a bid for any of the identified bid packages provide a Prequalification Questionnaire and any supporting documents requested and are subsequently determined qualified to construct the work required by the bid packages identified on the Prequalification Questionnaire. The County may not accept any bid from a prospective bidder that has not prequalified by this process.

c) The County's determination that a prospective bidder is qualified shall apply only to the project(s) identified in the prequalification documents. The Prequalification Questionnaire may request information regarding the prospective bidder's specialized expertise or demonstrated experience pertaining to the individual project as long as such information will not unnecessarily restrict the pool of qualified prospective bidders to unfairly exclude any otherwise qualified prospective bidders.

d) While it is the intent of this prequalification policy to assist the County in determining bidder responsibility prior to bid and to aid the County in selecting the lowest responsible bidder, the prequalification of a prospective bidder will not preclude the County from post-bid consideration of whether a prospective bidder has the quality, fitness, capacity and experience to satisfactorily perform the proposed work and has demonstrated the requisite trustworthiness. The Deputy Procurement Agent may waive minor irregularities and omissions in the information contained in the Prequalification Questionnaire and supporting documents.

e) The County may modify the prequalification determination assigned to a prospective bidder based on subsequently learned information. Prospective bidders previously deemed qualified then subsequently disqualified will be given notice and an opportunity to be heard consistent with the procedures set forth herein.

§3.5-117 Prequalification Standards and Notifications Requirements

(1) The prospective bidder's Prequalification Questionnaire must be completely filled out and verified under penalty of perjury and all the required supporting documents must be submitted as required by the Prequalification Questionnaire. The completed Prequalification Questionnaire and supporting documents must be submitted to the County within the timeline described therein.

(2) The prospective bidder must successfully meet or exceed the passing threshold established by the awarding department in accordance with recommendations promulgated by the California Department of Industrial Relations.

(3) The prospective bidder must not provide any false or misleading information in the Prequalification Questionnaire and/or supporting documents.

(4) The prospective bidder's completed Prequalification Questionnaire and supporting documents must comply with the following submittal requirements:

a) All supplemental documents are to be submitted on 8½" by 11" sheets and must be

organized and identified in accordance with the requirements of the Prequalification Questionnaire.

b) Prequalification Questionnaires must be signed under penalty of perjury in the manner designated at the end of the Prequalification Questionnaire by an individual who has the legal authority to bind the prospective bidder on whose behalf the person is signing. See, e.g., Corporations Code Section 313.

c) If any information provided by a prospective bidder becomes false or inaccurate subsequent to the submittal of a Prequalification Questionnaire and supporting documentation, the prospective bidder must immediately notify the County and provide updated accurate information in writing under penalty of perjury.

d) The completed Prequalification Questionnaire and supporting documents must be submitted to the County per the instructions on the solicitation. Late submittals will not be considered by the County. Prospective bidders are encouraged to submit the Prequalification Questionnaire and supporting documents as soon as possible so that they may be notified of omissions of information which can be remedied or of their prequalification determination well in advance of bid advertisement for the project.

e) The County may accept the Prequalification Questionnaire fully electronically through the County's online bidding system, if the instructions for that specific project state that it is a fully electronic solicitation.

f) Completed Prequalification Questionnaires and supporting documents must be sealed and marked "Confidential" in a suitable envelope and mailed or delivered to the following:

County of Orange
[DEPARTMENT
NAME]
[ADDRESS]
[CITY, CA. ZIP]
Attn.: [NAME], DPA

g) The County will inform prospective bidders, in writing, of the prequalification determination upon receipt and evaluation by the County of the completed Prequalification Questionnaire and supporting documents. If a prospective bidder receives a negative prequalification decision, the County will, in its notification of the decision, advise the prospective bidder of the reasons for that determination.

h) Joint ventures may prequalify as prospective bidders if (i) at least one of the jointly venturing entities holds the appropriate license at the time that prequalification is conducted, (ii) each of the jointly venturing entities completes the prequalification questionnaire, (iii) the jointly venturing entities, when examined as a whole, meet the prequalification requirements, and (iv) the joint venture is properly licensed at the time of contract award.

§3.5-118 Prequalification Protest Hearing Procedure

(1) Where the prospective bidder has made a timely and complete submittal of prequalification documents that result in a determination that the contractor is not qualified, the prospective bidder can contest the department's decision via administrative hearing.

(2) To petition for a hearing, the prospective bidder must deliver written notice of its desire to contest the department's decision to County of Orange within seven (7) calendar days of the date of County's notice of determination. Failure to file a timely notice shall result in the prospective bidder's waiver of any and all rights to challenge the prequalification determination, whether by administrative process, judicial process, or any other legal process or proceeding.

(3) The prospective bidder may request the County to advise it in writing of the basis for the

prequalification determination and any supporting evidence that was received from others or adduced as a result of an investigation by the County.

(4) A Hearing Panel shall be established and consist of three panelists from various County of Orange infrastructure departments, with a maximum of one (1) panelist from the procuring department.

(5) The Hearing Panel shall render its decision based on all potentially relevant evidence submitted by either the County or the prospective bidder, including but not limited to, the administrative record and testimonial evidence. The prospective bidder may submit on the record, or provide other evidence, including testimony given under oath, to rebut the department's determination of non-qualification. Such a hearing is conducted in an informal manner, and all relevant evidence is admissible. The department rendering the initial determination may rebut any evidence proffered by the prospective bidder in writing or through its own testimony. Finally, the Hearing Panel may ask questions of either the prospective bidder or department before making its decision.

(6) If the prospective bidder requests to provide testimony, the hearing shall be conducted within five (5) business days after the County's receipt on notice of appeal and no later than 20 business days prior to the last date of receipt of bids on the project. Within three (3) business days after the conclusion of the hearing, the Hearing Panel will render its decision in writing.

(7) The decision of the Hearing Panel shall be the County's final administrative decision and any judicial review thereof shall be instituted no later than the time period specified in Section 1094.6 of the Code of Civil Procedure.

§3.5-119 Determination of Non-Responsibility

(1) A responsive, responsible bidder is "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract" (Public Contract Code Section 1103). In other words, the term "responsible" in the context of public works bidding is not employed to denote a bidder who is merely generally trustworthy, but also refers to the bidder's ability to perform in accordance with the requirements of the bid solicitation.

(2) Prior to a contract being awarded by the County, the County may determine that a party submitting a bid or proposal is non-responsible for purposes of that contract. In the event that the County determines that a bidder is non-responsible for a particular contract, said bidder shall be ineligible for the award of that contract.

(3) Procedures:

a) It is important that County Counsel be consulted when a department considers a non-responsibility determination. Because of the particular nature of a non-responsibility finding, the bidder found to be non-responsible is entitled to certain due process protections before a determination of non-responsibility is made.

b) The County may take into account numerous factors in determining responsibility, including the financial capabilities of the bidder, the bidder's experience and familiarity with the type of work of the project, the bidder's work on previous projects (including any prior failure to perform), and the bidder's resources and facilities. Non-responsibility is determined on a case-by-case basis, so these factors are merely examples enumerated by the courts, and are by no means an exhaustive list. Because prequalification is a method of determining responsibility prior to bid, basic considerations may also include those listed in the standard Prequalification Questionnaire, such as whether:

i. Bidder possesses a valid and current California contractor's license for the project;

ii. Bidder has sufficient liability insurance and bonding capacity;

iii. Bidder has current workers' compensation insurance;

iv. Bidder can provide a financial statement demonstrating the capacity to perform the project;

v. Bidder has had its license revoked in the past, and the reasons for such revocation;

vi. A surety has completed a project on behalf of the bidder;

vii. Bidder is barred from bidding or being awarded a contract under California law;

viii. Bidder has been debarred by another jurisdiction;

ix. Bidder or any of its owners, officers, or other principals have been convicted of a crime relevant to the bidder's trustworthiness or ability to perform the contract.

x. The responsibility of each bidder must be evaluated independently. No consideration can be made of each bidder's relative responsibility among all bidders, so once a finding has been made of the bidders' responsibility all such bidders are deemed equally responsible

§3.5-120 Notice of Non-Responsibility Hearing

(1) A bidder subject to a potential finding of non-responsibility for a particular contract shall be given 30 days' advance written notice of the hearing in which that bidder's responsibility is to be determined, sent by the Director and approved by County Counsel, and sent via certified mail to the bidder's last known address (or to the bidder's attorney, if applicable).

a) The notice shall include the date, time, and place of the hearing as described above before the Director or designee.

b) The notice must specify the basis for the proposed recommendation of non-responsibility and a summary of any evidence to support such recommendation.

c) The notice shall advise the bidder that the parties may agree to submit the matter on the basis of documentary evidence only; otherwise, the bidder is required to confirm with the department that the bidder or its representative intends to attend the hearing as described above, and bidder's failure to appear may result in the bidder waiving all rights to a hearing.

§3.5-121 Non-Responsibility Hearing Procedure

(1) The bidder shall be given the opportunity of a hearing at which to contest the County's determination.

(2) A hearing officer will be designated, who cannot be the same person as the staff who conducted the non-responsibility investigation. It is strongly recommended that the hearing officer be a neutral third party - e.g., not an employee of the County. At the hearing, the burden of proof is on the department and must be established by a preponderance of the evidence. The hearing is conducted in a relatively informal manner, and the formal rules of evidence do not apply. The hearing officer may consider any relevant information presented at the hearing as described above. County Counsel may provide legal advice to the department and hearing officer.

(3) The County's administrative record will be considered, so it shall contain adequate evidence of the basis of the County's determination as well as evidence that the bidder has been given adequate notice and opportunity to rebut that determination.

(4) The Director should designate a Project Manager who will investigate information concerning bidder's non-responsibility, and who will present such findings at the hearing.

(5) The bidder or its representative will then have the opportunity to present evidence, through witnesses and/or submitted documents, rebutting the County's finding of non-responsibility, as well as evidence that it is qualified to perform the work. In the event the evidence or documentation is new or was unavailable to the County when the non-responsive determination was made, information can still be considered.

(6) Each party will then have the opportunity to rebut evidence previously presented by the other.

(7) The Director may ask questions, seek clarification, and request additional information from the parties at any time during the hearing. The hearing officer has discretion to continue the hearing to a later time or date as necessary.

(8) The Director shall close the hearing after the presentation of all evidence; no evidence submitted after the close of the hearing will be considered unless otherwise specified by the hearing officer.

(9) The Director shall consider evidence proffered by the department and contractor in rendering its decision.

(10) The Director will present the proposed decision and recommendation to the Board of Supervisors based on the record of the hearing regarding whether the contractor should be found non-responsible.

(11) The Director shall give notice to the bidder via certified mail of the proposed decision and recommendation, which will also specify the date, time, and place of the Board of Supervisors hearing.

(12) The final decision as to non-responsibility lies with the Board of Supervisors. The Board may limit any further hearing to the presentation of evidence not previously presented. The Board can modify, deny, or adopt the recommendation of the Director. The Board of Supervisors' findings are final, and if a finding of non-responsibility is determined, the bidder is ineligible for award of the contract.

NOTE: On awarding the contract to the lowest responsible bidder, the Board of Supervisors must also make the finding that any lower bidders were deemed non-responsible and are therefore excluded from consideration.

§3.5-122 Contract Award and Notice to Proceed

(1) Prior to Contract award, DPAs shall conduct due diligence and obtain any documentation necessary to do so.

(2) Contracts are awarded by the Board of Supervisors and signed by the Director or designee pursuant to the Board of Supervisors' authorization, unless authority to award and sign a contract without further Board of Supervisors action has been appropriately delegated to the Director.

(3) Upon approval of the contractor's bonds and insurance after award of the contract and on satisfaction of any other prerequisites to the contractor's performance, a Notice to Proceed will be issued which begins the performance period of the contract.

§3.5-123 Payments

(1) The contracting department prepares and processes all documents necessary for preparation and issuance of payments to the contractor in accordance with the terms established in the contract documents.

a) Projects less than $5,000 will be paid in full upon acceptable completion of the work and receipt of an invoice from the contractor and approved by the contracting department.

b) Projects from $5,000 to $75,000 may be paid by progress payments or by payment upon completion of the work as established in the contract documents. The contracting department will prepare and process payment(s) up to 95 percent of the actual value of the work completed. Not less than 5 percent of the total contract price shall be withheld until the work is complete in accordance with Public Contract Code Section 9203.

c) Projects of $75,000 or more will be paid by progress payments. The contracting department will prepare and process payments up to 95 percent of the actual value of the work completed. Not less than 5 percent of the total contract price shall be withheld until the work is complete in accordance with Public Contract Code Section 9203.

(2) If, after 50 percent of the project has been completed and the contracting department finds that satisfactory progress has been made, the contracting department may make any of the remaining progress payments in full for actual work completed in accordance with Public Contract Code Section 9203.

(3) "Complete" shall mean acceptance, as evidenced by a notice of completion, beneficial occupancy accompanied by cessation of labor, a cessation of labor for 100 continuous days or more due to factors beyond the control of the contractor, or a cessation of labor for 30 continuous days following the filing of a notice of completion or a notice of cessation in accordance with Public Contract Code Section 7107.

(4) At the Directors option, the contracting department may, withhold amounts for up to 30 days in accordance with "Stop Notice Rules" corresponding to work in dispute pending resolution of the dispute in accordance with Public Contract Code Section 7107.

(5) All funds, including withheld funds, will be paid in accordance with the time frames specified in accordance with Public Contract Code Section 7107.

(6) The contractor may substitute securities for funds withheld in accordance with the Public Contract Code Section 22300.

(7) Escrow agreements for security deposit in lieu of retention shall be approved by County Counsel.

§3.5-124 Liquidated Damages Clause for Use In Public Works Contracts

(1) Sample Language: "In accordance with Government Code Section 53069.85, contractor agrees to forfeit and pay to County the sum of ($ XXX) per day for each calendar day work is delayed beyond the time allowed, and such sum shall be deducted from any payments due to or to become due to contractor. Contractor will be granted an extension of time and will not be assessed liquidated damages for unforeseeable delays beyond the control of and without the fault or negligence of contractor including delays caused by County."

(2) Changes to the standard Liquidated Damages provision may be made upon County Counsel approval.

§3.5-125 Notice of Completion

(1) The contracting department will file a notice of completion for all public works projects (those requiring payment of prevailing wage) of $5,000 or more; these notices do not need to be approved by the Board of Supervisors. Notices of Completion shall be recorded in the Clerk Recorder's Office within 15 days of the earlier of (1) acceptance of the project by the Director or (2) cessation of labor on a work of improvement for a continuous period of sixty (60) days. Civil Code Sections 9200, 9204 and 9208.

§3.5-126 General Requirements

(1) Projects are not to be intentionally split in order to avoid informal or formal bidding or to avoid approval by the Board of Supervisors per Public Contract Code Section 22033.

(2) All contractors performing public works projects shall be properly licensed in accordance with the requirements of the State of California Contractor's License Board.

(3) All contractors performing public works projects shall pay prevailing wages in accordance with the California Labor Code Section 1720.

(4) All contractors must register with the Department of Industrial Relations, per Labor Code Section 1771.1(a) and 1725.5.

§3.5-127 Bonds

(1) Public Contract Code Section 20129 requires bidder's security and performance bonds.

(2) All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security in an amount not less than 10 percent of the bid:

a) cash;

b) a cashier's check made payable to the County;

c) a certified check made payable to the County;

d) a bidder's bond executed by an admitted surety insurer, made payable to the County.

(3) Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

(4) The person to whom the contract is awarded shall execute a bond to be approved by County Counsel and CEO/Risk Management for the faithful performance of the contract.

(5) Civil Code §9554, the labor and materials payment bond must be for at least 100 percent of the total amount of the public works contract.

(6) Faithful-performance bonds and labor-and-materials bonds shall be submitted on the forms approved by County Counsel and shall be subject to approval by CEO/Risk Management and County Counsel.

§3.5-128 Regulatory Permit Approvals

(1) This policy applies to all public works construction projects requiring Board of Supervisors approval to advertise or award.

(2) Any application, plan, permit, letter, report, agreement, waiver, memorandum of understanding or other document requiring approval by an Authority Having Jurisdiction (AHJ) over the project in any capacity. Examples may include Building & Grading Permits, Construction General Permits, Biological Opinions, Waste Excavation Permits, Construction Quality Assurance Plans, Geotechnical Reports, Environmental Impact Reports, Mitigation Monitoring Plans, or Development Agreements.

(3) Departments shall ensure that all necessary Regulatory Permit Approvals from all AHJs are secured prior to approval of the advertisement by the Director or designee. If an approval has not been secured

by the date that the related ASR is due to the County Executive Officer, the ASR is to be delayed.

(4) In certain cases, a determination may be made to proceed with the advertisement without a regulatory approval, such as when delaying advertisement may jeopardize funding. In these cases, departments shall indicate in the ASR that not all Regulatory Permit Approvals have been secured. The ASR background shall also indicate the following:

a) Which Regulatory Permit Approvals have not been secured;

b) Why they have not been secured;

c) When they are likely to be secured;

d) Why the Director recommends proceeding with advertisement prior to approval; and

e) What the likely risks are of proceeding without approval. At a minimum, cost, scope, and schedule should be addressed.

SECTION 3.6

ADDITIONAL POLICIES RELATED TO DESIGN AND CONSTRUCTION SERVICES

§3.6-101 Justification of Variance from Engineer's Estimate

(1) An engineer's estimate is a point in time estimate based on a defined estimation methodology.

(2) The County relies on an engineer's estimate prior to bidding out a project, primarily for budgetary purposes. It is also used to determine which procedures should be used for advertising and awarding a project.

(3) Respondents/Bidders use the engineer's estimate range to determine whether the project is within their capacity to perform and/or ability to obtain bid bonds.

(4) There is no legal requirement that the County prepare an estimate, nor any prohibition of such a process.

(5) A cost estimate should be prepared for all projects regardless of size and complexity.

a) Cost estimates for projects not requiring Board of Supervisors approval may be completed by the contracting department or contracted out.

b) Estimates for projects requiring Board of Supervisors approval shall be prepared by an engineer or third-party estimator.

c) A certified engineer's estimate shall be obtained for all capital construction prior to solicitation.

(6) Methodology for Preparation

a) Types of engineer's estimates:

i. Unit cost line item (bid history);

ii. Cost-based estimating;

iii. Combination;

iv. Rough Order of Magnitude (Calculations based on industry standards or data such as cost per square foot or cost per acre if and when applicable); and

v. Other best practices.

(7) Methodology/approach should be provided to and reviewed by project staff.

(8) Engineer's estimates may be provided in-house or contracted out. They should be reviewed and validated by County staff.

(9) When possible, departments should include a secondary review of their engineer's estimates. This may include other County departments or a contracted professional estimator.

(10) The final engineer's estimate should be completed in a timely manner to ensure that estimated figures are not adversely affected by market conditions.

(11) All A-E design contracts should include an engineer's estimate as part of the A-E's Scope of Work as a deliverable.

(12) Submittals Above/Below the Engineer's Estimate:

a) Because it is a point in time estimate, it is common for the engineer's estimate to deviate from the submittal.

b) When the submittal is either above/below the engineer's estimate, the submittal and the estimate should undergo an additional review. This review shall be performed by a qualified County staff member or by contract with a third party. These reviews and justifications shall depend on the value of the project as follows:

i. If a project is above $200,000, but less than $1,000,000, the threshold for explaining the difference is 20 percent.

ii. If a project is greater than $1,000,000, the threshold is 10 percent.

iii. If a project does not meet one of the above thresholds, no justification is required

(13) Any review conducted and justification required from the above thresholds shall be discussed in the background of the ASR.

(14) Release of the Engineer's Estimate

a) The engineer's estimate may be released when the Notice of Intent to Award is released. It will be included in the body of the ASR in a table which includes all of the submittals with the engineer's estimate included in the list from lowest to highest. In the ASR, it should be stated, that, "The lowest responsive and responsible bid submitted by XXX for this Project is approximately XX% above/below the Engineer's Estimate of $XXX." An explanation of any deviation over 20 percent, or 10 percent, as indicated by the preceding subsection must be included (e.g., identifying changed economic conditions such as price of fuel, cost of supplies, rental prices, or the competitive bidding environment).

§3.6-102 Operations & Maintenance Future Costs

(1) This policy applies to all public works new construction and major renovation projects requiring Board of Supervisors approval to advertise or award.

(2) Operations and Maintenance (O&M): The recurring, day-to-day, periodic, or scheduled work required to preserve, control deterioration and provide for the basic operation of a facility. This type of maintenance is routine and is based on frequency schedules, responding to service requests, or through periodic inspection and correction efforts. O&M is typically funded through operational budgets.

(3) Departments shall ensure that O&M costs for new facilities have been considered and include appropriate staff during the planning and design phases of renovation and new construction projects. Project operating and maintenance impact estimates shall include the following:

a) The effect of infrastructure replacement and upgrades required for the facility in the year(s) of occurrence; and

b) Projections and funding plans for direct costs to County departments for maintenance, internal services and utilities.

(4) These O&M costs shall be included in all public works renovation and new construction project ASRs or as part of the attachments to the ASR. The ASR and/or ASR attachments should also indicate if any of the following were conducted:

a) Industry standards and other locality approaches were considered prior to initiation of infrastructure replacement or upgrades;

b) Any County attempts at value engineering;

c) Any total life cycle cost analysis conducted; and/or

d) Development of an O&M manual was included in the statement of work of the project.

§3.6-103 Sample ASR Language for Ongoing Maintenance Costs

(1) The subject project will require an additional annual maintenance cost of approximately $ XXX for a period of X years. The above mentioned costs are a based on a life cycle cost analysis conducted by staff as shown in Attachment X. Life cycle cost is the sum of all recurring and one-time (non-recurring) costs over the full life span of this asset. It includes total project costs, operating costs, maintenance and upgrade costs, and remaining (residual or salvage) value at the end of ownership or its useful life."

(2) "No new operations and maintenance costs are anticipated as a result of his project."

(3) "This project is anticipated to reduce annual operations and maintenance costs by approximately $XXX for a period of X years." [If appropriate, include language referencing a life cycle cost analysis as in Section (1) above].

§3.6-104 California Environmental Quality Act (CEQA)

(1) The majority of public works projects will require compliance with the California Environmental Quality Act (CEQA) and any projects involving federal funding may additionally require compliance with the National Environmental Policy Act (NEPA). Such requirements must be complied with before approval of the project.

(2) For projects that do not require approval by the Board of Supervisors:

a) The Director or designee shall ensure that they have received a memorandum from the OC Public Works/Development Services Division documenting that the requirements of CEQA have been complied with;

b) If a negative declaration or mitigated negative declaration has been prepared, the declaration must be signed by the Director or designee; or

c) If OC Public Works/Development Services Division determines that the project is statutorily or categorically exempt, then it shall provide to the Director or designee a memorandum specifying the exemption and the facts supporting its determination.

d) The Director or designee shall file the appropriate Notice of Determination or Notice of Exemption, as applicable.

§3.6-105 Lobbying

(1) Capital projects solicitated shall not include "no lobbying" verbiage as standard language without express approval of the Board of Supervisors. Capital projects that are greater than $25,000,000 and involve special circumstances because of the complexity and scope of work may insert the "no lobbying" clause after Board of Supervisors approval is obtained.

§3.6-106 Public Works Subcontractor Contract Requirement and County of Orange Procurement Preference Policy

(1) Unless otherwise required by Federal or State funding, for Public Works Projects estimated to exceed five million dollars ($5,000,000), 3% of the total project amount must be awarded to the OCLSB/DVBE subcontractor(s).

(2) Per restrictions in the Public Contract Code, Public Works Procurements shall not include a DVBE preference.

SECTION 3.7

REAL ESTATE TRANSACTIONS AND CONTRACTS

§3.7-101 General Responsibilities

(1) The policies of the County of Orange regarding Real Estate are adopted and approved by the Orange County Board of Supervisors and implemented by the Chief Real Estate Officer (CREO) through the CEO Real Estate Department (CEO Real Estate). These policies and procedures shall apply to any Real Estate Contracts involving the County of Orange, and any of its departments (County) or special districts whose affairs and funds are under the supervision and control of the Board of Supervisors, such as the Orange County Flood Control District or Orange County Housing Authority (Special Districts). All references to the Board of Supervisors shall also apply to the governing body of any public entity that elects to adopt this CPM. While other departments may handle certain aspects of real estate transactions (*i.e.*, John Wayne Airport and Orange County Sheriff), this manual is meant to establish clear standards and policies that should be followed in regard to any County Real Estate transactions (*i.e.*, the actual granting or accepting of an interest in real estate on behalf of the County or a Special District), and any deviations shall be specifically approved by the Board of Supervisors unless the Board has delegated authority for such a transaction. As used herein, the term "Real Estate Contracts" shall refer to the legal agreements necessary to effectuate a real estate transaction such as a lease, license, easement, grant deed, or other similar document, but shall not include procurement contracts related to services provided for the transaction nor departmental issued permits, such as County construction permits or encroachment permits. In the event of a question about the applicability of this section to a particular contract, please contact CEO Real Estate.

(2) All Real Estate Contracts (*e.g.*, leases, licenses, easements, etc., but not departmental issued permits, *e.g.* County encroachment permits), including those not requiring Board of Supervisors approval, shall be transacted through the CREO or those authorized County officials or department designees identified by the Board of Supervisors, CEO, or the CREO to transact Real Estate Contracts consistent with this CPM, Resolutions of the Board of Supervisors and applicable law. In addition, the CREO is authorized to solicit and procure any and all required real estate services and contractors necessary and intended to supplement or support and carry out real estate transactions and contracts on behalf of the County through compliance with other applicable sections of the CPM. Unless otherwise specified, all references hereinafter to "CREO" shall mean all such designated officials or departments.

(3) The CREO supervises County real estate staff and contractors in conformance with the real estate policy of the County of Orange found herein, Resolutions of the Board of Supervisors and applicable law. In addition, the CREO and CEO Real Estate department coordinate with other County departments on real estate transactions and this CPM is meant to standardize, to the extent possible, the real estate transaction process carried out on behalf of the County of Orange and its departments and Special Districts.

(4) The CREO and CEO Real Estate will identify policy elements from time to time that need to be amended, added or deleted in order to meet the real estate needs of the County and to stay in conformance with changes in state law, local ordinances and resolutions.

(5) County of Orange Procurement Preference Policy requirement is not applicable to Real Estate Solicitations and Transactions, except as directed by the Chief Real Estate Officer in consultation with County Counsel.

§3.7-102 Delegated Authority

(1) State and local law, including but not limited to California Government Code Sections 25520, *et seq*., Orange County Codified Ordinances Section 1-4-153, *et seq*., provide for delegation of authority by the Board of Supervisors to appropriate officials to execute certain real estate contracts and engage in real estate transactions. These delegations are limited in scope and substantially reduce administrative processing time, thereby allowing CEO Real Estate to provide enhanced customer service when processing minor real estate transactions.

(2) In addition to the authorities and responsibilities set out in this policy manual, the CREO is authorized to take specific actions identified under previously issued delegated authority as detailed below. These specific authorities delegated to the CREO, and to any of their designees in writing, are to solicit, award and execute on behalf of the County. These delegations have been authorized and approved by prior actions of the Orange County Board of Supervisors. In addition, the CREO may sub-delegate to other employees of the County of Orange, its offices, or Special Districts.

(3) CEO Real Estate shall comply with the Board's requirement, per the granting authority, that specific uses of delegated authority be reported to the Board annually via Agenda Staff Report, to keep the Board informed as to the number and types of property transactions that have been executed. It is the responsibility of CREO and CEO Real Estate and each designee acting under delegated authority to maintain records of transactions sufficient to support the annual report to the Board.

(4) The attached Delegated Authority Chart summarizes the types of real estate transactions and their limits, as established by state statutes and Board authority, that have been granted to the CREO and other select County officers as of the date of this CPM.

Delegated Authority Chart

Revenue Lease/License of County Property	Acquisitions of Real Property Interests for Flood	Acquisition Lease/License for County or Flood Use	Acquisitions of Real Property Interests for County	Collateral Instruments	Donated Space Agreements for County Use	Authorize Full Reconveyance	Grants or Conveyance of Easements of County OCFCD OCDA OCHA Property	Revenue Licenses of Orange County Flood Control District Property	Temporary Right of Entry Permits for Flood or County Use
Execute leases/licenses if the monthly rental does not exceed $15,000 per month and the lease term does not exceed 10 years.	Approve and accept acquisitions of real property interests not exceeding $250,000 in value and other criteria are met.	Amend and execute leases/licenses if rental over term of lease/license does not exceed $10,000 per month and a (5) year term and other criteria are met.	Approve and accept acquisitions of real property interests not exceeding $250,000 in value and other criteria are met.	If instrument is on County's standard form. Instruments are defined as: Attornments Estoppels Subornation Non- Disturbance.	If agreement is in County's standard form, County's indemnification of donor is limited to $1,000,000, and agreement is approved by County Counsel and Risk Management.	Execute requests for reconveyance upon approval of County Counsel and receipt of notification from the Auditor-Controller's Office that all sums due and payable under an installment note have been paid in full.	If Easement does not exceed $25,000 in value and is granted to City, County, State or other public agency with County Counsel approval.	Execute licenses of OCFCD property if the monthly rental does not exceed $10,000 per month and the license term does not exceed 10 years.	If permit is required by County or Flood Control District from a public or private entity for ingress and egress, construction staging, and other purposes. Permits may include indemnification of others.
per Resolution No. 19-002 and Minute Order dated January 8, 2019. (Gov. Code 25537)	per Resolution No. 20-040 and Minute Order dated May 5, 2020. (Gov. Code 25350.60)	per Resolution No. 20-016 and Minute Order dated March 10, 2020 (Gov. Code 25350.51)	per Ordinance No. 20-004 and Minute Order dated May 19, 2020 (Gov. Code 25350.60)	per Resolution No. 98-75 and Minute Order dated March 10, 1998.	per Resolution No. 21-031 and Minute Order dated April 13, 2021 (Gov. Code 25355)	per Resolution No. 76-1642 dated November 9, 1976.	per Ordinance No. 3898 and Codified Ordinance Section 1-4-225 (Gov. Code 25526.6).	per Minute Order dated February 25, 2014.	per Resolution No. 08-151 and Minute Order dated December 9, 2008.
Delegated Authority expires January 8, 2024	NO EXPIRATION	NO EXPIRATION	Delegated Authority expires May 19, 2025	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION	NO EXPIRATION
ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT	ANNUAL REPORT		ANNUAL REPORT QUARTERLY REPORT FOR VALUES OVER $10,000		ANNUAL REPORT	ANNUAL REPORT	
Chief Real Estate Officer, CEO Director, JWA *as designee*	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO Director, JWA *as designee*	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Chief Real Estate Officer, CEO	Director, OCPW	Director, OCPW	Director, OCPW Director, JWA *as designee*

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§3.7-103 Specific Duties

(1) The CREO and CEO Real Estate are authorized to carry out the specific duties listed in the CPM, plus any other ancillary duties consistent with this manual and/or pre-existing delegated authority. In this role, and consistent with applicable law such as Government Code Section 23004, the CREO and CEO Real Estate are authorized to, among other things:

a) Solicit and procure any real estate interests necessary for the operation and administration of the County of Orange, and other real property of whatever kind and nature required to conduct County business, except in cases of emergency and as otherwise granted by the Board of Supervisors (see also Government Code Section 25350):

b) Advertise and offer for lease or license County or Special District property that has been determined by the County, its departments, and/or its Special Districts to be available for lease or licenses consistent with the CPM and policies and procedures established by the CREO (see also Government Code Section 23004):

c) Negotiate and execute all Real Estate Contracts required to conduct County business:

d) Sell and dispose of surplus real property no longer required for County and/or Special District use, in accordance with this CPM, Resolutions of the Board of Supervisors and applicable state, federal, and county laws and regulations (see also Government Code Sections 25365, 25526 and 25363):

e) Establish policies and procedures to be followed by departments in the solicitation or procurement of real property interests:

f) Standardize County real estate forms, including, but not limited to, leases and licenses, for use on behalf of County departments and Special Districts; and

g) Review real estate solicitations and contracts being entered into on behalf of the County, its department and Special Districts to ensure consistency.

SECTION 3.8

MEMORANDUM OF UNDERSTANDING (MOU)

3.8–101 Definition

(1) A Memorandum of Understanding (MOU) is an agreement between two or more parties that describes the broad outlines and expectations reached by the parties, which is not otherwise covered by the CPM.

(2) While parties often do not intend for MOUs to be legally binding, determining the legal effect of an MOU depends on the presence or absence of the legal elements necessary to create a binding contract. California Civil Code Section 1550 provides the essential elements of a contract, including: (1) Parties capable of contracting; (2) Their consent; (3) A lawful object; and (4) A sufficient cause or consideration.

(3) An MOU under this Section 3.8 does not include agreements pursuant to which an elected county official coordinates the performance of his or her statutory duties on a State or regional level where the agreement does not require the County to pay or indemnify third parties.

(4) Any interdepartmental agreement between County of Orange departments shall not use the title of MOU and shall instead be entitled "Interdepartmental Agreement" (IA). IAs shall not be construed as legally binding on any department or the County of Orange.

3.8-102 Board/CEO Approval

(1) Any MOU that would legally bind the County such that Board Approval would otherwise be required under this policy shall require approval by the Board of Supervisors, except as otherwise provided herein. Staff shall consult with County Counsel for any questions concerning the legal effect of an MOU or its terms on the County.

(2) MOUs shall be approved by the department head or designee. The department head shall direct any legal questions to County Counsel and shall obtain the CEO's approval of any MOU that the director deems likely to create controversy or liability for the County. The CEO shall then determine whether any further review from County Counsel or approval by the Board of Supervisors is required.

(3) IAs do not require Board of Supervisor approval unless the CEO determines otherwise.

§3.8-103 Approval of Non-Standard Contract Terms

(1) Unless Risk Management agrees in writing that the risk to the County is minimal and County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of any MOU that is otherwise subject to administrative approval and includes non-standard terms in the indemnification contract provisions and/or limits the vendor's liability.

(2) Unless County Counsel agrees in writing that the legal risk to the County is minimal, approval by the Board of Supervisors is required prior to the execution of an MOU that is otherwise subject to administrative approval and includes non-standard terms in the governing law or arbitration/dispute resolutions contract provisions.

§3.8-104 Term

(1) The duration will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.

(2) In no case shall the term of an MOU exceed five years, except as approved by the Board of Supervisors.

(3) MOUs that require approval by the Board of Supervisors may not be extended or renewed without approval by the Board of Supervisors.

§3.8-105 Increases

(1) MOUs that require approval by the Board of Supervisors may not be increased without approval by the Board of Supervisors.

§3.8-106 Monitoring

(1) County DPA's shall follow all monitoring requirements for contracts, such as Beneficiary Agreements, Sub Recipient Agreements, etc.

SECTION 3.9

UNILATERAL PROCUREMENTS

§3.9-101 Definition

(1) A unilateral Procurement is a vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanisms for unilateral procurements include but are not limited to: Procurement card(s), County financial system documents, petty cash, and request for checks.

(2) The following unilateral procurements are preapproved:

a) Utility services: electric, gas, water, telephone

b) Cable/Satellite TV companies

c) Exclusive franchise trash contracts

d) Department of Justice

e) US Postal Service

f) The Toll Roads/FasTrak

g) Publications/Newsprint: Industry related or news periodicals, magazines, trade journals, etc., either in print or electronic/digital subscriptions.

h) Memberships

i. Memberships procured under this Section are limited to wholesale memberships such as Costco, Sam's Club, Smart & Final, Amazon, etc., memberships in associations formed for a purpose directly related to the primary work of the department, and memberships held exclusively for the purpose of obtaining a periodical, journal, or other reference materials that are directly related to the primary work of the department.

ii. Memberships procured under this Section do not include memberships in social, religious and fraternal organizations, professional or occupational organizations (such as accountants in accounting societies, physicians in medical associations, and engineers in engineering associations), or memberships that are included under the County's Personnel and Salary Resolutions.

i) Registration Fees

i. Amount should be actual expenses paid by the Department to participate in events or conferences for County business.

(3) In accordance with the competitive bidding policies stated in this manual, if a service/commodity can be provided by another vendor, a solicitation should be conducted.

(4) Entities not listed above must be approved by the County Procurement Officer or designee on the associated requisition and approval must be obtained prior to any services or commodities being provided.

SECTION 4 – METHODS OF SOLICITATION

SECTION 4.1

REQUEST FOR INFORMATION (RFI)

§4.1-101 Definition

(1) A Request for Information (RFI) is used to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to requests for information notices are not offers and cannot be accepted by County to form a binding contract, unless otherwise specified in the solicitation.

SECTION 4.2

INVITATION FOR BID (IFB)

§4.2-101 Definition

(1) Invitations for Bids (IFBs) are competitive bidding documents used for procuring supplies, services, or equipment for which clear specifications can be written and contract award is made generally to the lowest responsive, responsible bidder.

(2) IFB policies and procedures contained in this Section 4.2 shall apply, except as otherwise required for procurements pursuant to Sections 3.4, 3.5, and 3.6.

§4.2-102 Solicitation Document

(1) The IFB shall include a description and all contractual terms and conditions applicable to the procurement. All invitations for bids will include the following:

a) Adequate Public Notice: Adequate public notice will be given to provide potential bidders sufficient time to prepare and submit bids by the due date specified in the invitation for bid.

b) Specifications - General: Clear, concise specifications must be included in all bid documents. The specification is a description of the physical or functional characteristics of the commodity, equipment, or service desired. Specifications shall be written to encourage maximum and fair competition. A Statement of Desired Purpose may be included in specifications and only those characteristics essential to the final performance of the product or service will be included. Unless only one brand of commodity or equipment is acceptable due to compatibility or other restrictive requirements, any brand name used in the specifications will be used only for the purpose of establishing descriptive information and will not be used to restrict competitive bidding.

c) Proprietary Specification (no substitute): Proprietary specifications shall be used only when the end user has presented justification that only the named product will function in the end use required. Proprietary items will be competitively bid whenever there is more than one vendor from whom the product is available.

d) Terms and Conditions: All IFBs will include terms and conditions which will become part of the contract. The County Procurement Officer shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these available to departments for inclusion in the contracts they issue.

e) Bid and Performance Surety: When required by law or determined to be in the best interest of the County, the County Procurement Officer or the Deputy Procurement Agent shall include in the terms and conditions a requirement for bid and/or performance surety. A Bid Surety will guarantee that a bidder enters into the contract per its bid, and a performance surety will guarantee that the bidder will carry out the contract per the specifications and terms and conditions set down by the County. Such surety, when required, will not be designed to be restrictive, but will only be in an amount necessary to protect the County's interest. Bidders shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the County. Upon award to the successful bidder, all such sureties will be returned to unsuccessful bidders.

f) Indemnification: Where the County may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the County harmless from such risk.

g) Insurance: The County may also require that the successful bidder submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.

h) Criteria for Award: The IFB will include criteria for award. Award will be based on lowest responsive and responsible bidder. The lowest responsive and responsible bidder may be identified using the Reverse Auction process.

i) Responsiveness: A bidder's responsiveness will be determined in accordance with the requirements set forth in the invitation to bid. No criteria may be used in the determination of a bidder's responsiveness that is not set forth in the IFB. In order to determine lowest responsive bidder, criteria which affect bid price and may be objectively measured, such as discounts, transportation costs, and life cycle cost, may be considered. Award may not be made to a bidder submitting a higher quality item than the minimum required unless the bidder's price is also determined to be the lowest in accordance with the criteria established in the IFB. The unreasonable failure of a bidder to promptly supply information or documents required for bid review may be grounds for "determination of non-responsiveness" made by the appropriate Deputy Procurement Agent. All findings of non-responsiveness shall be documented and made part of the contract file.

j) Responsibility: A bidder's responsibility will be determined according to the bidder's ability to successfully carry out the proposed contract. Criteria to be used may include financial capacity, experience, facilities, equipment, and integrity. The County may also consider any of its own past dealings with the bidder.

§4.2-103 Lobbying

(1) All IFBs will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

§4.2-104 Pre-Bid Conference

(1) When it is in the County's best interest, a pre-bid conference may be held. The purpose of the conference will be to further define or illustrate the County's needs and/or to answer any questions which may exist on the part of the bidders. The conference shall be hosted by the County Procurement Officer or by the appropriate Deputy Procurement Agent. Any changes, deletions, additions or clarification to the bid solicitation shall be issued as an Addendum and sent to all prospective bidders. Pre-bid conferences shall not be mandatory for potential bidders unless it is clearly in the County's best interest, and a (5) five business day notice is given.

§4.2-105 Acceptance of Bids

(1) Except as noted below, bids must be:

a) Received no later than the time specified in the IFB;

b) Unconditionally accepted without alteration or correction;

c) All bids must be received by someone other than the person who conducted the bid solicitation and must be time and date stamped upon receipt;

d) All bids must be kept in a secure, locked location for access by personnel so authorized by the department head; and,

e) Bids become public information immediately after the closing date and time.

§4.2-106 Waivable Informalities

(1) When considered in the best interest of the County, certain bid requirements may be waived by the County Procurement Officer or Deputy Procurement Agent. Such waivers will be only for minor requirements which will not provide a material advantage for one bidder over another. Examples of waivable informalities are:

a) Failure of a bidder to submit information due to oversight (i.e. descriptive literature) consistent with Section 4.2-107;

b) Failure of a bidder to sign or date bid documents; or,

c) Failure of a bidder to submit the requested number of bid copies.

(2) Waivable informalities will be considered on a case by case basis and will occur only when in the County's best interest.

§4.2-107 Correction, Clarification, or Withdrawal of Bids

(1) Correction, clarification, or withdrawal of erroneous bids before or after award shall be permitted by the County Procurement Officer or Deputy Procurement Agent under the following circumstances:

a) Where there is a mistake clearly evident from examining the bid document, such as an extension of unit pricing or errors in addition, the bidder should be permitted to correct the error and the bid remain valid;

b) Where a bidder alleges a material mistake of fact and there is reasonable proof a mistake was made and the intended bid cannot be ascertained with reasonable certainty, the bidder shall be permitted to withdraw the submitted bid without penalty; and,

c) Where a bidder fails to supply information requested in the IFB due to oversight, the bidder should be permitted the opportunity to provide the information. This shall be permitted so long as the information does not affect the bidders' submitted price, specifications or substantive obligations and does not affect the position of the bid relative to others properly submitted.

(2) Where a bidder committed errors in judgment, the County will not permit withdrawal of the submitted bid without penalty, unless it is determined to be in the best interest of the County.

(3) Nothing in this Section is intended to prohibit the County from accepting a voluntary reduction in price or more favorable terms from a successful bidder after award, provided that such is not conditioned on a modification or deletion of any conditions required in the IFB which would result in a contract less favorable to the County.

§4.2-108 Tied Bids

(1) When all other factors are determined to be equal, the County Procurement Officer and Deputy Procurement Agents have the right to request a best and final offer from the tied vendors and award to the lowest.

§4.2-109 Cancellation of Invitations for Bid/ Reject all Bids

(1) An IFB may be canceled and any or all bids may be rejected in whole or in part as specified in the solicitation if it is for good cause and in the best interest of the County. The reasons for such cancellation or rejection shall be made part of the procurement file. Reasons for cancellation or rejection shall be provided upon request to bidders.

§4.2-110 Award

(1) Award will be made to the lowest, responsive, responsible bidder.

a) Prior to Contract award, DPAs shall conduct due diligence and obtain any documentation necessary to do so.

b) References:

i. Reference checks must be conducted prior to contract award.

ii. References will be obtained from outside the County of Orange whenever possible.

iii. References shall not be provided by the same department conducting the solicitation.

SECTION 4.3

REQUEST FOR PROPOSAL (RFP)

§4.3-101 Definition

(1) When it is not in the County's best interest to acquire commodities or services through normal competitive bidding, a contract may be solicited using the Request for Proposal (RFP) method. Such a situation may arise for any number of reasons, including, but not limited to:

a) The County's requirements are not well-defined;

b) The County is interested in evaluating a range of offers so that it may take advantage of technical innovation and developments in the market place; and,

c) Factors such as availability, expertise, and quality override price as a criteria for award.

(2) RFP policies and procedures contained in Section 4.3 shall apply, except as otherwise required for procurements pursuant to Sections 3.4, 3.5, and 3.7.

§4.3-102 Solicitation Document

(1) RFP will be issued with the intent of providing a competitive process from which the County may select a vendor to satisfy its requirements. The RFP will consist of the following:

a) Adequate Public Notice: Adequate public notice shall be given to provide potential respondents sufficient time to prepare and submit proposals by the due date specified in the RFP.

b) Requirements Statement: This will be a statement of the County's objectives in issuing the request. It shall explain the County's need as clearly as possible. It shall include any special requirements which the County may have in regard to its overall objectives. Included may be requests for special reports, critical timelines, unique items or services to be provided, cost or pricing data required, duration of service, etc.

c) Qualification Statement: The County may include minimum qualification criteria in the RFP. The criteria shall not be used to limit competition, but may be used to assure a certain level of expertise and quality of service.

d) Terms and Conditions: The terms and conditions which are intended to become part of the final contract shall be included in the RFP. Included in the terms and conditions are such items as indemnification, contract termination, payment terms, applicable laws, etc. The County Procurement Officer shall maintain, by type of contract, applicable and appropriate terms and conditions to be included in contracts and shall make these available to departments for inclusion in the contracts they issue.

e) Instructions: These are items which relate directly to the procedures on how the proposal must be submitted. Included in the instructions are items related to number of submittals required, format, procedure for information clarification, etc.

f) Bid and Performance Surety: When required by law or determined to be in the best interest of the County, the County Procurement Officer or the Deputy Procurement Agent shall include in the terms and conditions a requirement for bid and/or performance surety. A bid surety will guarantee that respondent enters into the contract as agreed upon, and a

performance surety will guarantee that the respondent will carry out the contract requirements according to specifications and terms and conditions set down by the County. Such surety, when required, will not be designed to be restrictive, but will only be in an amount necessary to protect the County's interest. Respondents shall be permitted to provide such surety in the form of a bond, certified or cashier's check, letter of credit, or certificate of deposit redeemable by the County. Upon execution of contract with the successful respondent, all such sureties will be returned to unsuccessful respondent.

g) Indemnification: Where the County may experience financial or physical risk in the performance of a contract by a vendor, the contract terms and conditions will require that the vendor hold the County harmless from such risk.

h) Insurance: The County may also require that the awarded respondent submit an insurance certificate prior to contract award. Such certificate will be in an amount adequate to protect the County and will name the County as an additional insured.

i) Liquidated Damages: When determined to be appropriate by the Deputy Procurement Agent, a provision for liquidated damages may be included in the contract terms and conditions. Liquidated damages may not be a penalty, but must be an approximation of the County's actual damages. See Liquidated Damages provision under Section 3.3 for Service Contracts.

j) Evaluation Criteria: The RFP will list the criteria which will be used to evaluate submitted proposals. The factors shall relate to the respondent's ability to satisfy the County's requirements as specified in the proposal. Evaluation criteria may be weighted by having specific values assigned to each criterion. Evaluation criteria may also be listed in order of importance without including values. Only the factors listed as part of the evaluation criteria may be used to determine the successful respondent. Values/weights for evaluation criteria must be included in the RFP. It is recommended cost be included as part of the criteria. When cost is a factor in the evaluation criteria, cost analysis must be conducted, scored, and recorded by the Deputy Procurement Agent.

§4.3-103 Lobbying

(1) All RFPs will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

§4.3-104 Pre-Proposal Conference

(1) When it is in the County's best interest, a pre-proposal conference may be held. The purpose of the conference will be to further define or illustrate the County's needs and/or to answer any questions from potential respondent. The conference shall be facilitated by the County Procurement Officer or by the appropriate Deputy Procurement Agent. Any changes, deletions, additions, or clarification to the RFP shall be issued as an addendum and sent to all prospective respondents. Pre-proposal conferences shall not be mandatory for potential respondents unless it is clearly in the County's best interest, and a (5) five business day notice is given.

§4.3-105 Receipt and Acceptance of Proposals

(1) Except as noted below, proposals must be:

a) Received no later than the time specified in the RFP.

b) Unconditionally accepted without alteration or correction;

c) All proposals must be received by someone other than the person who conducted the solicitation and must be time and date stamped upon receipt;

d) All proposals must be kept in a secure, locked location for access by personnel so authorized by the department head; and,

e) If conducted as an electronic solicitation, all proposal materials must be kept in a secured electronic location for access only by authorized personnel until provided to the evaluation committee.

§4.3-106 Waivable Informalities

(1) When considered in the best interest of the County, certain proposal requirements may be waived by the County Procurement Officer or Deputy Procurement Agent. Such waivers will be only for minor requirements which will not provide a material advantage for one respondent over another. Examples of waivable informalities are:

a) Failure of a respondent to submit information due to oversight, consistent with Section 4.3-113;

b) Failure of a respondent to sign or date a bid document; or,

c) Failure of a respondent to submit the requested number of proposal copies.

(2) Waivable informalities will be considered on a case by case basis and will occur only when in the County's best interest.

§4.3-107 Confidentiality

(1) Proposals are not to be marked as confidential or proprietary. Proposals submitted in response to a RFP are subject to public disclosure as required by the California Public Records Act. Additionally, all proposals shall become the property of the County. The County reserves the right to make use of any information or ideas in the proposals submitted.

(2) Regardless of any identification otherwise, including marking some or all pages as "confidential" or "proprietary", information in proposals shall become a part of the public record and subject to disclosure without further notice to the respondent.

(3) The County shall not in any way be liable or responsible for the disclosure of any such records.

§4.3-108 Evaluation Committee

(1) Proposals shall be evaluated by an evaluation committee. When possible, evaluation committees shall be comprised of an odd number of at least five (5) members. Members shall have no conflict of interest with the selection process. Members of evaluation committees shall be selected based on their qualifications and expertise related to the subject matter. If only one (1) proposal is received in response to an RFP, the Deputy Procurement Agent, after verifying that the minimum qualifications have been met, may waive the standard evaluation process and allow project manager/department designee(s), in collaboration with the DPA, to review the proposal against the

solicitation evaluation criteria to determine whether to proceed with negotiations and/or contract award.

a) It is County policy that when practical and appropriate, private citizens with appropriate expertise who are free of any potential conflict of interest will be included on the proposal evaluation committee.

b) The composition of the selection committee will be determined by the contracting department or by the County Procurement Officer or designee for those contracts issued by the County Procurement Office.

c) All members of the evaluation committee must certify, under penalty of perjury, that they have no conflict of interest with the selection.

d) During the evaluation process, evaluators shall not discuss any issues related to the evaluation or selection process with any respondents or their advocates, except in scheduled interviews as discussed below.

e) A member that serves on the evaluation committee shall not be listed as a reference for the same RFP. If the evaluation committee member is listed as a reference, that member shall be excused from that particular RFP.

§4.3-109 Presentations/Interviews

(1) Interviews must be conducted when the total contract value is anticipated to exceed $1,000,000, unless otherwise justified and approved by the County Procurement Officer or designee in writing. The evaluation committee will conduct interviews with respondents who have submitted responsive proposals and have scored high enough on the written portion of the RFP.

(2) When the total contract value is anticipated to not exceed $1,000,000, the evaluation committee may elect to conduct interviews with respondents who have submitted responsive proposals and have scored high enough on the written portion of the RFP.

(3) During all interviews conducted under sub-sections (1) and (2) above:

a) Respondents shall be given fair and equal treatment with respect to any opportunity for discussion and revision to proposals;

b) Discussions with respondents may be documented in writing, and that record will become part of the procurement file;

c) In conducting interviews there shall be no disclosure of any information derived from proposals submitted by competing respondents; and,

All members of the evaluation committee must sit in on the interviews with all respondents.

§4.3-110 Proposal Revisions

(1) Revisions may be requested after submissions and prior to award for the purpose of obtaining best and final offers. Late best and final offers will not be accepted.

§4.3-111 Scope of Work Revisions

(1) If discussions reveal the need to change the original scope of work, either an addendum detailing the revised scope will be sent to all those submitting proposals, or, if appropriate, the County will issue a revised RFP and begin the solicitation process again. The County Procurement Officer or appropriate Deputy Procurement Agent shall be the final authority as to which process will be used.

§4.3-112 Evaluation Scores

(1) Evaluators shall initially score proposals individually. The initial score sheets containing the evaluators notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as County record.

(2) Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied. The preliminary scores will be tallied and included on the consolidated score sheets. An additional tallied calculation will be conducted with the highest and lowest panelist scores eliminated. The results of this calculation shall be included in the consolidated score sheet as the final score.

(3) After scores have been tallied and discussed by the panel of evaluators and a recommended proposal(s) determined, a Memorandum of Recommendation that includes the ranking of all proposals based on the aggregate scores, will be signed by the evaluators and made part of the procurement file. The final scores will be recorded on a single consolidated score sheet.

(4) The aggregate scores will be documented and be part of the procurement file. Furthermore, the finalized individual scoring sheet(s), with evaluators names redacted, will be provided to the Board of Supervisors as an attachment to the Agenda Staff Report (ASR).

§4.3-113 Correction, Clarification, or Withdrawal of Proposals

(1) Prior to the time and date set for the receipt of proposals, any respondent may withdraw the proposal or correct any errors in their previously submitted proposal.

(2) After the time and date set for the receipt of proposals, respondents may not make any changes to their submitted proposals.

§4.3-114 Award

(1) Award of contract will be made to the responsible respondent who is ranked the highest. This will be determined by the evaluation committee using the evaluation criteria, which may include proposed cost.

a) Contract award, DPAs shall conduct due diligence and obtain any documentation necessary to do so.

b) References:

i. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.

ii. References will be obtained from outside the County of Orange whenever possible.

iii. References shall not be provided by the same department conducting the solicitation.

(2) Should the County Procurement Officer or appropriate Deputy Procurement Agent fail to concur with the recommendation submitted by the evaluation committee, the County Procurement Officer or appropriate Deputy Procurement Agent will meet with the evaluation committee members to discuss the reasons for the disagreement.

a) No recommendation shall go forward to the Board of Supervisors from the County Procurement Officer or the Deputy Procurement Agent, unless there is concurrence among the County Procurement Officer or Deputy Procurement Agent, the using department, and the evaluation committee.

SECTION 4.3.1

RFP FOR REAL ESTATE INTEREST

§4.3.1-101 Policy

(1) This Section 4.3.1 shall apply to Requests For Proposals (RFPs) for real estate interests short of fee simple interest (*i.e.,* lease, and licenses, etc.), where existing delegated authority is not applicable. See also, *e.g.* Government Code Section 25537 and Orange County Codified Ordinance Section 1-4-154.

(2) It is the policy of the County of Orange to solicit competitive bids and proposals for surplus real estate interest short of a fee simple interest, including, but not limited to leases and licenses, except where existing delegated authority applies and dictates a different procedure, or as otherwise provided for herein or in applicable law. In addition, Section 25520, *et seq.*, of the Government Code expresses a legal preference for competitive proposals or bidding, except as otherwise provided for in the law.

(3) The County and its Special Districts shall receive fair market value for any interest in real property unless there is a specific public purpose and a below market value is authorized by applicable law (see, e.g., California Government Code Section 25365(a)).

(4) When the CREO, in conjunction with a County department or Special District, identities surplus County property that may be utilized by another party and is not currently needed for County, or other governmental uses, but is not appropriate for sale, an RFP process shall be used, except for instances where specific delegated authority applies, or applicable law otherwise dictates.

§4.3.1-102 Prior to RFP Process

(1) Prior to engaging in an RFP process for the lease or license of County or Special District property, the CREO and CEO Real Estate shall first determine that the County Property at issue is not needed by a different County department or Special District for a public use. (Note: The disposition of real estate by sale and the Surplus Land Act are addressed in §1.6.1 of the CPM. Leases may require Surplus Land Act compliance. Please consult with County Counsel for assistance.)

(2) The CREO and CEO Real Estate shall determine if the real property interest at issue is marketable or of such minor value that a direct transaction can be processed by law. California Government Code Section 25526.5 permits the sale of County land without competitive bidding if it is of limited utility or unmarketable (i.e., if competitive proposals would be futile or would not produce any advantage to the County). See also, *Meakins v. Steveland, Inc.*, 68 Cal.App.3d 490, 498 (1977). However, the buyer still must pay fair market value. In the event that the real property interest in minor or unmarketable, the CREO and CEO Real Estate shall coordinate with County Counsel to ensure that the proper procedure is followed for a direct sale, including insuring that the proper findings are made by the Board of Supervisors.

(3) The CREO and CEO Real Estate shall then comply with any and all legal requirements to ensure that the interest in real property proposed to be conveyed can be done so, including, but not limited to (as applicable), complying with:

a) The Surplus Land Act (see §1.6.1-107 of the CPM).

b) The Park Abandonment Act (see §1.6.1-103 of the CPM).

c) Orange County Codified Ordinances Section 1-4-153, *et seq*., which allows the Board of Supervisors to grant a lease or license of real property when "bids posted in at least three (3) public places for not less than fifteen (15) days and published for not less than two (2) weeks in a newspaper of general circulation, if any such newspaper is published in the County, or reject all bids."

d) Any other applicable noticing requirements pursuant to applicable procedure and law.

(4) The CREO and CEO Real Estate shall determine the specific objective of the RFP for the County.

§4.3.1-103 Process

(1) The RFP process to be followed for the leasing and licensing of real estate, shall be consistent with the process outlined in §4.3, above, except that the tasks to be conducted by the County Procurement Officer or the Deputy Procurement Agent shall be performed by the CREO and CEO Real Estate, and except as further outlined below. Any issues addressed in 4.3, above, and not addressed or revised below shall remain as set forth in 4.3.

(2) The real estate RFP shall state with specificity the County's objectives in releasing the RFP (as determined by the CREO and CEO Real Estate in conjunction with the effected department and the applicable Supervisorial District), the use being sought for the property by the County, and if no specific use is being solicited, set forth any constrains on the property, if any, pursuant to zoning or County preference.

(3) Real estate RFPs will be posted on the County Real Estate website, among other locations, such as the County's online bidding system, as determined by the CREO and CEO Real Estate to be in the best interest of the County.

(4) Once an RFP has been released, responses shall be required no sooner than 60 days from the release but may be extended in the reasonable discretion of the CREO and CEO Real Estate.

(5) After release of the RFP and prior to receipt of proposals:

a) Any and all questions regarding the RFP shall be submitted in writing, and responses shall be provided to all potential respondents through an addendum to the RFP.

b) No discussion with County department staff involved with the RFP (*i.e.*, CEO Real Estate or any department managing or occupying the applicable property) shall take place while the RFP is posted, except through the project contact identified in the RFP. Any nonpermitted contact with County department staff could result in disqualification of the respondent.

c) CEO Real Estate may host a Pre-Proposal Conference if it is deemed useful for the RFP process in the reasonable discretion of the CREO.

(6) At any time during the real estate RFP process, the CREO reserves the right to:

a) Amend the RFP and any proposed key dates, and/or

b) Solicit new proposals on the same project, or on a modified project, which may include portions of the original RFP, as the County may deem necessary.

(7) After receipt of proposals the CREO reserves the right to:

a) Request clarification of any information contained in a proposal;

b) Allow for the correction of errors and/or omissions;

c) Accept or reject any and all proposals or any part of any proposal, and to waive minor defects or technicalities in same;

d) Disregard all non-conforming, nonresponsive, or conditional proposals;

e) Reject any proposal that does not pass the minimum requirements outlined in the RFP;

f) Schedule interviews with any or all respondent;

g) Select the respondent that will best meet the needs of the County; and/or

h) Negotiate the Contract with a primary respondent or alternate respondent as determined through the RFP process.

(8) Based on the complexity of the Real Estate Contract and transaction contemplated in the RFP, a good faith deposit may be required to be provided by the successful respondent prior to the start of negotiations in the reasonable discretion of the CREO and CEO Real Estate. The good faith deposit will be held by the County subject to the terms and conditions of a letter agreement between the successful respondent and the County, which will specify the terms and conditions upon which such deposit will be forfeited or refunded. In the event that a final Real Estate Contract is negotiated and entered into by the County and a respondent, any amounts remaining from the good faith deposit may be refunded or applied to any required payment under the contract as agreed to by the County and the successful respondent. In any of the following instances the County's staff, attorney, and consultant time and fees during negotiations and in addressing these unanticipated issues may be deducted from the good faith deposit if, during negotiations, successful respondent:

a) Materially changes the terms of their financial offer;

b) Changes the proposed development plan (if any) or schedule; or

c) Fails to respond to the County's requests for additional information or clarifications in a timely manner; fails to provide proof of financing, insurance, or bonding; or previously failed to disclose substantive background information (e.g., major civil litigation in regard to prior projects, bankruptcies, criminal convictions, or any other matter that would reflect poorly on the County).

§4.3.1-104 Protest Process

(1) In the event any party believes that the County's solicitation is unfairly restrictive or ambiguous or contains conflicting provisions or the party believes that any resulting Real Estate Contract would be commercially impractical to perform, the party must file a written protest with the CEO Real Estate project contact.

(2) Protest Procedure: All protests shall be typed under the protestor's letterhead and submitted in accordance with the provisions stated in the RFP. All protests shall include at a minimum the following information:

a) The name, address and telephone number of the protestor;

b) Signature of the protestor or the protestor's representative;

c) Solicitation or contract number;

d) Detailed statement of the legal and/or factual grounds for the protest; and

e) Form of relief requested.

(3) Protest of RFP Specifications: All protests related to the RFP specifications must be submitted to the CEO Real Estate project contact no later than thirty (30) business days prior to the proposal due date. Protests received after the thirty (30) business day deadline will not be considered by the County.

a) In the event the protest of the RFP specifications is denied, and the protester wishes to continue in this solicitation process, they must still submit a proposal prior to the close of solicitation in accordance with proposal submittal procedures provided in this RFP.

(4) Protest of Award of the Real Estate Contract: In protests related to the award of a Real Estate Contract, the protest must be submitted no later than five (5) business days after the Notice of Intent to Award is provided by the CEO Real Estate project contact. Protests relating to a contract award, which are received after the five (5) business day deadline will not be considered by the County.

a) Protest Process.

i. In the event of a timely protest, the County will not proceed with the solicitation or award of the contract until the CREO renders a decision regarding the protest.

ii. Upon receipt of a timely protest, the CEO Real Estate project contact will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.

iii. The County may, after providing written justification, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protester's right to the protest procedures outlined herein.

iv. If the protester disagrees with the decision of the CREO, the protestor may submit a written notice to the Office of the County Procurement Officer requesting an appeal to the Procurement Appeals Board, in accordance with the process stated below.

b) Appeal Process.

i. If the protester wishes to appeal the decision of the CREO, the protester must submit, within three (3) business days from receipt of the CREO's decision, a written appeal to the Office of the County Procurement Officer pursuant to §1.3-107.

ii. Within fifteen (15) business days, the County Procurement Officer will review all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain his or her decision on whether the protest shall be forwarded to the Procurement Appeals Board.

iii. The decision of the County Procurement Officer on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

§4.3.1-105 Evaluation Committee

(1) The evaluation committee for real estate RFPs under this section shall be comprised of no less than five (5) members who have no conflict or apparent conflict of interest with the selection process or any potential respondents. In addition to the requirements set out in §4.3-108, above, members of evaluation committees shall be selected based on their qualifications and expertise related to the subject matter, and should generally be experienced in real estate, construction (if applicable), finance, development or another area relevant to the RFP as reasonably determined by the CREO and CEO Real Estate.

(2) The evaluation committee will conduct evaluations of the proposals. The committee will consider the information supplied or not supplied by respondents. If it finds a failure or deficiency in the proposals or any information provided in connection thereto, the evaluation committee may reject said proposal or information or reflect the failure or deficiency in the evaluation.

(3) CEO Real Estate may request clarifications, or otherwise verify the contents of the proposal, including information about the respondent, development team members (if any), consultants, and sub-consultants. If CEO Real Estate considers clarification or interpretation of the RFP is necessary, a written addendum shall be issued. Any addenda issued will become part of the RFP. Each respondent must follow the directions in the addenda. CEO Real Estate reserves the right to seek publicly available information about the respondents and their development teams, if any.

(4) Proposals will be evaluated on the basis of the responsiveness of the requirements in this RFP. Proposals will be evaluated on the basis of the following criteria (all or some of the following may be included by CEO Real Estate depending on the subject of the RFP):

a) Demonstrated understanding of RFP objectives;
b) Quality of the proposed plan, if any;
c) Feasibility of proposed plan, if any;
d) Composition of the proposed team, if any;
e) Relevant experience of team, if any;
f) Project schedule and phasing
g) Quality of the respondents proposed financing capability and structure;
h) Financial offer;
i) Proposed option and/or ground lease amendments and exceptions;
j) Public benefit (if required);
k) Completeness of submittal; and
l) Interview, as needed
m) Other criteria as needed

§4.3.1-106 Presentation/Interviews

(1) When a real estate RFP is issued, CEO Real Estate will conduct interviews with respondents , as needed. Respondents shall be ready to attend the interview within ten (10) business days of

notification. CEO Real Estate may also send written questions and ask for written responses within five (5) business days. The interviews will be evaluated based on the following criteria (all or some of the following may be included by CEO Real Estate depending on the subject of the RFP):

a) Presentation / communication skills;

b) Project lead / key team members;

c) Respondent's response to questions; and

d) Overall understanding of the project and articulation of project vision.

e) Other criteria as needed

(2) Proposals will be scored based on established criteria, which have been weighted and will be assigned points that measure the responsiveness to each identified criterion.

§4.3.1-107 Evaluation Scores

(1) In addition to the scoring process set out in Section 4.3-112, above, evaluators shall score proposals individually, and scoring will be divided into evaluation of the written proposal and the interview. The initial score sheets containing the evaluators' notes and comments shall remain in the possession of the individual evaluators, and at no time shall this information become part of the permanent procurement file or retained as a County record. Evaluators' individual scores will be discussed with the entire evaluation panel and combined and tallied after the interviews (if conducted). The total number of points earned for the written proposals and interviews will be combined for each respondent. The preliminary scores will be tallied and included on the consolidated score sheets. An additional tallied calculation will be conducted with the highest and lowest panelist scores eliminated. The results of this calculation shall be included in the consolidated score sheet as the final score.

§4.3.1-108 Award

(1) In addition to the procedure outlined in Section 4.3-114, above, after the RFP evaluation process has produced a ranked slate of respondents, a primary respondent and alternate (if the RFP results in multiple respondents) shall be identified and, in the reasonable discretion of the CREO may be presented to the Board of Supervisors, either in open or closed session, to select the respondent to negotiate the applicable Real Estate Contract for Board approval. The CREO shall also be given authority to negotiate with the alternate respondent if negotiations with the primary respondent do not result in a final contract between the parties.

(2) After negotiations have been completed with the selected respondent, the Board of Supervisors at a public meeting shall approve the final Real Estate Contract(s).

(4) In no event shall the County be bound by, or liable for, any obligation with respect to a proposed project by a potential respondent until such time (if at all) a Real Estate Contract between the County and the respondent, in form and substance acceptable and satisfactory to the sole discretion of County, has been approved by the Board of Supervisors.

SECTION 4.4

TWO-STEP PROCESS

§4.4-101 Definition

(1) The two-step solicitation process is a method of soliciting services and commodities, except as otherwise applied to contracts procured pursuant to Section 3.4 and 3.5, where a preliminary evaluation of the respondent's qualifications is conducted, and a final evaluation for recommendation of award is made based on the RFP process.

(2) Two-step sealed bidding may be used when it is determined that:

a) Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the County of Orange;

b) Definite criteria exist for evaluation of technical offers;

c) More than one technically qualified source is expected to be available; and

d) A fixed price contract will be used.

§4.4-102 Process

A prequalification process may be conducted prior to the issuance of the RFP, as the first step in a two-step solicitation process, to establish a list of qualified respondents.

(1) Step One – Request for Qualifications (RFQ)

a) Step One shall be initiated by an RFQ for respondents to submit a Statement of Qualifications (SOQ). Qualification criteria may include, but is not limited to: financial capacity/stability, company history, capacity to perform, relevant experience, professional licenses/certifications, and any other criteria relevant to services or items being sought. Prequalification requirements will constitute the minimum requirements necessary to fulfill the contract. The RFQ shall be issued in a manner which provides adequate public notice allowing potential respondents sufficient time to prepare and submit responses. The RFQ may contain, but is not limited to, the following information:

i. Notice that the procurement process shall be conducted in two steps;

ii. A description of the material or service desired using the best information available to the County;

iii. A statement that cost will not be included in Step One;

iv. The qualification requirements, such as drawings, descriptive literature, proof of licenses/certification, etc.;

v. The criteria for evaluating the SOQs;

vi. A statement that only SOQs from respondents who are prequalified during step one shall be considered for step two.

(2) Step Two

a) Except as otherwise required for procurements conducted pursuant to Sections 3.4 and 3.5 herein, upon completion of Step One, the County Procurement Officer or Deputy Procurement Agent shall conduct a Request for Proposal (RFP) in accordance with Section 4.3. Only those determined to be most qualified in Step One will be invited to participate in Step Two.

b) References:

i. References will be obtained from outside the County of Orange whenever possible.

ii. If a reference check is not part of the RFP evaluation criteria it must be conducted prior to contract award.

iii. References shall not be provided or accepted by the same department conducting the solicitation.

§4.4-103 Lobbying

(1) All solicitations will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

§4.4-104 Protest Process

(1) Protests will only be accepted in Step Two and in accordance with Section 1.3 of this manual, except as otherwise provided in Sections 3.4, 3.5 and 3.6 herein. All protests related to bid or proposal specifications must be submitted to the Deputy Procurement Agent no later than five (5) business days prior to the close of the solicitation. Protests received after the five (5) business day deadline will not be considered by the County.

a) In the event the protest of specifications is denied and the protestor wishes to continue in the solicitation process, they must submit a bid/proposal prior to the close of the solicitation in accordance with the solicitation instructions.

(2) Protest of Award of Contract: Except as otherwise required in Sections 3.4, 3.5, and 3.6, herein, in accordance with Section 1.3 of this manual, protests related to the award of a contract must be submitted no later than five (5) business days after the notice of intent to award is provided by the Deputy Procurement Agent.

(3) Protests received after the five (5) business day deadline will not be considered by the County.

SECTION 4.5

SOLE SOURCE REQUESTS

§4.5-101 Policy

(1) It is the policy of the County of Orange to solicit competitive bids and proposals for its procurement requirements. A Sole Source procurement may only be used when there is clear and convincing evidence that only one source exists to fulfill the County's requirements, subject to further limitations for procurements pursuant to Sections 3.4, 3.5 and 3.7 that conflict with this section.

§4.5-102 Justification

(1) Formal justification for Sole Source procurements is required when competitive solicitation is required. A Sole Source justification will be prepared and signed by the requesting department, the department head or designee, and the Deputy Procurement Agent. The County Procurement Officer or Deputy Procurement Agent shall retain a copy of this justification as part of the procurement file. As part of the Sole Source justification, the requestor shall clearly explain:

a) A detailed description of the type of contract to be established;

b) A detailed description of services/commodities to be provided by the vendor;

c) Why the recommended vendor is the only one capable of providing the required services/commodities and includes back-up information to support the justification;

d) Identify other sources that have been contacted and explain in detail why they cannot fulfill the County's requirements;

e) How the recommended vendor's prices or fees compare to the general market and attach quotes for comparable services and supplies, if available; and,

f) How the County would achieve the desired request if the recommended vendor could not provide the product or service.

(2) Valid Sole Source justifications require strong technological or strong programmatic justifications.

(3) If a contractor develops a particular expertise through demonstrated past performance which has been investigated and determined to be satisfactory in this area of expertise, then such contractor may be issued a contract for related work, provided that the Sole Source justification requirements outlined in this Section are satisfied. Such contractor may be designated as an exclusive contractor if the County would be adversely affected by bringing in another vendor who would be required to meet the expert contractor's level of expertise and existing knowledge and involvement in a specific project.

§4.5-103 Proprietary Source Requests

(1) Proprietary means confidentially owned and controlled. The term may be used to refer to such items as property, computer software, or intellectual property. The vendor owning items that are proprietary is known as a sole proprietor and there is no other source available from which to purchase the commodities or services.

(2) Determining if an item is proprietary rests with the Deputy Procurement Agent and shall be justified in accordance with the policies and procedures outlined in this Section. In the event an item is justified as proprietary, the Deputy Procurement Agent shall endeavor to negotiate a price that is most advantageous to the County.

(3) Proprietary Specifications: A proprietary item or service is one that must meet particular restrictive specifications but may be available from a number of sources, e.g., "Brand 'X' computers - no substitutions". A detailed description of the proprietary specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.

(4) A detailed description of the proprietary specification shall be attached to the requisition for approval. The requisition should contain a brief justification for requesting the proprietary specification.

(5) Board Approval: Board approval is required for proprietary commodities and services in accordance with applicable policy as provided in this Section, as well as those that may apply in Sections 3.1, 3.2, and 3.3 of this manual.

§4.5-104 Renewals and Amendments

(1) The initial Sole Source Request is required for each contract renewal period. A new Sole Source Request is required for any contract amendments that change the scope of work or increase the contract value above the established Board thresholds for the appropriate contract types as set forth in Sections 3.1, 3.2, and 3.3.

§4.5-105 Agenda Staff Report

(1) Prior to the submittal of an Agenda Staff Report, all Sole Source Justifications requiring approval by the Board of Supervisors shall first be reviewed and approved by the Office of the County Procurement Officer.

(2) Agenda Staff Reports shall clearly state that the procurement is a Sole Source procurement and also include the Sole Source Justification text in the "Background Section" of the Agenda Staff Report.

§4.5-106 Solicitation Exemption

(1) The County Procurement Officer or designee may consider a departmental request to use a Sole Source contract and waive the solicitation requirements for purchases with special circumstances and/or when it is determined to be in the best interest of the County.

(2) The Board of Supervisors will be notified prior to County Procurement Officer or designee & Chief Financial Officer approvals. The exemption must be approved on the associated requisition.

§4.5-107 County of Orange Procurement Preference Policy Exemption

(1) County of Orange Procurement Preference Policy requirement is not applicable to Sole Source procurements.

SECTION 4.6

PETTY CASH

§4.6-101 Definition

(1) Petty Cash: Funds set aside as a cash reserve in a revolving fund for single expenditures under $1,000 each made within established policies and controls.

§4.6-102 Types of Small Dollar Purchases:

(1) Petty cash purchases are made directly by County departments using cash established within their revolving petty cash funds. Petty cash funds are to be used in the following manner and in accordance with Auditor-Controller's Accounting Manual:

a) The limit on any individual petty cash transaction is $1,000, including tax, handling charges, etc. Splitting to avoid the $1,000 limit is a violation of Board policy;

b) Petty cash transactions are limited to one per day, per vendor;

c) Purchases are to be paid for when received. Purchases where the invoice follows the commodities should be handled by contract; and,

d) Petty Cash shall not be used to procure services or commodities that are available on a County contract.

e) Authority to procure travel services for individuals providing a service to the County, such as speakers, panel experts, etc.

SECTION 4.7

COOPERATIVE PROCUREMENT

§4.7-101 Definition

(1) Cooperative Procurement is a strategy used by governmental entities to procure services and commodities from contracts awarded by other governmental entities or cooperative programs to take advantage of volume purchasing discounts and to reduce administrative expenses.

§4.7-102 Policy

(1) Services, commodities and capital assets may be acquired through cooperative contracts that can involve one or more public entities, subject to any limitations for procurements pursuant to Sections 3.4 and 3.5 that are inconsistent with the cooperative purchasing requirements in this Section. Such cooperative procurements may include public procurement contracts, which are made available to or from other public entities or cooperative programs.

§4.7-103 Collaborative Procurement

(1) In accordance with Section 1.1 of this manual, the County Procurement Officer or designee has the authority to identify and use cooperative contracts that would be beneficial for County use.

a) The County Procurement Office may pursue competitive cooperative contracts executed by the federal and/or state governments;

b) May pursue contracts with other governmental entities in order to obtain cost savings for the County; and,

c) Shall make available County cooperative contracts to other government entities and pursue opportunities for collaboration in procurement.

(2) In the event a cooperative contract identified for use by the County Procurement Office was awarded by a method other than a competitive bid, the County Procurement Office is required to seek review from the Office of County Counsel and County Risk Manager where appropriate, prior to authorizing the use of the contract.

§4.7-104 Responsibility

(1) The County Procurement Office is responsible for identifying and approving cooperative programs. The County Procurement Office may authorize and make use of cooperative contracts and programs including the pricing, terms and conditions of the contract of another public entity provided that:

a) Except as permitted pursuant to Section 4.7-104 (3), the initial procurement the County is relying upon shall be consistent with County procurement rules and requirements, which shall include specific descriptions of the commodities, capital assets and/or services available under the cooperative contract; and,

b) The vendor holding the contract extends the same pricing, terms and conditions to the County.

(2) Before deciding whether or not to use the contract of another public entity or program, Deputy Procurement Agents will review the contract to determine that the use of the contract serves the best interest of the County of Orange and that minimum County procurement requirements have been followed with respects to competitive bidding. Deputy Procurement Agents shall ensure that all terms and conditions associated with the cooperative agreement to which the subordinate contract will be subject, are reviewed and incorporated as appropriate as part of this review and approval process. Should multiple vendors possess a cooperative contract for the same services/products, a pricing analysis will be conducted to ensure the most advantageous contract is utilized.

(3) For commodity and capital asset purchases, as defined in Sections 3.1-101 and 3.2-101 respectively, subordinate to cooperative contracts with a contract value of $250,000 annually or less, the requirement for a "specific description" as stated in Section 4.7-104 (1) a) shall not apply as long as the item and name of the commodity and/or capital asset is listed within the cooperative contract. Such contracts shall be considered to have satisfied the written solicitation requirement in this manual.

§4.7-105 Board Approval

(1) Individual departments utilizing cooperative contracts to purchase services and commodities are required to receive Board approval on individual purchases that exceed the established dollar thresholds for the appropriate contract types as set forth in Section 3 of this manual.

§4.7-106 Term

(1) The duration of a contract executed as a subordinate to a cooperative contract will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.

(2) With respect to non-Board of Supervisors awarded contracts, in no case will a contract executed as a subordinate to a cooperative contract exceed five (5) years in duration, unless specifically approved by the Board of Supervisors.

(3) In consultation with County Counsel, Board and Non-Board subordinate contract extensions may be issued by the Deputy Procurement Agent for up to one (1) year, beyond the fifth year, with County Procurement Officer or designee approval, provided there are no monetary increases (i.e., within the contract's existing contract amount) or other material changes to the contract.

SECTION 4.8

REGIONAL COOPERATIVE AGREEMENTS (RCAs)

§4.8-101 Definition

(1) A Regional Cooperative Agreement (RCA) is a cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer to take advantage of the County's economies of scale and reduce the duplication of efforts across the County.

§4.8-102 Policy

(1) At the County Procurement Officer's discretion, the County Procurement Officer may delegate responsibility to other County departments to establish RCAs pursuant to requirements set forth by County Procurement Office.

§4.8-103 Responsibility

(1) County departments are required to use RCAs as stated in Section 1.1.1-102 (2) of this manual.

(2) The County may allow other public entities to take advantage of RCAs which the County has competitively bid, although the County shall not be a signer on these contracts and shall have no legal liability to either the contracting entities or to third parties as a result of the contracts, including, but not limited to:

a) Issuing their own contract documents;

b) Providing for their own acceptance of the pricing, terms & conditions of the contract;

c) Obtaining required certificates of insurance, endorsements and bonds; and,

d) Making any payments due to the vendor.

e) Limitation of Liability – Orange County: The contracting entities shall hold harmless the County of Orange from all claims, demand actions, or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of County issued cooperative contracts.

f) The Deputy Procurement Agent shall ensure the Contractor maintains a list of the County departments and public entities that have used the County's cooperative RCAs. This list shall report dollar volumes and shall be provided to the Deputy Procurement Agent upon request.

§4.8-105 No Usage Guarantee

(1) The terms of the RCA shall include a provision indicating that the County of Orange makes no guarantee of usage.

§4.8-106 Board Approval

(1) Individual departments utilizing RCAs to procure services are required to receive Board approval on individual contracts that exceed the established dollar thresholds for the appropriate contract types as set forth in Section 3 of this manual; the County Procurement Officer or designee, at their discretion, may obtain Board approval on behalf of County departments.

§4.8-107 Term

(1) The duration of a RCAs will depend upon the County's need, prevailing market conditions, contract start-up costs, and the County's best economic interest.

(2) RCAs issued by the Office of the County Procurement Officer may extend beyond five (5) years in duration, without approval by the Board of Supervisors.

a) Any department subordinate contracts may be extended to the same duration as the RCAs that are issued by the Office of the County Procurement Officer.

SECTION 4.9

REQUEST FOR APPLICATION (RFA)

§4.9-101 Definition

(1) When it is not in the County's best interest to acquire services and commodities through one or more of the other solicitation processes specified in Section 4 of this manual, services and commodities may be solicited using the Request For Applications (RFA) process. Such a situation may arise for any number of reasons including, but not limited to:

a) The County's need for services may exceed the available supply of applicants;

b) The County's need is to secure as many prospective qualified applicants as possible;

c) The County's need is for specialized service by licensed or certified applicants; and/or

d) The solicitation may remain open for longer periods of time, or indefinitely to allow qualified applicants to obtain required certifications or meet the minimum requirements set forth in the solicitation.

§4.9-102 Requirements

(1) The RFA shall consist of the following:

a) Adequate Public Notice: Adequate public notice shall be given to provide potential applicants sufficient time to prepare and submit applications by the due date specified in the RFA.

b) Requirements Statement: This will be a statement of the County's objectives in issuing the solicitation. It shall explain the County's need(s) as clearly as possible. It may include any special requirements which the County may have in regard to its overall objectives, such as requests for special reports, critical timelines, unique services to be provided, cost or pricing data required, duration of service, etc.

c) Qualification/Certification Statement: The County will include minimum qualification criteria in the RFA. The criteria will be utilized to ensure a certain level of expertise and/or certification.

d) Terms and Conditions: The terms and conditions which are intended to become part of the final contract shall be included in the RFA. Included in the terms and conditions are such items as indemnification, contract termination, payment terms, applicable laws, etc.

e) Instructions: These are items which relate directly to the procedures on how the application must be submitted. Included in the instructions are items related to number of submittals required, format, procedure for information clarification, etc.

f) Indemnification: Where the County may have exposure to an appreciable risk of financial or property loss as the result of the performance by vendor, the RFA must specify that the

terms and conditions which are intended to become part of the final contract include a requirement that vendor indemnify, defend and hold harmless the County against and from such risk.

g) Insurance: The RFA must specify that the County may require that prior to the award of a final contract, the selected applicant submit an insurance certificate that will be in an amount adequate to protect the County and will name the County as an additional insured. The RFA must clearly specify the County's insurance requirements as recommended by CEO/Risk Management.

h) Application Review and Award Criteria: An administrative review of the applications submitted by interested vendors must be performed to ensure they meet the instructions and minimum requirements specified in the RFA. Those applications that meet the instructions and minimum requirements will be considered for contract award. The County department and/or agency issuing the RFA may make contract awards on a continuous basis and up until it has been determined that the needs of the department or agency have been met.

§4.9-103 Lobbying

(1) All RFAs will include as part of their language the following vendor advisory: "The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business."

§4.9-104 Pre-Application Conference

(1) When it is in the County's best interest, a pre-application conference may be held. The purpose of the conference will be to further define or illustrate the County's needs and/or to answer any questions which may exist on the part of prospective applicants. Any changes, deletions, additions, or clarification to the RFA that may result from the pre-application conference shall be issued as an addendum and sent to all prospective applicants. Pre-application conferences shall not be mandatory for prospective applicants unless it is clearly in the County's best interest and specifically stated in the RFA.

§4.9-105 Receipt and Acceptance of Applications

(1) Applications are to be received by the date and time specified in the RFA. Applications shall be unconditionally accepted without alteration or correction. All applications must be received by someone other than the person who conducted the solicitation and must be time and date stamped immediately upon receipt. All applications must be kept in a secure locked location for access by only authorized personnel.

(2) Late applications may be accepted depending on the best interest of the County. No application will be accepted which is received by the County Procurement Officer or Deputy Procurement Agent later than 24 hours from the due date and time specified in the RFA. The designated Deputy Procurement Agent in the RFA, for purposes of administering the RFA, will have sole discretion in deciding to accept late applications. In the event the designated Deputy Procurement Agent accepts a late application, he or she must also accept all applications that are received within 24 hours of the specified date and time.

§4.9-106 Waivable Informalities

(1) When considered in the best interest of the County, certain requirements specified in the RFA may be waived by the County Procurement Officer or the designated Deputy Procurement Agent in the RFA. Examples of waivable informalities include such items as:

a) Failure by an applicant to submit information as a result of clerical error;

b) Failure by an applicant to sign or date the application; and/or,

c) Failure by an applicant to submit the requested number of application copies.

(2) Waivable informalities will be considered on a case-by-case basis, and a waiver will be granted only when in the County's best interest.

§4.9-107 Confidentiality

(1) The RFA must advise that prospective applicants are not to mark their applications as confidential or proprietary, and that applications submitted in response to a RFA may be subject to public disclosure in accordance with the California Public Records Act. The RFA must also advise that all applications and attached documents shall become the property of the County, and that the County reserves the right to make use of any information or ideas in the applications submitted unless such use is prohibited by law.

(2) The RFA must advise that regardless of any identification otherwise, including marking some or all pages as "confidential" or "proprietary", information in applications shall become a part of County's record and subject to possible public disclosure without further notice to the applicant.

(3) The RFA must advise that the County shall not in any way be liable or responsible for the disclosure of any such records.

§4.9-108 Protest Process

(1) In accordance with Section 1.3 of this manual, any actual or prospective applicant or contractor who alleges a grievance by an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate department Deputy Procurement Agent administering the RFA.

§4.9-109 Presentations/Interview

(1) Interviews may be conducted when deemed necessary to verify an applicant's qualifications/certifications and to verify requirements, as set forth in the RFA, have been met. Such interviews will be conducted by the appropriate County department staff for applicant(s) who have submitted a responsive application.

a) Applicants shall be given fair and equal treatment with respect to any opportunity for discussion and revision to their applications;

b) Discussions with applicants will be recorded either in writing or digital media, and that record will become part of the procurement file; and

c) In conducting interviews, there shall be no disclosure of any information derived from applications submitted by other applicants.

§4.9-110 Scope of Work Revisions

(1) If discussions reveal the need to change the RFA's original scope of work, either an addendum detailing the revised scope will be sent to all those submitting applications, or, if appropriate, the County will issue a revised RFA and begin the solicitation process again. The County Procurement Officer or appropriate Deputy Procurement Agent shall be the final authority as to which process will be used.

§4.9-111 Award

(1) Prior to Contract award, DPAs shall conduct due diligence and obtain any documentation necessary to do so.

(2) Award of contract(s) will be made by the Board of Supervisors to applicants whose applications meet the County's requirements. Awards may be made on a continuous basis until the needs of the County have been met. Contract awards shall be submitted for Board of Supervisors (Board) approval in accordance with Section 3.3-102 of this manual.

(3) All Master Agreements will be submitted to the Board in accordance with Section 3.3-102 of this manual. When requesting Board of Supervisors' approval of a Master Agreement, the initial applicant(s) will also be brought to the Board for approval. The County department or agency may request, in the Agenda Staff Report (ASR), the delegated authority to add future applicant(s) to the Master Agreement without further Board approval, provided the original, Board approved, dollar amount on the Master Agreement is not exceeded.

SECTION 5 – GLOSSARY

SECTION 5

GLOSSARY

1. Addendum: A written change, addition, alteration, correction or revision to a bid, proposal or contract document.

2. Agenda Staff Report (ASR): A document by which matters are submitted to the Board of Supervisors for consideration during its regular meetings.

3. Amendment: An agreed addition to, deletion from, correction or modification of a document or contract.

4. Appeal: A written notice of disagreement, signed by a person of authority, from a protestor to the County Procurement Officer in appealing a decision of department Deputy Procurement Agent.

5. Arbitration: A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision; a process whereby a disagreement is resolved.

6. Architect-Engineer: Services include but are not limited to: architectural, landscape architectural, engineering, environmental, land surveying services, and construction project management as well as incidental services that members of these professions may logically or justifiably perform.

7. Award: The execution of a contract to a vendor.

8. Best Interest: The discretionary rationale used by a procurement official in taking action most advantageous to the jurisdiction when it is impossible to adequately delineate a specific response by law or regulation.

9. Best Practice: A business process, activity or operation that is authorized by the County Procurement Officer.

10. Bid: The offer submitted by a bidder in response to an Invitation for Bid (IFB), a request for quotation, or a two-step solicitation process procedure. A bid includes a cost for commodities or services to be provided per the specifications included in the bid solicitation issued by the County.

11. Bid Bond: An insurance instrument in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if its bid is accepted, fails to accept the contract as bid.

12. Bid Opening: The formal process through which bids are opened and the contents revealed for the first time to the jurisdiction, other bidders, and, usually, to the public.

13. Bid Surety: A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract will accept the contract as bid, otherwise the bidder (in the case of a deposit) or the guarantor (in the case of a bond) will be liable for the amount of the deposit or bond, respectively.

14. Bidders List: A list maintained by the county's bidding system setting out the names and addresses of vendors of various services and commodities from whom bids, proposals, and quotations can be solicited.

15. Brand Name: A name which serves to identify a product of a particular manufacturer; a trade name.

16. Business Day: Any day during which normal business operations are conducted.

17. Calendar Day: Every day shown on the calendar, including Saturdays, Sundays and holidays.

18. California Environmental Quality Act (CEQA): A 1970 California state law which requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects or actions that are subject to a discretionary approval before they are approved, and to reduce the environmental impacts of proposed projects or actions to the extent feasible.

19. Capital Asset: A tangible property costing $10,000 or more per unit, including tax, delivery and installation, with a useful life expectancy exceeding one (1) year.

20. Cash Alternatives: Gift cards, gift certificates, gift vouchers, etc. to purchase travel and food for non-employee County department clients. receiving services from the County.

21. Change Order: See Modification.

22. Closing Date/Time: Refers to the date and time for a bid or proposal closing.

23. Cloud Computing: The delivery of software/applications/infrastructure and other resources providing remote or on-demand network access to remote servers, or applications hosted on the Internet to conduct business operations. This may include the storage, management, and processing of data (e.g., Platform as a Service (PaaS), allows for the development, management, and delivery of applications without infrastructure, Infrastructure as a Service (IaaS) provides virtualized computing resources over the Internet or Software as a Service (SaaS) functionally delivers software applications over the Internet).

24. Collusion: A secret contract or cooperation between two or more persons to accomplish a fraudulent, deceitful or unlawful act.

25. Commodities: All supplies and all equipment costing less than $10,000 per item, including tax and freight, etc., or more than $10,000. ~~but with a useful life of less than one (1) year.~~

26. Competitive Process: The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, delivery, and/or service.

27. Compliance Monitoring: A process whereby the County Procurement Officer, or designee, selects and audits procurement transactions conducted by departments for the purpose of ensuring that the County procurement process is fair, efficient, and compliant with legal requirements and County policies and procedures.

28. Conflict of Interest: A situation where the personal interests of a contractor, public official and/or designated employee are/is, or appear to be, at odds with the interests of the jurisdiction.

29. Consent Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for approval as a group of items. Items on the Consent Calendar may be pulled by the Board, County staff, or a member of the public for discussion and individual Board action.

30. Construction: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; Painting or repainting of any publicly owned, leased, or operated facility.

31. Construction Manager at Risk (CMAR): an alternate project delivery method which entails a commitment by the Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP).

32. Consultant: A person or firm who provides professional or expert advice and/or recommendations.

33. Consumer Price Index (CPI): The Consumer Price Index measures the overall change in consumer prices based on a representative basket of goods and services over time.

34. Contingency: A Board of Supervisors authorized percentage or specific amount of money which can be added to the base contract amount to provide for small changes to the contract without returning to the Board for approval. The percentage granted will not be based on the total amount of the contract, as it may accumulate in the second and third years, etc., of the contract, but will be based on the initial contract amount.

35. Contract: A legally enforceable agreement between two or more parties to do or not do a certain thing, which meets the requisite statutory elements of: (a) Parties capable of contracting, (b) Consent, (c) A lawful object and (d) A sufficient cause or consideration. Cal. Civ. Code §§ 1549-1550.

36. Contract Administration: The management of various aspects of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and that the contractor's obligations are fulfilled.

37. Contract Award: The act of executing a final signed contract between the County and a vendor.

38. Contract Extension: An action to extend a contract term upon written mutual agreement by both parties.

39. Contract Renewal: A renewal clause allows a contract to continue for a defined term.

40. Contract Task Order: A contract for A-E services that includes, price, and scope for the performance of tasks during the period of the A-E On-Call contract.

41. Contractor: A vendor having a contract with a governmental body.

42. Cooperative Procurement: A strategy used by governmental entities to procure services and commodities from contracts awarded by other governmental entities or programs to take advantage of volume purchasing discounts and reduce administrative expenses.

43. County of Orange Procurement Preference Policy: An initiative approved by the Orange County Board of Supervisors to encourage local small businesses and disabled veteran businesses to compete in new solicitations released by the County of Orange.

44. Debarment: A shutting out or exclusion, through due process, for cause, e.g., a bidder from a list of qualified prospective bidders.

45. Department of Industrial Relations (DIR): A California state agency that monitors state labor laws.

46. Deputy Procurement Agent: An employee of the County of Orange appointed by a department head who is trained and certified/deputized under the direction of the County Procurement Officer to act in the capacity of the County Procurement Officer to procure commodities and/or services for the department.

47. Design-Bid-Build: A procurement method for construction projects resulting in a Fixed-Price Contract, a Fixed-Price Indefinite Quantity Contract, or a Cost Plus Fixed Fee Contract, and is required to utilize the prequalification process

48. Design Build: A qualification-based selection (QBS), in which both the design and construction services for a project are procured at the same time following the QBS.

49. Designated Employees: Those employees of the County of Orange who are required to file conflict of interest statements because those employees, in the course of their employment make or participate in the making of decisions which may potentially have a material effect on the financial interest of the employees.

50. Director: Shall mean all such designated officials or departments.

51. Discount: An allowance or deduction from a normal or list price extended by a seller to a buyer to make the net price more competitive.

52. Discussion Agenda Items: Those agenda items, as identified by the CEO and the Board of Supervisors, which are placed in the section of the Board of Supervisors agenda for discussion and individual Board action. All items requiring the Board to select from a slate or a list of recommendation options, among others, are placed on the Discussion Calendar.

53. Dispute: A difference between a contractor and a jurisdiction over performance or other elements of a contract calling for appropriate administrative action with the intent of achieving a remedial result.

54. Electronic Waste (E-Waste): An electronic device powered by electricity or a battery that has a printed circuit board or video display attached that has reached the end of its useful life and is being discarded by the user. Examples include: televisions, computers, computer peripherals and components, hard drives, CD/DVD drives, printers, facsimile machines, copiers and wireless phones and devices.

55. Emergency: Those situations where the welfare of County residents is at stake and/or immediate procurement action is required to prevent serious economic or other hardship to the County.

56. Equal or Equivalent: A phrase used to indicate the acceptability of products of similar or superior function.

57. Equipment: Personal property of a durable nature which retains its identity throughout its useful life.

58. Evaluation Committee: A committee which advises and assists in proposal evaluation and award of contract.

59. Evaluation Criteria: Those criteria set forth in the solicitation and used by the evaluation committee to score and rank respondents.

60. Express Warranty: Any affirmation of fact or promise made by a seller to a buyer which relates to the commodities and becomes part of the basis of the bargain.

61. Findings: The identification of facts or documentations which are not in compliance with procurement policy, procedures, or Best Practices.

62. Firm Bid: A bid that binds the vendor until a specified time of expiration of the bid.

63. Firms: A business that provides professional or technical advice or expertise which will supplement departmental expertise or advice or where an independent opinion or audit is required.

64. Fixed Price Contract: A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.

65. Force Account: Use of internal (County) labor.

66. Formal Advertising: The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting proposal/bids on a specific solicitation.

67. Formal Bidding: As to formal bids referenced in Sections 3.5, formal bids are those in excess of $ the Board of Supervisors threshold, requiring a four-fifths (⅘) vote for the award the contract, The project plans and specifications shall be adopted by the Board of Supervisors, unless delegated. For all other procurements, formal bids are those that require a competitive bid solicitation process for contracts/purchases exceeding the oral/written quote dollar thresholds. All formal solicitations will be advertised via the County's bidding system. This process may or may not requiring require a Public Bid Opening with the date, time and location set forth in the bid solicitation.

68. Government Code: The general laws of the State of California as applied to the County of Orange and other governmental entities.

69. Gratuity: A payment, loan, subscription, advance deposit of monies, services or anything of more than nominal value presented or promised for consideration of a procurement decision or recommendation.

70. Guarantee: To warrant, stand behind, or ensure performance or quality of services or commodities.

71. Horizontal: A road maintenance project, such as paving, slurry seal, etc. in reference to construction or maintenance projects.

72. Human Services: Services which maintain or improve the social, economic, physical, or mental well-being of persons for whom the County bears such a responsibility.

73. Hybrid Contract: A contract which consists of multiple procurement types.

74. Incremental Contracting: Contracting in small segments to avoid solicitation requirements or Board of Supervisors approval.

75. Indemnification: Protection against incurred loss, damage, or hurt, usually by monetary compensation.

76. Informal Bidding: A process of procurement that does not exceed of the Board of Supervisors thresholds to require Board approval.

77. Insurance: A contractual relationship where an insurance company agrees, for a premium paid, to reimburse the insured or other party for a loss to a specified subject caused by designated hazards or risks.

78. Interviews: A process facilitated by the Deputy Procurement Agent during a solicitation, between the evaluation committee and prospective contractor who responded to the solicitation.

79. Invitation for Bid (IFB): The solicitation process used for competitive sealed bidding for the purchase of equipment, materials, supplies, services, and construction, for which clear specifications can be written.

80. Job Order Contract (JOC): A contract for repair, remodeling, or other repetitive work based on unit prices, which is a firm fixed price, competitively bid, unit priced, indefinite quantity contract designed to accomplish applicable projects. JOC may be solicited via low-bid/IFB or best value.

81. Liquidated Damages: Liquidated damages clauses are enforceable if:(1) damages are difficult to ascertain or estimate at the time the contract is formed; and (2) the amount is a reasonable forecast of compensatory damages in the case of breach. Specifically, if the liquidated damages amount significantly exceeds the amount of damages prospectively probable, the liquidated damages clause may not be enforceable. Thus, liquidated damage clauses may be included in service contracts when the County could suffer financial loss due to delays in performance. Consistent with legal requirements, the amount of damages listed in the contract must be a "reasonable forecast" of the County's actual damages.

82. Lobbyist: Any person who receives compensation of $500.00 or more in any calendar month for engaging in lobbying activities or is employed by his or her employer and receives compensation of $500.00 or more in any calendar month for engaging in lobbying activities, as defined in Article 5 Sec. 1-1-80 of the Orange County Codified Ordinances.

83. Maintenance Work: Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose, including: minor repainting;

resurfacing of streets and highways at less than one inch; landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

84. Modification: A non-material change that does not require signatures of contracting parties.

85. Negotiation: The discussion or correspondence between the County and a contractor in order to develop a contract with terms and conditions that serve the best interest of the County.

86. One-Time Contract: Procurements for particular commodities or services which cover a particular need. These types of procurements are distinguished from annual or blanket contracts which cover a continuing need of an item or service.

87. Opportunity Buys: A situation where necessary commodities, capital assets, or services are for sale at significantly reduced rates from what is normally offered in the general market or where an alternative product to the one being bid represents significant savings.

88. Original Contract Term: The period of time first specified in the contract at the time the contract was initially established.

89. Payment Bond: A legal contract, a type of bond, that guarantees certain employees, subcontractors, and vendors are protected against non-payment.

90. Performance Bond: A bond issued by a bank or other financial institution, guaranteeing the fulfillment of a particular contract.

91. Petty Cash: Funds set aside as a cash reserve in a revolving fund for single expenditures under $1,000 each made within established policies and controls.

92. Pre-Bid/Pre-Proposal Conference: A meeting set up between the County parties issuing a solicitation and the potential bidders/respondents for the purpose of clarifying the solicitation and answering any questions.

93. Prequalification: A process used prior to solicitation of bids to determine if potential vendors have the ability to fulfill the contract requirements for which the solicitation will be issued and/or to determine if the potential vendors products will meet the cost and performance criteria required to meet the County's needs.

94. Prevailing Wage: The California Department of Industrial Relations determines that the general prevailing rate of per diem wages for a particular craft, classification, or type of worker is uniform throughout an area, the director issues a determination enumerated county by county, but covering the entire area.

95. Procurement Appeals Board: A body comprised of County department senior management and a member of the public chaired by the County Procurement Officer for the purpose of hearing vendor protests to a specific County procurement process.

96. Procurement Council: A committee of County employees appointed by department heads and chaired by the County Procurement Officer to discuss procurement issues and make recommendations regarding County-wide procurement policies and procedures.

97. Proposal: The document submitted by a respondent in response to a Request for Proposal (RFP). A proposal includes a detailed description of the commodities or services to be provided to the County per the scope of work included in the Request for Proposal (RFP), including, but not limited to cost, time frame for completion of work or delivery of commodities, and method of accomplishment of services.

98. Proprietary Product: A proprietary item or service is one that must meet particular restrictive specifications but may be available from a number of sources, e.g., "Brand 'X' computers - no substitutions".

99. Protest: A written objection of grievance from an actual or prospective bidder who alleges an error or impropriety in the solicitation or award of a contract.

100. Public Bid Opening: The process of opening and reading bids at the time and place specified in the solicitation and in presence of anyone who wishes to attend.

101. Public Contract Code: Statutory authority applicable in one respect or another to virtually all public entities in California in relation to certain procurements. Pursuant principally to the California Public Contract Code, with limited exceptions, public agencies have a duty to publicly bid certain contracts, particularly construction contracts.

102. Public Works Procurements: Contracts procured via Sections 3.4 or 3.5 of this CPM.

103. Public Works Project: Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility paid for using public funds; painting or repainting of any publicly owned, leased, or operated facility.

104. Qualified Vendor List (QVL): A list of qualified A-E firms that have been deemed responsive through the Request for Qualification (RFQ) process.

105. Real Estate Contracts: Legal instruments necessary to effectuate a real estate transaction such as a lease, license, easement, grant deed, or other similar document, but shall not include procurement contracts related to services provided for the transaction nor departmental issued permits, such as County construction permits or encroachment permits. This includes acquiring, leasing, licensing constructing, operation, and maintaining County-owned or County-occupied facilities and assets. Contracts concerning the purchase or use of County owned or private sector parking spaces are considered real estate contracts.

106. Regional Cooperative Agreement (RCA): A cooperative contract for commonly used services and commodities executed by the Office of the County Procurement Officer or designee to take advantage of the County's economies of scale and reduce the duplication of efforts across the County.
107. Rejection of Bid(s): The non-acceptance of submitted bid(s).

108. Request for Information (RFI): A request for information is used to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to request for information

notices are not offers and cannot be accepted by the County to form a binding contract unless otherwise specified in the solicitation.

109. Request for Proposal (RFP): The solicitation method that includes a scope of work and terms and conditions used to secure proposals for services or commodities not clearly defined by the County in terms of exact specifications or manner of delivery of services or where price is not the sole selection criteria.

110. Request for Qualifications (RFQ): A solicitation method that describes the project or services required and solicits qualifications from potential vendors or contractors for purposes of evaluating those qualifications for screening or for award of contract.

111. Responsible Bidder: A bidder who has the capability in all respects to perform in full the contract requirements and who has the integrity and reliability which will assure good faith performance.

112. Responsive Bidder: A bidder whose bid conforms in all material respects to the terms and conditions, the specifications and other requirements of the solicitation.

113. Retroactive Contract: When goods and services have been ordered, performed or delivered without a contract in place.

114. Requesting Department: A County agency, which requests goods and services procured by the Deputy Procurement Agent.

115. Reverse Auction: Procurement process by which bidders submit decreasing incremental offers openly and in real-time and where the award is based on the lowest pricing from a responsive and responsible bidder.

116. Services: The furnishing of labor, time or effort by a contractor involving the delivery of a specific performance.

117. Sole Source: A procurement of a commodity or service to the only known capable vendor, occasioned by the unique nature of the requirement, the vendor, or market conditions.

118. Sole Source Justification: A document submitted by department staff for approval to contract with a particular party without competitive bidding.

119. Solicitation: A good faith effort to obtain a bid or proposal for the provision of commodities or services.

120. Specifications: A description of what is requested to be procured.

121. Statement of Qualifications (SOQ): A submitted response to a Request for Qualifications.

122. Subcontractor: A vendor who is performing work on behalf of the contractor.

123. Surplus County Department Property: Tangible supplies, materials or equipment to which the County acquired title by means of purchase, donation, grant, or other lawful means, that a County department has determined is no longer needed by the department.

124. Surplus County Property: Surplus County Department Property that the County Procurement Officer or designee has determined is not needed for public use by any other County department.

125. Task Order: A contract for Job Order Contracts that includes, price, and scope for the performance of tasks during the period of the contract.

126. Terms and Conditions: A general reference applied to the provisions under which bids/proposals must be submitted and which are applicable to most contracts.

127. Terms of Payment: Methods and timelines by which the County must render payment under a contract.

128. Two Step Solicitation: A method of soliciting services and commodities where a preliminary evaluation of the respondent's qualifications is conducted, and a final evaluation for recommendation of award is made based on the RFP process.

129. Unauthorized Expenditure: Procuring goods and/or services without a fully approved requisition i.e. final and budget requisition approval.

130. Unilateral Procurement: A vehicle to pay for critical, ongoing services provided by exclusive entities within a County geographical area that is not subject to County's standard terms and conditions (i.e., utility services). The payment mechanism for unilateral procurements include, but are not limited to: Procurement card(s), County financial system documents, request for checks, etc.

131. Value Analysis: An organized effort to analyze the function(s) of products, systems specifications and standards, and practices and procedures, intended to satisfy the required function(s) in the most economical manner.

132. Vertical: Construction projects that include constructing a building or performing work to a building or structure.

133. Waiver of Bid(s): A process authorized by law or rule whereby the County Procurement Officer or Deputy Procurement Agents may procure items without competitive solicitation procedures because of unique circumstances related to a particular need or procurement.

134. Waiver of Mistake or Informality: The act of disregarding errors or technical nonconformities in the bid/proposal which do not go to the substance of the bid/proposal and will not adversely affect the competition between bidders/respondents.

135. Warranty: A representation of utility, condition, and durability made by a bidder or respondent for a product offered.

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA AND THE BOARD OF SUPERVISORS, ACTING AS
THE GOVERNING BOARD OF THE ORANGE COUNTY FLOOD CONTROL DISTRICT
FEBRUARY 10, 2026

WHEREAS, pursuant to California Public Contract Code Section 20125, the Board of Supervisors of the County of Orange ("County") shall cause advertisements for bids for the performance of public works to be published in the manner set forth in the Government Code; and

WHEREAS, pursuant to California Public Contract Code Section 21020.2, the Board of Supervisors of the Orange County Flood Control District ("District") shall advertise contracts for any improvement or unit of work done on behalf of the District in the manner set forth in California Public Contract Code Section 21020.2; and

WHEREAS, the County has charged OC Public Works to serve the citizens of Orange County by providing a safe environment and enhanced quality of life through improvements to and maintenance of public infrastructure; and

WHEREAS, the County strives to deliver services to the citizens of Orange County in an efficient and cost-effective manner;

NOW, THEREFORE, BE IT RESOLVED that this Board acting on behalf of the County of Orange and the Orange County Flood Control District does hereby:

1. Authorize the Director of OC Public Works, Sheriff-Coroner, or those qualified County officials or department designees identified by the Director of OC Public Works or the Sheriff-Coroner, to advertise bids, which includes adopting plans, specifications, and working details, in the manner set forth in Public Contract Code Section 22037 for the performance of public projects described in Public Contract Code Section 22032(c) ("Public Works Projects") on behalf of the County.

2. This authorization shall not extend to: (1) contracts for Public Works Projects subject to state or federal funding requirements that require action by the Board of Supervisors; (2) contracts for Public Works Projects performed on behalf of other public entities; or (3) contracts for Public Works Projects performed by or on behalf of the District.

Attachment B

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA AND THE BOARD OF SUPERVISORS, ACTING AS
THE GOVERNING BOARD OF THE ORANGE COUNTY FLOOD CONTROL DISTRICT
~~JANUARY 27~~FEBRUARY 10, 2026

WHEREAS, pursuant to California Public Contract Code Section 20125, the Board of Supervisors of the County of Orange ("County") shall cause advertisements for bids for the performance of public works to be published in the manner set forth in the Government Code; and

WHEREAS, pursuant to California Public Contract Code Section 21020.2, the Board of Supervisors of the Orange County Flood Control District ("District") shall advertise contracts for any improvement or unit of work done on behalf of the District in the manner set forth in California Public Contract Code Section 21020.2; and

WHEREAS, the County has charged OC Public Works to serve the citizens of Orange County by providing a safe environment and enhanced quality of life through improvements to and maintenance of public infrastructure; and

WHEREAS, the County strives to deliver services to the citizens of Orange County in an efficient and cost-effective manner;

NOW, THEREFORE, BE IT RESOLVED that this Board acting on behalf of the County of Orange and the Orange County Flood Control District does hereby:

1. Authorize the Director of OC Public Works, Sheriff-Coroner, or those qualified County officials or department designees identified by the Director of OC Public Works or the Sheriff-Coroner, to advertise bids, which includes adopting plans, specifications, and working details, in the manner set forth in Public Contract Code Section 22037 for the performance of public projects described in Public Contract Code Section 22032(c) ("Public Works Projects") on behalf of the County.

2. This authorization shall not extend to: (1) contracts for Public Works Projects subject to state or federal funding requirements that require action by the Board of Supervisors; (2) contracts for Public Works Projects performed on behalf of other public entities; or (3) contracts for Public Works Projects performed by or on behalf of the District.

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RECEIVED
2026 FEB -2 PM 4:11
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

Office of Supervisor Janet Nguyen

Deletion Request

February 2, 2026

TO: Robin Stieler, Clerk of the Board

FROM: Supervisor Janet Nguyen, First District

RE: ASR Control #: **Meeting Date:** February 10, 2026 **Agenda Item No.** #28

SUBJECT: Consider First Reading of an "Ordinance to amend Sections 4-11-2, 4-11-7, and 4-11-16 of the Codified Ordinances of the County of Orange, regarding Contracting by the Orange County Health Authority"

☒ Request deletion of Agenda Item No. #28.

Comments:

Continuation or Deletion Request

RECEIVED
2026 FEB 10 AM 8:2
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

Date: **2/10/2026**

To: Clerk of the Board of Supervisors

From: **Michelle Aguirre,** JW for MA

Re: ASR Control #: N/A, Meeting Date 2/10/2026 Agenda Item No. # CS-2

Subject: **Closed Session - Public Employee Performance Evaluation - Executive Director of the Campaign Finance and Ethics Commission**

☒ Request to continue Agenda Item No. # CS-2 to the 2/24/2026 Board Meeting.

Comments:

☐ Request deletion of Agenda Item No. # _____

Comments:

Agenda Item S30A
Clerk's Use Only _____

SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

MEETING DATE:	2/10/26
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	1
SUBMITTING AGENCY/DEPARTMENT:	Supervisor Janet Nguyen
DEPARTMENT HEAD REVIEW:	_____ *Department Head Signature*
DEPARTMENT CONTACT PERSON(S):	Joe Pena (714) 834-3110 Austin Edsell (714) 834-3110

SUBJECT: Appoint Jason Schmitt to the Audit Oversight Committee

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
	N/A	Discussion
	Action	
N/A	N/A	3 Votes Board Majority
CEO Signature	*County Counsel Signature*	

RECOMMENDED ACTION(S)
Appoint Jason Schmitt to the Audit Oversight Committee

To the: Audit Oversight Committee

Position Slot, if applicable: Public Member

Name of incumbent being replaced: Drew Atwater

Term Years: Concurrent with Supervisor's term of office

Vacancy created by: Expiration of term

Nomination To: Appoint

Qualifications: Attached

Remarks:

RECEIVED
2026 FEB -5 PM 1:17
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

APPLICATION FOR COUNTY OF ORANGE BOARD, COMMISSION OR COMMITTEE

(FOR COUNTY USE ONLY)

Return to: Clerk of the Board of Supervisors
400 W. Civic Center Dr., 6th Floor
Santa Ana, California 92701
Email: response@ocgov.com
Website: https://cob.ocgov.com/

Instructions: Please complete each section below. Be sure to enter the title of the Board, Commission or Committee for which you desire consideration and attach a resume. For information or assistance, please contact the Clerk of the Board of Supervisor's Office at (714) 834-2206. Please print in ink or type.

NAME OF BOARD, COMMISSION, OR COMMITTEE TO WHICH YOU ARE APPLYING FOR MEMBERSHIP. SEE LIST AT https://cob.ocgov.com/boards-commissions-committees/bcc-name-list-and-contact-information

Audit Oversight Committee

SUPERVISORIAL DISTRICT IN WHICH YOU RESIDE: ■ First ☐ Second ☐ Third ☐ Fourth ☐ Fifth

APPLICANT NAME AND RESIDENCE ADDRESS:

Jason (First Name) Eric (Middle Name) Schmitt (Last Name)

Street Address | City | State | Zip Code

N/A
Home Phone Number

Cell Phone Number

Email Address

CURRENT EMPLOYER:

OCCUPATION/JOB TITLE:

BUSINESS ADDRESS:

BUSINESS PHONE NUMBER:

☑ **EMPLOYMENT HISTORY:** Please attach a resume to this application and provide any information that would be helpful in evaluating your application. **A RESUME MUST BE ATTACHED TO YOUR APPLICATION.**

ARE YOU A CITIZEN OF THE UNITED STATES: ■ YES ☐ NO

IF NO, NAME OF COUNTRY OF CITIZENSHIP: N/A

ARE YOU A REGISTERED VOTER? ■ YES ☐ NO

IF YES, NAME COUNTY YOU ARE REGISTERED IN: Orange

LIST ALL CURRENT PROFESSIONAL OR COMMUNITY ORGANIZATIONS AND SOCIETIES OF WHICH YOU ARE A MEMBER.

ORGANIZATION/SOCIETY	FROM (MO./YR.)	TO (MO./YR.)
United Way (Orange County and Middle Tennessee)	06/21	Present
Rotary (Huntington Beach, Orange, and Nashville)	05/23	Present
Goodwill (Southern Los Angeles County)	11/25	Present

WITHIN THE LAST FIVE YEARS, HAVE YOU BEEN AFFILIATED WITH ANY BUSINESS OR NONPROFIT AGENCY(IES)? ☐YES ■ NO

DO YOU OWN REAL OR PERSONAL PROPERTY OR HAVE FINANCIAL HOLDING WHICH MIGHT PRESENT A POTENTIAL CONFLICT OF INTEREST? ☐YES ■ NO

HAVE YOU BEEN CONVICTED OF A FELONY OR MISDEMEANOR CRIME SINCE YOUR 18TH BIRTHDAY? YOU ARE NOT REQUIRED TO DISCLOSE ANY OF THE FOLLOWING: ARRESTS OR DETENTIONS THAT DID NOT RESULT IN A CONVICTION; CONVICTIONS THAT HAVE BEEN JUDICIALLY DISMISSED, EXPUNGED OR ORDERED SEALED; INFORMATION CONCERNING REFERRAL TO AND PARTICIPATION IN ANY PRETRIAL OR POSTRIAL DIVERSION PROGRAM; AND CERTAIN DRUG RELATED CONVICTIONS THAT ARE OLDER THAN TWO YEARS, AS LISTED IN CALIFORNIA LABOR CODE § 432.8 (INCLUDING VIOLATIONS OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 11357(B) AND (C), 11360(C) 11364, 11365 AND 11550 – AS THEY RELATE TO MARIJUANA)?

☐YES ■ NO

IF YES, PLEASE EXPLAIN AND ATTACH ADDITIONAL SHEETS, IF NECESSARY.

PLEASE BRIEFLY EXPLAIN WHY YOU WISH TO SERVE ON THIS BOARD, COMMITTEE, OR COMMISSION. ATTACH ADDITIONAL SHEETS, IF NECESSARY.

Leverage finance/audit experience as OC City Treasurer and government board member to help steward our county finances

DATE: 2/3/26 **APPLICANTS SIGNATURE:** Jason Schmitt

CLERK OF THE BOARD OF SUPERVISORS USE ONLY – DO NOT WRITE BELOW THIS LINE

Date Received: _____ Received by: _____
Deputy Clerk of the Board of Supervisors

Date referred: _____

To: ☐ BOS District 1 ☐ BOS District 2 ☐ BOS District 3 ☐ BOS District 4 ☐ BOS District 5

☐ All BOS ☐ BCC Contact Person Name _____

JASON E. SCHMITT

C-SUITE EXECUTIVE/BOARD OF DIRECTORS

CEO, CFO, and venture capitalist who has leveraged data-driven approaches and process rigor to drive operational transformation of Fortune 500 and private equity companies in retail, consumer goods, and industrial sectors. Adept at turnarounds, returning companies to profitability by championing innovation and empowering high-performing teams. Combines global perspective from work on four continents with policy expertise in workforce development and procurement.

PROFESSIONAL HIGHLIGHTS

- **Executed as CEO and CFO the turnaround and sale of $200M retailer with 1,000 employees to $1B retailer,** managing auction process and developing management presentations to significantly increase company valuation.
- **Spearheaded transformational business model pivots and M&A transactions** for four Fortune 500 companies, including dozens of acquisitions worth $10B+ in enterprise value and sale of a public company.
- **Managed $5B eCommerce P&L for apparel division of Amazon,** driving double-digit sales growth at expanded margins through team of 75 members spanning 1st party vendors, 3rd party marketplace, site marketing, and business analytics.
- **Served as interim CEO for $100 million Southern California eCommerce company with 600 employees,** before returning to Board of Directors and member of Audit Committee after permanent CEO joined the company.

GOVERNMENT/UNIVERSITY BOARDS

- **TENNESSEE STATE WORKFORCE BOARD:** Board Member overseeing workforce and job skills programs with $200M budget that impacts 50K Tennesseans annually; appointed by Republican Governor Bill Lee.
- **LAUNCH TENNESSEE BOARD:** Board Member overseeing $70M venture capital fund for the State of Tennessee that has created 1,000 jobs; appointed by Republican Governor Bill Lee.
- **TENNESSEE VOCATIONAL REHABILITATION BOARD:** Board Member overseeing $200M budget covering all workforce disability services and impacting 15K Tennesseans annually; appointed by Republican Governor Bill Lee.
- **COUNTY PUBLIC BUILDING AUTHORITY:** Board Member overseeing $35M in construction contracts for new and renovated public buildings in the 4th largest county in Tennessee; appointed by Republican Rutherford County Mayor.
- **CITY CABLE TELEVISION COMMISSION:** Board Member overseeing $10M cable TV and internet services contract with Comcast for 6th largest city in Tennessee with 165K residents; appointed by non-partisan Murfreesboro Mayor.
- **MIDDLE TENNESSEE STATE UNIVERSITY:** Executive Advisory Council Member overseeing College of Business for largest undergraduate university in Tennessee with over 20K students; appointed by Dean of Business School.

CORPORATE/CIVIC BOARDS AND RECOGNITION

- **Corporate**: AMS Fulfillment – Audit Committee • Alex Apparel Group • Old Time Pottery • Miasole • Power-It Solutions
- **Civic:** United Way of Orange County – Workforce Development • Rotary International (Orange County)
- **Recognition:** Henry Crown Fellowship (Aspen Institute) • Presidential Leadership Scholars • 40 Under 40 (Crain's Chicago Business) • Traphagan Distinguished Alumni in Law and Business (Harvard Law School) • Leadership Tennessee

EDUCATION

- HARVARD COLLEGE: **A.B.** ***magna cum laude*** (University Endorsement for Rhodes Scholarship)
- HARVARD LAW SCHOOL: **J.D.** ***cum laude*** (Finance/Business Focus)
- PACIFIC COLLEGE: **M.B.A.** (Accounting Focus)

PROFESSIONAL EXPERIENCE

Co-Founder and Managing Director

Launched investment and consulting firm focused on omnichannel Fortune 500 and middle-market private equity-backed retailers. Providing executive support spanning business plan development, revenue generation, and operational efficiency.

- **Served as Interim CEO for $100M Southern California company with 600 employees,** increasing EBITDA by 14% (+$1.4M) over six months through operational efficiencies within 10 West/East Coast distribution centers.
- **Created brand strategy for $35M outdoor footwear brand portfolio based in Orange County;** conducted due diligence on high-growth California-based brands in outdoor apparel and pet spaces for global private equity firm.
- **Overhauled $150 million US division based in Southern California** for $1B global outdoor hardgoods brand; reduced corporate SG&A by 25%, rearchitected marketing strategy, and developed new retail go-to-market model.
- **Developed business plan and sourced funding** for revitalizing defunct $750M home décor concept; secured $5M in soft investment commitments and conducted initial landlord discussions to reopen former top 50 store locations.

JASON E. SCHMITT

Chief Executive Officer and Chief Financial Officer

Orchestrated successful turnaround of $200M private equity-owned home décor retailer, managing full P&L and serving as CEO, CFO, and head merchant. Overhauled business model for leveraged organization with 1,000 employees across 12 states. Focused on decision-making that accelerated cash flow and improved fiscal health.

- **Increased EBITDA by $37M,** revenue by $40M (20%), and margins by 1700 basis points to match world-class retailers; reduced clearance costs by $15M (75%), eliminated $10M in media spend, and streamlined store labor by $10M; lowered inventory levels by 50% and cleared debt by $30M; opened 2 new stores and repositioned existing store.
- **Revamped merchandising processes,** developing data-driven product assortments and robust planning that increased margins by 530 basis points; optimized prices to increase AUR by 20% and expanded vendor base to 14 new countries.
- **Implemented reorganization plan** and secured creditor approval in 4 months, closing unprofitable stores and reducing rents by 25%; managed company through bankruptcy without employee or vendor loss and paid creditors in full.
- **Grew email subscriber base by 30%** to 1M+ with 20% open rates and launched text messaging program with 175K participants; developed pick-up in-store/deliver-to-home partnership with Walmart that grew eCommerce sales by 40%+.

Vice President, Online Merchandising Strategy and Business Operations

Served as member of online leadership team reporting to head merchant for $20B division of world's largest retailer. Defined merchandising strategies and transformation plan for product categories, including development of marketplace business.

- **Conceptualized 5-year strategic merchandising roadmap for Walmart's board of directors** that generated 40% annual growth at reduced operating costs and developed management dashboards to implement strategy.
- **Led due diligence and M&A process** for potential acquisition of 30+ brands, completing five transactions in home, fashion, pet, automotive, and videogaming categories with complementary roadmaps to capture operational synergies.

Divisional Merchandising Manager, US Apparel

Assumed increasing accountability, expanding role from running $500M category P&L to leading $5B multi-category business. Drove revenue, profitability, and margin improvements while reorganizing division to eliminate 60% of headcount.

- **Achieved 30% revenue growth, 65% profit increase, and 170 basis point margin expansion** through product, inventory, and marketing; boosted margins in largest division by 900 basis points by shifting vendors in high-volume categories.
- **Selected to co-lead cross-category team that generated $800M in marketing revenue** for $20B softlines division, successfully increasing vendor promotional support for key holiday periods by $20M.

Vice President, Strategy & Business Initiatives

Advised division presidents on brand strategy, streamlining operations, and capitalizing on whitespace opportunities as strategy and consumer insights team leader for $3B Banana Republic and $6B Old Navy brands.

- **Defined category growth plans** for Old Navy that helped drive double-digit sales comps.
- **Accelerated outlet/online performance** for Banana Republic through real estate and product offerings that increased gross margins and maintained sales growth; exited Europe business and harmonized global pricing.

Vice President, Corporate Strategy

Advised CEO and board of directors, redesigning 5-year strategy for $4B fashion conglomerate and streamlining portfolio from 35 labels to 12 core brands; led repositioning effort that culminated in sale to Sycamore Partners at 66% stock price premium.

ADDITIONAL PROFESSIONAL EXPERIENCE

ArcelorMittal: *Cleantech Fund Manager* – Led strategy/M&A for $25B Americas region and launched $50M VC fund. (2006-2011)

Mattel: *Strategy Manager* – Led reorganization of $3B division and increased Barbie brand EBITDA by 30%. (2005-2006)

McKinsey & Company: *Senior Associate* – Conducted strategic studies for Fortune 500 global consumer companies. (1998-2005)

Docusign Envelope ID: A320BE2C-919A-455B-B55B-37A2E345162A

County Executive Office

Memorandum

RECEIVED
2026 FEB -5 PM 2:30
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

February 5, 2026

To: Clerk of the Board of Supervisors

From: Michelle Aguirre, County Executive Officer

Signed by:
Michelle Aguirre
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Subject: Supplemental Request According to Board Rule 21

S30B

The County Executive Office is requesting a Supplemental Agenda Staff Report for February 10, 2026, Board Hearing.

Agency: OC Community Resources
Subject: 2026 NOFA & Regional Housing Needs Allocation Policy Options
Districts: All Districts

Reason Item is Supplemental: During the January 27, 2026 Board of Supervisors (Board) meeting, under Agenda Item No. 5, the Board inquired about the timing for bringing forward Regional Housing Needs Allocation (RHNA) policy options for consideration. At the time, staff indicated that the item would be brought to the Board in March 2026 along with the recommended changes to the Notice of Funding Availability (NOFA). Given that OC Community Resources has multiple pending projects, staff are bringing this item to the Board as soon as possible for consideration.

Justification: Delaying approval of this item will delay the release of the 2026 NOFA and the Board's consideration of the RHNA policy options. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Doug Chaffee

Concur: _____
Doug Chaffee, Chair of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel

Docusign Envelope ID: A320BE2C-919A-455B-B55B-37A2E345162A

Agenda Item *Clerk's Use Only* S30B

SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

RECEIVED
2026 FEB -5 PM 2:30
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

MEETING DATE:	2/10/26
LEGAL ENTITY TAKING ACTION:	Board of Supervisors and Orange County Housing Authority
BOARD OF SUPERVISORS DISTRICT(S):	All Districts
SUBMITTING AGENCY/DEPARTMENT:	OC Community Resources
DEPARTMENT HEAD REVIEW:	DocuSigned by: Dylan Wright 902BB737A5184B6... *Department Head Signature*
DEPARTMENT CONTACT PERSON(S):	Dylan Wright (714) 480-2788 Julia Bidwell (714) 480-2991

SUBJECT: 2026 NOFA & Regional Housing Needs Allocation Policy Options

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
Signed by: Michelle Aguirre 7C8E38E3345C4E4... *CEO Signature*	Approved Agreement as to Form *Action* Signed by: Jacqueline Guzman 5455BA7E6D0488... *County Counsel Signature*	Discussion 3 Votes Board Majority

Budgeted: Yes
Current Year Cost: See Financial Impact Section
Annual Cost: N/A
Staffing Impact: No
# of Positions: N/A
Sole Source: N/A
Current Fiscal Year Revenue: N/A
Funding Source: See Financial Impact Section
County Audit in last 3 years No
Levine Act Review Completed: N/A
Prior Board Action: 3/25/2025 #4, 2/25/2025 #22, 1/28/2025 #8

RECOMMENDED ACTION(S)

Acting as the Board of Supervisors and the Board of Commissioners to the Orange County Housing Authority:

1. Consider the Regional Housing Needs Allocation Policy Options in Attachment A and direct OC Community Resources staff to incorporate the selected policy to be implemented under the 2026 Supportive Housing Notice of Funding Availability and applied prospectively as new applications for County resources are received.

2. Approve the Recommended Changes in Policy and Process for 2026 Supportive Housing Notice of Funding Availability in Attachment B, including authorizing the OC Community Resources Director or designee to 1) subordinate the County's financing to the construction and/or permanent deed(s) of

trust if the senior loan is increased after the County's initial funding commitment, provided that the revised financing terms are reviewed and approved by the County and will not adversely affect the project's financial feasibility or the County's affordability requirements and security position, and 2) expand eligible target populations to include households participating in any special-purpose voucher or Continuum of Care funded permanent supportive housing program – who are at risk of homelessness and/or at risk of losing rental assistance because of funding limitations, program changes, or shifts in eligibility requirements, consistent with the Coordinated Entry System prioritization policy, and to be applied retroactively.

3. Authorize the OC Community Resources Director or designee to issue the 2026 Supportive Housing Notice of Funding Availability with an emphasis on developing extremely low-income housing with up to $20,891,948 in available funding as outlined in the Financial Impact Section and utilize up to 100 Housing Choice, Mainstream and/or Veterans Affairs Supportive Housing Project-Based Vouchers and return to the Board of Supervisors for funding commitments to individual projects.

4. Approve the attached form (Construction) Loan Agreement, (Permanent) Loan Agreement, Exhibit D – Additional Terms & Conditions for HOME Funds, Exhibit D – Additional Requirements for Mental Health Services Act Funds, Exhibit D – Additional Terms & Conditions for County Funds, Deed of Trust, Assignment of Rents, and Security Agreement, Promissory Note Secured by Deed of Trust, Regulatory Agreement and Declaration of Restrictive Covenants, Subordination Agreement, Assignment of Lessor's Interest in Leases, Rents and Profits, Mental Health Services Act Capitalized Operating Subsidy Reserve Loan Agreement, Exhibit A – Capitalized Operating Subsidy Reserve Funds Instructions for Requesting Payments, Mental Health Services Act Capitalized Operating Subsidy Reserve Deed of Trust, Assignment of Rents, and Security Agreement, and Mental Health Services Act Capitalized Operating Subsidy Reserve Promissory Note Secured by Deed of Trust (Attachments C-P), and as further approved to form by County Counsel, for construction and permanent loan financing.

5. Authorize the OC Community Resources Director or designee to make non-substantive ministerial changes to the attached form (Construction) Loan Agreement, (Permanent) Loan Agreement, Exhibit D – Additional Terms & Conditions for HOME Funds, Exhibit D – Additional Requirements for Mental Health Services Act Funds, Exhibit D – Additional Terms & Conditions for County Funds, Deed of Trust, Assignment of Rents, and Security Agreement, Promissory Note Secured by Deed of Trust, Regulatory Agreement and Declaration of Restrictive Covenants, Subordination Agreement, Assignment of Lessor's Interest in Leases, Rents and Profits, Mental Health Services Act Capitalized Operating Subsidy Reserve Loan Agreement, Exhibit A – Capitalized Operating Subsidy Reserve Funds Instructions for Requesting Payments, Mental Health Services Act Capitalized Operating Subsidy Reserve Deed of Trust, Assignment of Rents, and Security Agreement and Mental Health Services Act Capitalized Operating Subsidy Reserve Promissory Note Secured by Deed of Trust (Attachments C-P), with approval of County Counsel, for construction and permanent loan financing.

SUMMARY:

Consideration of the proposed Regional Housing Needs Allocation Policy Options will clarify funding sources requiring Regional Housing Needs Allocation transfer or credit for County sponsored projects, and approval of policy and process changes and issuance of the 2026 Supportive Housing Notice of Funding Availability will support the production and preservation of affordable and supportive housing in Orange County.

BACKGROUND INFORMATION:

On February 25, 2025, the Board of Supervisors (Board) authorized the OC Community Resources (OCCR) Director or designee to issue the 2025 Notice of Funding Availability (NOFA) including approved changes in policy and process and return to the Board for funding commitments to individual projects. The NOFA made available up to $12.05 million in Federal HOME Investment Partnerships Program (HOME), HOME American Rescue Plan (HOME-ARP), Mental Health Services Act (MHSA),15G Reserves, and Housing Successor Agency (HSA) Funds and utilization of up to 100 Housing Choice, Mainstream and/or Veterans Affairs Supportive Housing (VASH) Project Based Vouchers (PBVs).

Since issuance of the 2025 NOFA, OCCR has received nine applications from developers. Three applications have been processed and approved by the Board, five applications are still being reviewed and one application was withdrawn. The eight active applications requested 53 Housing Choice PBVs and approximately $9.2 million in capital funding to fund and/or subsidize the development of 44 supportive housing units for extremely low-income households experiencing homelessness.

To prepare for the 2026 NOFA, OCCR staff worked with other County of Orange (County) Departments and agencies to gather feedback and held a developer input session on November 13, 2025, to discuss the current NOFA and the proposed recommended changes in policy and process stemming from internal County review. Developers shared consistent feedback that they continue to face high development costs due to a shortage of material, high interest rates, rising insurance costs and concerns regarding utility infrastructure constraints. This feedback was taken into consideration in developing these recommended changes.

OCCR staff is recommending changes in policy and process for the 2026 NOFA as outlined in Attachment B. These recommended changes aim to clarify or establish County policy(ies) or process(es), align with industry standards, and include pertinent information updates or clarifications on federal and state regulations.

Additionally, OCCR staff recommends authorization for OCCR to subordinate the County's financing to the construction and/or permanent deed(s) of trust if the senior loan is increased after the County's initial funding commitment, provided that the revised financing terms are reviewed and approved by the County consistent with the NOFA policy and process and will not adversely affect the project's financial feasibility or the County's affordability requirements and security position.

In light of funding limitations for the Emergency Housing Voucher (EHV) program and changes to Continuum of Care (CoC) funded permanent supportive housing (PSH) program, OCCR staff recommends expanding eligible target populations beyond only households who are experiencing homelessness Specifically, this expansion would include households participating in any special-purpose voucher or CoC-funded PSH program who are at risk of homelessness or losing rental assistance due to funding constraints, program changes, or shifts in eligibility requirements. The expansion would align with the Coordinated Entry System (CES) prioritization policy and be applied retroactively to County-assisted units in the County's existing affordable housing portfolio and pipeline, as well as new units that become available, and to County-assisted units in new developments funded under the 2026 and future NOFAs. For existing County-assisted units, eligible target populations under the expanded CES prioritization policy may be referred into housing opportunities upon unit turnover, as units become available.

As part of the 2026 NOFA, OCCR is requesting Board approval of the attached form Loan Agreements, Exhibit D to the Loan Agreements, Deed of Trust, Promissory Note, Regulatory Agreement, Subordination Agreement, Assignment of Leases, Capitalized Operating Subsidy Reserve Loan Agreement, Exhibit A to

the Capitalized Operating Subsidy Reserve Loan Agreement, Capitalized Operating Subsidy Reserve Deed of Trust, and Capitalized Operating Subsidy Reserve Promissory Note (Attachments C-P), with any ministerial changes as further approved to form by County Counsel, for construction and permanent loan financing.

As directed by the Board during consideration of the General Plan Progress Report on March 25, 2025, OCCR staff drafted Regional Housing Needs Allocation (RHNA) Policy Options (Attachment A). The RHNA Policy Options provide the Board with three options for consideration:

- Option A – No changes to existing RHNA policy with only minor edits for technical clarification and removes option to request for a waiver.
- Option B – Proposed revisions to the existing RHNA policy and removes option to request for a waiver.
- Option C – Proposed revisions to the existing RHNA policy requiring RHNA credit or transfer for every project utilizing County resources and removes option to request for a waiver.

Once an option is selected and approved by the Board, the RHNA Policy Option will clarify funding sources requiring RHNA transfer or credit for County sponsored projects under the 2026 Supportive Housing Notice of Funding Availability (2026 NOFA) and will be applied prospectively as new applications for County resources are received.

If approved, the proposed 2026 NOFA will make available up to $20.9 million HOME, HOME-ARP, MHSA/Behavioral Health Services Act (BHSA), 15G Reserves and/or HSA Funds and will also authorize the use of up to 100 Housing Choice, Mainstream and/or VASH PBVs.

The 2026 NOFA will continue to prioritize the development of extremely low-income supportive housing for households experiencing homelessness. These efforts are part of a comprehensive approach to support both the County's Housing Funding Strategy (HFS) and the 2022 HFS Update to develop 2,396 permanent supporting housing units by 2029 to address housing needs for individuals and households experiencing homelessness. Additionally, these supportive housing units will follow the best practices, guiding principles and commitments of the Homeless Service System Pillars Report that was created by the Commission to Address Homelessness. Additionally, any small-scale supportive housing units which meet the criteria of the 2026 NOFA will adhere to the guiding principles established by the Small-Scale Housing Unit Report established by the Commission to Address Homelessness that was received and filed by the Board on January 28, 2025.

The Project Review Advisory Panel concurred with staff's recommended changes in policy and process at its December 22, 2025, meeting.

Compliance with CEQA: This action is not a project within the meaning of California Environmental Quality Act (CEQA) Guidelines Section 15378 (Attachment Q) and is therefore not subject to CEQA, since it does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The approval of this agenda item does not commit the County to a definite course of action in regard to a project since it is for an approval of changes in policy and process under the NOFA allow the continued support of the production of supportive housing in Orange County. This proposed activity is therefore not subject to CEQA. Any future action connected to this approval that constitutes a project will be reviewed for compliance with CEQA.

Docusign Envelope ID: A320BE2C-919A-455B-B55B-37A2E345162A

Compliance with NEPA: The proposed activity is Exempt under Section 24 CFR 58.34(a)(3) (Attachment R).

FINANCIAL IMPACT:

Up to $20.9 million may be funded as loans from a combination of funding sources, including HOME, HOME-ARP, MHSA/BHSA, 15G Reserves and HSA. The loans will impact OC Housing Fund 15G, MHSA/BHSA Fund 12A and Housing Asset Fund 170. These loans only affect the notes receivable balance sheet accounts of the funds. Per budgeting practice, the loans are not built into fiscal year appropriations. The 100 Housing Choice, Mainstream and/or VASH PBVs were received from the United States Department of Housing and Urban Development (HUD) and are included in the OC Housing Authority Fund 15F FY 2025-26 budget.

STAFFING IMPACT:

N/A

REVIEWING AGENCIES:

OC Health Care Agency
Office of Care Coordination
OC Public Works

ATTACHMENT(S):

Attachment A – Regional Housing Needs Allocation Policy Options
Attachment B – Recommended Changes in Policy and Process for 2026 NOFA
Attachment C – (Construction) Loan Agreement
Attachment D – (Permanent) Loan Agreement
Attachment E – Exhibit D – Additional Terms & Conditions for HOME Funds
Attachment F – Exhibit D – Additional Requirements for Mental Health Services Act Funds
Attachment G – Exhibit D – Additional Terms & Conditions for County Fund
Attachment H – Deed of Trust, Assignment of Rents, and Security Agreement
Attachment I – Promissory Note Secured by Deed of Trust
Attachment J – Regulatory Agreement and Declaration of Restrictive Covenants
Attachment K – Subordination Agreement
Attachment L – Assignment of Lessor's Interest in Leases, Rents and Profits
Attachment M – Mental Health Services Act Capitalized Operating Subsidy Reserve Loan Agreement
Attachment N – Exhibit A – Capitalized Operating Subsidy Reserve Funds Instructions for Requesting Payments
Attachment O – Mental Health Services Act Capitalized Operating Subsidy Reserve Deed of Trust, Assignment of Rents, and Security Agreement
Attachment P – Mental Health Services Act Capitalized Operating Subsidy Reserve Promissory Note Secured by Deed of Trust
Attachment Q – California Code of Regulations Title 14 Section 15378
Attachment R – Code of Federal Regulations Title 24 Subtitle A Part 58

REGIONAL HOUSING NEEDS ALLOCATION
POLICY OPTIONS

*Changes are noted in red.

Option A:

No Substantive Changes to Existing RHNA Policy and only minor edits for technical clarification. –
The following Regional Housing Needs ~~Assessment~~ Allocation (RHNA) transfer policies are applicable to developments applying for capital funding, COSR and/or PBVs (including VASH). RHNA allocation transfers are subject to Government Code Section 65584.07.

a. Require ~~Pursue~~ RHNA ~~allocation~~ transfers for developments:
   i. For development located in cities which are funded with County local revenue (such as General Funds, Housing Successor Agency funds or 15G Reserves funds), the County will require acceptance of the transfer of RHNA share from the County's allocation to the City's allocation or credits toward the County's existing RHNA obligation if the development occurs during a Planning Period (following adoption of a Housing Element), based on the number of County ~~restricted~~ assisted units. The number of RHNA transfer or credit will be calculated on a pro-rata basis of County funds to City funds invested in the total number of County assisted units. For this calculation, the County's capital and valuation of the PBVs will be included. The Developer is responsible for conveying to and obtaining proof of the acquiescence of this policy via approval by the governing board of the jurisdiction in which the project will be located at the time it approves the development. ~~If the City has an exceptional circumstance, HCD will return to the Board for approval of a waiver of the RHNA transfer policy.~~

b. Optional RHNA ~~allocation~~ transfer for developments:

   i. For developments located in cities funded with regional revenue resources or meeting regional priorities, including developments with Mental Health Services Act funding (capital and COSR) and PBVs only.

   ii. For developments located in participating cities utilizing Federal Urban County funds, including Federal HOME Investment Partnership Programs (HOME), Community Development Block Grants (CDBG), and Emergency Solutions Grant (ESG) funds.

   iii. For developments that meets a County business need, such as serving 100 percent extremely low-income households who are experiencing homelessness.

Option B:

Proposed with Revisions to Existing RHNA Policy –
The following Regional Housing Needs ~~Assessment~~ Allocation (RHNA) transfer or credit policies are applicable to developments applying for capital funding, COSR and/or PBVs (including VASH). RHNA allocation transfers are subject to Government Code Section 65584.07.

a. Require ~~Pursue~~ RHNA ~~allocation~~ transfers or credits for developments:

i. For developments located in cities which are funded with County local revenue (such as General Funds, Housing Successor Agency funds or 15G Reserves funds), the County will require acceptance of the transfer of RHNA share from the County's allocation to the City's allocation or credits toward the County's existing RHNA obligation if the development occurs during a Planning Period (following adoption of a Housing Element), based on the number of County ~~restricted~~ assisted units. The number of RHNA transfer or credit will be calculated on a pro-rata basis of County funds to City funds invested in the total number of County assisted units. For this calculation, the County's capital and valuation of the PBVs will be included. The Developer is responsible for conveying to and obtaining proof of the acquiescence of this policy via approval by the governing board of the jurisdiction in which the project will be located at the time it approves the development. ~~If the City has an exceptional circumstance, HCD will return to the Board for approval of a waiver of the RHNA transfer policy.~~

ii. For developments located in cities using County regional revenue resources that have already met its RHNA goals.

iii. For developments located in HOME entitlement jurisdictions using Urban County HOME funds.

b. Optional RHNA ~~allocation~~ transfer or credits for developments:

i. For developments located in cities funded with regional revenue resources or meeting regional priorities, including developments with Mental Health Services Act funding (capital and COSR) and PBVs only.

ii. For developments located in participating cities utilizing Federal Urban County funds, including Federal HOME Investment Partnership Programs (HOME), Community Development Block Grants (CDBG), and Emergency Solutions Grant (ESG) funds.

iii. For developments that meet a County business need, such as serving 100 percent extremely low-income households who are experiencing homelessness.

Option C:

Revisions to Existing RHNA Policy –

The following Regional Housing Needs ~~Assessment~~ Allocation (RHNA) transfer or credit policies are applicable to developments applying for capital funding, COSR and/or PBVs (including VASH). RHNA allocation transfers are subject to Government Code Section 65584.07.

~~a. Pursue RHNA allocation transfers for developments:~~

~~i. For development located in cities which are funded with County local revenue (such as General Funds, Housing Successor Agency funds or 15G Reserves funds), the County will require acceptance of the transfer of RHNA share from the County's allocation to the City's allocation based on the number of County restricted units. The Developer is responsible for conveying to and obtaining proof of the acquiescence of this policy via approval by the governing board of the jurisdiction in which the project will be located at the time it approves the development. If the City has an exceptional circumstance, HCD will return to the Board for approval of a waiver of the RHNA transfer policy.~~

~~b. Optional RHNA allocation transfer for developments:~~

~~i. For developments located in cities funded with regional revenue resources or meeting regional priorities, including developments with Mental Health Services Act funding (capital and COSR) and PBVs only.~~

~~ii. For developments located in participating cities utilizing Federal Urban County funds, including Federal HOME Investment Partnership Programs (HOME), Community Development Block Grants (CDBG), and Emergency Solutions Grant (ESG) funds.~~

~~iii. For developments that meets a County business need, such as serving 100 percent extremely low-income households who are experiencing homelessness.~~

- Require RHNA ~~allocation~~ transfers or credits for developments funded with County local revenue and regional revenue, such as General Funds, Housing Successor Agency funds, 15G Reserves funds, Mental Health Services Act funds (capital and COSR), federal Urban County funds, including Federal HOME Investment Partnership Programs (HOME), and PBVs.

The County will require acceptance of the transfer of RHNA share from the County's allocation to the City's allocation or credits toward the County's existing RHNA obligation if the development occurs during the Planning Period (following adoption of a Housing Element), based on total number of County assisted units. The number of RHNA transfer or credit will be calculated on a pro-rata basis of County funds to City funds invested in the total number of County assisted units. For this calculation, the County's capital and valuation of the PBVs will be included. The Developer is responsible for conveying to and obtaining proof of the acquiescence of this policy via approval by the governing board of the jurisdiction in which the project will be located at the time it approves the development.

Summary –
Option A is the current RHNA policy under the 2025 NOFA with only minor edits for technical clarification.

Option B expands the RHNA requirements for developments located in cities using County regional revenue that have already met their RHNA goals and for developments located in HOME entitlement jurisdictions using Urban County HOME funds.

Option C requires cities to provide RHNA transfers or credits for *all* County revenues included in the NOFA.

All options remove the ability to request a RHNA waiver and clarifies how the RHNA transfer or credit will be calculated.

RECOMMENDED CHANGES IN POLICY AND PROCESS TO 2026 SUPPORTIVE HOUSING NOTICE OF FUNDING AVAILABILITY (NOFA)

*Recommended changes are noted in red.

1. CHOICE LIMITING ACTION

Proposed –
Upon submittal of an application, the Applicant shall not undertake in any activity utilizing federal or non-federal funds that would result in Choice Limiting Action under 24 CFR 58.22(a), including but not limited to real property acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation or clearance, ground disturbance and leasing, until satisfactory completion of the NEPA environmental review and receipt of an approval of the Request of Release of Funds (RROF) and certification from the HUD under 24 CFR Part 58. Failure to comply with this requirement could result in a regulatory violation with HUD and the project being ineligible for federal funding. A waiver may be considered in accordance with the Orange County Housing Authority (OCHA) Administrative Plan for developments proposed within a master planned community.

Current –
No current policy/process.

Discussion –
The proposed language informs the Applicant to not undertake in any activities once an application is submitted to the County that may result in Choice Limiting Action. Failure to comply with this requirement could result in a regulatory violation with HUD and the project being ineligible for federal funding. The Orange County Housing Authority (OCHA) may consider a waiver in accordance with the OCHA Administrative Plan for developments proposed within a master planned community.

2. MONITORING FEES

Proposed –
Unless prohibited by federal, state or local law, borrowers shall pay a ~~loan~~ monitoring fee. ~~Loan~~ Monitoring fees will be incorporated into the operating proforma. Monitoring fees shall include a total initial set-up of $500 to be included in the Total Development Cost Budget, plus a flat annual fee of $3,795 and a per unit fee of $22 ~~annual fees as follows~~ to be included in the Annual Operating Budget. HCD will make the final determination if regulations governing the funding source permit monitoring fees. Annual monitoring fees will be applied during the Qualified Project Period under the Regulatory Agreement.

~~Number of Assisted Units *~~	~~Annual Monitoring Fee~~
~~1 – 40 Units~~	~~$95 per Unit**~~
~~41 – 80 Units~~	~~$85 per Unit**~~
~~81 + Units~~	~~$75 per Unit**~~

~~* Number of assisted beds may be considered on a case-by-case basis when calculating annual monitoring fees.~~

~~** Fees subject to change.~~

Current –
Unless prohibited by federal, state or local law, borrowers shall pay a loan monitoring fee. Loan monitoring fees will be incorporated into the operating proforma. Monitoring fees shall include a total initial set-up of $500 to be included in the Total Development Cost Budget, plus annual fees as follows to be included in the Annual Operating Budget. HCD will make the final determination if regulations governing the funding source permit monitoring fees.

Number of Assisted Units *	Annual Monitoring Fee
1 – 40 Units	$95 per Unit**
41 – 80 Units	$85 per Unit**
81 + Units	$75 per Unit**

* Number of assisted beds may be considered on a case-by-case basis when calculating annual monitoring fees.

** Fees subject to change.

Discussion –
The proposed language provides clarification that annual monitoring fees will be applied during the Qualified Project Period under the Regulatory Agreement, even if the loan is paid off. Additionally, a monitoring fee study was completed to assess County costs associated with monitoring efforts in support of the updated fees. The proposed fee structure consists of a flat fee of $3,840, plus a per-unit annual fee of $23.

3. INSURANCE REQUIREMENTS

Proposed –
While any obligation of Borrower under any Loan Document remains outstanding, including during the Qualified Project Period under the Regulatory Agreement, Borrower shall maintain at Borrower's sole expense, the following policies of insurance in form and substance as follows…

Current –
While any obligation of Borrower under any Loan Document remains outstanding, Borrower shall maintain at Borrower's sole expense, the following policies of insurance in form and substance as follows…

Discussion –
The proposed language provides clarification that the County's insurance requirements are applicable during the Qualified Project Period under the Regulatory Agreement. This eliminates any ambiguity of whether insurance is still a requirement even after the loan gets paid off.

4. ELIGIBLE COSTS

Proposed –
Under this NOFA, funds may be used for the following: "hard" costs of construction or rehabilitation of housing, "soft" costs associated with acquisition, financing, and/or rehabilitation. "Soft" costs include marketing costs (not to exceed $1,500 per unit), appraisals, architectural and engineering fees, other lender required third-party reports (market study, capital needs assessment), individual apartment furnishings, certain common area furnishings (not to exceed $1,000 per unit), building permit fees, credit reports, developer fees, environmental assessments, impact fees, legal and accounting costs, private lender origination fees, recording fees, surety fees, and title insurance, cost of property insurance during development, relocation costs and costs relating to payment of loans (construction principal and interest), if it is consistent with the eligible costs specified in this section. An overall cost limitation of fourteen percent (14%) of the cost of construction shall apply to builder overhead, profit, and general requirements, excluding builder's general liability insurance. For purposes of builder overhead and profit, the cost of construction includes site work, structures, prevailing wages, and general requirements. For purposes of general requirements, the cost of construction includes offsite improvements, demolition and site work, structures, and prevailing wages. Certain eligible costs shall be limited to those incurred and paid not more than twenty-four (24) months before the date of a written legally binding agreement for HOME funds, consistent with 24 CFR 92.206.

Current –
Under this NOFA, funds may be used for the following: "hard" costs of construction or rehabilitation of housing, "soft" costs associated with acquisition, financing, and/or rehabilitation. "Soft" costs include marketing costs (not to exceed $1,500 per unit), appraisals, architectural and engineering fees, individual apartment furnishings, certain common area furnishings (not to exceed $1,000 per unit), building permit fees, credit reports, developer fees, environmental assessments, impact fees, legal and accounting costs, private lender origination fees, recording fees, surety fees, and title insurance. An overall cost limitation of fourteen percent (14%) of the cost of construction shall apply to builder overhead, profit, and general requirements, excluding builder's general liability insurance. For purposes of builder overhead and profit, the cost of construction includes site work, structures, prevailing wages, and general requirements. For purposes of general requirements, the cost of construction includes offsite improvements, demolition and site work, structures, and prevailing wages.

Discussion –
The list of eligible costs is updated to align with HOME regulations (24 CFR 92.206), including specifying that certain costs may be paid if they were not incurred more than 24 months before the date of a written legally binding agreement for HOME funds.

5. FINANCIAL ASSUMPTIONS

Proposed –
The hard cost contingency should be a minimum of 5% hard costs for new construction and a minimum of 10% for rehabilitation projects. In addition, a soft cost contingency minimum of 2% of total soft costs should be included.

Current –
No current policy/process.

Discussion –
The proposed hard and soft cost contingency requirements reflect a blend of best practices used by the City of Los Angeles, the Los Angeles County Development Authority and the State's Uniform Multifamily Regulations. These proposed requirements are intended to ensure developers incorporate a minimum contingency amount at the time of application, helping reduce potential financing gaps later in the process.

6. AFFORDABILITY REQUIREMENTS

Proposed –
Where consistent with the California Assembly Bill (AB) 1386 (Veterans housing: tenant referrals) and/or State HCD's Homekey/Homekey+ Program and where the proposed affordable housing development is funded with VASH, the County will allow units to be filled with Secondary Tenants, as defined in California Military and Veterans Code Section 987.003, up to 60% AMI, pursuant to California Military and Veterans Code Section 987.000.

Current –
No current policy/process.

Discussion –
As part of federal regulations, the Orange County Housing Authority (OCHA) can approve up to 80% Area Median Income (AMI) and will be amending its Administrative Plan to align with these federal regulations. However, the existing NOFA limits affordability to 30% AMI. The proposed changes to the affordability requirement for Veterans Affair Supportive Housing (VASH) and/or Homekey/Homekey+ funding would bring our NOFA policies into alignment with Assembly Bill 1386 (AB1386) (Veterans housing: tenant referrals).

AB1386 authorizes referrals for veteran-designated units targeted to extremely low-income households to include secondary tenants with incomes at or below 60% AMI who receive income from service-connected disability benefits, if a qualified tenant cannot be matched and accept placement within 28 days of unit availability. If a secondary tenant is not matched and placed within 14 days, the bill further authorizes placement of a veteran experiencing homelessness with income at or below 60% AMI, regardless of income source.

Implementation of AB1386 would also improve OCHA's budget flexibility, as higher AMI levels reduce OCHA's rent subsidy costs, and better support the U.S. Department of Veterans Affairs in its referral process.

7. SUBORDINATION POLICY

Proposed –

Security Instruments

Lien priority will be based on amount of financial assistance provided by the County. When calculating the financial assistance provided by the County, it will calculate both the County-contributed capital, COSR and the value of long-term rental subsides OCHA is contributing toward the development. Recording order must be negotiated and finalized by the applicant and other non-County funders of the development prior to Board approval to commit funding to the development. Exceptions including the value of long-term rental subsidies in the financial assistance calculation apply to State HCD funds, consistent with the State's Uniform Multifamily Regulations.

Financial Assistance from Cities

The Security Instruments and Affordability Covenants for financial contributions from cities must be subordinated to the County's security instruments and the Regulatory Agreement. Exceptions may be made where the amount of a city's financial contribution, not including land donations, exceeds the amount of financial assistance provided by the County. When calculating both the County-contributed capital and value of long-term rental subsidies OCHA is contributing toward the development. When applicable, the County will evaluate the value of land donations and fee waivers as part of the City financial assistance to the development. Where the city is a lender and has land use authority, the County may consider allowing their land use restrictive covenant and/or affordable housing agreement to be recorded against the property so long as the use and affordability restrictions are not in conflict with the Regulatory Agreement. The applicant's financial assumptions must include the County policy regarding its Affordability Requirements and Subordination Policy and must include and disclose this assumption and this policy to other potential funders when seeking additional financing for their development. The County strongly encourages the applicant to notify the County on any issues it encounters with this requirement and policy as soon as possible. Failure to adhere to this policy may result in loss of funding.

Subordination to Construction and Permanent Senior Financing

The County may, at its sole discretion, agree to subordinate its financing to the construction and/or permanent deed of trust if the senior loan is increased or resized after the County's initial funding commitment, provided that the revised financing terms are reviewed and approved by the County and will not adversely affect the project's financial feasibility or the County's affordability requirements and security position. An appraisal at construction loan closing or at permanent closing (if required by another lender due to a higher permanent loan) may be used to determine if the additional increase in senior loan will affect the project's financial feasibility.

Specifically, the County shall not enter into a subordination agreement unless the following conditions are met:

a. The County retains the right to exercise its remedies under the Regulatory Agreement;

b. The proposed subordination to the senior loan will not adversely affect the project's financial feasibility and complies with Section 4.04 of this NOFA. Subordination requests must meet County's underwriting policies. Concurrent with the request to subordinate, the request must include the proposed loan terms, sources and uses, and an updated proforma for County review;

c. The affordability requirements are consistent under Section 2.12 of this NOFA; and

d. The County's security position is consistent with the provisions titled Security Instrument and Financial Assistance from Cities in this NOFA.

Current –

Security Instruments

Lien priority will be based on amount of financial assistance provided by the County. When calculating the financial assistance provided by the County, it will calculate both the County-contributed capital and value of long-term rental subsides OCHA is contributing toward the development. Recording order must be negotiated and finalized by the applicant and other non-County funders of the development prior to Board approval to commit funding to the development.

Financial Assistance from Cities

The Security Instruments and Affordability Covenants for financial contributions from cities must be subordinated to the County's security instruments and the Regulatory Agreement. Exceptions may be made where the amount of a city's financial contribution, not including land donations, exceeds the amount of financial assistance provided by the County. When calculating both the County-contributed capital and value of long-term rental subsidies OCHA is contributing toward the development. When applicable, the County will evaluate the value of land donations and fee waivers as part of the City financial assistance to the development. Where the city is a lender and has land use authority, the County may consider allowing their land use restrictive covenant and/or affordable housing agreement to be recorded against the property so long as the use and affordability restrictions are not in conflict with the Regulatory Agreement. The applicant's financial assumptions must include the County policy regarding its Affordability Requirements and Subordination Policy and must include and disclose this assumption and this policy to other potential funders when seeking additional financing for their development. The County strongly encourages the applicant to notify the County on any issues it encounters with this requirement and policy as soon as possible. Failure to adhere to this policy may result in loss of funding.

Subordination to Construction and Permanent Senior Financing

None

Discussion –
The proposed changes to the Security Instrument will align with the State's Uniform Multifamily Regulations (UMR). The State Department of Housing and Community Development (HCD) excludes the long-term rental subsidies from the financial contribution calculation.

Additionally, the proposed section on Subordination to Construction and Permanent Senior Financing is to provide flexibility if the construction and permanent senior loan amount changes and allows OCCR to subordinate— so long as it will not adversely affect the project's financial feasibility or the County's affordability requirements and security position.

8. APPRAISAL

Proposed –
Provide an appraisal prepared by a "Certified General Real Estate Appraiser" as licensed by the State of California *Office of Real Estate Appraisers* and have no identity of interest with the development's partner(s) or intended partner or general contractor. The appraiser must comply with Uniform Standards of Professional Appraisal Practice (USPAP) guidelines. For rehabilitation projects, an appraisal must determine both the "as-is" and "after-rehab" values of the development. New construction applicants are required to submit a land-only and an "as-built" appraisal, along with market studies to assist OCHCD in establishing value. The County will accept an existing appraisal at initial application submittal if consistent with the California Tax Credit Allocation Committee's adopted regulation Section 10322 (h)(9). The appraisal must not be more than six (6) months old at construction loan closing and at permanent conversion (if required by another lender due to a higher permanent loan). ~~applicable, when requesting the County to subordinate to additional senior debt). Appraisals provided by other lenders will not be accepted.~~ For Community Housing Development Organizations (CHDO), the County may provide assistance for the appraisal. The County also reserves the right to contract our own appraiser to review the developer's appraisal and/or to conduct a new appraisal.

Where an appraisal is not available at the time of application, applicants will be required to submit an appraisal within 30 days of notification that the project has been accepted as meeting threshold requirements.

Current –
Provide an appraisal prepared by a "Certified General Real Estate Appraiser" as licensed by the State of California *Office of Real Estate Appraisers* and have no identity of interest with the development's partner(s) or intended partner or general contractor. The appraiser must comply with Uniform Standards of Professional Appraisal Practice (USPAP) guidelines. For rehabilitation projects, an appraisal must determine both the "as-is" and "after-rehab" values of the development. New construction applicants are required to submit a land-only and an "as-built" appraisal, along with market studies to assist OCHCD in establishing value. The County will accept an existing appraisal at initial application submittal if consistent with the California Tax Credit Allocation Committee's adopted regulation Section 10322 (h)(9). The appraisal must not be more than six (6) months old at construction loan closing and at permanent conversion (if applicable, when requesting the County to subordinate to additional senior debt). Appraisals provided by other lenders will not be accepted. For Community Housing Development Organizations (CHDO), the

County may provide assistance for the appraisal. The County also reserves the right to contract our own appraiser to review the developer's appraisal and/or to conduct a new appraisal.

Where an appraisal is not available at the time of application, applicants will be required to submit an appraisal within 30 days of notification that the project has been accepted as meeting threshold requirements.

Discussion –
The proposed strikeout on "Appraisals provided by other lenders will not be accepted" is intended to align with industry standards. It is common practice for lenders to engage third-party appraisers who have no identity of interest with the development partners or intended partner or general contractor. Additionally, the proposed language on when an appraisal is needed is consistent with the proposed subordination language under the proposed *Subordination to Construction and Permanent Senior Financing* section.

9. ELIGIBLE PROJECTS

Proposed –
Projects must include a minimum of five (5) units which are assisted under this NOFA and will provide permanent housing restricted to extremely low-income households who are experiencing homelessness. Proposals must include a plan for provision of supportive services appropriate to the needs of the designated population.

In light of the funding limitations of the Emergency Housing Voucher (EHV) program and changes to the Continuum of Care (CoC) funded permanent supportive housing program, households participating in any special-purpose voucher or CoC funded permanent supportive housing program – who are at risk of homelessness and/or at risk of losing rental assistance because of funding limitations, program changes, or shifts in eligibility requirements may be considered as eligible target populations, consistent with the Coordinated Entry System prioritization policy.

Projects including MHSA units in their proposals are required to provide additional evidence of supportive services from the Orange County Health Care Agency (HCA). Additional MHSA requirements are found in Attachment D.

Current –
Projects must include a minimum of five (5) units which are assisted under this NOFA and will provide permanent housing restricted to extremely low-income households who are experiencing homelessness. Proposals must include a plan for provision of supportive services appropriate to the needs of the designated population.

Projects including MHSA units in their proposals are required to provide additional evidence of supportive services from the Orange County Health Care Agency (HCA). Additional MHSA requirements are found in Attachment D.

Discussion –
On March 6, 2025, HUD announced the EHV program was coming to a premature end due to funding limitations. As a result, 772 current EHV participants in Orange County are at risk of losing rental assistance by the end of 2026. Expanding eligibility to families in special-purpose voucher programs will help maintain housing stability for these vulnerable households. Likewise, ongoing uncertainty with CoC funding, driven by litigation and potential funding gaps, puts programs serving hundreds of households at risk, creating instability across Orange County's homeless response system. By broadening the target population to include those at risk of homelessness due to funding limitations, program changes, or shifts in eligibility requirements, the County can mitigate these disruptions and maintain progress toward ending homelessness.

This proposed language will expand the target populations served under the NOFA, align with the Coordinated Entry System (CES) prioritization policy, and be applied retroactively to County-assisted units in the County's existing affordable housing portfolio and pipeline, as well as new units that become available, and to County-assisted units in new developments funded under the 2026 and future NOFAs. For existing County-assisted units, eligible target populations under the expanded CES prioritization policy may be referred into housing opportunities upon unit turnover, as units become available.

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LOAN AGREEMENT

BY AND BETWEEN

COUNTY OF ORANGE, a political subdivision of the State of California,

AND

BORROWER

TEMPLATE

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LOAN AGREEMENT

THIS LOAN AGREEMENT ("the **Agreement**") is entered into as of this _____ day of _____, 2026, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**"), and [BORROWER**]** ("**Borrower**"), with reference to the following:

RECITALS

1. Borrower intends to construct a housing project on that certain real property located within the [**LOCATION]**, County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "**Property**"). The Borrower further intends to [construct] operate a [number of units] (__) residential development consisting of PROJECT INFORMATION which shall be constructed by Borrower on the Property (collectively, the "**Project**").

2. The Borrower has submitted to County an application for funding of a project, described herein, under its 2026 Supportive Housing Notice of Funding Availability ("**2026 NOFA**").

3. The County desires to provide financial assistance in the form of a loan to Borrower subject to the Borrower's agreement, amongst other things, to encumber the Property with certain rental restrictions, all as more particularly set forth in this Agreement and the Regulatory Agreement.

4. The Orange County Board of Supervisors [acting as the Board of Commissioners for the Orange County Housing Authority] approved a loan to the Borrower from County funds for financing on DATE.

5. Borrower is financing the construction of the improvements and related costs and expenses through, among others, during the Qualified Project Period, as defined below, the following sources (collectively, the "**Permitted Financing**"):

[FINANCING SOURCES TO BE OUTLINED FORTHWITH]

6. [In addition to the financing in Section 5., above, the Orange County Housing Authority ("**OCHA**") has approved the use of [XXXXX] Project-Based Vouchers ("**PBV**") for [XXXX], all of which will be restricted by the County and the OCHA for individuals who meet the PBV eligibility criteria for a term more specifically described in that certain Agreement to Enter into Housing Assistance Payments ("**AHAP**") Contract between OCHA and Borrower.]

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NOW, THEREFORE, the parties agree as follows:

ARTICLE I

DEFINITIONS

The following terms used in this Agreement shall have the respective meanings assigned to them in this Article I unless the context in which they are used clearly requires otherwise:

1.1. "Adjusted Income" shall mean the adjusted income of all persons who intend to reside in one residential unit, calculated in the manner which complies with determinations of income for low income families under the Department of Housing and Urban Development's Section 8 Program of the United States Housing Act of 1937, as amended.

1.2. "Agreement" shall mean this Loan Agreement.

1.3. "Architect" shall mean [XXXXXXX], or any other architect designated by Borrower and approved by the County which approval shall not be unreasonably withheld conditioned or delayed, as the architect for the Project.

1.4. "Architect's Agreement" shall have the meaning as set forth in Section 3.4, hereafter, in which the Borrower has entered into with the Architect.

1.5. "Area" shall mean Orange County.

1.6. "Assignment of Leases" shall mean that/those certain Assignment(s) of Lessor's Interest in Leases, Rents and Profits executed by Borrower of even date herewith.

1.7. "Borrower" shall mean [XXXX]

1.8. "Close of Escrow" shall mean the date on which the Deed of Trust together with the other Loan Documents set up for recording are in fact recorded.

1.9. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time hereafter, or any successor statute thereto.

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1.10. "Commencement of Construction" shall mean the date upon which the Senior Deed of Trust is fully executed and recorded as a lien upon the Property

1.11. "Completion of Construction" shall mean the date on which the Borrower has submitted to the County and the County has approved the recorded Notice of Completion and the final certificate of occupancy or jurisdictional equivalent.

1.12. "Construction Agreement" shall have the meaning as set forth in Section 3.3, hereafter, in which the Borrower has entered into with the Contractor.

1.13. "Construction Period" shall mean the period beginning with the Commencement of Construction and ending upon the Completion of Construction, which is estimated to last no more than [XXXX] (XX) months.

1.14. "Contractor" shall mean [XXXXXXX], or any other contractor designated by Borrower and approved by County, which approval shall not be unreasonably withheld conditioned or delayed, as the contractor for the Project.

1.15. "Conversion Date" the date on which the County's construction loan converts to a permanent loan.

1.16. "County" shall mean the County of Orange, a political subdivision of the state of California or [Orange County Housing Authority, a public corporation created pursuant to California Health and Safety Code section 34200 et. seq., acting solely as the Housing Successor Agency to the Orange County Development Agency].

1.17. "Deed of Trust"" shall mean the Deed of Trust, Assignment of Rents and Security Agreement(s) executed by the Borrower in favor of the County of even date herewith.

1.18. "Director" shall mean the [Orange County Housing Authority Executive Director] OR OC Community Resources Director or her or his designee.

1.19. "Due Date" shall mean the date which is fifty-five (55) years following the Conversion Date, on which all principal and interest due on the Loan shall be fully paid.

1.20. "Escrow Holder" shall mean the escrowholder approved by the County for the escrow established to facilitate the Close of Escrow.

1.21. "Financing Plan" shall mean the financing plan described in Section 4.1 below.

1.22. "Financing Statement" shall mean the UCC-1 form to be prepared and executed by Borrower, in a form satisfactory to the County, and delivered to the County, the filing of which shall give the County a perfected security interest in Borrower's tangible personal property and fixtures located on or about the Project.

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1.23. "Hazardous Materials" or "hazardous materials" shall mean:

(a) any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance or any other waste, material, or pollutant that

(i) poses a hazard to the Project or to persons on the Project or

(ii) causes the Project to be in violation of any Hazardous Substance Law;

(b) asbestos in any form;

(c) urea formaldehyde foam insulation;

(d) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls;

(e) radon gas;

(f) any chemical, material, or substance defined as or included in the definition of "hazardous substance," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws, including, but not limited to, any Hazardous Substance Law, Code of Civil Procedure § 564, as amended from time to time, Code of Civil Procedure § 726.5, as amended from time to time, Code of Civil Procedure §736, as amended from time to time, and Civil Code § 2929.5, as amended from time to time;

(g) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or which may pose a hazard to the health and safety of the occupants of the Project or the owners or occupants of property adjacent to or surrounding the Project, or any other person coming on the Project or any adjacent property; and

(h) any other chemical, material, or substance that may pose a hazard to the environment flammable materials, explosives, radioactive materials, hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law, including, without limitation the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq., as amended.

1.24. "Hazardous Substance Law" means any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Project, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS §§ 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCS §§ 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act [42 USCS §§ 6901 et seq.], as amended from time to time; the Federal Water Pollution Control Act [33 USCS §§ 1251 et seq.], as amended from time to time; the Hazardous Substance Account Act [Health and Safety Code §§ 25300 et seq.], as amended from time to time; the

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Hazardous Waste Control Law [Health and Safety Code §§ 25100 et seq.], as amended from time to time; the Medical Waste Management Act [Health and Safety Code §§ 25015 et seq.], as amended from time to time; and the Porter-Cologne Water Quality Control Act [Water Code §§ 13000 et seq.], as amended from time to time.

1.25. "Loan" shall mean the Loan in the amount of ---------- ($----------) by the County to the Borrower, which Loan is the subject of this Agreement.

1.26. "Loan Documents" shall mean the following documents evidencing the Loan: (a) the Note; (b) the Deed of Trust; (c) the Financing Statement; (d) the Regulatory Agreement; (e) the Assignment of Leases; and (g) this Agreement.

1.27. "Management Plan" shall mean that management plan submitted to and approved by the County pursuant to Section 4.1 below.

1.28. "Marketing Plan" shall mean that certain Marketing Plan submitted to and approved by the County pursuant to Section 8.8 hereof.

1.29. "Median Income for the Area" shall mean the median income for the Area as most recently determined by the United States Department of Housing and Urban Development ("HUD") and published by the State of California (the "**State**"). In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the State.

1.30. "Mortgage Loan" shall mean any of the following loans secured by a mortgage or deed of trust on the Project:

(a) The Loan evidenced by the Note and the balance of the Loan Documents.

(b) Any other loan secured by a mortgage or deed of trust on the Project, either senior or junior to the Loan.

1.31. "Mortgage Loan Documents" shall mean all documents executed by the Borrower endorsing or securing a Mortgage Loan.

1.32. "Mortgagee" shall mean the mortgagee or beneficiary under a mortgage or a deed of trust executed in connection with a Mortgage Loan.

1.33. "Note" shall mean all the promissory note(s) in the principal amount of the Loan evidencing the monies borrowed by Borrower from the County.

1.34. "Operating Reserves" shall mean reserves maintained during the Qualified Project Period and funded out of Residual Receipts, loan advances, equity, or other sources and set aside for taxes and assessments, insurance premiums, operating expenses,

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and debt service. Operating Reserves shall be the amount required to pay three (3) months of operating expenses and three (3) months of mandatory debt service.

1.35. "Parties" shall mean the County and the Borrower.

1.36. "Partnership" shall mean NAME OF PARTNERSHIP.

1.37. "Permanent Lender" shall mean the permanent lender designated by Borrower and approved in advance by the County as the Permanent Lender for the Project.

1.31. "Permitted Financing" shall have the meaning given in Recital 5.

1.32. "Plans and Specification" shall mean the final set of architectural, structural, mechanical, electrical, grading, sewer, water, street and utility plans and specifications for the Project, including all supplemental, amendments and modifications.

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1.33. "Project" means collectively the Property and the structures and related buildings, and other improvements now or hereafter located on the Property from time to time together with all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements.

1.34. "Property" means the real property legally described in **Exhibit "A",** which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.

1.35. "Qualified Project Period" shall mean the period beginning upon the Conversion Date and ending on the date which is fifty-five (55) years after the beginning of the Qualified Project Period.

1.36. "Qualified Tenant" or "Qualified Tenants" shall collectively mean the individuals occupying the Restricted Units with the Adjusted Incomes more particularly described in **Exhibit "B"** attached hereto and incorporated herein. The income of individuals shall be determined in a manner consistent with determinations of lower income households under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). In no event, however, will the occupant of a Restricted Unit be considered to be a Qualified Tenant if the occupant is a student, and is not entitled to file a federal income tax return.

1.37. "Regulations" shall mean the Income Tax Regulations promulgated by the United States Department of the Treasury pursuant to the Code from time to time.

1.38. "Regulatory Agreement" shall mean that certain Regulatory Agreement and Declaration of Restrictive Covenants between the County and the Borrower of even date herewith.

1.39. "Replacement Reserves" shall mean reserves maintained during the Qualified Project Period and funded out of Residual Receipts, loan advances, equity, or other sources and set aside for replacement of roofing, furniture, fixtures, equipment and other capital expenditures. The annual amount set aside for Replacement Reserves shall not be more than [five/four hundred dollars ($5/400) $250 per unit per annum for new construction and $300 per unit per annum for rehabilitation] per unit. Exceptions may be considered where required for continued feasibility of projects with short-term rent subsidy commitments, or when required by other funding agencies if approved in writing by the County.

1.40. "Residual Receipts" shall have the same definition has found in the Note.

1.41. "Restricted Unit" or "Restricted Units" means the dwelling units in the Project identified on **Exhibit "B"** attached hereto and incorporated herein required to be rented to, or held available for occupancy by, Qualified Tenants pursuant to the terms, covenants and conditions of the Regulatory Agreement, this Agreement, including, but

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not limited to, the rental restrictions and other matters set forth in said Exhibit "B" and the other Loan Documents.

1.42. "Senior Lenders" shall mean, collectively, Senior Construction Lender, Senior Permanent Lender, and their successors and assigns

1.43. "Tax Credit Investor" shall mean the tax credit investor limited partner of the Borrower, reasonably approved in advance by the County as the Tax Credit Investor for the Project.

1.44. "Term" shall mean the period of time commencing on the date of this Agreement and ending with the last date of the Qualified Project Period, for a total possible term of up to fifty-eight (58) years.

ARTICLE II

LOAN

2.1 Amount. Subject to the terms of this Agreement, the County hereby agrees to lend, and the Borrower hereby agrees to borrow, the Loan, evidenced by the Note, the proceeds of which shall be used to acquire the Property and upon fulfillment of certain conditions, as set forth herein, to permanently finance the Project and for the other purposes set forth herein.

2.2 Repayment of Loan. Borrower shall repay the Loan, with interest, in accordance with the provisions of the Note and this Agreement. Except as otherwise provided, all payments shall be applied first to interest and then to principal.

2.3 Prepayment. Borrower may pay the principal and any interest due the County under the Note prior to or in advance of the time for payment thereof as provided in the Note, without penalty; provided, however, that Borrower acknowledges that in the event the Conversion Date occurs the provisions of this Agreement and the Regulatory Agreement will be applicable to the Project throughout the Qualified Project Period even though Borrower may have prepaid the Note.

2.4 Assumption. Subject to the provisions of Section 7.7 hereof, the Note shall not be assumable by successors and assigns of Borrower, either voluntarily or by operation of law, without the prior written discretionary consent of the County and any such assignment or assumption without said prior consent of the County shall be void.

2.5 Loan Disbursement. Upon satisfaction of the conditions to disbursement set forth in Section 5.1 below, the County, through the approved Escrowholder, will cause the disbursement of the Loan as provided for in Section 5.2.

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2.6 Security for Loan. The Loan shall be secured by the Deed of Trust, Regulatory Agreement, the Financing Statement, and Assignment of Leases.

2.7 Approval of Additional Financing. Except as to the Permitted Financing and as otherwise described herein, the Borrower shall not place or permit (either voluntarily or involuntarily) to be placed any encumbrances, including, but not limited to any additional liens or financing of any kind on the Project without the prior written discretionary consent of the County.

2.8 Subordination of Deed of Trust.

The County agrees that the Deed of Trust may be subordinate to the lien of a permanent loan secured by a Senior Construction/Permanent Deed of Trust (and any refinancing of said permanent loan secured by the Senior Construction/Permanent Deed of Trust) securing financing in an amount not to exceed $[XXX,XXX] so long as (i) the documentation for said loan is approved by the County and (ii) said loan is otherwise provided for and approved by the County in the Financing Plan. Any other financing, refinancing or encumbrance of the Project is prohibited without the County's prior written consent which consent the County may reasonably withhold in the exercise of its discretion.

In order to affect the subordinations described above and elsewhere in this Agreement, the County and Borrower agree to execute and acknowledge for recordation a subordination agreement (in a form acceptable to the County) in favor of the Senior Lender, as requested by such Senior Lender.

ARTICLE III

CONSTRUCTION PERIOD

3.1. Construction. Borrower will diligently proceed with construction of the Project and related improvements in accordance with the Plans and Specifications as approved by the County and the Senior Construction Lender without delay subsequent to the Commencement of Construction. It is anticipated that the Construction Period shall be no more than [XX] (XX) months from Commencement of Construction, as it may be extended as provided in the loan documents for the Senior Loan.

3.2. Force Majeure. The time within which construction/rehabilitation of the Project must be completed shall be extended for a period of time equal to the period of any delay directly affecting construction/rehabilitation which is caused by fire, earthquake or other acts of God, -proclaimed states of emergency, epidemics, strike, lockout, acts of public enemy, riot insurrection or governmental regulation of the sale or transportation of materials, supplies or labor; provided however, that (i) Borrower shall furnish to County written notice satisfactory to County evidencing any such delay within fifteen (15) business days from the occurrence of any such delay, and (ii) the delay shall in no event cause an event of default beyond any applicable notice and cure period under,

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or threaten the availability of, the other construction funding or permanent funding for the Project.

3.3. Construction Agreement. Borrower and Contractor have entered, or will soon enter into a Construction Agreement, as approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed, pursuant to the terms and conditions of which Contractor is to construct the Project. Borrower shall require Contractor to perform in accordance with the terms of the Construction Agreement and, except with respect to change orders approved under Section 3.5 below, shall not materially amend, modify or alter the responsibilities of Contractor under the Construction Agreement without the County's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Borrower shall execute, upon the County's written request, an assignment of Borrower's rights under the Construction Agreement to County as security for Borrower's performance and obligations under this Agreement and the other Loan Documents and shall cause Contractor to consent to any such assignment, as necessary; provided, however, that such security interest shall be subordinate to the security interest in the Construction Agreement pledged to Senior Construction Lender.

3.4. Architect's Agreement. Borrower and Architect have entered, or will soon enter into an Architect's Agreement, as approved by the County, which shall not be unreasonably withheld, conditioned or delayed, pursuant to the terms and conditions of which Architect is to design the Project. Borrower shall require Architect to perform in accordance with the terms of the Architect's Agreement and, except with respect to change orders approved under Section 3.5 below, shall not materially amend, modify or alter the responsibilities of Architect under the Architect's Agreement without the County's prior written consent. Borrower shall execute, upon the County's written request, an assignment of the Architect's Agreement and the Plans and Specifications to County as additional security for Borrower's performance and obligations under this Agreement and the other Loan Documents and shall cause Architect to consent to any such assignment, as necessary; provided, however, that such security interest shall be subordinate to the security interest in the Architect's Agreement and the Plans and Specification pledged to Senior Construction Lender.

3.5. Plans and Specifications.

(a) Changes; County Consent. Except as otherwise provided in this Agreement, Borrower shall not make any changes in the Plans and Specifications without County's prior written consent, which will not be unreasonably withheld, provided such change would not: (i) result in an increase of construction/rehabilitation costs in excess of two hundred thousand dollars ($200,000) for any single change, or in excess of five hundred thousand dollars ($500,000) for all such changes; (ii) affect the structural integrity, quality or building materials, the architectural or structural design previously approved by the County, or overall efficiency of operating systems of the Project; or (iii) require the approval of the Construction Lender, or any other third party. Without limiting the above, the County agrees that Borrower may make minor or nonmaterial

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changes in the Plans and Specifications without County's prior written consent, provided that such changes do not violate any of the conditions specified herein, and provided that Borrower obtains the consent of the Senior Construction Lender to all such changes to the extent required by the Senior Loan documents or any applicable partnership documents. Borrower shall at all times maintain, for inspection by County, a full set of working drawings of the Project.

(b) Changes; Submission Requirements. If County's consent to a change is required hereunder, then Borrower shall submit any proposed change in the Plans and Specifications to County at least ten (10) days prior to the commencement of construction/rehabilitation relating to such proposed change; otherwise, Borrower shall submit plans and changes, which do not require County's consent, with Borrower's subsequent draw request. Requests for any change which requires consent shall be accompanied by working drawings and/or specifications sheet and a written description of the proposed change, submitted on a change order form reasonably acceptable to the County, signed by Borrower and, if required by County, also by the Architect and Contractor. At its option, County may require Borrower to provide: (i) evidence reasonably satisfactory to County of the cost and time necessary to complete the proposed change; (ii) a deposit in the amount of any increased costs into Borrower's construction account; and (iii) a complete set of "as built" Plans and Specification for the completed Project, including any changes.

(c) Consent Process. Borrower acknowledges that County's review of any changes and required consents may result in non-material delays in construction/rehabilitation and hereby consents to any such non-material delays, so long as such non-material delays do not result in penalties or fines imposed on Borrower (e.g., liquidated damages under the construction/rehabilitation contract, etc.), and the Borrower notifies County of the possibility of such penalties or fines; provided, however, that County shall use commercially reasonable efforts to review such changes in a timely manner. County shall review and respond to any proposed change order that requires County's consent hereunder within ten (10) business days of receipt of the requested change order. If County fails to timely respond to a change order request, then Borrower may submit to County a second request for review and approval, which request will include a bolded and capitalized statement that "THIS IS A SECOND REQUEST FOR REVIEW AND APPROVAL OF A CHANGE ORDER – FAILURE TO RESPOND WITHIN FIVE (5) BUSINESS DAYS SHALL CONCLUSIVELY BE DEEMED COUNTY CONSENT THERETO." If County fails to respond to the second request for said change order within five (5) business days of receipt of the second request, then the applicable change order shall be conclusively deemed approved by the County.

(d) Final Plans and Specifications. Within thirty (30) business days following Completion of Construction, Borrower shall deliver to County a set of final Plans and Specifications.

3.6. Contractor/Construction Information. Within ten (10) business days of County's written request, Borrower shall deliver to County from time to time in a form reasonably acceptable to County: (a) a list detailing the name, address and phone number

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of each contractor to be employed or used for construction/rehabilitation of the Project together with the dollar amount, including changes, if any, of each contract and the portions, thereof, if any, paid through the date of such list; (b) copies of each contact identified in such list, including changes thereto; (c) a cost breakdown of the projected total cost of constructing the Project, and that portion, if any, of each cost item which has been incurred; and (d) a construction progress schedule detailing the progress of construction/rehabilitation and the projected sequencing and completion time for the uncompleted work, all as of the date of such schedule.

3.7. Prohibited Contracts. Without County's prior written consent, Borrower shall not contract for any materials, furnishings, equipment, fixtures or other parts or components of the Project, if any third party shall retain any ownership interest (other than lien rights created by operation of law) in such items after funds have been disbursed to pay for such items. Borrower shall have five (5) business days to effect the removal of any such retained interest.

3.8. Liens and Stop Notices. If a claim of lien is recorded which affects the Property or the Project, or a bonded stop notice is served upon County or Borrower, Borrower shall, within thirty (30) calendar days of such recording or service or within five (5) business days of County's demand, whichever occurs first: (a) pay or discharge the claim of lien or bonded stop notice; (b) effect the release thereof by recording or delivering to County a surety bond in sufficient form and amount; or (c) provide County with other assurances which County deems, in its sole discretion, to be satisfactory for the payment of such claim of lien or bonded stop notice and for the full and continuous protection of County for the effect of such lien or bonded stop notice.

3.9. Construction Responsibilities. Borrower shall construct the Project in a workmanlike manner in accordance with the approved Plans and Specification and the recommendations of any soils or engineering reports approved by County, which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions (as approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed), and the requirements of all regulatory authorities having jurisdiction over the Property and Project. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Property and Project, including, without limitation, for the quality and suitability of the Plans and Specification and their compliance with all governmental requirements, the supervision of the work of construction/rehabilitation, the qualifications, financial conditions and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements. County is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the construction/rehabilitation of the Project or any other matter referred to above.

3.10. Assessments and Community Facilities Districts. Without County's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Borrower shall not cause or allow to become effective or otherwise consent to

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the formation of any assessment district or community facilities district which includes all or any part of the Property and Project pursuant to: (a) the Mello-Roos Community Facilities Act of 1982; (b) the Municipal Improvement Act of 1913; or (c) any other comparable or similar statute or regulation. Nor shall Borrower cause or otherwise consent to the levying of special taxes or assessments against the Property or Project by any such assessment district or community facilities district.

3.11. Delay. Borrower shall promptly notify County in writing of any event causing delay or interruption of construction/rehabilitation, or the timely Completion of Construction. The notice shall specific the particular work delayed, and the cause and period of each delay.

3.12. Inspections. County, or County's authorized representative, shall have the right to enter upon the Property at all reasonable times, during regular business hours and following not less than seventy-two (72) hours' prior written notice, to inspect the Project and the construction/rehabilitation work to verify information disclosed or required pursuant to this Agreement. Any inspection or review of the Project by the County is solely to determine whether the Borrower is properly discharging its obligations to County under this Agreement and may not be relied upon by Borrower or any third party as a representation or warranty of compliance with this Agreement or any other agreement. County owes no duty of care to Borrower or any third party with regard to any negligent, faulty, inadequate or defective design or construction/rehabilitation of the Project as determined by County. During any such entry, County and/or County's authorized representative (as applicable) shall be accompanied by a representative of Borrower.

3.13. Surveys. Upon County's written request, Borrower shall promptly deliver to County: (a) a perimeter survey of the property; (b) upon completion of the foundations of the Project, a survey showing the location of the improvements constituting the Project on the Property and confirming that the Project is located entirely within the Property and does not encroach upon any easement or breach or violate any governmental requirement; and (c) upon Completion of the Construction an as-built ALTA survey for the Project showing the location of all improvements in and to the Project as well as (i) all "setbacks" and other restrictions applicable to the Project pursuant to requirements of applicable public authorities (ii) all easements, licenses and other rights of way, (iii) shows no encroachments onto the Project or from the Project onto adjoining property and (iv) certifies the legal description of the Project as insured in the title policy.. All such surveys shall be performed and certified by a licensed engineer or surveyor acceptable to the title insurer.

3.14. County's Cessation of Construction. If County reasonably determines at any time that the Project is not being constructed in accordance with the Plans and Specification and all applicable governmental requirements, after giving such notice to Borrower as is required by this Agreement County may immediately cause all construction/rehabilitation to cease on any of the Project improvements affected by the condition of nonconformance. Borrower shall thereafter not allow any construction/rehabilitation work, other than corrective work, to be performed on any of

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the Project affected by the condition of nonconformance until such time as the County notified the Borrower in writing that the nonconforming condition has been corrected to County's reasonable satisfaction.

ARTICLE IV

RENTAL RESTRICTIONS DURING THE QUALIFIED PROJECT PERIOD

4.1. Use and Rent Restrictions.

(a) During the Qualified Project Period, the Restricted Units shall be "Affordable" as defined in 24 CFR Part 92.252 (HOME units) and 24 CFR 982.507(c) (PBV/OTHER FUNDS units), [shall not exceed the rent permitted under Internal Revenue Code Section 42(g)(2) and as published annually by the California Tax Credit Allocation Committee, and must be in compliance with County policies associated with the 2026 NOFA, at the income limits set forth in Exhibit "B,"] except as otherwise provided in this Agreement for a period of not less than fifty-five (55) years.

(b) In accordance with the provisions of the Regulatory Agreement, this Loan Agreement and Exhibit "B" attached hereto and incorporated herein, the Borrower has agreed to rent the Restricted Units of the Project to Qualified Tenants for the Qualified Project Period with initial rents as described in said Exhibit "B."

(c) Borrower agrees to provide to Qualified Tenants notice of all rent increases pursuant to applicable California law.

(d) Borrower agrees to limit rent increases for the Restricted Units to (i) the Department of Housing and Urban Development's (HUD) annually published Rent Adjustment factor for the Section 8 program, or (ii) no more than the rent established as affordable based on the Median Income for the Area and the affordability restrictions set forth in Exhibit "B", which is adjusted annually by HUD and published by the State of California.

(e) [Notwithstanding the foregoing, where consistent with the California Assembly Bill (AB) 1386 (Veterans housing: tenant referrals) and where the proposed affordable housing development is funded with VASH and/or Homekey/Homekey+ funding, the County will allow units to be filled with Secondary Tenants if units cannot be filled with veterans at or below 30% AMI. "**Secondary tenants**" are defined in statute as either: 1) veterans who are homeless earning up to 50% AMI and receiving service-connected disability benefits or 2) veterans experiencing homelessness with income up to 60% AMI.]

4.2. Income Determination. For the purposes of this section, the income of individuals and families of the Restricted Units and the area median gross income shall be determined in a manner consistent with determinations of lower income families and the Median Income for the Area under Section 8 of the United States Housing Act of

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1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for household size.

4.3. Certifications. With respect to those Restricted Units subject to the rental restrictions described above, during the Qualified Project Period the Borrower will comply with the Qualified Tenant certifications and recertifications in the same manner as prescribed under the Regulatory Agreement. Said certifications and recertifications shall include, but not be limited to, client name, address, and verifiable income level (as documented by income tax returns, employee payroll records, retirement statements, etc. or other third-party documentation approved by the County for determining eligibility). Such information shall be made available to County monitors, or their designees, for review upon request.

4.4. Records.

(a) The Borrower will maintain complete and accurate records as required by Federal Regulations specified in 24 CFR 92.508, which shall contain a description of each activity undertaken, records pertaining to the Restricted Units, records documenting compliance with fair housing and equal opportunity components, financial records as required by 24 CFR 92.508 (a)(5), other records to document compliance with Subpart K of 24 CFR 92, and records documenting the continued affordability and income restrictions outlined in Exhibit "B."

(b) The Borrower will permit any duly authorized representatives of the County to inspect and copy the books and records of the Borrower pertaining to the Project, including those books and records pertaining to the occupancy of the Restricted Units provided that the County will make a reasonable effort to provide notice of at least forty-eight (48) hours to inspect, examine, or make copies of such information.

(c) Borrower will retain such records for a period of five (5) years after the termination of all activities funded under this Agreement.

4.1. Leases. Each lease pertaining to a Restricted Unit shall contain provisions to the effect that the Borrower has relied on the income certification and supporting information supplied by the Qualified Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. County reserve the right to require additional non-financial terms or clauses that are reasonably related to such qualifications (including, but not limited to additional disclosure clauses) that the County may from time to time deem appropriate or necessary to be included in said leases.

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ARTICLE V
DISBURSEMENT OF LOAN

5.1 Conditions Precedent to Disbursement of Loan Proceeds. The County shall cause Loan proceeds to be disbursed to the Borrower as set forth in this Article V. No disbursement shall be made until all of the following conditions precedent are satisfied (or satisfied concurrently with the disbursement) in the reasonable opinion of the County:

(a) Execution and Delivery of Documents. Borrower shall have executed and delivered to the County (i) this Agreement, the Note, the Deed of Trust, the Financing Statement, the Regulatory Agreement, and the Assignment of Leases, (ii) all resolutions and certificates necessary or appropriate in the opinion of the County to evidence the Borrower's authority to enter into the Loan and be bound by the Loan Documents, and (iii) all other documents and instruments required by the County to be executed and delivered, all in form and substance satisfactory to the County.

(b) Insurance. Borrower shall have furnished the County with certificates of insurance for all policies required under this Agreement.

(c) Phase One Environmental Assessment Report. Borrower shall have provided the County with a Phase One Environmental Assessment Report on the Property prepared by a licensed and registered environmental engineer or other qualified party satisfactory to County, along with any other information the County may require, in each case stating that no hazardous substances are present in, on, under or around the Property and that no condition or circumstances warranting further investigation now exists. For purposes of this subsection (c), the Phase 1 environmental assessment dated [XXX] and updated on [XXXX] have been reviewed and approved by the County.

(d) Financing Plan. The Borrower shall have submitted and the County shall have approved the Borrower's plan for the permanent financing of the Project ("**Financing Plan**").

(e) Management Plan. The Borrower shall have submitted and the County shall have approved a management plan ("**Management Plan**"). The Management Plan shall include a management contract with a manager approved in writing by the County for management of the Project and a plan for long-term marketing, operation, maintenance, repair and security of the Project, method of selection of tenants, and for rental policies in compliance with any applicable requirements, policies and procedures and with the Regulatory Agreement, along with any other policies or procedures required by the County. The Management Plan shall also include an initial budget for the Project.

(f) Title Policy. Borrower shall, at its sole expense, have delivered to County a title policy issued by an insurer satisfactory to County, including any and all other endorsements and binders required by County, naming County as the insured, in a policy amount of not less than the Loan, showing [the County/Borrower as the owner of the

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Property [with evidence of a long-term ground lease] by Borrower and insuring the Deed of Trust to be a valid **[XXX]** lien on the Project, subject only to those exceptions approved by the County in a subsequent instruction letter.

(g) Recordation. The Regulatory Agreement, Deed of Trust, Assignment of Leases and Financing Statement shall have been recorded, in that order, in the Official Records of Orange County.

(h) Senior Deed(s) of Trust. The Mortgage Loan Documents for the Senior Loan shall have been recorded in such order as directed by the said Senior Lenders.

(i) No Default. There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(j) Representations and Warranties. All representations and warranties of Borrower herein contained shall be true and correct.

(k) Availability of Funds. The Borrower has submitted to the County and the County has approved in the exercise of its discretion evidence that the funds identified as committed to the rehabilitation and construction of the Project in the approved Financing Plan are in fact unconditionally and readily available to Borrower for the Property as of the Close of Escrow.

(l) Priority of Regulatory Agreement. The Regulatory Agreement has been executed and recorded as a lien senior to any deed of trust.

5.2 Procedure for Disbursement of Loan Proceeds. When all the conditions to disbursement have been satisfied, the County shall fund the Loan on a draw-down or reimbursement basis upon Borrower's request and submission of invoices and/or receipts for Eligible Expenses, as defined herein, to the County for review, approval. County shall disburse approved loan funds to Borrower's account. For purposes of this agreement,

"Eligible Expenses" shall mean "hard" costs of construction or rehabilitation of housing, "soft" costs associated with acquisition, financing, and/or rehabilitation. "Soft" costs include marketing costs (not to exceed $1,500 per unit), appraisals, architectural and engineering fees, lender required third-party reports (market study, capital needs assessment),individual apartment furnishings, certain common area furnishings (not to exceed $1,000 per unit), building permit fees, credit reports, developer fees, environmental assessments, impact fees, legal and accounting costs, private lender origination fees, recording fees, surety fees, and title insurance, cost of property insurance during development, relocation costs and costs relating to payment of loans (construction principal and interest), if it is consistent with the eligible expenses specified in this section. The Borrower shall not exceed an overall cost limitation of fourteen percent (14%) of the cost of construction as it applies to builder overhead, profit, and general requirements, excluding builder's general liability insurance. For purposes of determining

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builder overhead and profit, the cost of construction includes site work, structures, prevailing wages, and general requirements. For purposes of general requirements, the cost of construction includes offsite improvements, demolition and site work, structures, and prevailing wages. as specified in Section 2.06 of 2026 NOFA and agreed to as a part of the application for this Loan. Eligible expenses shall be limited to those incurred and paid within twenty-four (24) months from the date of project approval, consistent with HUD regulations. The County reserves the right to disallow any costs paid after this period to ensure compliance with applicable program requirements.

5.3 Waiver; Termination. No waiver of any of the conditions to the Close of Escrow and disbursement of the Loan shall be permitted unless agreed to in writing by the Director. If any of the conditions to disbursement of the Loan are not satisfied as stated in the County's commitment letter dated [XXXX], County may terminate this Agreement by the Director giving written notice to Borrower. Upon such termination, the parties shall have no further rights or obligations under this Agreement.

ARTICLE VI
LEASES

6.1 Standard Form Leases. On or before the commencement of the Qualified Project Period, Borrower shall submit to County for its written approval a standard form of residential lease to be used for leasing of the Restricted Units (the "**Standard Lease**"). The Standard Lease shall be in compliance with all applicable laws and Borrower shall be obligated to revise said Standard Lease from time to time to comply with any changes in said applicable laws.

6.2 Leasing Program. Borrower shall market and lease the Restricted Units consistent with the Marketing Plan described in Section 8.8 hereof.

6.3 Pro-Forma Schedules. Attached hereto and incorporated herein as Exhibit "**B**" is the rental rate schedule for the Restricted Units at the Project approved by County.

6.4 No Changes. Borrower shall not materially modify the approved Standard Lease or materially deviate from the approved rental rate schedule for the Restricted Units without the County's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed.

6.5 Landlord's Obligations. Borrower shall timely and in good faith, perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Project. If any tenant at any time claims any breach of landlord's obligations and the amount of such claim (in excess of available insurance coverage) is $10,000 or more, Borrower shall promptly notify County of such claim.

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ARTICLE VII
REPRESENTATIONS AND WARRANTIES OF BORROWER

7.1 Representations and Warranties. Borrower hereby makes the following representations and warranties to the County, each of which shall also be deemed a covenant and all of the following, Borrower agrees, shall continue to be true and accurate in all material respects so long as the Loan or any portion thereof remains outstanding:

(a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Borrower delivered to the County are true and correct copies of the originals, as amended to the date of this Agreement, and Borrower will promptly provide the County with copies of any modifications thereto.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against the Borrower in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower and in effect at the time of execution of this Agreement, or any provision of the organizational documents of Borrower or, if applicable, of its constituent partners, or will conflict with or constitute a breach of or a default under any agreement to which

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Borrower, or, if applicable, its constituent partners, is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against Borrower or the Property or Project, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the County pursuant hereto.

(g) Compliance with Laws; Consents and Approvals. The Project shall comply at all times with all applicable laws (including but not limited to all Hazardous Substances Laws), ordinances, rules and regulations of federal, state, and local governments and agencies, and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector, and other officers of any such government or agency. All consents, permissions and licenses required by any federal, state, or local government or agency to which the Borrower, the Property or the Project is subject, which may be necessary in relation to this Agreement or the ownership or operation of the Project, have been or will be obtained.

(h) Financial Statements. The financial statements of the Borrower and its constituent partners, if any, and other financial data and information furnished by the Borrower for review by the County relating to the financial condition of Borrower or any of Borrower's constituent partners or the Project, fairly present the information contained therein. As of the date of Loan disbursement, there will not have been any adverse material change in the financial condition of the Borrower or its constituent partners from that shown by such financial statements and other data and information.

(i) Adequacy of Loan. The amount of the Loan, together with any funds to be provided by the Borrower or to the Borrower from any other sources, is adequate to pay all costs incurred in connection with the acquisition/construction of the Property and to enable the Borrower to satisfy the covenants contained in this Agreement.

(j) Payment of Taxes. All federal, state, county, and municipal taxes required to be paid by the Borrower or on account of the Property have been paid in full as of the date of this Agreement or will be paid in full by the Close of Escrow. Borrower knows of no basis for any additional assessment of taxes as of this date.

(k) Regulatory Agreement. The Restricted Units in the Project are, and will at all times remain, in compliance with all requirements of this Agreement and the Regulatory Agreement. The Restricted Units in the Project shall be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement. All leases for the Restricted Units will comply with all applicable laws and the Regulatory Agreement.

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ARTICLE VIII
CONTINUING OBLIGATIONS OF BORROWER

8.1. Applicability. For the longer of the entire Term, or so long as the Note remains outstanding, the Borrower shall comply with the provisions of this Article VIII.

8.2. Compliance with Loan Documents. Borrower shall promptly comply with all the terms, covenants and provisions of the Loan Documents.

8.3. Taxes and Assessments. So long as Borrower owns [a leasehold interest] in the Property and owns the Project, Borrower shall pay all real and personal property taxes, assessments and charges, and all franchise, income, unemployment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any delinquency or penalty from accruing, or any lien or charge from attaching to the Project; provided, however, that Borrower shall have the right to contest in good faith any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges, and interest.

8.4. Indemnity.

(a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the County and its elected officials, officers, governing members, employees, attorneys and agents (collectively, the "**Indemnified Parties**"), from and against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any and every conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject to under any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

1. the Loan Documents or the execution or amendment thereof or in connection with the transactions contemplated thereby;

2. Borrower's ownership or operation of the Project or any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, operation or rehabilitation/construction of, the Project or any part thereof;

3. any lien or charge upon payments by the Borrower to the

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County, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the County in respect of any portion of the Project;

4. any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof;

5. any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any Loan Document or any of the documents or instruments relating to said Loan Documents that the County relied upon in making the Loan except to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment and payment for counsel selected by the Indemnified Party, and shall assume the payment of all reasonable expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement.

6. If judgment is entered against Borrower and County by a court of competent jurisdiction because of the concurrent active negligence of County or Indemnified Parties, Borrower and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

8.5. Entry by the County. Borrower shall permit the County, through its officers, agents, or employees, at all reasonable times, subject to the rights of tenants, during normal business hours and after opportunity for at least 24 hours' notice to the Project's tenants to enter into or onto the Property or the Project and inspect the Project to determine that the same is in conformity with the Loan Documents and all the requirements hereof. Borrower acknowledges that the County is under no obligation to supervise, inspect, or inform Borrower of the results of its said inspection(s) and Borrower shall not rely upon the County therefor. Any inspection by the County is entirely for its purposes in determining whether Borrower is in default under this Agreement or the Loan Documents. Borrower shall rely entirely upon its own supervision and inspection.

8.6. Hazardous Materials. Borrower shall indemnify, defend and hold harmless the County, and its respective elected and appointed officials, members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the Project, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Project and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses

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incurred by the County in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

8.7. Transfers. During the Term, except for a Permitted Transfer, Borrower shall not sell or otherwise transfer the Project or any portion thereof, and none of the constituent general partners of Borrower shall sell or otherwise transfer their interests in Borrower, and none of the constituent general partners in a partnership that is a partner in Borrower shall sell or otherwise transfer their interest in such partnership without first obtaining the approval of the County, which consent the County may withhold or grant in the exercise of its good faith discretion. The County shall not approve any such transfer request if the Borrower is in default under any of the Loan Documents or the Management Plan. For purposes hereof, "**Permitted Transfer**" shall mean:

(a) The granting of easements or licenses to any appropriate governmental agency or utility or permits to facilitate the development and/or operation of the Property.

(b) A sale or Transfer in connection with a foreclosure or deed in lieu of foreclosure of any senior deed of trust so long as the County is given 90-day notice as provided in Section 10.3 in order to exercise its remedies under Section 9.2.

(c) The lease, assignment of lease or sublease of any individual residential unit in the Property consistent with the terms of this Agreement.

(d) A transfer of the Borrower's interest in the Property by foreclosure or deed in lieu of foreclosure (i) to any bona fide third-party lender holding a lien encumbering the Property (or its nominee), and (ii) by a lender foreclosure transferee entity to a third-party.

(e) A transfer of this Agreement and the Property to the general partner(s) of Borrower or any affiliate of Borrower in connection with a purchase option and/or right of first refusal agreement. For purposes of this subparagraph (e), "affiliate" shall mean a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual in whom Borrower's general partners own a **majority** interest and is controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the majority ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(f) The withdrawal, removal, and/or replacement of the Borrower's general partner with the Tax Credit Investor, any affiliate thereof, or any successor tax credit investor ("**Interim Replacement GP**") as a temporary replacement general partner of Borrower, in the event Borrower's general partner is removed for cause in accordance

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with Borrower's partnership agreement. County shall be provided with written notice of such replacement and County shall receive executed copies of any and all documents necessary to effect such replacement.

Such approval of such Interim Replacement GP is expressly limited to a period of only 90 days that commences on the date of such removal, provided that County in its sole discretion may extend such 90-day period by an additional 30 days, or for so long as County deems reasonably necessary to provide for a permanent replacement of the general partner. After such interim period, any proposed permanent replacement for the Borrower's general partner is subject to County's consent, which consent shall not be unreasonably withheld or delayed.

8.8. Management; Annual Marketing and Management Plans. Any management company of the Project and the management agreement with such management company shall be subject to the prior written approval of the County. The management agreement shall not be amended, modified, supplemented, terminated or canceled without the prior written consent of the County. Borrower and the County (if it so elects) will cooperate in the marketing of the units on the Property pursuant to a marketing plan (the "**Marketing Plan**") prepared by the Borrower and approved by the County. The Marketing Plan must contain procedures that include marketing of the units to all residents, regardless of gender, throughout Orange County including residents of unincorporated areas and other incorporated cities. For certain developments, including but not limited to those receiving Project Based Section 8 from the cities of Anaheim, Garden Grove or Santa Ana, or those subject to special zoning ordinances requiring preference for City residents, further documentation from the Borrower will be required demonstrating that residents throughout the County will have equal opportunity at obtaining units in the Project. Restricted Units assisted in this project are required to utilize the Coordinated Entry System (CES) for referrals. Said Marketing Plan and the Management Plan described in Section 5.1 hereof shall be prepared by the Borrower and approved by the County on an annual basis; however, the Borrower shall provide quarterly written supplements to said approved plans (or more frequently if requested by the County). For purposes of this paragraph, the County hereby approves [XXXXX] as the management agent for the Project.

8.9. Operation and Maintenance of Project.

(a) Operation. During the Qualified Project Period, Borrower shall at all times operate on the Project an affordable housing rental facility in compliance with this Agreement and the Regulatory Agreement.

(b) Maintenance. During the Qualified Project Period, Borrower agrees to maintain all interior and exterior improvements, including landscaping (and all abutting ground, sidewalks, roads, parking and landscape areas) on the Project in good condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with any Management Plan approved by the County under the Loan Agreement (including without limitation any landscape and signage plans), as the same

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may be amended from time to time, and all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials. Borrower acknowledges the great emphasis the County places on quality maintenance to protect its investment and to provide quality low-income housing for its constituents and to ensure that all County-subsidized affordable housing projects within the County are not allowed to deteriorate due to deficient maintenance. In addition, Borrower shall keep the Project free from all graffiti and any accumulation of debris or waste material. Borrower shall promptly make all repairs and replacements necessary to keep the Project in good condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials. Borrower shall not commit or permit any waste or deterioration of the Project, shall not abandon any portion of the Project, and shall not otherwise act, or fail to act, in such a way as to unreasonably increase the risk of damage to the Project.

In the event that Borrower breaches any of the covenants contained in this Section 8.9 and such default continues for a period of five (5) days after written notice from County (with respect to graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from County (with respect to landscaping and building improvements), then County, in addition to whatever other remedies it may have under this Agreement, the other Loan Documents or at law or in equity, shall have the right to enter upon the Project and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County shall be permitted (but not required) to enter upon the Project and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas on the Project, in the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by County and/or reasonable costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by Borrower to County upon demand.

(c) Removal of Personal Property. During the Qualified Project Period, Borrower shall not cause or permit the removal from the Project of any items of Borrower's personal property (other than tools and equipment used in the operation of the Project) unless (i) no Event of Default remains uncured and (ii) Borrower promptly substitutes and installs on the Project other items of equal or greater value in the operation of the Project, all of which shall be free of liens and shall be subject to the liens of the Deed of Trust and the Financing Statement and executes and delivers to County all documents required by County in connection with the attachment of such liens to such items. Borrower shall keep detailed records of such removal and shall make such records available to County upon written request from time to time.

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8.10. Status of Borrower. Borrower shall at all times maintain its legal status and all material licenses, rights, franchises and privileges in the jurisdiction of its formation in good standing and comply with all laws, rules and regulations of California and the United States and of any political subdivision thereof applicable to it or its business.

8.11. Insurance. While any obligation of Borrower under any Loan Document remains outstanding, Borrower shall maintain at Borrower's sole expense, the following policies of insurance in form and substance as follows:

(a) Commercial General Liability insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 in the aggregate;

(b) Commercial Auto Liability insurance covering all owned, non-owned and hired autos with a limit of $1,000,000 per occurrence);

(c) Statutory Workers' compensation insurance and Employer's Liability with a minimum limit of $1,000,000 per occurrence (amounts subject to change to ensure proper coverage);

(d) Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" form for 100% of the Replacement Cost Value and no coinsurance provision. (including insurance against loss by flood if the Project is located in an area now or hereafter designated as subject to the danger of flood, but excluding insurance against loss by earthquake);

(e) Rent loss insurance for a period of at least one year;

(f) The Commercial Property policy shall include a "lender's loss payable endorsement" to the County assuring County that all proceeds shall be paid to County as provided in the Deed of Trust subject to the interests of the senior lenders on the Project. The County shall be an additional named insured on the Commercial General Liability policy, and such insurance shall be primary, and any insurance maintained by the County shall be excess and non-contributing. All policies shall waive all rights of subrogation against the County, its elected and appointed officials, officers, agents, and employees. The general liability policy shall contain a severability of interests clause. Certificates of insurance and endorsements for all of the above policies (and/or original policies, if required by the County from time to time), showing the same to be in full force and effect, shall be delivered to the County;

(g) All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Borrower's current audited financial report. If Borrower's SIR is approved, Borrower, in addition to, and without limitation of, any other indemnity provision(s) in this Agreement, agrees to all of the following:

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8.1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Borrower, its agents, employee's or subcontractor's performance of this Agreement, Borrower shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

8.2. Borrower's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

8.3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Borrower's SIR provision shall be interpreted as though the Borrower was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Borrower and Additional Insureds.

If the Borrower fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

8.12. Alterations and Repair. Except with the prior consent of the County, during the Qualified Project Period, Borrower shall not remove, demolish or materially alter any improvement constituting the Project, except to make non-structural repairs which preserve or increase the Project's value, and shall promptly restore, in good and workmanlike manner, any said improvement (or other aspect of the Project) that is damaged or destroyed from any cause.

8.13. Changes in Property Restrictions. Borrower shall not initiate, join in or consent to any change in any applicable zoning ordinance, general plan or similar law, or to any private restrictive covenant or any similar public or private restriction on the use of the Project, except with the prior written consent of the County.

8.14. Books, Records and Annual Statement. Borrower shall maintain complete books of account and other records reflecting the /rehabilitation and operation of the Project in accordance with generally accepted accounting principles applied on a consistent basis. During the Qualified Project Period, the amount of the Residual Receipts (as defined in the Note) shall be determined on the basis of an annual audited financial statement ("**Annual Statement**"), for the preceding year, beginning with the first year of operation of all or any part of the Project, prepared at the Borrower's expense by an independent certified public account firm acceptable to the County. Such Annual Statement shall be prepared based on the guidelines, and taking into account the information, set forth on **Exhibit "C,"** attached hereto and incorporated herein. During

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the Qualified Project Period, the Borrower shall submit the Annual Statement and any payment to the County not later than six (6) months after closing of the Borrower's previous year's books. The first Annual Statement submitted by the Borrower for the Loan shall include the period from the Completion of Construction to the close of that year's books. The County shall review and approve such statement, or request revisions, within ninety (90) days after receipt. In the event that as the result of County review, there is an increase in the amount of Residual Receipts, Borrower shall pay to the County the full amount of such increase within ten (10) days of notice of such increases. The terms of this subsection shall not be the exclusive method by which the County may review Residual Receipts payments by the Borrower. In the event that an increase in the amount of Residual Receipts for any annual period is discovered at any time subsequent to the ninety (90) day period for that year's books, no previous action or inaction by the County shall prohibit the County from requesting repayment of those amounts at any time during the term of this Agreement or thereafter. The Borrower shall pay to the County the full amount of such increase within thirty (30) days of notice of such increase for periods prior to the previous year.

8.15. Notices of Certain Matters. Borrower shall give notice to County, within ten (10) days after Borrower receives actual knowledge thereof, of each of the following:

(a) Any litigation or claim against the Borrower relating to the Property or the Project and involving an amount in excess of $50,000 and any litigation or claim that might subject Borrower or any constituent partner of Borrower to liability in excess of $250,000, whether covered by insurance or not;

(b) Any dispute between Borrower and any governmental or public agency relating to the Property or the Project, the adverse determination of which might materially affect the Project;

(c) Any trade name hereafter used by Borrower and any change in Borrower's principal place of business;

(d) Any Event of Default or event, which, with the giving of notice or the passage of time, without ameliorative action, or both, would constitute an Event of Default;

(e) Any default by Borrower or any other party under any Loan Document or Mortgage Document, or the receipt by Borrower of any notice of default under any Loan Document or Mortgage Document;

(f) The creation or imposition of any mechanics' lien or other lien against the Project;

(g) The presence of any hazardous materials on, under or about the Property or the Project in violation of any applicable Environmental Laws; any enforcement, clean-up, removal or other action or requirement of any local, state or federal

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governmental or quasi-governmental authority with jurisdiction relating to any such hazardous materials; and the existence of any occurrence of conditions on any property in the vicinity of the Project that could cause any portion of the Project to be classified as what was formerly known as "border-zone property" under the provisions of former the California Health and Safety Code §§ 25220 et seq., as those sections read on January 1, 2012, or any related regulations, or that could cause the Project to be otherwise subject to any restrictions relating to hazardous materials; and

(h) Any material adverse change in the financial condition of Borrower or any of its constituent general partners.

8.16. Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to County all documents, and take all actions, reasonably required by County from time to time to confirm the rights created or now or hereafter intended to be created under the Loan Documents, to protect and further the validity, priority and enforceability of the Loan Documents, to subject to the Loan Documents any property intended by the terms of any Loan Document to be covered by the Loan Documents, or otherwise to carry out the purpose of the Loan Documents and the transactions contemplated thereunder.

8.17. Liens. Borrower shall not cause or suffer to become effective any lien, restriction or other title limitation affecting any part of the Project other than the (i) Regulatory Agreement, the Deed of Trust, the Financing Statement, and the liens of the Permitted Financing; and (ii) taxes not delinquent.

8.18. Payment of Expenses. Borrower shall pay the County's costs and expenses incurred in connection with the making, disbursement and administration of the Loan, as well as any recapitalizations request, revisions, transfers, extensions, renewals, modifications, refinancing or "workouts," and providing estoppels or subordinations of the Loan, and in the exercise of any of County's rights or remedies under this Agreement. The County will receive from Borrower a nonrefundable fee in the amount of Five Hundred Dollars ($500) and Borrower shall reimburse County for all of the County's reasonable out-of-pocket expenses (including reasonable attorney's fees) incurred in the administration and review of such changes, to the extent such expenses exceed Five Hundred Dollars ($500). Such costs and expenses may include title insurance, recording and escrow charges, survey charges, hazard insurance, premiums, fees for any appraisals and any appraisal reviews, architectural and engineering review, construction services and environmental and toxic services and reviews, zoning and entitlement services and reviews, mortgage taxes, legal fees and any other reasonable fees and costs for services, regardless of whether such services are furnished by the County's employees or agents or independent contractors. For purposes of this paragraph, "recapitalization" shall mean any transaction or series of transactions that results in the restructuring of a project financial foundation including but not limited to adjusting of debt and equity, refinancing, resyndication.

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8.19. Loan Monitoring Fees. Unless prohibited by Federal, State or local laws, the Borrower shall pay an annual loan monitoring fee during the Term. Loan monitoring fees shall be incorporated into the operating pro forma. The loan monitoring fee shall include a one-time payment ("**One Time Payment**") of Five Hundred Dollars ($500) to be used for project set-up plus an annual fee ("**Annual Fee**") of [AMOUNT] ($XXX), which will be used to offset the reasonable costs associated with monitoring X TYPE OF UNIT Restricted Units. The initial One-Time Payment fee and initial Annual Fee will be payable to the County at the Close of Escrow. The Annual Fee will be due each subsequent year for the Qualified Project Period on or within thirty (30) days of the day and month that this Agreement was entered into as set forth on page one hereof. Loan monitoring fees will be adjusted annually. The annual adjustment shall be in accordance with the change in the Consumer Price Index for Los Angeles –Anaheim - Riverside (All Urban Consumers – All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:

$$A = B \times \frac{C}{D}$$

Where: A = Adjusted Annual Fee

B = Annual Fee (as such Annual Fee may have been previously adjusted)

C = Average monthly index for the most recent twelve-month period

D = Average monthly index for the twelve-month period preceding the date of this Loan Agreement.

In the event that the Consumer Price Index (CPI) ceases to use 1982-84 = 100 as the basis of calculation, or if, in County's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figures as shall be practical) had the manner of calculating the CPI in effect at the date of this Loan Agreement not been altered.

In the event that the CPI is not issued or published for the period for which such minimum Annual Fees are to be adjusted and computed hereunder, or in the even that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by County, shall be used and if none is so published, then another index general recognized as authoritative shall be substituted by County.

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8.20. Subcontracts.

(a) Upon request of County, or their designated agent, Borrower shall submit any requested Subcontract agreements to the County for review and consent in the County's reasonable discretion which shall not be unreasonably withheld, or delayed. Any requested Subcontracts shall be submitted to County within forty-eight (48) hours of such request.

(b) Borrower shall assume responsibility for all subcontracted services to assure compliance with this Agreement.

(c) Borrower shall cause all of the applicable 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.

8.21. Relocation. Borrower shall, if applicable, in all matters relating to the Project:

(a) Take all reasonable steps to minimize displacement by providing tenants a reasonable opportunity to lease and occupy dwelling units in the Project being improved, if applicable;

(b) Submit to County a plan outlining financial and advisory assistance in securing temporary housing for any eligible tenant who is temporarily or permanently relocated due to the Project; and,

(c) Comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24 in providing relocation assistance for persons displaced by the Project.

(d) Have in effect, and follow a residential anti-displacement and relocation plan required under Section 104 (d) of the Housing and Community Development Act of 1974, as amended, in conjunction with any activity assisted with funds under the subject program.

(e) Indemnify, defend and hold harmless the County, and its respective elected and appointed officials, members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the failure of the Borrower to provide relocation benefits as required under State and Federal relocation law rules, statutes, or guidance.

8.22. HOME Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the HOME Requirements and the legal requirements set

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forth in **Exhibit D** attached to this Agreement and the statutes referenced therein. For purposes of this paragraph, "HOME Requirements" mean the requirements of the HOME Investment Partnership Act, as amended (42 U.S.C. § 12741, et seq.), and the implementing regulations (24 C.F.R. § 92, et seq.), and the legal requirements summarized or referenced in Exhibit No. D attached hereto and incorporated herein by this reference.

8.23. HOME-ARP Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the HOME Requirements and the legal requirements set forth in **Exhibit D-1** attached to this Agreement and the statutes referenced therein. For purposes of this paragraph, "HOME Requirements" mean the requirements of the HOME Investment Partnership Act, as amended (42 U.S.C. § 12741, et seq.), and the implementing regulations (24 C.F.R. § 92, et seq.), and the legal requirements summarized or referenced in Exhibit No. D attached hereto and incorporated herein by this reference, and any of those requirements as waived or specifically amended by the U.S. Department of Housing and Urban Development (HUD) Secretary for implementation of the HOME-ARP program and as described in HUD Notice No. CPD-21-10, incorporated herein by reference, and as specifically provided for in the County's HOME-ARP Allocation Plan.

8.24. Mental Health Services Act Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the requirements set forth in California Welfare and Institutions Code Section 5771.1 *et. seq*. and, without limitation, the requirements found in **Exhibit D** attached to this Agreement.

8.25. Housing Successor Agency/County and/or Project Based Voucher Requirements. The Borrower shall carry out the design, construction and operation of the Project, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the requirements set forth in state and federal law and, without limitation, the requirements found in **Exhibit D** attached to this Agreement.

8.26. Lender Recognition. The owner shall ensure recognition of the role of the County in providing funds through this Agreement. All activities, facilities and items utilized pursuant to the Agreement shall be prominently labeled as to funding source.

8.27. Labor Standards. To the extent applicable, the Borrower agrees to comply with the requirements of the California Department of Industrial Relations Prevailing Wage Requirements and the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333) 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. If applicable, the Borrower shall

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maintain documentation, which demonstrates compliance with hour, and wage requirements of this part. Such documentation shall be made available to the County for review upon request. The Borrower agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than twelve (12) units, 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 the County pertaining to such contracts and with the applicable requirements of the regulations of the U.S. Department of Labor, under 29 CFR, Parts 1, 3, 5, 7 and 1926 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 herein is intended to relieve the Borrower of its obligation, if any, to require payment of the higher rate. The Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph, for such contracts in excess of $10,000.00.

8.28. [HOME Section 92.252] [EVERYTHING ELSE: 24 CFR part 888, subpart A and 24 C.F.R. Sections 5.653 and 5.655] Qualification as Affordable Housing and Income Targeting Rental Housing.

The requirements found in [HOME: 24 CFR 92.252] [EVERYTHING ELSE: 24 CFR part 888, subpart A and 24 C.F.R. Sections 5.653 and 5.655] are incorporated into this Agreement as if fully set forth herein.

8.29. [HOME Section 91.5 and 92.253] [EVERYTHING ELSE: 24 CFR Section 983.257] Tenant and Participant Protections.

The definitions found in 24 CFR Sections 91.5 and requirements included in 245 CFR 92.253, and 24 CFR Section 983.257, are incorporated into this Agreement as if fully set forth herein.

8.30. Annual Audit.

Following the Conversion Date and commencing on the date six (6) months after closing of the Borrower's previous year's books and every one year anniversary date thereafter during the Term, Borrower shall submit to County the following audit reporting package (the "**Audit Reporting Package**"). [If federal funds are awarded, said Audit Reporting Package shall be in accordance with 2 CFR part 200, subpart F.] County reserves the right to revise the Audit Reporting Package requirements in accordance with any revision to Federal, State or County rules, regulations, ordinances, laws and statutes. Unless otherwise required by 2 CFR part 200, the Audit Reporting Package shall include the following:

(a) As applicable, the most recent IRS Form 990;

(b) Audited Financial Statements including but not limited to:

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a. Classified Balance Sheet (Statement of Financial Position) – Distinguishing between current and long-term assets and liabilities, and including all supporting schedules (i.e. Detailed Aged Payables, Aged Receivables, Notes Payable, etc.)
b. Income Statement (Profit and Loss Statement) (Statement of Activity)
c. Statement of Cash Flow
d. Retained Earnings
e. • Any footnotes to the statements

Borrowers who are not subject to Single Audit reports are required to submit the most recent two (2) years of audited financial statements

(c) [Schedule of expenditures of Federal awards;]

(f) [SF-SAC (Single Audit Collection) Data Collection Form; and]

(g) Management Letter.

The County Auditor/Controller shall have the right to review the Borrower's financial records. Borrowers shall agree to allow access to their audited financial records when requested by County, State or Federal Auditor staff.

8.32. Operating Reserve

Borrower shall establish an interest-bearing account to be known as the Operating Reserve Account. Upon the Conversion Date shall deposit an amount into the Operating Reserve Account sufficient to pay three (3) months of operating expenses and three (3) months of mandatory debt service payments ("**Target Balance**").

Funds shall be invested subject to the prior written approval of the County, which approval shall not be unreasonably withheld, and any earnings shall become and remain a part of the Operating Reserve. Funds may be drawn only when revenue is insufficient to pay operating expenses. The Borrowers shall not draw funds from the Operating Reserve Account without the prior written approval of the County, which approval shall not be unreasonably withheld.

If the balance in the Operating Reserve Account falls below the amount required to pay three (3) months of operating expenses and three (3) months of mandatory debt service payments, then Borrower shall pay for it out of operating expenses, when and if available, or other funds, to the replenishment of Operating Reserves until the Target Balance is achieved.

In the event of a failure by the Borrower to pay operating expenses, mandatory debt service payments, or other payments required under the Loan Documents or Mortgage Loan Documents, or during the continuance of an event of default by Borrower under the Loan Documents or Mortgage Loan Documents that would provide for the acceleration of the Loan or Mortgage Loan, then County may, after delivery of notice to

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Borrower and the expiration of any applicable cure periods, apply the funds in the Operating Reserve Account to the Loan, a Mortgage Loan, or use such funds for the continued operation of the Project.

8.33. Replacement Reserve

At or before the Conversion Date, Borrower shall establish an interest-bearing account to be known as the Replacement Reserve Account. Annually prior to March 31 of each year, Borrower shall deposit into the Replacement Reserve Account an amount equal to equal **five/four hundred dollars ($5/400) $250 per unit per annum for new construction and $300 per unit per annum for rehabilitation** or such higher amount as may be required by a Tax Credit Investor or Senior Lenders and approved by County, which approval shall not be unreasonably withheld. The Funds shall be invested subject to the prior written approval of the County and any earnings shall become and remain a part of the Replacement Reserve. The Borrowers shall not draw funds from the Replacement Reserve Account without the prior written approval of the County, which approval shall not be unreasonably withheld.

Funds may only be drawn from the Replacement Reserve Account to replace or maintain Project assets which have a useful life of more than one (1) year in accordance with Generally Accepted Accounting Principles ("GAAP"), and have been or will be depreciated on the Partnership Tax Return, Form 1040P, filed with the Internal Revenue Service by the Borrower's accountant.

In the event of a failure by the Borrower to adequately maintain the Project, or pay operating expenses, mandatory debt service payments, or other payments required under the Loan Documents or Mortgage Loan Documents, or during the continuance of an event of default by Borrower under the Loan Documents or Mortgage Loan Documents that would provide for the acceleration of the Loan or Mortgage Loan, then County may, after delivery of notice to Borrower and the expiration of any applicable cure periods, apply the funds in the Replacement Reserve Account to the Loan, a Mortgage Loan, or use such funds for the maintenance, improvement, or continued operation of the Project.

Any additional reserves beyond those stated in Sections 8.32 and 8.33, including but not limited to, security reserves and furnishing reserves beyond the County's operating reserve, replacement reserve, and/or transition reserve requirements shall be reviewed and approved by the County. Such approval shall not be unreasonably delayed or withheld.

ARTICLE IX
DEFAULT AND REMEDIES

9.1 Events of Default. Each of the following shall constitute an "**Event of Default**" by Borrower under this Agreement:

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(a) Failure to Make Note Payments. Borrower fails to make any payment of principal and/or interest under the Note when due, after ten (10) days' notice from County. Any payment that falls due on a non-business day may be made the next succeeding business day without penalty and shall not be considered a past-due payment;

(b) Failure to Make Other Payments. Borrower fails to perform any other obligation for the payment of money (other than payments described in subparagraph (a) above) under any Loan Document within ten (10) days after County gives Borrower written notice that such obligation was not performed or paid for;

(c) Non-Monetary Failure to Perform. Borrower fails to timely perform, comply with or observe any of the terms, covenants, or conditions of this Agreement or any other Loan Document (other than those provisions elsewhere referred to in this Section 9.1) and such failure continues uncured or without Borrower commencing to diligently cure for thirty (30) days after notice thereof in writing is given by the County to Borrower, provided that if Borrower has commenced cure but cannot complete such cure reasonably within thirty (30) days, Borrower shall have ninety (90) days from the date of notice to cure such failure without such failure constituting an event of default;

(d) Mortgage Loan Document Breach. Any default or breach of Borrower that continues uncured after the expiration of any applicable cure period under any other loan document including, but not limited to, the Mortgage Loan Documents;

(e) Voluntary Suspension. The voluntary suspension of Borrower's business or the dissolution or termination of the partnership (if any) constituting Borrower;

(f) Unauthorized Transfer. Borrower's sale or other transfer of the Property or the Project in violation of Section 8.7 above;

(g) Fraud or Material Misstatement or Omissions. Any fraudulent act or omission of Borrower's, or intentional misrepresentation of Borrower's, pertaining to or made in connection with the Loan, Loan Documents or the Project;

(h) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection 9.1(h) as well; or Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv),

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inclusive. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note; or

(i) Project Monies. Borrower's misapplication or embezzlement of Project monies.

9.2 Remedies. The occurrence of any Event of Default shall, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the Loan and shall give the County the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents or otherwise available at law or in equity or by statute (and all of the County's rights and remedies shall be cumulative), including but not limited to the following:

(a) Acceleration of Note. The County shall have the right to cause all indebtedness of the Borrower to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest, or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the County on demand all expenses, costs and fees (including, without limitation, attorneys' fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The County shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The County shall have the right to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the rate of twelve percent (12%) per annum (which rate shall in no event exceed the maximum rate permitted by law and if it does, said rate shall be reduced to the maximum rate then permitted by law), from the date of expenditure until the date of reimbursement.

9.3 Remedies Cumulative. No right, power, or remedy given to the County by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial

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exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

9.4 Waiver of Terms and Conditions. No waiver of any default or breach by Borrower hereunder shall be implied from any omission by the County to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the County to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the Loan Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under the Loan Documents, unless in the exercise of any such right, power, or remedy all obligations of Borrower to County are paid and discharged in full.

9.5 [Tax Credit Investor Cure Rights. The Tax Credit Investor shall have the right, but not the obligation, to cure any defaults of the Borrower on the same terms as the Borrower, and the County shall accept such cures as if tendered by the Borrower. The Parties agree that the Borrower is responsible for providing written notice of any Event of Default or other default to the Tax Credit Investor as provided herein within 5 days of receipt from the County of such notice. As to the Tax Credit Investor, the cure period(s) specified herein shall commence upon the date of delivery of such notice to the Tax Credit Investor.]

ARTICLE X
MISCELLANEOUS

10.1 Approvals Under Agreement. Where this Agreement requires an approval or consent of the County, such approval or consent may be given on behalf of the County by the Director or his or her designee, through their authority as delegated by the County Board of Supervisors.

10.2 Time. Time is of the essence in this Agreement.

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10.3 Notices. Any notice requirement set forth herein shall be in writing and delivered to the appropriate party at the address listed in this subparagraph. Addresses for notice may be changed from time to time by written notice to the other party. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change in address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

Borrower:

County:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

Such addresses may be changed by notice to the other party given in the same manner as provided above.

10.4 No Third Parties Benefitted. This Agreement is made and entered into for the sole protection and benefit of the County, its successors and assigns, and Borrower, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

10.5 County to File Notices. Borrower irrevocably appoints, designates, and authorizes the County as its agent (said agency being coupled with an interest) to file for record any notice that the County deems necessary or desirable to protect its interest hereunder and under the Loan Documents.

10.6 Actions. The County shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties hereunder, or the disbursement of any proceeds of the Loan.

10.7 Successors and Assigns. The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no assignment of Borrower's rights hereunder shall be made, voluntarily or by operation of law, without the prior written consent of the County as specified in Section 8.7 above, and that any such assignment without said consent shall be void.

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10.8 Construction of Words. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

10.9 Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

10.10 Governing Law and Venue. This Agreement and the Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement or any of the Loan Documents, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

10.11 Amendment. This Agreement may not be changed orally, but only by an agreement in writing signed by Borrower and the County.

10.12 Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing.

10.13 Captions and Headings. Captions and headings in this Agreement are for convenience of reference only and are not to be considered in construing the Agreement.

10.14 Nonliability. By accepting or approving anything required to be performed or given to County under the Loan Documents, including any certificate, financial statement, survey, or insurance policy, County shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by County to anyone.

10.15 Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of County to Borrower, or any claim by Borrower against County, in connection with the Loan or otherwise, Borrower hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Borrower's obligations under the Loan Documents or (b) to claim that the existence of any such obligation, liability or claim excuses the nonperformance by Borrower of any of its obligations under the Loan Documents.

10.16 Survival of Representations and Warranties. All representations and warranties of Borrower in the Loan Documents shall survive the making of the Loan and have been or will be relied on by County notwithstanding any investigation made by County.

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10.17 Prior Agreements. This Agreement (together with the other Loan Documents) contains the entire agreement between County and Borrower with respect to the Loan and all prior negotiations, understandings and agreements (including, but not limited to, any commitment letter issued by County to Borrower) are superseded by this Agreement and such Loan Documents.

10.18 Conflicts. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, this Agreement shall prevail; provided, however, that with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

10.19 Waiver of Right to Trial by Jury. Unless prohibited by Federal, State or local laws, each party to this Agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under any Loan Document or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to any Loan Document, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

10.20 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts. This Agreement shall become effective when the parties have duly executed and delivered signature pages of this Agreement to each other. Delivery of this Agreement shall be effectuated by electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

--SIGNATURE PAGES FOLLOW --

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BORROWER:

TEMPLATE

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COUNTY:

COUNTY OF ORANGE, a political subdivision of the state of California

By:_____
Julia Bidwell, Director
OC Community Resources,
OC Housing and Community Development
County of Orange

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By_____
Signed by:
Jacqueline Guzman
8452584753D3488...
Deputy

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EXHIBIT A
LEGAL DESCRIPTION

TEMPLATE

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EXHIBIT B
EXTREMELY LOW QUALIFIED TENANT/UNIT MIX
[ ], California

RENT & AFFORDABILITY SCHEDULE

Number of Restricted Units	Number of Bedrooms	* Gross Restricted Rental Rate	**Utility Allowance	***Net Restricted Rental Rate	Income Limit based on Area Median Income (AMI)	Age Restriction (if any)	Project Based Section 8 Units	Number of Years Restricted
								55
Total							Total 0	

* Restricted Rental Rate is based on the 2026 Area Median Income (AMI) published by HUD annually and does not include the utility allowance deduction. UPDATED RENTAL RATE TO BE PROVIDED AT START OF QUALIFIED PROJECT PERIOD.

** Utility allowance is based on the 2026 utility schedule published by the Orange County Housing Authority annually and will be updated at HAP execution to reflect updated utility schedule.

*** Rent increases shall be limited to no more than the lower of rent established as affordable based on the Median Income for the Area and the affordability restrictions set forth above, which is adjusted annually by HUD and published by the State of California, as referenced in the Loan Agreement Section 4.1except as otherwise provided in the Loan Agreement Section 4.1(d).

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EXHIBIT C
ANNUAL STATEMENT GUIDELINES

Expenses
Obligated debt service on the Senior Loan
Operating reserves
Replacement Reserves ($**250/300/500** per unit)
Deferred developer fee
County annual loan monitoring fee ($XXX)
Other public agency monitoring fees, as applicable
Property Management fee
Utility fees
Property taxes
Insurance premiums
Operating and maintenance expenses
Supportive/Resident services

Partnership Management Fees:
Partnership Management related charges and fees in the amount of $25,000 pursuant to the NOFA.

Cash Flow Percentage Available for Distribution to the County, as further described in the Promissory Note

[ ]% **County of Orange**
County loan accrues at 3% simple interest annually

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LOAN AGREEMENT

BY AND BETWEEN

COUNTY OF ORANGE, a political subdivision of the State of California,

AND

BORROWER

TEMPLATE

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LOAN AGREEMENT

THIS LOAN AGREEMENT ("the **Agreement**") is entered into as of _____, 2026, by and between the COUNTY OF ORANGE, a political subdivision of the State of California ("**County**"), and [BORROWER**]** ("**Borrower**"), with reference to the following:

RECITALS

1. Borrower intends to construct a housing project on that certain real property located within the [**LOCATION]**, County of Orange, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein (the "**Property**"). The Borrower further intends to [construct] operate a [number of units] (__) residential development consisting of PROJECT INFORMATION which shall be constructed by Borrower on the Property (collectively, the "**Project**").

2. The Borrower has submitted to County an application for funding of a project, described herein, under its 2026 Supportive Housing Notice of Funding Availability ("**2026 NOFA**").

3. The County desires to provide financial assistance in the form of a loan to Borrower subject to the Borrower's agreement, amongst other things, to encumber the Property with certain rental restrictions, all as more particularly set forth in this Agreement and the Regulatory Agreement.

4. The Orange County Board of Supervisors [acting as the Board of Commissioners for the Orange County Housing Authority] approved a loan to the Borrower from County funds for financing on DATE.

5. Borrower is financing the construction of the improvements and related costs and expenses through, among others, during the Qualified Project Period, as defined below, the following sources (collectively, the "**Permitted Financing**"):

[FINANCING SOURCES TO BE OUTLINED FORTHWITH]

6. [In addition to the financing in Section 5., above, the Orange County Housing Authority ("**OCHA**") has approved the use of [XXXXX] Project-Based Vouchers ("**PBV**") for [XXXX], all of which will be restricted by the County and the OCHA for individuals who meet the PBV eligibility criteria for a term more specifically described in that certain Agreement to Enter into Housing Assistance Payments ("**AHAP**") Contract between OCHA and Borrower.]

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NOW, THEREFORE, the parties agree as follows:

ARTICLE I

DEFINITIONS

The following terms used in this Agreement shall have the respective meanings assigned to them in this Article I unless the context in which they are used clearly requires otherwise:

1.1. "Adjusted Income" shall mean the adjusted income of all persons who intend to reside in one residential unit, calculated in the manner which complies with determinations of income for low income families under the Department of Housing and Urban Development's Section 8 Program of the United States Housing Act of 1937, as amended.

1.2. "Agreement" shall mean this Loan Agreement.

1.3. "Area" shall mean Orange County.

1.4. "Assignment of Leases" shall mean that/those certain Assignment(s) of Lessor's Interest in Leases, Rents and Profits executed by Borrower of even date herewith.

1.5. "Borrower" shall mean [XXXX]

1.6. "Close of Escrow" shall mean the date on which the Deed of Trust together with the other Loan Documents set up for recording are in fact recorded.

1.7. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time hereafter, or any successor statute thereto.

1.8. "Conversion Date" the date that a construction loan converts from the construction phase, as defined in the senior construction loan document, to the permanent phase and the County Loan is funded.

1.9. "County" shall mean the County of Orange, a political subdivision of the state of California or [Orange County Housing Authority, a public corporation created pursuant to California Health and Safety Code section 34200 et. seq., acting solely as the Housing Successor Agency to the Orange County Development Agency].

1.10. "Deed of Trust"" shall mean the Deed of Trust, Assignment of Rents and Security Agreement(s) executed by the Borrower in favor of the County of even date herewith.

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1.11. "Director" shall mean the [Orange County Housing Authority Executive Director] OR OC Community Resources Director or her or his designee.

1.12. "Due Date" shall mean the date which is fifty-five (55) years following the Conversion Date, on which all principal and interest due on the Loan shall be fully paid.

1.13. "Escrow Holder" shall mean the escrow holder approved by the County for the escrow established to facilitate the Close of Escrow.

1.14. "Financing Plan" shall mean the financing plan described in Section 4.1 below.

1.15. "Financing Statement" shall mean the UCC-1 form to be prepared and executed by Borrower, in a form satisfactory to the County, and delivered to the County, the filing of which shall give the County a perfected security interest in Borrower's tangible personal property and fixtures located on or about the Project.

1.16. "Hazardous Materials" or "hazardous materials" shall mean:

(a) any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance or any other waste, material, or pollutant that

(i) poses a hazard to the Project or to persons on the Project or

(ii) causes the Project to be in violation of any Hazardous Substance Law;

(b) asbestos in any form;

(c) urea formaldehyde foam insulation;

(d) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls;

(e) radon gas;

(f) any chemical, material, or substance defined as or included in the definition of "hazardous substance," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws, including, but not limited to, any Hazardous Substance Law, Code of Civil Procedure § 564, as amended from time to time, Code of Civil Procedure § 726.5, as amended from time to time, Code of Civil Procedure §736, as amended from time to time, and Civil Code § 2929.5, as amended from time to time;

(g) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or which may pose a hazard to the health and safety of the occupants of the Project or the owners or occupants of property adjacent to or surrounding the Project, or any other person coming on the Project or any adjacent property; and

(h) any other chemical, material, or substance that may pose a hazard to the environment flammable materials, explosives, radioactive materials, hazardous wastes,

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toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable law, including, without limitation the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq., as amended.

1.17. "Hazardous Substance Law" means any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Project, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS §§ 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCS §§ 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act [42 USCS §§ 6901 et seq.], as amended from time to time; the Federal Water Pollution Control Act [33 USCS §§ 1251 et seq.], as amended from time to time; the Hazardous Substance Account Act [Health and Safety Code §§ 25300 et seq.], as amended from time to time; the Hazardous Waste Control Law [Health and Safety Code §§ 25100 et seq.], as amended from time to time; the Medical Waste Management Act [Health and Safety Code §§ 25015 et seq.], as amended from time to time; and the Porter-Cologne Water Quality Control Act [Water Code §§ 13000 et seq.], as amended from time to time.

1.18. "Loan" shall mean the Loan in the amount of ---------- ($----------) by the County to the Borrower, which Loan is the subject of this Agreement.

1.19. "Loan Documents" shall mean the following documents evidencing the Loan: (a) the Note; (b) the Deed of Trust; (c) the Financing Statement; (d) the Regulatory Agreement; (e) the Assignment of Leases; and (g) this Agreement.

1.20. "Management Plan" shall mean that management plan submitted to and approved by the County pursuant to Section 5.1 below.

1.21. "Marketing Plan" shall mean that certain Marketing Plan submitted to and approved by the County pursuant to Section 7.8 hereof.

1.22. "Median Income for the Area" shall mean the median income for the Area as most recently determined by the United States Department of Housing and Urban Development ("HUD") and published by the State of California (the "**State**"). In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the County shall provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the State.

1.23. "Mortgage Loan" shall mean any of the following loans secured by a mortgage or deed of trust on the Project:

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(a) The Loan evidenced by the Note and the balance of the Loan Documents.

(b) Any other loan secured by a mortgage or deed of trust on the Project, either senior or junior to the Loan.

1.24. "Mortgage Loan Documents" shall mean all documents executed by the Borrower endorsing or securing a Mortgage Loan.

1.25. "Mortgagee" shall mean the mortgagee or beneficiary under a mortgage or a deed of trust executed in connection with a Mortgage Loan.

1.26. "Note" shall mean all the promissory note(s) in the principal amount of the Loan evidencing the monies borrowed by Borrower from the County.

1.27. "Operating Reserves" shall mean reserves maintained during the Qualified Project Period and funded out of Residual Receipts, loan advances, equity, or other sources and set aside for taxes and assessments, insurance premiums, operating expenses, and debt service. Operating Reserves shall be the amount required to pay three (3) months of operating expenses and three (3) months of mandatory debt service.

1.28. "Parties" shall mean the County and the Borrower.

1.29. "Partnership" shall mean NAME OF PARTNERSHIP.

1.30. "Permanent Lender" shall mean the permanent lender designated by Borrower and approved in advance by the County as the Permanent Lender for the Project.

1.31. "Permitted Financing" shall have the meaning given in Recital 5.

1.32. "Plans and Specification" shall mean the final set of architectural, structural, mechanical, electrical, grading, sewer, water, street and utility plans and specifications for the Project, including all supplemental, amendments and modifications.

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1.33. "Project" means collectively the Property and the structures and related buildings, and other improvements now or hereafter located on the Property from time to time together with all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements.

1.34. "Property" means the real property legally described in **Exhibit "A",** which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.

1.35. "Qualified Project Period" shall mean the period beginning upon the Conversion Date and ending on the date which is fifty-five (55) years after the beginning of the Qualified Project Period.

1.36. "Qualified Tenant" or "Qualified Tenants" shall collectively mean the individuals occupying the Restricted Units with the Adjusted Incomes more particularly described in **Exhibit "B"** attached hereto and incorporated herein. The income of individuals shall be determined in a manner consistent with determinations of lower income households under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). In no event, however, will the occupant of a Restricted Unit be considered to be a Qualified Tenant if the occupant is a student, and is not entitled to file a federal income tax return.

1.37. "Regulations" shall mean the Income Tax Regulations promulgated by the United States Department of the Treasury pursuant to the Code from time to time.

1.38. "Regulatory Agreement" shall mean that certain Regulatory Agreement and Declaration of Restrictive Covenants between the County and the Borrower of even date herewith.

1.39. "Replacement Reserves" shall mean reserves maintained during the Qualified Project Period and funded out of Residual Receipts, loan advances, equity, or other sources and set aside for replacement of roofing, furniture, fixtures, equipment and other capital expenditures. The annual amount set aside for Replacement Reserves shall not be more than [$250 per unit per annum for new construction and $300 per unit per annum for rehabilitation Annual deposits to replacement reserves shall not exceed $400 per unit per annum or $500 per unit per annum for MHSA/BHSA restricted units] per unit. Exceptions may be considered where required for continued feasibility of projects with short-term rent subsidy commitments, or when required by other funding agencies if approved in writing by the County.

1.40. "Residual Receipts" shall have the same definition has found in the Note.

1.41. "Restricted Unit" or "Restricted Units" means the dwelling units in the Project identified on **Exhibit "B"** attached hereto and incorporated herein required to be rented to, or held available for occupancy by, Qualified Tenants pursuant to the terms,

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covenants and conditions of the Regulatory Agreement, this Agreement, including, but not limited to, the rental restrictions and other matters set forth in said Exhibit "B" and the other Loan Documents.

1.42. "Senior Lenders" shall mean, collectively, Senior Construction Lender, Senior Permanent Lender, and their successors and assigns.

1.43. "Tax Credit Investor" shall mean the tax credit investor limited partner of the Borrower, reasonably approved in advance by the County as the Tax Credit Investor for the Project.

1.44. "Term" shall mean the period of time commencing on the date of this Agreement and ending with the last date of the Qualified Project Period, for a total possible term of up to fifty-eight (58) years.

ARTICLE II

LOAN

2.1 Amount. Subject to the terms of this Agreement, the County hereby agrees to lend, and the Borrower hereby agrees to borrow, the Loan, evidenced by the Note, the proceeds of which shall be used to acquire the Property and upon fulfillment of certain conditions, as set forth herein, to permanently finance the Project and for the other purposes set forth herein.

2.2 Repayment of Loan. Borrower shall repay the Loan, with interest, in accordance with the provisions of the Note and this Agreement. Except as otherwise provided, all payments shall be applied first to interest and then to principal.

2.3 Prepayment. Borrower may pay the principal and any interest due the County under the Note prior to or in advance of the time for payment thereof as provided in the Note, without penalty; provided, however, that Borrower acknowledges that in the event the Conversion Date occurs the provisions of this Agreement and the Regulatory Agreement will be applicable to the Project throughout the Qualified Project Period even though Borrower may have prepaid the Note.

2.4 Assumption. Subject to the provisions of Section 7.7 hereof, the Note shall not be assumable by successors and assigns of Borrower, either voluntarily or by operation of law, without the prior written discretionary consent of the County and any such assignment or assumption without said prior consent of the County shall be void.

2.5 Loan Disbursement. Upon satisfaction of the conditions to disbursement set forth in Section 4.1 below, the County, through the approved Escrowholder, will cause the disbursement of the Loan as provided for in Section 4.2.

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2.6 Security for Loan. The Loan shall be secured by the Deed of Trust, Regulatory Agreement, the Financing Statement, and Assignment of Leases.

2.7 Approval of Additional Financing. Except as to the Permitted Financing and as otherwise described herein, the Borrower shall not place or permit (either voluntarily or involuntarily) to be placed any encumbrances, including, but not limited to any additional liens or financing of any kind on the Project without the prior written discretionary consent of the County.

2.8 Subordination of Deed of Trust.

The County agrees that the Deed of Trust may be subordinate to the lien of a permanent loan secured by a Senior Construction/Permanent Deed of Trust (and any refinancing of said permanent loan secured by the Senior Construction/Permanent Deed of Trust) securing financing in an amount not to exceed $[XXX,XXX] so long as (i) the documentation for said loan is approved by the County and (ii) said loan is otherwise provided for and approved by the County in the Financing Plan. Any other financing, refinancing or encumbrance of the Project is prohibited without the County's prior written consent which consent the County may reasonably withhold in the exercise of its discretion.

In order to affect the subordinations described above and elsewhere in this Agreement, the County and Borrower agree to execute and acknowledge for recordation a subordination agreement (in a form acceptable to the County) in favor of the senior lender, as requested by such senior lender.

ARTICLE III

RENTAL RESTRICTIONS DURING THE QUALIFIED PROJECT PERIOD

3.1. Use and Rent Restrictions.

(a) During the Qualified Project Period, the Restricted Units shall be "Affordable" as defined in 24 CFR Part 92.252(HOME units) and 24 CFR 982.507(c) (PBV/OTHER FUNDS units), [shall not exceed the rent permitted under Internal Revenue Code Section 42(g)(2) and as published annually by the California Tax Credit Allocation Committee, and must be in compliance with County policies associated with the 2026 NOFA, at the income limits set forth in Exhibit "B,"] and in compliance with County policies associated with the 2026 NOFA for a period of not less than fifty-five (55) years.

(b) In accordance with the provisions of the Regulatory Agreement, this Loan Agreement and Exhibit "B" attached hereto and incorporated herein, the Borrower has agreed to rent the Restricted Units of the Project to Qualified Tenants for the Qualified Project Period at the initial rents described in said Exhibit "B."

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(c) Borrower agrees to provide to Qualified Tenants notice of all rent increases pursuant to applicable California law.

(d) Borrower agrees to limit rent increases for the Restricted Units to (i) the Department of Housing and Urban Development's (HUD) annually published Rent Adjustment factor for the Section 8 program, or (ii) no more than the rent established as affordable based on the Median Income for the Area and the affordability restrictions set forth in Exhibit "B", which is adjusted annually by HUD and published by the State of California.

(e) [Notwithstanding the foregoing, where consistent with the California Assembly Bill (AB) 1386 (Veterans housing: tenant referrals) and where the proposed affordable housing development is funded with VASH and/or Homekey/Homekey+ funding, the County will allow units to be filled with Secondary Tenants if units cannot be filled with veterans at or below 30% AMI. "**Secondary tenants**" are defined in statute as either: 1) veterans who are homeless earning up to 50% AMI and receiving service-connected disability benefits or 2) veterans experiencing homelessness with income up to 60% AMI.]

3.2. Income Determination. For the purposes of this section, the income of individuals and families for the Restricted Units and the area median gross income shall be determined in a manner consistent with determinations of lower income families and the Median Income for the Area under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). Determinations under the preceding sentence shall include adjustments for household size.

3.3. Certifications. With respect to those Restricted Units subject to the rental restrictions described above, during the Qualified Project Period the Borrower will comply with the Qualified Tenant certifications and recertifications in the same manner as prescribed under the Regulatory Agreement. Said certifications and recertifications shall include, but not be limited to, client name, address, and verifiable income level (as documented by income tax returns, employee payroll records, retirement statements, etc. or other third-party documentation approved by the County for determining eligibility). Such information shall be made available to County monitors, or their designees, for review upon request.

3.4. Records.

(a) The Borrower will maintain complete and accurate records as required by Federal Regulations specified in 24 CFR 92.508, which shall contain a description of each activity undertaken, records pertaining to the Restricted Units, records documenting compliance with fair housing and equal opportunity components, financial records as required by 24 CFR 92.508 (a)(5), other records to document compliance with Subpart K

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of 24 CFR 92, and records documenting the continued affordability and income restrictions outlined in Exhibit "B."

(b) The Borrower will permit any duly authorized representatives of the County to inspect and copy the books and records of the Borrower pertaining to the Project, including those books and records pertaining to the occupancy of the Restricted Units provided that the County will make a reasonable effort to provide notice of at least forty-eight (48) hours to inspect, examine, or make copies of such information.

(c) Borrower will retain such records for a period of five (5) years after the termination of all activities funded under this Agreement.

3.5. Leases. Each lease pertaining to a Restricted Unit shall contain provisions to the effect that the Borrower has relied on the income certification and supporting information supplied by the Qualified Tenant in determining qualification for occupancy of the Restricted Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease. County reserves the right to require additional non-financial terms or clauses that are reasonably related to such qualifications (including, but not limited to additional disclosure clauses) that the County may from time to time deem appropriate or necessary to be included in said leases.

ARTICLE IV
DISBURSEMENT OF LOAN

4.1 Conditions Precedent to Disbursement of Loan Proceeds. The County shall cause Loan proceeds to be disbursed to the Borrower as set forth in this Article V. No disbursement shall be made until all of the following conditions precedent are satisfied (or satisfied concurrently with the disbursement) in the reasonable opinion of the County:

(a) Execution and Delivery of Documents. Borrower shall have executed and delivered to the County (i) this Agreement, the Note, the Deed of Trust, the Financing Statement, the Regulatory Agreement, and the Assignment of Leases, (ii) all resolutions and certificates necessary or appropriate in the opinion of the County to evidence the Borrower's authority to enter into the Loan and be bound by the Loan Documents, and (iii) all other documents and instruments required by the County to be executed and delivered, all in form and substance satisfactory to the County.

(b) Insurance. Borrower shall have furnished the County with certificates of insurance for all policies required under this Agreement.

(c) Phase One Environmental Assessment Report. Borrower shall have provided the County with a Phase One Environmental Assessment Report on the Property prepared by a licensed and registered environmental engineer or other qualified party satisfactory to County, along with any other information the County may require, in each

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case stating that no hazardous substances are present in, on, under or around the Property and that no condition or circumstances warranting further investigation now exists. For purposes of this subsection (c), the Phase 1 environmental assessment dated [XXX] and updated on [XXXX] have been reviewed and approved by the County.

(d) Financing Plan. The Borrower shall have submitted and the County shall have approved the Borrower's plan for the permanent financing of the Project ("**Financing Plan**").

(e) Management Plan. The Borrower shall have submitted and the County shall have approved a Management Plan ("**Management Plan**"). The Management Plan shall include a management contract with a manager approved in writing by the County for management of the Project and a plan for long-term marketing, operation, maintenance, repair and security of the Project, method of selection of tenants, and for rental policies in compliance with any applicable requirements, policies and procedures and with the Regulatory Agreement, along with any other policies or procedures required by the County. The Management Plan shall also include an initial budget for the Project.

(f) Title Policy. Borrower shall, at its sole expense, have delivered to County a title policy issued by an insurer satisfactory to County, including any and all other endorsements and binders required by County, naming County as the insured, in a policy amount of not less than the Loan, showing [the County/Borrower as the owner of the Property [with evidence of a long-term ground lease] by Borrower and insuring the Deed of Trust to be a valid **[XXX]** lien on the Project, subject only to those exceptions approved by the County in a subsequent instruction letter.

(g) Recordation. The Regulatory Agreement, Deed of Trust, Assignment of Leases and Financing Statement shall have been recorded, in that order, in the Official Records of Orange County.

(h) Senior Deed(s) of Trust. The Mortgage Loan Documents for the Senior Loan shall have been recorded in such order as directed by the said senior first trust deed lender.

(i) No Default. There shall exist no condition, event or act which would constitute an Event of Default (as hereinafter defined) hereunder or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(j) Representations and Warranties. All representations and warranties of Borrower herein contained shall be true and correct.

(k) Availability of Funds. The Borrower has submitted to the County and the County has approved in the exercise of its discretion evidence that the funds identified as committed to the rehabilitation and construction of the Project in the approved Financing Plan are in fact unconditionally and readily available to Borrower for the Property as of the Close of Escrow.

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(l) Priority of Regulatory Agreement. The Regulatory Agreement has been executed and recorded as a lien senior to any deed of trust.

(m) Notice of Completion; Compliance with Applicable Requirements; Senior Permanent Loan Conversion Conditions Precedent. The Borrower shall have submitted to the County and the County shall have approved the recorded Notice of Completion, the final certificate of occupancy and evidence that the Property and its intended use are in compliance with all applicable building, zoning and other requirements of applicable public authorities.

(n) Mechanic's Liens. The Borrower shall have submitted to County for County approval evidence that all construction costs have been paid in full and that the period for filing of mechanic's liens has expired without the filing of any lien.

(o) As-Built Survey. Borrower shall have delivered and the County shall have approved a final, as-built ALTA survey for the Project showing the location of all improvements in and to the Project as well as (i) all "setbacks" and other restrictions applicable to the Project pursuant to requirements of applicable public authorities (ii) all easements, licenses and other rights of way, (iii) shows no encroachments onto the Project or from the Project onto adjoining property and (iv) certifies the legal description of the Project as insured in the title policy.

4.2 Procedure for Disbursement of Loan Proceeds. When all the conditions to disbursement have been satisfied, the County shall fund the Loan on a draw-down or reimbursement basis upon Borrower's request and submission of invoices and/or receipts for Eligible Expenses, as defined herein, to the County for review, approval. County shall disburse approved loan funds to Borrower's account. For purposes of this agreement,

"Eligible Expenses" shall mean "hard" costs of construction or rehabilitation of housing, "soft" costs associated with acquisition, financing, and/or rehabilitation. "Soft" costs include marketing costs (not to exceed $1,500 per unit), appraisals, architectural and engineering fees, individual apartment furnishings, certain common area furnishings (not to exceed $1,000 per unit), building permit fees, credit reports, developer fees, environmental assessments, impact fees, legal and accounting costs, private lender origination fees, recording fees, surety fees, and title insurance. The Borrower shall not exceed an overall cost limitation of fourteen percent (14%) of the cost of construction as it applies to builder overhead, profit, and general requirements, excluding builder's general liability insurance. For purposes of determining builder overhead and profit, the cost of construction includes site work, structures, prevailing wages, and general requirements. For purposes of general requirements, the cost of construction includes offsite improvements, demolition and site work, structures, and prevailing wages. as specified in Section 2.06 of 2026 NOFA and agreed to as a part of the application for this Loan. Eligible expenses shall be limited to those incurred and paid within twenty-four (24) months from the date of project approval, consistent with HUD regulations. The

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County reserves the right to disallow any costs paid after this period to ensure compliance with applicable program requirements.

4.3 Waiver; Termination. No waiver of any of the conditions to the Close of Escrow and disbursement of the Loan shall be permitted unless agreed to in writing by the Director. If any of the conditions to disbursement of the Loan are not satisfied as further stated in the County's commitment letter dated [XXXX], County may terminate this Agreement by the Director giving written notice to Borrower. Upon such termination, the parties shall have no further rights or obligations under this Agreement.

ARTICLE V
LEASES

5.1 Standard Form Leases. On or before the commencement of the Qualified Project Period, Borrower shall submit to County for its written approval a standard form of residential lease to be used for leasing of the Restricted Units (the "**Standard Lease**"). The Standard Lease shall be in compliance with all applicable laws and Borrower shall be obligated to revise said Standard Lease from time to time to comply with any changes in said applicable laws.

5.2 Leasing Program. Borrower shall market and lease the Project consistent with the Marketing Plan described in Section 7.8 hereof.

5.3 Pro-Forma Schedules. Attached hereto and incorporated herein as Exhibit "**B**" is the rental rate schedule for the Restricted Units at the Project for the initial year of operation, adjusted as set forth in Exhibit "B" approved by County.

5.4 No Changes. Borrower shall not materially modify the approved Standard Lease or materially deviate from the approved rental rate schedule for the Restricted Units without the County's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed.

5.5 Landlord's Obligations. Borrower shall timely and in good faith, perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Project. If any tenant at any time claims any breach of landlord's obligations and the amount of such claim (in excess of available insurance coverage) is $10,000 or more, Borrower shall promptly notify County of such claim.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF BORROWER

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6.1 Representations and Warranties. Borrower hereby makes the following representations and warranties to the County, each of which shall also be deemed a covenant and all of the following, Borrower agrees, shall continue to be true and accurate in all material respects so long as the Loan or any portion thereof remains outstanding:

(a) Organization. Borrower is duly organized, validly existing and in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted. The copies of the documents evidencing the organization of Borrower delivered to the County are true and correct copies of the originals, as amended to the date of this Agreement, and Borrower will promptly provide the County with copies of any modifications thereto.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower, and all actions required under Borrower's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Borrower enforceable against the Borrower in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Borrower and in effect at the time of execution of this Agreement, or any provision of the organizational documents of Borrower or, if applicable, of its constituent partners, or will conflict with or constitute a breach of or a default under any agreement to which Borrower, or, if applicable, its constituent partners, is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

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(f) Pending Proceedings. Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against Borrower or the Property or Project, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Borrower, materially affect Borrower's ability to repay the Loan or impair the security to be given to the County pursuant hereto.

(g) Compliance with Laws; Consents and Approvals. The Project shall comply at all times with all applicable laws (including but not limited to all Hazardous Substances Laws), ordinances, rules and regulations of federal, state, and local governments and agencies, and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector, and other officers of any such government or agency. All consents, permissions and licenses required by any federal, state, or local government or agency to which the Borrower, the Property or the Project is subject, which may be necessary in relation to this Agreement or the ownership or operation of the Project, have been or will be obtained.

(h) Financial Statements. The financial statements of the Borrower and its constituent partners, if any, and other financial data and information furnished by the Borrower for review by the County relating to the financial condition of Borrower or any of Borrower's constituent partners or the Project, fairly present the information contained therein. As of the date of Loan disbursement, there will not have been any adverse material change in the financial condition of the Borrower or its constituent partners from that shown by such financial statements and other data and information.

(i) Adequacy of Loan. The amount of the Loan, together with any funds to be provided by the Borrower or to the Borrower from any other sources, is adequate to pay all costs incurred in connection with the acquisition/construction of the Property and to enable the Borrower to satisfy the covenants contained in this Agreement.

(j) Payment of Taxes. All federal, state, county, and municipal taxes required to be paid by the Borrower or on account of the Property have been paid in full as of the date of this Agreement or will be paid in full by the Close of Escrow. Borrower knows of no basis for any additional assessment of taxes as of this date.

(k) Regulatory Agreement. The Restricted Units in the Project are, and will at all times remain, in compliance with all requirements of this Agreement and the Regulatory Agreement. The Restricted Units in the Project shall be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement. All leases for the Restricted Units will comply with all applicable laws and the Regulatory Agreement.

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ARTICLE VII
CONTINUING OBLIGATIONS OF BORROWER

7.1. Applicability. For the longer of the entire Term, or so long as the Note remains outstanding, the Borrower shall comply with the provisions of this Article VIII.

7.2. Compliance with Loan Documents. Borrower shall promptly comply with all the terms, covenants and provisions of the Loan Documents.

7.3. Taxes and Assessments. So long as Borrower owns [a leasehold interest] in the Property and owns the Project, Borrower shall pay all real and personal property taxes, assessments and charges, and all franchise, income, unemployment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any delinquency or penalty from accruing, or any lien or charge from attaching to the Project; provided, however, that Borrower shall have the right to contest in good faith any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges, and interest.

7.4. Indemnity.

(a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the County and its elected officials, officers, governing members, employees, attorneys and agents (collectively, the "**Indemnified Parties**"), from and against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any and every conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject to under any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

1. the Loan Documents or the execution or amendment thereof or in connection with the transactions contemplated thereby;

2. Borrower's ownership or operation of the Project or any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, operation or rehabilitation/construction of, the Project or any part thereof;

3. any lien or charge upon payments by the Borrower to the

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County, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the County in respect of any portion of the Project;

4. any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof;

5. any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any Loan Document or any of the documents or instruments relating to said Loan Documents that the County relied upon in making the Loan except to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment and payment for counsel selected by the Indemnified Party, and shall assume the payment of all reasonable expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement.

6. If judgment is entered against Borrower and County by a court of competent jurisdiction because of the concurrent active negligence of County or Indemnified Parties, Borrower and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

7.5. Entry by the County. Borrower shall permit the County, through its officers, agents, or employees, at all reasonable times, subject to the rights of tenants, during normal business hours and after opportunity for at least 24 hours' notice to the Project's tenants to enter into or onto the Property or the Project and inspect the Project to determine that the same is in conformity with the Loan Documents and all the requirements hereof. Borrower acknowledges that the County is under no obligation to supervise, inspect, or inform Borrower of the results of its said inspection(s) and Borrower shall not rely upon the County therefor. Any inspection by the County is entirely for its purposes in determining whether Borrower is in default under this Agreement or the Loan Documents. Borrower shall rely entirely upon its own supervision and inspection.

7.6. Hazardous Materials. Borrower shall indemnify, defend and hold harmless the County, and its respective elected and appointed officials, members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of hazardous materials on, under, or about the Project, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Project and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses

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incurred by the County in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees.

7.7. Transfers. During the Term, except for a Permitted Transfer, Borrower shall not sell or otherwise transfer the Project or any portion thereof, and none of the constituent general partners of Borrower shall sell or otherwise transfer their interests in Borrower, and none of the constituent general partners in a partnership that is a partner in Borrower shall sell or otherwise transfer their interest in such partnership without first obtaining the approval of the County, which consent the County may withhold or grant in the exercise of its good faith discretion. The County shall not approve any such transfer request if the Borrower is in default under any of the Loan Documents or the Management Plan. For purposes hereof, "**Permitted Transfer**" shall mean:

(a) The granting of easements or licenses to any appropriate governmental agency or utility or permits to facilitate the development and/or operation of the Property.

(b) A sale or Transfer in connection with a foreclosure or deed in lieu of foreclosure of any senior deed of trust so long as the County is given 90-day notice as provided in Section 9.3 in order to exercise its remedies under Section 8.2.

(c) The lease, assignment of lease or sublease of any individual residential unit in the Property consistent with the terms of this Agreement.

(d) A transfer of the Borrower's interest in the Property by foreclosure or deed in lieu of foreclosure (i) to any bona fide third-party lender holding a lien encumbering the Property (or its nominee), and (ii) by a lender foreclosure transferee entity to a third-party.

(e) A transfer of this Agreement and the Property to the general partner(s) of Borrower or any affiliate of Borrower in connection with a purchase option and/or right of first refusal agreement. For purposes of this subparagraph (e), "affiliate" shall mean a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual in whom Borrower's general partners own a **majority** interest and is controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the majority ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(f) The withdrawal, removal, and/or replacement of the Borrower's general partner with the Tax Credit Investor, any affiliate thereof, or any successor tax credit investor ("**Interim Replacement GP**") as a temporary replacement general partner of Borrower, in the event Borrower's general partner is removed for cause in accordance

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with Borrower's partnership agreement. County shall be provided with written notice of such replacement and County shall receive executed copies of any and all documents necessary to effect such replacement.

Such approval of such Interim Replacement GP is expressly limited to a period of only 90 days that commences on the date of such removal, provided that County in its sole discretion may extend such 90-day period by an additional 30 days, or for so long as County deems reasonably necessary to provide for a permanent replacement of the general partner. After such interim period, any proposed permanent replacement for the Borrower's general partner is subject to County's consent, which consent shall not be unreasonably withheld or delayed.

7.8. Management; Annual Marketing and Management Plans. Any management company of the Project and the management agreement with such management company shall be subject to the prior written approval of the County. The management agreement shall not be amended, modified, supplemented, terminated or canceled without the prior written consent of the County. Borrower and the County (if it so elects) will cooperate in the marketing of the units on the Property pursuant to a marketing plan (the "**Marketing Plan**") prepared by the Borrower and approved by the County. The Marketing Plan must contain procedures that include marketing of the units to all residents, regardless of gender, throughout Orange County including residents of unincorporated areas and other incorporated cities. For certain developments, including but not limited to those receiving Project Based Section 8 from the cities of Anaheim, Garden Grove or Santa Ana, or those subject to special zoning ordinances requiring preference for City residents, further documentation from the Borrower will be required demonstrating that residents throughout the County will have equal opportunity at obtaining units in the Project. Restricted Units assisted in this project are required to utilize the Coordinated Entry System (CES) for referrals. Said Marketing Plan and the Management Plan described in Section 4.1 hereof shall be prepared by the Borrower and approved by the County on an annual basis; however, the Borrower shall provide quarterly written supplements to said approved plans (or more frequently if requested by the County). For purposes of this paragraph, the County hereby approves [XXXXX] as the management agent for the Project.

7.9. Operation and Maintenance of Project.

(a) Operation. During the Qualified Project Period, Borrower shall at all times operate on the Project an affordable housing rental facility in compliance with this Agreement and the Regulatory Agreement.

(b) Maintenance. During the Qualified Project Period, Borrower agrees to maintain all interior and exterior improvements, including landscaping (and all abutting ground, sidewalks, roads, parking and landscape areas) on the Project in good condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with any Management Plan approved by the County under the Loan Agreement (including without limitation any landscape and signage plans), as the same

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may be amended from time to time, and all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials. Borrower acknowledges the great emphasis the County places on quality maintenance to protect its investment and to provide quality low-income housing for its constituents and to ensure that all County-subsidized affordable housing projects within the County are not allowed to deteriorate due to deficient maintenance. In addition, Borrower shall keep the Project free from all graffiti and any accumulation of debris or waste material. Borrower shall promptly make all repairs and replacements necessary to keep the Project in good condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials. Borrower shall not commit or permit any waste or deterioration of the Project, shall not abandon any portion of the Project, and shall not otherwise act, or fail to act, in such a way as to unreasonably increase the risk of damage to the Project.

In the event that Borrower breaches any of the covenants contained in this Section 8.9 and such default continues for a period of five (5) days after written notice from County (with respect to graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from County (with respect to landscaping and building improvements), then County, in addition to whatever other remedies it may have under this Agreement, the other Loan Documents or at law or in equity, shall have the right to enter upon the Project and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County shall be permitted (but not required) to enter upon the Project and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas on the Project, in the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by County and/or reasonable costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by Borrower to County upon demand.

(c) Removal of Personal Property. During the Qualified Project Period, Borrower shall not cause or permit the removal from the Project of any items of Borrower's personal property (other than tools and equipment used in the operation of the Project) unless (i) no Event of Default remains uncured and (ii) Borrower promptly substitutes and installs on the Project other items of equal or greater value in the operation of the Project, all of which shall be free of liens and shall be subject to the liens of the Deed of Trust and the Financing Statement and executes and delivers to County all documents required by County in connection with the attachment of such liens to such items. Borrower shall keep detailed records of such removal and shall make such records available to County upon written request from time to time.

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7.10. Status of Borrower. Borrower shall at all times maintain its legal status and all material licenses, rights, franchises and privileges in the jurisdiction of its formation in good standing and comply with all laws, rules and regulations of California and the United States and of any political subdivision thereof applicable to it or its business.

7.11. Insurance. While any obligation of Borrower under any Loan Document remains outstanding, Borrower shall maintain at Borrower's sole expense, the following policies of insurance in form and substance as follows:

(a) Commercial General Liability insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 in the aggregate;

(b) Commercial Auto Liability insurance covering all owned, non-owned and hired autos with a limit of $1,000,000 per occurrence);

(c) Statutory Workers' compensation insurance and Employer's Liability with a minimum limit of $1,000,000 per occurrence (amounts subject to change to ensure proper coverage);

(d) Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" form for 100% of the Replacement Cost Value and no coinsurance provision. (including insurance against loss by flood if the Project is located in an area now or hereafter designated as subject to the danger of flood, but excluding insurance against loss by earthquake);

(e) Rent loss insurance for a period of at least one year;

(f) The Commercial Property policy shall include a "lender's loss payable endorsement" to the County assuring County that all proceeds shall be paid to County as provided in the Deed of Trust subject to the interests of the senior lenders on the Project. The County shall be an additional named insured on the Commercial General Liability policy, and such insurance shall be primary, and any insurance maintained by the County shall be excess and non-contributing. All policies shall waive all rights of subrogation against the County, its elected and appointed officials, officers, agents, and employees. The general liability policy shall contain a severability of interests clause. Certificates of insurance and endorsements for all of the above policies (and/or original policies, if required by the County from time to time), showing the same to be in full force and effect, shall be delivered to the County;

(g) All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars ($50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Borrower's current audited financial report. If Borrower's SIR is approved, Borrower, in addition to, and without limitation of, any other indemnity provision(s) in this Agreement, agrees to all of the following:

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1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Borrower, its agents, employee's or subcontractor's performance of this Agreement, Borrower shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2. Borrower's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and

3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Borrower's SIR provision shall be interpreted as though the Borrower was an insurer and the County was the insured.

Upon notice of any actual or alleged claim or loss arising out of subcontractor's work hereunder, subcontractor shall immediately satisfy in full the SIR provisions of the policy in order to trigger coverage for the Borrower and Additional Insureds.

If the Borrower fails to maintain insurance acceptable to the County for the full term of this Agreement, the County may terminate this Agreement.

7.12. Alterations and Repair. Except with the prior consent of the County, during the Qualified Project Period, Borrower shall not remove, demolish or materially alter any improvement constituting the Project, except to make non-structural repairs which preserve or increase the Project's value, and shall promptly restore, in good and workmanlike manner, any said improvement (or other aspect of the Project) that is damaged or destroyed from any cause.

7.13. Changes in Property Restrictions. Borrower shall not initiate, join in or consent to any change in any applicable zoning ordinance, general plan or similar law, or to any private restrictive covenant or any similar public or private restriction on the use of the Project, except with the prior written consent of the County.

7.14. Books, Records and Annual Statement. Borrower shall maintain complete books of account and other records reflecting the /rehabilitation and operation of the Project in accordance with generally accepted accounting principles applied on a consistent basis. During the Qualified Project Period, the amount of the Residual Receipts (as defined in the Note) shall be determined on the basis of an annual audited financial statement ("**Annual Statement**"), for the preceding year, beginning with the first year of operation of all or any part of the Project, prepared at the Borrower's expense by an independent certified public account firm acceptable to the County. Such Annual Statement shall be prepared based on the guidelines, and taking into account the information, set forth on **Exhibit "C,"** attached hereto and incorporated herein. During

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the Qualified Project Period, the Borrower shall submit the Annual Statement and any payment to the County not later than six (6) months after closing of the Borrower's previous year's books. The first Annual Statement submitted by the Borrower for the Loan shall include the period from the Completion of Construction to the close of that year's books. The County shall review and approve such statement, or request revisions, within ninety (90) days after receipt. In the event that as the result of County review, there is an increase in the amount of Residual Receipts, Borrower shall pay to the County the full amount of such increase within ten (10) days of notice of such increases. The terms of this subsection shall not be the exclusive method by which the County may review Residual Receipts payments by the Borrower. In the event that an increase in the amount of Residual Receipts for any annual period is discovered at any time subsequent to the ninety (90) day period for that year's books, no previous action or inaction by the County shall prohibit the County from requesting repayment of those amounts at any time during the term of this Agreement or thereafter. The Borrower shall pay to the County the full amount of such increase within thirty (30) days of notice of such increase for periods prior to the previous year.

7.15. Notices of Certain Matters. Borrower shall give notice to County, within ten (10) days after Borrower receives actual knowledge thereof, of each of the following:

(a) Any litigation or claim against the Borrower relating to the Property or the Project and involving an amount in excess of $50,000 and any litigation or claim that might subject Borrower or any constituent partner of Borrower to liability in excess of $250,000, whether covered by insurance or not;

(b) Any dispute between Borrower and any governmental or public agency relating to the Property or the Project, the adverse determination of which might materially affect the Project;

(c) Any trade name hereafter used by Borrower and any change in Borrower's principal place of business;

(d) Any Event of Default or event, which, with the giving of notice or the passage of time, without ameliorative action, or both, would constitute an Event of Default;

(e) Any default by Borrower or any other party under any Loan Document or Mortgage Document, or the receipt by Borrower of any notice of default under any Loan Document or Mortgage Document;

(f) The creation or imposition of any mechanics' lien or other lien against the Project;

(g) The presence of any hazardous materials on, under or about the Property or the Project in violation of any applicable Environmental Laws; any enforcement, clean-up, removal or other action or requirement of any local, state or federal

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governmental or quasi-governmental authority with jurisdiction relating to any such hazardous materials; and the existence of any occurrence of conditions on any property in the vicinity of the Project that could cause any portion of the Project to be classified as what was formerly known as "border-zone property" under the provisions of former California Health and Safety Code §§ 25220 et seq., as those sections read on January 1, 2012, or any related regulations, or that could cause the Project to be otherwise subject to any restrictions relating to hazardous materials; and

(h) Any material adverse change in the financial condition of Borrower or any of its constituent general partners.

7.16. Further Assurances. Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to County all documents, and take all actions, reasonably required by County from time to time to confirm the rights created or now or hereafter intended to be created under the Loan Documents, to protect and further the validity, priority and enforceability of the Loan Documents, to subject to the Loan Documents any property intended by the terms of any Loan Document to be covered by the Loan Documents, or otherwise to carry out the purpose of the Loan Documents and the transactions contemplated thereunder.

7.17. Liens. Borrower shall not cause or suffer to become effective any lien, restriction or other title limitation affecting any part of the Project other than the (i) Regulatory Agreement, the Deed of Trust, the Financing Statement, and the liens of the Permitted Financing; and (ii) taxes not delinquent.

7.18. Payment of Expenses. Borrower shall pay the County's costs and expenses incurred in connection with the making, disbursement and administration of the Loan, as well as any recapitalizations request, revisions, transfers, extensions, renewals, modifications, refinancing or "workouts," and providing estoppels or subordinations of the Loan, and in the exercise of any of County's rights or remedies under this Agreement. The County will receive from Borrower a nonrefundable fee in the amount of Five Hundred Dollars ($500) and Borrower shall reimburse County for all of the County's reasonable out-of-pocket expenses (including reasonable attorney's fees) incurred in the administration and review of such changes, to the extent such expenses exceed Five Hundred Dollars ($500). Such costs and expenses may include title insurance, recording and escrow charges, survey charges, hazard insurance, premiums, fees for any appraisals and any appraisal reviews, architectural and engineering review, construction services and environmental and toxic services and reviews, zoning and entitlement services and reviews, mortgage taxes, legal fees and any other reasonable fees and costs for services, regardless of whether such services are furnished by the County's employees or agents or independent contractors. For purposes of this paragraph, "recapitalization" shall mean any transaction or series of transactions that results in the restructuring of a project financial foundation including but not limited to adjusting of debt and equity, refinancing, resyndication.

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7.19. Loan Monitoring Fees. Unless prohibited by Federal, State or local laws, the Borrower shall pay an annual loan monitoring fee during the Term. Loan monitoring fees shall be incorporated into the operating pro forma. The loan monitoring fee shall include a one-time payment ("**One Time Payment**") of Five Hundred Dollars ($500) to be used for project set-up plus an annual fee ("**Annual Fee**") of [AMOUNT] ($XXX), which will be used to offset the reasonable costs associated with monitoring X TYPE OF UNIT Restricted Units. The initial One-Time Payment fee and initial Annual Fee will be payable to the County at the Close of Escrow. The Annual Fee will be due each subsequent year for the Qualified Project Period on or within thirty (30) days of the day and month that this Agreement was entered into as set forth on page one hereof. Loan monitoring fees will be adjusted annually. The annual adjustment shall be in accordance with the change in the Consumer Price Index for Los Angeles –Anaheim - Riverside (All Urban Consumers – All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:

$$A = B \times \frac{C}{D}$$

Where: A = Adjusted Annual Fee

B = Annual Fee (as such Annual Fee may have been previously adjusted)

C = Average monthly index for the most recent twelve-month period

D = Average monthly index for the twelve-month period preceding the date of this Loan Agreement.

In the event that the Consumer Price Index (CPI) ceases to use 1982-84 = 100 as the basis of calculation, or if, in County's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figures as shall be practical) had the manner of calculating the CPI in effect at the date of this Loan Agreement not been altered.

In the event that the CPI is not issued or published for the period for which such minimum Annual Fee is to be adjusted and computed hereunder, or in the even that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by County, shall be used and if none is so published, then another index general recognized as authoritative shall be substituted by County.

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7.20. Subcontracts.

(a) Upon request of County, or their designated agent, Borrower shall submit any requested Subcontract agreements to the County for review and consent. Any requested Subcontracts shall be submitted to County within forty-eight (48) hours of such request.

(b) Borrower shall assume responsibility for all subcontracted services to assure compliance with this Agreement.

(c) Borrower shall cause all of the applicable 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.

7.21. Relocation. Borrower shall, if applicable, in all matters relating to the Project:

(a) Take all reasonable steps to minimize displacement by providing tenants a reasonable opportunity to lease and occupy dwelling units in the Project being improved, if applicable;

(b) Submit to County a plan outlining financial and advisory assistance in securing temporary housing for any eligible tenant who is temporarily or permanently relocated due to the Project; and,

(c) Comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and 49 CFR 24 in providing relocation assistance for persons displaced by the Project.

(d) Have in effect, and follow a residential anti-displacement and relocation plan required under Section 104 (d) of the Housing and Community Development Act of 1974, as amended, in conjunction with any activity assisted with funds under the subject program.

(e) Indemnify, defend and hold harmless the County, and its respective elected and appointed officials, members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the failure of the Borrower to provide relocation benefits as required under State and Federal relocation law rules, statutes, or guidance.

7.22. HOME Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the HOME Requirements and the legal requirements set forth in **Exhibit D** attached to this Agreement and the statutes referenced therein. For

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purposes of this paragraph, "HOME Requirements" mean the requirements of the HOME Investment Partnership Act, as amended (42 U.S.C. § 12741, et seq.), and the implementing regulations (24 C.F.R. § 92, et seq.), and the legal requirements summarized or referenced in Exhibit No. D attached hereto and incorporated herein by this reference.

7.23. HOME-ARP Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the HOME Requirements and the legal requirements set forth in **Exhibit D-1** attached to this Agreement and the statutes referenced therein. For purposes of this paragraph, "HOME Requirements" mean the requirements of the HOME Investment Partnership Act, as amended (42 U.S.C. § 12741, et seq.), and the implementing regulations (24 C.F.R. § 92, et seq.), and the legal requirements summarized or referenced in Exhibit No. D attached hereto and incorporated herein by this reference, and any of those requirements as waived or specifically amended by the U.S. Department of Housing and Urban Development (HUD) Secretary for implementation of the HOME-ARP program and as described in HUD Notice No. CPD-21-10, incorporated herein by reference, and as specifically provided for in the County's HOME-ARP Allocation Plan.

7.24. Mental Health Services Act Requirements. The Borrower shall carry out the design, construction and operation of the Project, and operate the Program, in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the requirements set forth in California Welfare and Institutions Code Section 5771.1 *et. seq*. and, without limitation, the requirements found in **Exhibit D** attached to this Agreement.

7.25. Housing Successor Agency/County and/or Project Based Voucher Requirements. The Borrower shall carry out the design, construction and operation of the Project in conformity with all applicable laws, regulations, and rules of governmental agencies having jurisdiction, including without limitation, the requirements set forth in state and federal law and, without limitation, the requirements found in **Exhibit D** attached to this Agreement.

7.26. Lender Recognition. The owner shall ensure recognition of the role of the County in providing funds through this Agreement. All activities, facilities and items utilized pursuant to the Agreement shall be prominently labeled as to funding source.

7.27. Labor Standards. To the extent applicable, the Borrower agrees to comply with the requirements of the California Department of Industrial Relations Prevailing Wage Requirements and the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333) 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. If applicable, the Borrower shall maintain documentation, which demonstrates compliance with hour, and wage

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requirements of this part. Such documentation shall be made available to the County for review upon request. The Borrower agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than twelve (12) units, 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 the County pertaining to such contracts and with the applicable requirements of the regulations of the U.S. Department of Labor, under 29 CFR, Parts 1, 3, 5, 7 and 1926 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 herein is intended to relieve the Borrower of its obligation, if any, to require payment of the higher rate. The Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph, for such contracts in excess of $10,000.00.

7.28. [HOME Section 92.252] [EVERYTHING ELSE: 24 CFR part 888, subpart A and 24 C.F.R. Sections 5.653 and 5.655] Qualification as Affordable Housing and Income Targeting Rental Housing.

The requirements found in [HOME: 24 CFR 92.252] [EVERYTHING ELSE: 24 CFR part 888, subpart A and 24 C.F.R. Sections 5.653 and 5.655] are incorporated into this Agreement as if fully set forth herein.

7.29. [HOME Section 91.5 and 92.253] [EVERYTHING ELSE: 24 CFR Section 983.257] Tenant and Participant Protections.

The definitions found in 24 CFR Sections 91.5 and requirements included in 245 CFR 92.253, and 24 CFR Section 983.257, are incorporated into this Agreement as if fully set forth herein.

7.30. Annual Audit.

Following the Conversion Date and commencing on the date six (6) months after closing of the Borrower's previous year's books and every one year anniversary date thereafter during the Term, Borrower shall submit to County the following audit reporting package (the "**Audit Reporting Package**"). [If federal funds are awarded, said Audit Reporting Package shall be in accordance with 2 CFR part 200, subpart F.] County reserves the right to revise the Audit Reporting Package requirements in accordance with any revision to Federal, State or County rules, regulations, ordinances, laws and statutes. Unless otherwise required by 2 CFR part 200, the Audit Reporting Package shall include the following:

(a) As applicable, the most recent IRS Form 990;

(b) Audited Financial Statements including but not limited to:

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a. Classified Balance Sheet (Statement of Financial Position) – Distinguishing between current and long-term assets and liabilities, and including all supporting schedules (i.e. Detailed Aged Payables, Aged Receivables, Notes Payable, etc.)
b. Income Statement (Profit and Loss Statement) (Statement of Activity)
c. Statement of Cash Flow
d. Retained Earnings
e. • Any footnotes to the statements

Borrowers who are not subject to Single Audit reports are required to submit the most recent two (2) years of audited financial statements

(c) [Schedule of expenditures of Federal awards;]

(f) [SF-SAC (Single Audit Collection) Data Collection Form; and]

(g) Management Letter.

The County Auditor/Controller shall have the right to review the Borrower's financial records. Borrowers shall agree to allow access to their audited financial records when requested by County, State or Federal Auditor staff.

7.31. Operating Reserve

Borrower shall establish an interest-bearing account to be known as the Operating Reserve Account. Upon the Conversion Date shall deposit an amount into the Operating Reserve Account sufficient to pay three (3) months of operating expenses and three (3) months of mandatory debt service payments ("**Target Balance**").

Funds shall be invested subject to the prior written approval of the County, which approval shall not be unreasonably withheld, and any earnings shall become and remain a part of the Operating Reserve. Funds may be drawn only when revenue is insufficient to pay operating expenses. The Borrowers shall not draw funds from the Operating Reserve Account without the prior written approval of the County, which approval shall not be unreasonably withheld.

If the balance in the Operating Reserve Account falls below the amount required to pay three (3) months of operating expenses and three (3) months of mandatory debt service payments, then Borrower shall pay for it out of operating expenses, when and if available, or other funds, to the replenishment of Operating Reserves until the Target Balance is achieved.

In the event of a failure by the Borrower to pay operating expenses, mandatory debt service payments, or other payments required under the Loan Documents or Mortgage Loan Documents, or during the continuance of an event of default by Borrower under the Loan Documents or Mortgage Loan Documents that would provide for the acceleration of the Loan or Mortgage Loan, then County may, after delivery of notice to

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Borrower and the expiration of any applicable cure periods, apply the funds in the Operating Reserve Account to the Loan, a Mortgage Loan, or use such funds for the continued operation of the Project.

7.32. Replacement Reserve

At or before the Conversion Date, Borrower shall establish an interest-bearing account to be known as the Replacement Reserve Account. Annually prior to March 31 of each year, Borrower shall deposit into the Replacement Reserve Account an amount equal to equal **five/four hundred dollars ($5/400) $250 per unit per annum for new construction and $300 per unit per annum for rehabilitation** or such higher amount as may be required by a Tax Credit Investor or Senior Lenders and approved by County, which approval shall not be unreasonably withheld. The Funds shall be invested subject to the prior written approval of the County and any earnings shall become and remain a part of the Replacement Reserve. The Borrowers shall not draw funds from the Replacement Reserve Account without the prior written approval of the County, which approval shall not be unreasonably withheld.

Funds may only be drawn from the Replacement Reserve Account to replace or maintain Project assets which have a useful life of more than one (1) year in accordance with Generally Accepted Accounting Principles ("GAAP"), and have been or will be depreciated on the Partnership Tax Return, Form 1040P, filed with the Internal Revenue Service by the Borrower's accountant.

In the event of a failure by the Borrower to adequately maintain the Project, or pay operating expenses, mandatory debt service payments, or other payments required under the Loan Documents or Mortgage Loan Documents, or during the continuance of an event of default by Borrower under the Loan Documents or Mortgage Loan Documents that would provide for the acceleration of the Loan or Mortgage Loan, then County may, after delivery of notice to Borrower and the expiration of any applicable cure periods, apply the funds in the Replacement Reserve Account to the Loan, a Mortgage Loan, or use such funds for the maintenance, improvement, or continued operation of the Project.

Any additional reserves beyond those stated in Sections 8.32 and 8.33, including but not limited to, security reserves and furnishing reserves beyond the County's operating reserve, replacement reserve, and/or transition reserve requirements shall be reviewed and approved by the County. Such approval shall not be unreasonably delayed or withheld.

ARTICLE VIII
DEFAULT AND REMEDIES

8.1 Events of Default. Each of the following shall constitute an "**Event of Default**" by Borrower under this Agreement:

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(a) Failure to Make Note Payments. Borrower fails to make any payment of principal and/or interest under the Note when due, after ten (10) days' notice from County. Any payment that falls due on a non-business day may be made the next succeeding business day without penalty and shall not be considered a past-due payment;

(b) Failure to Make Other Payments. Borrower fails to perform any other obligation for the payment of money (other than payments described in subparagraph (a) above) under any Loan Document within ten (10) days after County gives Borrower written notice that such obligation was not performed or paid for;

(c) Non-Monetary Failure to Perform. Borrower fails to timely perform, comply with or observe any of the terms, covenants, or conditions of this Agreement or any other Loan Document (other than those provisions elsewhere referred to in this Section 9.1) and such failure continues uncured or without Borrower commencing to diligently cure for thirty (30) days after notice thereof in writing is given by the County to Borrower, provided that if Borrower has commenced cure but cannot complete such cure reasonably within thirty (30) days, Borrower shall have ninety (90) days from the date of notice to cure such failure without such failure constituting an event of default;

(d) Mortgage Loan Document Breach. Any default or breach of Borrower that continues uncured after the expiration of any applicable cure period under any other loan document including, but not limited to, the Mortgage Loan Documents;

(e) Voluntary Suspension. The voluntary suspension of Borrower's business or the dissolution or termination of the partnership (if any) constituting Borrower;

(f) Unauthorized Transfer. Borrower's sale or other transfer of the Property or the Project in violation of Section 8.7 above;

(g) Fraud or Material Misstatement or Omissions. Any fraudulent act or omission of Borrower's, or intentional misrepresentation of Borrower's, pertaining to or made in connection with the Loan, Loan Documents or the Project;

(h) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection 9.1(h) as well; or Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv),

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inclusive. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note; or

(i) Project Monies. Borrower's misapplication or embezzlement of Project monies.

8.2 Remedies. The occurrence of any Event of Default shall, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the Loan and shall give the County the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents or otherwise available at law or in equity or by statute (and all of the County's rights and remedies shall be cumulative), including but not limited to the following:

(a) Acceleration of Note. The County shall have the right to cause all indebtedness of the Borrower to the County under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest, or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the County on demand all expenses, costs and fees (including, without limitation, attorneys' fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The County shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of the Loan Documents.

(c) Right to Cure at Borrower's Expense. The County shall have the right to cure any monetary default by Borrower under a loan other than the Loan. The Borrower agrees to reimburse the County for any funds advanced by the County to cure a monetary default by Borrower upon demand therefore, together with interest thereon at the rate of twelve percent (12%) per annum (which rate shall in no event exceed the maximum rate permitted by law and if it does, said rate shall be reduced to the maximum rate then permitted by law), from the date of expenditure until the date of reimbursement.

8.3 Remedies Cumulative. No right, power, or remedy given to the County by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial

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exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

8.4 Waiver of Terms and Conditions. No waiver of any default or breach by Borrower hereunder shall be implied from any omission by the County to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the County to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the Loan Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under the Loan Documents, unless in the exercise of any such right, power, or remedy all obligations of Borrower to County are paid and discharged in full.

8.5 [Tax Credit Investor Cure Rights. The Tax Credit Investor shall have the right, but not the obligation, to cure any defaults of the Borrower on the same terms as the Borrower, and the County shall accept such cures as if tendered by the Borrower. The Parties agree that the Borrower is responsible for providing written notice of any Event of Default or other default to the Tax Credit Investor as provided herein within 5 days of receipt from the County of such notice. As to the Tax Credit Investor, the cure period(s) specified herein shall commence upon the date of delivery of such notice to the Tax Credit Investor.]

ARTICLE IX
MISCELLANEOUS

9.1 Approvals Under Agreement. Where this Agreement requires an approval or consent of the County, such approval or consent may be given on behalf of the County by the Director or his or her designee, through their authority as delegated by the County Board of Supervisors.

9.2 Time. Time is of the essence in this Agreement.

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9.3 Notices. Any notice requirement set forth herein shall be in writing and delivered to the appropriate party at the address listed in this subparagraph. Addresses for notice may be changed from time to time by written notice to the other party. All communications shall be effective when actually received; provided, however, that nonreceipt of any communication as the result of a change in address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

Borrower:

County:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

Such addresses may be changed by notice to the other party given in the same manner as provided above.

9.4 No Third Parties Benefitted. This Agreement is made and entered into for the sole protection and benefit of the County, its successors and assigns, and Borrower, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

9.5 County to File Notices. Borrower irrevocably appoints, designates, and authorizes the County as its agent (said agency being coupled with an interest) to file for record any notice that the County deems necessary or desirable to protect its interest hereunder and under the Loan Documents.

9.6 Actions. The County shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties hereunder, or the disbursement of any proceeds of the Loan.

9.7 Successors and Assigns. The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no assignment of Borrower's rights hereunder shall be made, voluntarily or by operation of law, without the prior written consent of the County as specified in Section 8.7 above, and that any such assignment without said consent shall be void.

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9.8 Construction of Words. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

9.9 Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

9.10 Governing Law and Venue. This Agreement and the Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement or any of the Loan Documents, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

9.11 Amendment. This Agreement may not be changed orally, but only by an agreement in writing signed by Borrower and the County.

9.12 Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing.

9.13 Captions and Headings. Captions and headings in this Agreement are for convenience of reference only and are not to be considered in construing the Agreement.

9.14 Nonliability. By accepting or approving anything required to be performed or given to County under the Loan Documents, including any certificate, financial statement, survey, or insurance policy, County shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by County to anyone.

9.15 Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of County to Borrower, or any claim by Borrower against County, in connection with the Loan or otherwise, Borrower hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Borrower's obligations under the Loan Documents or (b) to claim that the existence of any such obligation, liability or claim excuses the nonperformance by Borrower of any of its obligations under the Loan Documents.

9.16 Survival of Representations and Warranties. All representations and warranties of Borrower in the Loan Documents shall survive the making of the Loan and have been or will be relied on by County notwithstanding any investigation made by County.

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9.17 Prior Agreements. This Agreement (together with the other Loan Documents) contains the entire agreement between County and Borrower with respect to the Loan and all prior negotiations, understandings and agreements (including, but not limited to, any commitment letter issued by County to Borrower) are superseded by this Agreement and such Loan Documents.

9.18 Conflicts. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, this Agreement shall prevail; provided, however, that with respect to any matter addressed in both such documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

9.19 Waiver of Right to Trial by Jury. Unless prohibited by Federal, State or local laws, each party to this Agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under any Loan Document or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to any Loan Document, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

9.20 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts. This Agreement shall become effective when the parties have duly executed and delivered signature pages of this Agreement to each other. Delivery of this Agreement shall be effectuated by electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

--SIGNATURE PAGES FOLLOW --

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BORROWER:

TEMPLATE

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COUNTY:

COUNTY OF ORANGE, a political subdivision of the state of California

By:_____
Julia Bidwell, Director
OC Community Resources,
OC Housing and Community Development
County of Orange

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By_____
Signed by:
Jacqueline Guzman
8452584753D3488...
Deputy

Dated 2/2/2026

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EXHIBIT A
LEGAL DESCRIPTION

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EXHIBIT B
EXTREMELY LOW QUALIFIED TENANT/UNIT MIX
[ ], California

RENT & AFFORDABILITY SCHEDULE

Number of Restricted Units	Number of Bedrooms	* Gross Restricted Rental Rate	**Utility Allowance	***Net Restricted Rental Rate	Income Limit based on Area Median Income (AMI)	Age Restriction (if any)	Project Based Section 8 Units	Number of Years Restricted
								55
Total							Total 0	

* Restricted Rental Rate is based on the 2026 Area Median Income (AMI) published by HUD annually and does not include the utility allowance deduction. UPDATED RENTAL RATE TO BE PROVIDED AT START OF QUALIFIED PROJECT PERIOD.

** Utility allowance is based on the 2026 utility schedule published by the Orange County Housing Authority annually and will be updated at HAP execution to reflect updated utility schedule.

*** Rent increases shall be limited to no more than the lower of rent established as affordable based on the Median Income for the Area and the affordability restrictions set forth above, which is adjusted annually by HUD and published by the State of California, as referenced in the Loan Agreement Section 3.1except as otherwise provided in the Loan Agreement Section 3.1(d).

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EXHIBIT C
ANNUAL STATEMENT GUIDELINES

Expenses
Obligated debt service on the Senior Loan
Operating reserves
Replacement Reserves ($**250/300/500** per unit)
Deferred developer fee
County annual loan monitoring fee ($XXX)
Other public agency monitoring fees, as applicable
Property Management fee
Utility fees
Property taxes
Insurance premiums
Operating and maintenance expenses
Supportive/Resident services

Partnership Management Fees:
Partnership Management related charges and fees in the amount of $25,000 pursuant to the NOFA.

Cash Flow Percentage Available for Distribution to the County, as further described in the Promissory Note

[ ]% **County of Orange**
County loan accrues at 3% simple interest annually

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EXHIBIT D

ADDITIONAL TERMS & CONDITIONS FOR HOME FUNDS

In addition to the requirements set forth in other provisions of the Agreement, Borrower shall comply, and shall cause all Borrower personnel and/or subcontractors to comply, with the following regulations and requirements.[1]

1. Use of the HOME Funds. The Loan shall be used only for eligible costs (see, e.g., 24 C.F.R. § 92.206, 92.214, 92.300(c), and 92.301), and any development work shall be completed within the times referred to in the Affordable Housing and Loan Agreement between County and Borrower.

2. Affordability. The Project units shall meet the affordability requirements of the HOME Requirements (24 C.F.R. § 92.254) or this Agreement and the Regulatory Agreement, whichever is more restrictive. If the Project units do not meet the affordability requirements of the HOME Requirements for the specified time period, Borrower shall repay the Loan to County promptly upon demand by County. In such event, Borrower shall not be released from the affordability and other covenants and restrictions set forth in this Agreement and the Regulatory Agreement, which shall continue to apply independent of the HOME Requirements.

3. Equal Opportunity and Nondiscrimination.

a. Title VI of the Civil Rights Act of 1964, as amended, including Public Law 88-352 implemented in 24 CFR Part 1. This law provides in part that no person shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. In regard to the sale or lease of the Property, Borrower shall cause or require a covenant running with the land to be inserted in the deed and leases prohibiting discrimination under this Title, and providing that County and the United States are beneficiaries of and entitled to enforce such covenants. Borrower shall enforce such covenant and shall not itself so discriminate.

b. Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended, including Public Law 90-234. The Fair Housing Act provides in part that there shall be no discrimination in housing practices on the basis of race, color, religion, sex, and national origin. The Fair Housing Act was amended in 1988 to provide protections from discrimination in any aspect of the sale or rental of housing for families with children and persons with disabilities. The Fair Housing Act also establishes requirements for the design and construction of new rental or for-sale multi-family housing to ensure a minimum level of accessibility for persons with disabilities.

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[1] **This exhibit is a list and summary of some of the applicable legal requirements and is not a complete list of all Borrower requirements. The description set forth next to a statute or regulation is a summary of certain provisions in the statute or regulation and is in no way intended to be a complete description or summary of the statute or regulation. In the event of any conflict between this summary and the requirements imposed by applicable laws, regulations, and requirements, the applicable laws, regulations, and requirements shall apply.**

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c. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, including 42 U.S.C. 5301 *et. seq.*, 42 U.S.C. 6101 *et. seq*., and 29 U.S.C. 794. This law provides in part that no person on the grounds of race, color, national origin, sex, or religion shall be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with funds under this Title.

d. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including 42 U.S.C. 5301 *et. seq*. This law provides in part that any grant under Section 106 shall be made only if the grantee certifies to the satisfaction of the Secretary of HUD that the grantee will, among other things, affirmatively further fair housing.

e. Executive Order 11246, as amended. This order includes a requirement that grantees and subrecipients and their contractors and subcontractors not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. In the event Executive Order 11246 is repealed, Borrower is required to continue to comply with Title VII of the federal Civil Rights Act of 1964.

f. Executive Order 11063, as amended, including 24 CFR Part 107. This order and its implementing regulations include requirements that all actions necessary be taken to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental, or other disposition of property assisted with Federal loans, advances, grants, or contributions.

g. Section 504 of the Rehabilitation Act of 1973, as amended. This Act specifies in part that no otherwise qualified individual shall solely by reason of his or her disability or handicap be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance. Borrower must ensure that its programs are accessible to and usable by persons with disabilities.

h. The Americans with Disabilities Act (ADA) of 1990, as amended. This Act prohibits discrimination on the basis of disability in employment by state and local governments and in places of public accommodation and commercial facilities. The ADA also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. The Act defines the range of conditions that qualify as disabilities and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities.

i. The Age Discrimination Act of 1975, as amended. This law provides in part that no person shall be excluded from participation in, be denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal assistance.

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

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k. Minority/Women/Small and Disadvantaged Business Enterprise. Borrower will use its best efforts to afford small and disadvantaged businesses and minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of the Agreement. As used in the Agreement, the term "small business" means a business that meets the criteria set forth in Section 3(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 Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation. A small and disadvantage business is a small business that is at least fifty-one percent (51%) owned and controlled by a socially and economically disadvantaged individual(s).

l. Nondiscrimination. Borrower shall comply with the federal requirements and nondiscrimination provisions in 24 C.F.R. § 92.350, which include requirements on nondiscrimination and equal opportunity, disclosure requirements, debarred, suspended or ineligible contractors, and maintaining a drug-free workplace.

4. Environmental. [Insert mitigation measures]

a. Air and Water. Borrower shall comply with the following regulations insofar as they apply to the performance of the 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; and the U.S. Environmental Protection County regulations pursuant to 40 CFR Part 50, as amended.

b. Flood Disaster Protection Act of 1973. Borrower shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained.

c. Lead-Based Paint. Borrower shall comply with the Lead-Based Paint Regulations referenced in 24 C.F.R. 92.355, including 24 C.F.R. Part 35, *et. al*.

d. Historic Preservation. Borrower 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 C.F.R. Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties and related laws and Executive Orders, 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 years old or older or that are included on a federal, state, or local historic property list.

e. Limitation on Activities Pending Clearance. In accordance with 24 C.F.R. § 58.22 entitled "Limitations on activities pending clearance," neither a recipient nor any

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participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in 24 C.F.R. § 58.1(b) on an activity or project until HUD or the state has approved the recipient's Request for Release of Funds (RROF) and the related certifications have been approved. Neither a recipient nor any participant in the development process may commit non-HUD funds or undertake an activity or project that would have an adverse environmental impact or limit the choice of reasonable alternatives. Upon completion of environmental review or receipt of environmental clearance, County shall notify Borrower. HUD funds shall not be utilized before this requirement is satisfied. The environmental review or violation of the provisions may result in approval, modification of cancellation of the Loan. If a project or activity is exempt under 24 C.F.R. § 58.34, or is categorically excluded (except in extraordinary circumstances) under 24 C.F.R. § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the County has documented its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section by issuing a Notice to Proceed.

5. Uniform Administrative Requirements. Borrower shall comply with applicable uniform administrative requirements as described in 24 C.F.R. §§ 92.205.

6. Other Program Requirements. Borrower shall carry out each activity under the Agreement in accordance with all applicable federal laws and regulations described in Subpart H of 24 C.F.R. § 92 except for County's responsibility for initiating the environmental review process under the provisions of 24 C.F.R. Part 58.

7. Project Requirements. Borrower shall comply with all project requirements set forth in 24 C.F.R. §§ 92.250-92.258, as applicable in accordance with the type of project assisted.

8. Property Standards. Borrower shall perform any construction work and maintain the Project units in compliance with the property standards in 24 C.F.R. § 92.251 and the lead-based paint requirements in 24 C.F.R. § 92 Part 35, Subparts A, B, J, K, M and R, as applicable.

9. Records and Reports. Borrower shall provide to County all records and reports relating to the Program Activities that may be reasonably requested by County in order to enable it to perform its recordkeeping and reporting obligations pursuant to the HOME Requirements, including 24 C.F.R. §§ 92.508 and 92.509.

10. Conflict of Interest. Borrower will comply with 2 C.F.R. Part 200 and 24 C.F.R. 84.42, 85.36 and 92.356, as applicable, regarding the avoidance of conflict of interest, which provisions include (but are not limited to) the following:

i. Borrower 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.

ii. No employee, officer or agent of the Borrower 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.

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iii. No covered persons who exercise or have exercised any functions or responsibilities with respect to HOME-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or with respect to the proceeds from the HOME-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Borrower, or any designated public agency.

11. Affirmative Marketing. If the Loan will be used for housing containing 5 or more assisted units, Borrower shall establish for County's review and approval a plan and procedures to affirmatively market the units. The objective of the plan shall be to provide information and attract eligible persons from all racial, ethnic and general groups in the housing market area to the available housing. In connection therewith, Borrower shall perform those affirmative marketing responsibilities set forth in 24 C.F.R. § 92.351(a) and the marketing plan shall include the following:

a. methods for informing the public, owners, and potential tenants about federal fair housing loans and the County's affirmative marketing policy;

b. requirements and practices Borrower must adhere to in order to carry out the affirmative marketing procedures and requirements;

c. procedures to be used by Borrower to inform and solicit applications from persons in the housing market area that are not likely to apply for the housing without special outreach;

d. records that will be kept describing actions taken by Borrower to affirmatively market units and records to assess the results of those actions; and

e. a description of how Borrower will assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

12. Displacement. Consistent with the other goals and objectives of Subpart H of 24 C.F.R. § 92, Borrower shall take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Program Activities.

13. Debarment and Suspension. As required in 24 C.F.R. § 92.357, Borrower shall comply with all debarment and suspension certifications.

14. Enforcement of Agreement. In addition to the other provisions set forth in the Agreement, County shall have the authority to enforce Borrower's obligation to comply with the HOME Requirements.

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15. Return of HOME Funds. Upon the completion of the Project or earlier termination of the Agreement, Borrower shall transfer to County any HOME funds on hand for which expenses have not been incurred and any accounts receivable attributable to the use of HOME funds. In addition to the foregoing, in the event the expenses for which any disbursement of Loan funds are disbursed are not incurred by Borrower within thirty (30) days after County's disbursement, or such longer time as County approves in its sole discretion, County shall have the right to require that Borrower immediately return the Loan proceeds to County.

16. Monitoring. Not less than once per year, County shall review Borrower's activities and operations under the Agreement and Borrower's compliance with the HOME Requirements. Such review may include an on-site inspection of the Project units (including unit interiors). If such an on-site inspection of the Project units is to be undertaken, County shall coordinate such inspection with Borrower. The monitoring required pursuant to this paragraph shall be in compliance with the requirements of 24 C.F.R. § 92.504.

17. Tenant Participation Plan. Borrower shall provide to County for approval the form of the lease agreement to be used for the rental units, which lease must be fair and provide for a grievance procedure. In addition, Borrower shall provide to County for approval a plan that provides for tenant participation in management decisions. (24 C.F.R § 92.303.)

18 Anti-Lobbying Certification. By its execution of the Agreement, Borrower hereby certifies that:

i. 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, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

ii. 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.

iii. It will require that the 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 subrecipients 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. 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

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$100,000 for each such failure. At the request of County, Borrower shall execute a separate document that contains the certifications set forth above.

19. Drug-Free Workplace Requirements. Borrower shall comply with and be subject to the requirements of the federal drug-free workplace requirements, which include the following actions be taken:

i. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

ii. Establishing an ongoing drug-free awareness program to inform employees about: (a) the dangers of drug abuse in the work place; (b) the grantee's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

iii. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (i).

iv. Notifying the employee in the statement required by paragraph (i) that, as a condition of employment under the grant, the employee will: (a) abide by the terms of the statement; and (b) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

v. Notifying the agency in writing, within ten calendar days after receiving notice under sub-paragraph (iv) (b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

vi. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (iv)(b), with respect to any employee who is so convicted: (a) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (b) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

vii. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (i), (ii), (iii), (iv), (v), and (vi).

20. Procurement. If applicable, Borrower will comply with the procurement standards under 24 CFR 85.36 for governmental subrecipients and 24 CFR 84.40-48 for subrecipients that

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are non-profit organizations. Borrower shall comply with all existing and future County policies concerning the purchase of equipment.

21. Hatch Act. The Borrower agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Title V United States Code Section 1501 et seq.

22. Labor Provisions.

a. Section 3 of the Housing and Community Development Act of 1968. Borrower shall comply with and cause its contractors and subcontractors to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) ("Section 3"), the HUD regulations issued pursuant thereto at 24 C.F.R, Part 75, and any applicable rules and orders of HUD issued thereunder. Borrower acknowledges and agrees that compliance with this provision is a condition of the federal financial assistance provided under this Agreement and failure to fulfill these requirements constitute a breach of this Agreement. The Borrower certifies and agrees that no contractual or other disability exists which would prevent compliance with Section 3.

23. **Violence Against Women Act (VAWA) Requirement Compliance**.

Borrower acknowledges and agrees that compliance with the Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L, as described in 24 C.F.R. § 92.359, is a condition to receiving the Loan and that failure to comply with the VAWA requirements is considered a breach under this Agreement.

24. **Personal Responsibility and Work Opportunity Reconciliation Act of 1996 Compliance.**

Borrower acknowledges and agrees that compliance with Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) (PRWORA) and any applicable requirements that HUD, the Attorney General, or the U.S. Citizenship and Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws is a condition to receiving the Loan and that failure to comply with the VAWA requirements is considered a breach under this Agreement.

25. **SAVE Verification and Compliance**.

Borrower shall use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefits from being provided to an individual unlawfully present in the United States.

* * *

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EXHIBIT D

ADDITIONAL REQUIREMENTS FOR MHSA FUNDS

1. Population. The population to be served shall include extremely low income (30% of Area Median Income for Orange County), homeless individuals with documentation of a serious mental disorder, as defined in California Welfare and Institutions Code section 5600.3(b), State Licensed Healthcare Professional (as defined in the Social Security Act-42 U.S.C Section 423).

2. Rent Restrictions. Restricted rents for the MHSA funded units shall not exceed 30% of the Area Median Income (AMI) levels for Orange County, as established by state and federal law, adjusted for designated household size (less a utility allowance unless included in the rent) with the tenants rent portion not to be more than 30% of their Social Security Income/Social Security Pension (SSI/SSP) or not more than 30% of their total gross household income (if additional income beyond SSI/SSP is received). If federally funded Project Based Vouchers are provided, the developer shall comply with the federal regulations for maximum rent and tenant rent portions.

3. Coordinated Entry System. To the greatest extent feasible, the Developer shall utilize the local coordinated entry system to screen for eligible residents currently experiencing homelessness and with a documented serious mental disorder.

4. Housing Unit General Requirements. Housing units and building features must meet the needs of the MHSA tenants to be served at the development, including privacy, housing activities and community interaction. There shall be no requirement for non-related, single, adult tenants to share bedrooms. There shall be adequate number of bedrooms to accommodate the housing composition. Units are encouraged to have at least one-bedroom and be at least 450 square feet.

5. Housing Unit Living Requirements. Housing units must have an identifiable and private living area, sleeping area, full kitchen area and a full bathroom. The kitchen area shall at a minimum include a sink, full size refrigerator, cupboard space, counter area, microwave or oven, and a two-burner stove or built-in cook top.

6. Furnishings. All units should be furnished with standard furnishings applicable to the unit type.

7. Technology. Developers are encouraged to provide units that are pre-wired for high technology and internet access.

8. Common Space. The building must include common space, such as a community room that can accommodate a variety of activities and where tenants can choose to interact with one another.

9. Office Space. The building must include a designated office space to provide services to MHSA tenants.

10. Efficiency Requirements. The design and operation of the Project shall incorporate features designed to increase efficiency and reduce ongoing expenses. The Project shall incorporate appropriate and feasible green design practices, such as the use of ENERGY STAR rated energy-efficient appliances and water-conserving fixtures and products. The Project

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must also utilize durable materials chosen to reduce future maintenance costs and renewable building supplies.

11. Tenants shall be provided with information to assist them to participate in environmentally friendly practices such as energy and water conservation, recycling and use of non-toxic household products.

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EXHIBIT D
ADDITIONAL TERMS AND CONDITIONS FOR COUNTY FUNDS

1. **Fair Housing**. The Borrower shall affirmatively further fair housing in accordance with California Fair Employment and Housing Act (FEHA) (Gov. Code §§ 12900 et seq.) and 24 CFR 92.351, as applicable1. 24 CFR 5.105 (a) and Section 504 of the federal Rehabilitation Act.
2. **Civil Rights**.
    a. Compliance. The Borrower agrees to comply with Unruh Civil Rights Act (Section 51 of the California Civil Code, and he California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code); Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing & Community Development 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 Order 11375 and 12086, as applicable. . In the event Executive Order 11246 is repealed, Borrower is required to comply with Title VII of the federal Civil Rights Act of 1964.
    b. Nondiscrimination. The Borrower shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age or marital status with regard to public assistance. The Borrower will 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 recruiting advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
    c. Rehabilitation Act. The Borrower agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. The County shall provide the Borrower with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.
3. **Affirmative Action**.
    a. Approved Plan. The Borrower agrees that it shall be committed to carry out pursuant to the County specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. In the event Executive Order 11246 is repealed, Borrower is required to comply with Title VII of the federal Civil Rights Act of 1964.
4. **Employment Restrictions**.
    a. Labor Standards. To the extent applicable, the Borrower agrees to comply with the requirements of the California Department of Industrial Relations Prevailing Wage Requirements and the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333) 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. The

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Borrower shall maintain documentation, which demonstrates compliance with hour, and wage requirements of this part. Such documentation shall be made available to the County for review upon request. The Borrower agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than twelve (12) units, 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 the County pertaining to such contracts and with the applicable requirements of the regulations of the U.S. Department of Labor, under 29 CFR, Parts 1, 3, 5, 7 and 1926 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 herein is intended to relieve the Borrower of its obligation, if any, to require payment of the higher rate. The Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph, for such contracts in excess of $10,000.00.

i. "Section 3" Compliance.

1. Compliance. As applicable, Borrower shall comply with and cause its contractors and subcontractors to comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) ("Section 3"), the HUD regulations issued pursuant thereto at 24 CFR 75, and any applicable rules and orders of HUD issued thereunder . Borrower acknowledges and agrees that compliance with this provision is a condition of the federal financial assistance provided under this Agreement and failure to fulfill these requirements constitute a breach of this Agreement. The Borrower certifies and agrees that no contractual or other disability exists which would prevent compliance with Section 3.

5. Conduct.

a. Assignment/Transfer. The Borrower shall not assign or transfer any interest in this Agreement without the prior written consent of the County thereto; provided, however, that claims for money due or to become due to the Borrower from the 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 the County.

b. Hatch Act. The Borrower agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Title V United States Code Section 1501 et seq.

c. Conflict of Interest.

i. Federal. The Borrower agrees to abide by the provisions of 24 CFR 92.356 with respect to conflicts of interest, and 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. The Borrower further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Borrower herein. These conflict-of-interest provisions apply to any person

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who is an employee, agent, consultant, officer, or elected official or appointed official of the County or any designated public agency or Borrower's which are receiving funds under the Veterans Affairs Supportive Housing Project Based Voucher Program.

ii. State. The Borrower agrees to abide by the provisions of the State Political Reform Act and Levine Act and the regulations promulgated to effectuate the State's conflict of interest laws.

d. Drug Free Workplace. Borrower certifies that it will maintain a drug-free workplace as defined by HUD on project(s) funded by this Agreement.

e. Religious Organization. The Borrower agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with federal regulations specified in 24 CFR 92.257.

6. Environmental Conditions. [MAY VARY PER PROJECT]

a. Air and Water. The Borrower agrees to comply with the following regulations insofar as they apply to the performance of this Agreement:

i. Clean Air Act, 42 U.S.C., 1857, et seq.

ii. 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.

iii. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR, Parts 50 and 58, as amended.

iv. National Environmental Policy Act of 1969.

v. HUD Environmental Review Procedures (24 CFR, Part 58).

b. Flood Disaster Protection.

The Borrower agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (P.L. 2234), including as applicable any regulations set forth in 24 CFR Part 55 (implementing Executive Order 11988), 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.

c. Lead-Based Paint.

The Borrower agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 92.355, and 24 CFR Part 35, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall 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.

d. Historic Preservation.

The Borrower agrees to 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.

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

7. **Tenant Selection Criteria**.
    a. The tenant selection criteria established by the property developer and/or property management company cannot be more restrictive than the eligibility criteria established by Housing and Urban Development (HUD), unless the restriction is a requirement related to the project's funding source. At no time shall the criminal background threshold set by the property developer and/or property management company be more restrictive than that established by HUD, and where HUD defers to the public housing authority (PHA), the threshold cannot be more restrictive than the PHA's criminal background threshold. Where more than one PHA is a party to the development, the least restrictive criminal background threshold shall prevail.
8. **Broadband Infrastructure.**
    a. Borrower shall provide documentation that broadband infrastructure as defined in Title 24 of the Code of Federal Regulations, sections 5.100 and 983.157, has been installed or an exception was approved by HCD.
9. **California Constitution Article XXXIV**
    a. Borrower shall comply with the requirements set for in Article XXXIV of the California Constitution, as applicable.
10. **Minority Business Enterprises, Women-Owned Enterprises And Disadvantaged Enterprises.**
    a. Borrower shall comply with Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs) and Disadvantaged Business Enterprises (DBEs) guidelines established in the NOFA and as required under Presidential Executive Order Nos. 11625, 12432, and 12138 and 24 CFR 84.44.

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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT ("**Deed of Trust**") is made as of _____, 2026, by **[**BORROWER**]**, ("**Trustor**"), to_____, as trustee ("**Trustee**"), for the benefit of the COUNTY OF ORANGE, a political subdivision of the state of California, as beneficiary ("**Beneficiary**").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in Orange County, State of California, that is described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Property**"), on which Trustor intended to construct and operate a residential development commonly known as [PROJECT NAME].

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including without limiting the generality of the foregoing, all tenements, hereditament and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings, improvements and landscaping of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property (sometimes collectively referred to as the "**Improvements**");

TOGETHER WITH all building materials and equipment now or hereafter delivered to said Property and intended to be installed therein;

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TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, strips and gores of land adjacent to or used in connection with the Property and/or Improvements;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all oil, gas and mineral rights (including royalty and leasehold rights relating thereto), all water and water rights and shares of stock relating thereto, all leases of all or any portion of the Property or Improvements entered into by Trustor as lessor or lessee, all options to purchase or lease all or any portion of the Property and/or Improvements, all deposits made with or other security given by Trustor to third parties including, utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by and proceeding or purchase in lieu thereof of the whole or any part of such property; and

TOGETHER WITH all articles of personal property or fixtures now or hereafter attached to, located on, installed in or used in and about the Property and/or Improvements, including without limitation, all partitions, generators, screens, boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire extinguishing machinery and equipment, water tanks, heating, ventilating, air conditioning and air cooling machinery and, equipment, gas and electric machinery and equipment and other appliances, machinery and equipment and other fixtures of every nature, all of which shall remain real property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the Property in any manner.

TOGETHER WITH all present and future accounts, general intangibles, chattel paper, deposit accounts, investment property, instruments and documents as those terms are defined in the California Commercial Code, now or hereafter relating or arising with respect to the Property and/or Improvements and/or the use thereof or any improvements thereto, including without limitation: (i) all rights to the payment of money, including escrow proceeds arising out of the sale or other disposition of all or any portion of the Property and/or Improvements; (ii) all deposit accounts and other accounts and funds created under or pursuant to the Loan Agreement (as defined below), and the other Loan Documents, all amounts now or hereafter on deposit herein, and all interest and other earnings thereon; (iii) all use permits, occupancy permits, construction and building permits, and all other permits and approvals required by any governmental or quasi-governmental authority in connection with the development, construction, use, occupancy or operation of the Property and/or Improvements; (iv) any and all agreements relating to the occupancy and/or operation of the Property and/or Improvements, including without limitation service, property management, landscaping, gardening , consulting and other contracts of every nature (to the extent the same are assignable); (v) all lease or rental agreements; (vi) all names under which the Property and/or Improvements are now or hereafter known and all rights to carry on business under any such names or any variant thereof; (vii) all trademarks relating to the Property and/or Improvements and/or the use, occupancy or operation thereof; (viii) all goodwill relating to the Property and/or Improvements and/or the use, occupancy or operation thereof; (ix) all insurance proceeds and condemnation awards arising out

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of or incidental to the ownership, use, occupancy or operation of the Property and/or Improvements; (x) all reserves, deferred payments, deposits, refunds, cost savings, bonds, insurance policies and payments of any kind relating to the Property and/or Improvements; (xi) all water stock, if any, relating to any Property and/or Improvements; (xii) all supplements, modifications and amendments to the foregoing and all present and future accessions, additions, attachments, replacements and substitutions of or to any or all of the foregoing; and (xiii) all cash and noncash proceeds and products of any or all of the foregoing, including without limitation all monies, deposit accounts, insurance proceeds and other tangible or intangible property received upon a sale or other disposition of any of the foregoing, whether voluntary or involuntary; and

TOGETHER WITH all present and future goods, equipment and inventory, as those terms are defined in the California Commercial Code, and all other present and future personal property of any kind or nature whatsoever, now or hereafter located at, upon or about the Property and/or Improvements, or used or to be used in connection with or relating or arising with respect to the Property and/or Improvements, the use thereof or any improvements thereto.

All of the foregoing, together with the Property, is herein referred to as the "Security". To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING:

(a) Payment of and performance of all indebtedness of Trustor to Beneficiary as set forth in the Loan Agreement (defined in Section 1.5 below) and the Note (defined in Section 1.6 below) in the original principal amount of **[AMOUNT OF LOAN]** ($XXX) until paid or canceled. Said principal and other payments shall be due and payable as provided in the Loan Agreement and the Note. The Loan Agreement and the Note and all their terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced;

(b) Payment and performance of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust with interest thereon as provided herein;

(c) Payment and performance of every other obligation, covenant or agreement of Trustor contained in this Deed of Trust and in the other "Loan Documents" (as such term is defined in the Loan Agreement);

(d) Payment and performance of all renewals, extensions, supplements, amendments and other modifications of any of the foregoing, including without limitation modifications that are evidenced by new or additional documents or that change the rate of interest on any obligation.

All of the foregoing obligations are referred to collectively herein as the "Obligations".

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

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ARTICLE I
DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

1.1. **"Debt Instrument"** means any debt, loan, mortgage, deed of trust, regulatory agreement or security instrument relating to the Property or the Security, including, but not limited to, the Loan Documents.**"Hazardous Substance"** means:any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance or any other waste, material, or pollutant that

(i) poses a hazard to the Property or to persons on the Property or

(ii) causes the Property to be in violation of any Hazardous Substance Law;

(b) asbestos in any form;

(c) urea formaldehyde foam insulation;

(d) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls;

(e) radon gas;

(f) any chemical, material, or substance defined as or included in the definition of "hazardous substance," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws, including, but not limited to, any Hazardous Substance Law, Code of Civil Procedure § 564, as amended from time to time, Code of Civil Procedure § 726.5, as amended from time to time, Code of Civil Procedure §736, as amended from time to time, and Civil Code § 2929.5, as amended from time to time;

(g) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or which may pose a hazard to the health and safety of the occupants of the Property or the owners or occupants of property adjacent to or surrounding the Property, or any other person coming on the Property or any adjacent property; and

(h) any other chemical, material, or substance that may pose a hazard to the environment.

1.3. "**Hazardous Substance Claim**" means any enforcement, cleanup, removal, remedial, or other governmental, regulatory, or private actions, agreements, or orders threatened, instituted, or completed pursuant to any Hazardous Substance Law together with all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution,

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cost-recovery compensation, loss, or injury resulting from the presence, release or discharge of any Hazardous Substance.

1.4. "**Hazardous Substance Law**" means any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS §§ 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCS §§ 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act [42 USCS §§ 6901 et seq.], as amended from time to time; the Federal Water Pollution Control Act [33 USCS §§ 1251 et seq.], as amended from time to time; the Hazardous Substance Account Act [Health and Safety Code §§ 25300 et seq.], as amended from time to time; the Hazardous Waste Control Law [Health and Safety Code §§ 25100 et seq.], as amended from time to time; the Medical Waste Management Act [Health and Safety Code §§ 25015 et seq.], as amended from time to time; and the Porter-Cologne Water Quality Control Act [Water Code §§ 13000 et seq.], as amended from time to time.

1.5. "**Loan Agreement**" means that certain Loan Agreement, which terms and provision are incorporated into this Deed of Trust by reference, of even date herewith between Trustor and Beneficiary.

1.6. "**Note**" means that certain promissory note of even date herewith executed by the Trustor, the payment of which is secured by this deed of Trust.

1.7. "**Principal**" means the aggregate of all principal and interest due under the Note.

1.8. "**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of Hazardous Substances that goes into the soil, surface water, or groundwater of the Property, whether or not caused by, contributed to, permitted by, acquiesced to, or known to Trustor.

ARTICLE II
GENERAL COVENANTS OF TRUSTOR REGARDING THE PROPERTY, IMPROVEMENTS AND SECURITY

2.1. Payment of Secured Obligations.

Trustor shall duly and punctually pay and perform all Obligations, including but not limited to all terms, covenants, conditions and agreements set forth in the Debt Instruments, the Loan Agreement, the Note and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

2.2. Maintenance, Repair and Modification.

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(a) The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition and repair and in a prudent and businesslike manner. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals to the Security, which are necessary or appropriate. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

(b) Trustor shall not remove, demolish or substantially alter any of the Improvements, other than to make repairs in the ordinary course of business of a non-structural nature which serve to preserve or increase the value of the Security without Beneficiary's prior written consent, which consent shall not be unreasonably withheld so long as Trustor provides reasonable evidence to Beneficiary that, following such demolition and restoration and/or alteration, the Improvements shall have a fair market value at least equal to their fair market value prior to such demolition and restoration and/or alteration; Trustor shall complete promptly and in a good and workmanlike manner any Improvement which may now or hereafter be constructed and promptly restore in like manner any Improvement which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor; Trustor shall comply with all laws, ordinances, rules, regulations, covenants, conditions, restrictions and orders of any governmental authority now or hereafter affecting the conduct or operation of Trustor's business or the security or any part thereof or requiring any alteration or improvement to be made thereon; Trustor shall not commit, suffer or permit any act to be done in, upon or to the Security or any part thereof in violation of any such laws, ordinances, rules, regulations or orders, or any covenant, condition or restriction now or hereafter affecting the Security; Trustor shall not commit or permit any waste or deterioration of the Security, and shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; Trustor will not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Security or otherwise would impair the security of Beneficiary in the Security; Trustor shall comply with the provisions of all leases, if any, constituting a portion of the Security; Trustor shall not abandon the Security or any portion thereof or leave the Security unprotected, unguarded, vacant or deserted; Trustor shall not initiate, join in or consent to any change in any zoning ordinance, general plan, specific plan, private restrictive covenant or other public or private restriction limiting the uses which may be made of the Security by Trustor or by the owner thereof; Trustor shall secure and maintain in full force all permits necessary for the use, occupancy and operation of the Security; except as otherwise prohibited or restricted by the Loan Agreement and the other instruments and documents executed in connection with the transaction to which the Loan Agreement pertains or any of them, Trustor shall do any and all other acts which may be reasonably necessary to protect or preserve the value of the Security and the rights of Trustee and Beneficiary with respect thereto.

2.3. Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except

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those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law.

2.4. Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so paid by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are paid at the Agreed Rate (as defined in Section 3.1(d) below).

2.5. Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

2.6. Fixture Filing and Security Agreement.

(a) To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixture filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code and Trustor hereby grants to Beneficiary a security interest in all of Trustor's right, title and interest, whether now existing or hereafter arising, in and to any portion of the Property which constitutes personal property (the "**Personal Property**").

(b) Trustor hereby represents and warrants to Beneficiary that: (1) Trustor is the owner of the Personal Property and no other person has any right, title, claim or interest (by way of security interest or other lien or charge or otherwise) in, against or to the Personal Property other than any senior lender or lien holder approved in writing by Beneficiary; (2) the Personal Property is free from all liens, security interests, encumbrances and adverse interests, except Permitted Encumbrances (hereinafter defined); (3) no financing statement or similar filing covering any of the Personal Property, and naming any secured party other than Beneficiary and the holders of Permitted Encumbrances, is on file in any public office; (4) each account, general intangible, chattel paper, deposit account, instrument, document, agreement, contract or right to the payment of money constituting Personal Property (collectively, the "Rights to Payment"), if any, is genuine and enforceable in accordance with its terms against the party obligated to pay the same and (5) the Personal Property is not used nor was the Personal Property purchased for personal or family use by Trustor.

(c) Trustor hereby agrees: (1) to pay, prior to delinquency, all taxes, assessments, charges, encumbrances and liens now or hereafter imposed upon or affecting all or any part of the Personal Property; (2) not to amend, modify, supplement, terminate or cancel any of the

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Personal Property; (3) without the prior written consent of Beneficiary, not to remove all or any part of the tangible Personal Property from the Property; (4) to give Beneficiary thirty (30) days' prior written notice of any change in Trustor's residence, principal place of business, chief executive office or trade names or styles; (5) to appear in and defend any action or proceeding which may affect the Personal Property (including, without limitation, actions, proceedings and claims which may affect Trustor's title to the Personal Property or the validity or priority of Beneficiary's security interest in the Personal Property); (6) to indemnify Beneficiary against all claims, demands and liabilities of every kind caused by the Personal Property; and (7) to permit Beneficiary to enter Trustor's premises to inspect the Personal Property. Trustor further agrees (8) to fully and timely perform all of its obligations under and with respect to all Rights of Payment and to diligently enforce all of the obligations of each obligor thereunder; (9) not to amend, modify, supplement, cancel or terminate any of the Rights to Payment in any material respect without the prior written consent of Beneficiary; (10) to keep the Rights to Payment and all proceeds free and clear of all defaults, defenses, rights of offset and counterclaim; (11) to take or bring, in Beneficiary's name or in the name of Trustor, as Beneficiary may require, all actions, suits or proceedings deemed reasonably necessary or desirable by Beneficiary to effect collection or to realize upon Rights to Payment; and (12) not to commingle Rights to Payment or collections thereunder with other property.

(d) As soon as practicable, and in any event within ten (10) days, Trustor shall notify Beneficiary of: (1) any attachment or other legal process levied against any of the Personal Property; (2) any information received by Trustor which may in any manner materially and adversely affect the value of the Personal Property or the rights and remedies of Beneficiary with respect thereto; and (3) the removal of any of the Personal Property to a new location other than in the ordinary course of business and the removal of any records of Trustor relating to the Personal Property to any location other than the Land and Improvements.

(e) Trustor hereby irrevocably constitutes and appoints Beneficiary as its attorney-in-fact to, after the occurrence and during the occurrence of an Event of Default: (1) perform any obligation of Trustor hereunder in Trustor's name or otherwise; (2) give notice of Beneficiary's rights in the Rights to Payment, to enforce the same, and make extension agreements with respect thereto; (3) release persons liable on the Rights to Payment and to give receipts and acquittances and compromise disputes in connection therewith; (4) release security for the Rights to Payment; (5) resort to security for the Rights to Payment in any order; (5) prepare, execute, file, record or deliver notes, assignments, schedules, designation statements, financing statements, continuation statements, termination statements, and other documents to perfect preserve or release Beneficiary's interest in the Rights to Payment; and (6) do all acts and things and execute all documents in the name of Trustor or otherwise, deemed by Beneficiary as necessary, proper and convenient in connection with the preservation, perfection or enforcement of its rights hereunder. The power of attorney granted hereunder is coupled with an interest and is irrevocable.

2.7. Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees

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to perform all acts that the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

2.8. Operation of the Security.

The Trustor agrees and covenants to operate the Security in full compliance with the Loan Agreement and the Debt Instruments.

2.9. Inspection of the Security.

The Trustor covenants and agrees that at any and all reasonable times, the Beneficiary and its duly authorized agents, attorney's experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect all or any portion of the Security, including, but not limited to, the right to inspect and copy all reports and records pertaining thereto.

2.10. Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

2.11. Subrogation and Waiver of Offset.

(a) Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Security, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust; provided, however, that this waiver of subrogation shall not be effective with respect to any policy of insurance permitted or required by this Deed of Trust if (i) such policy prohibits, or if coverage thereunder would be reduced as a result of, such waiver of subrogation and (ii) Trustor is unable to obtain from a carrier issuing such insurance a policy that, by special endorsement or otherwise, permits such a waiver of subrogation.

(b) Except as otherwise specifically provided herein, all amounts payable by Trustor pursuant to this Deed of Trust shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or

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destruction of or any condemnation or similar taking of the Security or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Security or any part thereof; (iii) any title defect or encumbrance or any eviction from the Security or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

2.12. Utilities.

Trustor shall pay or cause to be paid when due all utility charges which are incurred for the benefit of the Security or which may become a charge or lien against the Security for gas, electricity, water, sewer services or other fees and charges for utilities furnished to the Security and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Security or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon.

2.13. Actions by Beneficiary to Preserve Property.

If Trustor fails to make any payment or to do any act as and in the manner provided in this Deed of Trust, Beneficiary and Trustee, and each of them, each in its own discretion, without obligation to do so, without releasing Trustor from any Obligation, and subject only to the notice and cure provisions of the Loan Agreement, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general and other powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall each and are hereby given the right, but not the obligation: (i) to enter upon and take possession of the Security; (ii) to make additions, alterations, repairs and improvements to the Security which either of them consider necessary or proper to keep the Security in good condition and repair; (iii) to appear and participate in any action or proceeding which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect the security of this Deed of Trust or be prior or superior hereto; and (v) in exercising such powers to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Trustor shall reimburse Beneficiary on demand for all costs incurred by Beneficiary in connection with actions which Beneficiary deems advisable to protect its interest under the Loan Agreement and all such amounts shall bear interest at the Agreed Rate following demand and be secured hereby.

2.14. Transfer of Property by Trustor.

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Prior to repayment of the Note, Trustor agrees that Trustor shall not sell or transfer the Security or any interest therein or sell or transfer all or substantially all of the assets of Trustor or any of them except as may be provided in the Loan Agreement.

2.15. Additional Security.

No other security now existing, or hereafter taken, to secure the Obligations secured hereby or the liability of any maker, surety guarantor or endorser with respect to such Obligations, or any of them, shall be impaired or affected by the execution of this Deed of Trust; and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the Security, or any extension of the time of payment of the indebtedness shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, surety, guarantor or endorser for the payment of said indebtedness. In the event Beneficiary at any time holds additional security for any of the Obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

2.16. Liens.

Trustor shall not cause, incur suffer or permit to exist or become effective any lien, encumbrance or charge upon all or any part of the Property, the Improvements or any interest therein other than (a) easements, rights of way, covenants, conditions, restrictions, liens and other title limitations approved in writing by Beneficiary prior to the execution of this Deed of Trust, and (b) immaterial easements and rights of way which are required by governmental authorities as a condition to the use and operation of the Improvements which are approved in writing by Beneficiary after the execution of this Deed of Trust (the "**Permitted Encumbrances**"). Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Security, or any part thereof or interest therein other than the Permitted Encumbrances; provided, that the existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof. Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Trustor shall first deposit with the Beneficiary a bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim or shall post a bond authorized by statute in lieu thereof, and provided further that Trustor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Trustor shall fail to remove and discharge any such lien, encumbrance, or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, without inquiring into the validity of such lien, encumbrance or charge nor into the existence of any defense or offset thereto, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in court a bond or the amount claimed, or otherwise giving security for such claim, in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, together

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with interest thereon from the date of such expenditure at the Agreed Rate and, until paid, such sums shall be secured hereby.

2.17. Beneficiary's Powers.

Without affecting the liability of any other person liable for the payment of any Obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Security not then or theretofore released as security for the full amount of all unpaid Obligations, Beneficiary may, from time to time and without notice: (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such Obligation (to the extent that Beneficiary is so allowed under the Loan Agreement), (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Security, (e) take or release any other or additional security for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto. By accepting payment or performance of any Obligation secured by this Deed of Trust after the payment or performance thereof is due or after the filing of notice of default and election to sell (other than satisfaction in full of the Obligations), Beneficiary shall not have thereby waived its right to require prompt payment or performance, when due, of all other Obligations secured hereby, or to declare a default for failure so to pay or perform, or to proceed with the sale under any notice of default and election to sell theretofore given by Beneficiary, or with respect to any unpaid balance of the indebtedness secured hereby. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due. Trustor's failure to pay the entire sum then due shall continue to be a default, notwithstanding the acceptance of partial payment, and, until the entire sum then due shall have been paid, Beneficiary or Trustee shall at all times be entitled to declare a default and to exercise all the remedies herein conferred, and the right to proceed with a sale under any notice of default and election to sell shall in no way be impaired, whether or not such amounts are received prior or subsequent to such notice. No delay or omission of Trustee or Beneficiary in the exercise of any other right or power hereunder shall impair such right or power or any other right or power nor shall the same be construed to be a waiver of any default or any acquiescence therein.

2.18. Suits to Protect Property.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or any additional or other security for the obligations secured, the interest of Beneficiary of the rights, powers and duties of Trustee, and to pay all costs and expenses, including without limitation, cost of evidence of title and attorneys' fees, in any action or proceeding in which Beneficiary or Trustee may appear to be made a party, including, but not limited to, foreclosure or other proceeding commenced by those claiming a right to any part of the Property under subordinate liens, in any action to partition or condemn all or part of the Property, whether pursued to final judgment, and in any exercise of the power of sale in this Deed of Trust, whether the sale is actually consummated.

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ARTICLE III
TAXES AND INSURANCE; ADVANCES

3.1. Taxes, Other Governmental Charges and Utility Charges.

(a) Trustor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other charges of any kind, including without limitation non-governmental levies or assessments such as maintenance charges, levies or other charges resulting from covenants, conditions and restrictions affecting the Security, which are assessed or imposed upon the Security or upon Trustor as owner or operator of the Security, or become due and payable, and which create or may create a lien upon the Security, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all the above collectively hereinafter referred to as "**Impositions**"); provided, however, that if, by law, any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same in installments (together with any interest charged) as the same become due and before any fine, penalty or cost may be added thereto for the nonpayment of any such installment. Notwithstanding the foregoing, Trustor shall have the right to diligently contest, in good faith and by appropriate proceedings, the validity of any Imposition, so long as Trustor demonstrates to Beneficiary that Trustor is maintaining sufficient reserves for the payment of all contested liabilities and so long as the security and value of Beneficiary's interest under this Deed of Trust are not impaired as a result of such contest.

(b) If at any time after the date hereof there shall be assessed or imposed (1) a tax or assessment on the Security in lieu of or in addition to the Impositions payable by Trustor pursuant to this Section 3.1 hereof, or (2) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in this Section and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Trustor fails to pay such Impositions prior to delinquency or if Trustor is prohibited by law from paying such Impositions, Beneficiary may at its option declare all Obligations secured hereby, together with all accrued interest thereon, immediately due and payable. Anything to the contrary herein notwithstanding, Trustor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Beneficiary or on the Obligations secured hereby.

(c) Trustor shall deliver to Beneficiary within thirty (30) days after the date upon which any such Imposition is due and payable by Trustor official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof. Trustor shall not suffer, permit or initiate the joint assessment of any real and personal property which may constitute all or a portion of the Security and the personal property or suffer, permit or initiate any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied or charged to the Security as a single Lien. Trustor shall cause to be furnished to Beneficiary a tax reporting service, covering the Property, of a type and duration, and with a company, reasonably satisfactory to Beneficiary.

(d) In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the

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same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the greater of twelve percent (12%) per annum or the maximum rate permitted by law (hereinafter the "**Agreed Rate**"), shall become an additional Obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

3.2. Insurance.

(a) Trustor agrees to provide insurance conforming in all respects to that required under the Loan Agreement at all times until all amounts secured by this Deed of Trust have been paid and all other Obligations secured hereunder fulfilled, and this Deed of Trust reconveyed. All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense.

(b) All said insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to the Beneficiary and/or shall name Beneficiary as an additional insured, as Beneficiary may require, and shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policies notwithstanding any act or negligence of Trustor or any party holding under Trustor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim and deduction against Trustor. At Beneficiary's option, Trustor shall furnish Beneficiary with an original of all required policies of insurance and/or a certificate of insurance with all required endorsements for each required policy setting forth the coverage, the limits of liability, the deductible, if any, the name of the carrier, the policy number, and the period of coverage, which certificates and endorsements shall be executed by authorized officials of the companies issuing such insurance, or any agents or attorneys-in-fact authorized to issue said certificates and endorsements (in which event each such certificate and endorsements shall be accompanied by a notarized affidavit, agency agreement or power of attorney evidencing the authority of the signatory to issue such certificate on behalf of the insurer named therein), accompanied by a certificate from Trustor that the insurance satisfies the requirements of the Loan Agreement, and that Beneficiary may conclusively rely on such certificates. If Beneficiary consents, Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location; provided, however, all such policies shall be in form and substance and issued by companies satisfactory to Beneficiary.

(c) At least thirty (30) days prior to the expiration of each required policy, Trustor shall deliver to Beneficiary evidence satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust or the Loan Agreement. All such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and the insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended (which term shall include any reduction in the scope, or limits of coverage) without at least thirty (30) days prior written notice to Beneficiary.

(d) In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance required by Section 3.2

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hereof and any unearned premiums paid thereon shall, without further act, be assigned to and shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Property, and Trustor hereby appoints Beneficiary its lawful attorney-in-fact to execute an assignment thereof and any other document necessary to effect such transfer.

3.3. Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Agreement, the Beneficiary, after at least twenty (20) days prior written notice to Trustor, may (but shall be under no Obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional Obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the Agreed Rate.

ARTICLE IV
DAMAGE, DESTRUCTION OR CONDEMNATION

4.1. Casualties.

Trustor shall give prompt written notice to Beneficiary upon the occurrence of casualty to or in connection with the Security or any part thereof, whether or not covered by insurance. In the event of such casualty Trustor hereby absolutely and unconditionally assigns to Beneficiary all insurance proceeds which it may be entitled to receive and such proceeds shall be delivered to and held by Beneficiary to be applied to Beneficiary's expenses in settling, prosecuting or defending any insurance claim, and then to the restoration of any portion of the Security that has been damaged or destroyed to the same condition, character and value as existed prior to such damage or destruction so long as the following conditions are satisfied: (i) Trustor is not in default hereunder (other than any default resulting from such casualty), (ii) Beneficiary's security is not materially impaired, (iii) all income (from the Security or otherwise) required to pay all debt service and operating expenses of the Security during such restoration and thereafter will be equal to or greater than the income which was required to pay such debt service and operating expenses prior to the casualty, (iv) Trustor evidences to the satisfaction of Beneficiary that the insurance required to be maintained hereunder will be available to the Trustor during restoration and thereafter, (v) Beneficiary shall have approved the plans and specifications for such restoration, which approval shall not be unreasonably withheld or delayed, and (vi) in the event that in Beneficiary's sole judgment the insurance proceeds and any amounts deposited with a senior lender are not sufficient to accomplish restoration, Trustor deposits with the Beneficiary or senior lender, as required by that senior lender pursuant to the terms of the senior Debt Instrument, within five days of demand by Beneficiary, the additional amounts necessary to accomplish restoration. Proceeds disbursed for restoration will be released to Trustor in accordance with Beneficiary's then current customary disbursement procedures. In the event any of the conditions set forth above are not satisfied or if the insurance proceeds shall not be applied to the restoration of the Security within thirty days after receipt of such proceeds by Beneficiary, Beneficiary may release such proceeds to Trustor without such release being

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deemed a payment of any indebtedness secured hereby, rather than apply such proceeds to the restoration of the Security. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If the Security is restored at a cost less than the available insurance proceeds, then such excess proceeds shall, if Trustor is not then in default hereunder, be paid over to Trustor. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise, settle and collect all claims, proceeds and awards assigned to Beneficiary, but shall not be responsible for any failure to collect any claim, proceeds or award, regardless of the cause of the failure.

4.2. Condemnation.

Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation or other taking for public or quasi-public use of the Security or any part thereof, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice or other information regarding such proceedings, action, taking or damage, Trustor shall promptly notify Trustee and Beneficiary of such fact. Trustor shall then, if requested by Beneficiary, file or defend its right thereunder and prosecute the same with due diligence to its final disposition and shall cause any award or settlement to be paid to Beneficiary in accordance with the provisions of the Loan Agreement. At Beneficiary's option, Beneficiary or Trustor may be the nominal party in such proceeding but in any event Beneficiary shall be entitled, without regard to the adequacy of its security, to participate in, appear in, prosecute and settle, jointly with Trustor to control the same and to be represented therein by counsel of its choice, and Trustor will deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. Trustor and Beneficiary agree to act in good faith with respect to any consent, settlement, or award arising out of said prosecution. If the Security or any part thereof is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceedings, all compensation, awards, damages, rights of action proceeds and settlements payable to Trustor by virtue of its interest in the security shall be and hereby are assigned, transferred and set over into Beneficiary to be held by it, in trust, subject to the lien and security interest of this Deed of Trust. All such proceeds shall be first applied to reimburse Trustee and Beneficiary, for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such award or settlement, and then to the restoration of any portion of the Security that has been taken to the similar condition, character and value as existed prior to such taking so long as the following conditions are satisfied: (i) Trustor is not in default hereunder, (ii) Beneficiary's security is not materially impaired, (iii) all income (from the Security or otherwise) required to pay all debt service and operating expenses of the Security during such restoration and thereafter will be equal to or greater than the income which was required to pay such debt service and operating expenses prior to the casualty, (iv) Trustor evidences to the satisfaction of Beneficiary that the insurance required to be maintained hereunder will be available to the Trustor during restoration and thereafter, (v) Beneficiary shall have approved the plans and specifications for such restoration, and (vi) in the event that in Beneficiary's sole judgment the insurance proceeds and any amounts deposited with a senior lender are not sufficient to accomplish restoration, Trustor deposits with the Beneficiary or senior lender, as required by that senior lender pursuant to the terms of the senior Debt Instrument, within five days of demand by Beneficiary, the additional amounts necessary to accomplish restoration. Application or release of proceeds as provided herein shall

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not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

ARTICLE V
ENVIRONMENTAL COVENANTS OF TRUSTOR

5.1. Disclosures By Trustor. Except as disclosed in writing to, and acknowledged and accepted in writing by Beneficiary, Trustor represents and warrants that:

(a) during the period of Trustor's ownership of the Property

(i) there has been no use, generation, manufacture, storage, treatment, disposal, discharge, Release, or threatened Release of any Hazardous Substance by any person on or around the Property except in such small quantities as are customary and usual in the ordinary course of constructing, using and operating a residential housing business on the Property and in strict compliance with all Hazardous Substances Laws, and

(ii) there have been no Hazardous Substances transported over or through the Property;

(b) after diligent inquiry, Trustor has no knowledge of, or reason to believe that, there has been:

(i) any use, generation, manufacture, storage, treatment, disposal, Release, or threatened Release of any hazardous waste or substance by any prior owners or prior occupants of the Property or by any third parties onto the Property, or

(ii) any actual or threatened litigation or claims of any kind by any person relating to these matters;

(c) no Hazardous Substances in excess of permitted levels or reportable quantities under applicable Hazardous Substance Laws are present in or about the Property or any nearby real property that could migrate to the Property;

(d) no Release or threatened Release exists or has occurred;

(e) no underground storage tanks of any kind are or ever have been located in or about the Property;

(f) the Property and all operations and activities at, and the use and occupancy of, the Property comply with all applicable Hazardous Substance Laws;

(g) Trustor is now in strict compliance with, every permit, license, and approval required by all applicable Hazardous Substance Laws for all activities and operations at, and the use and occupancy of, the Property;

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(h) to the best of Trustor's knowledge, after diligent inquiry, there are no Hazardous Substance Claims pending or threatened with regard to Property or against Trustor;

(i) to its knowledge the Property has not been nor is it within 2,000 feet of any other property designated as "hazardous waste property" or what was formerly known as "border zone property," as applicable, pursuant to former Health and Safety Code §§ 25220 et seq., as those sections read on January 1, 2012, and no proceedings for a determination of this designation are pending or threatened;

(j) to the best of its knowledge after diligent inquiry, there exists no occurrence or condition on any real property adjoining or within 2,000 feet of the Property that would cause the Property or any part of it to be designated as "hazardous waste property" or what was formerly known as "border zone property," as applicable, pursuant to former Health and Safety Code §§ 25220 et seq., as those sections read on January 1, 2012, and any regulation adopted in accordance with that section;

(k) that the use of the Property shall be residential housing;

(l) any written disclosure submitted by or on behalf of Trustor to Beneficiary concerning any Release or threatened Release, past or present compliance by Trustor or other person of any Hazardous Substance Laws applicable to the Property, the past and present use and occupancy of the Property, and any environmental concerns relating to the Property, was true and complete when submitted and continues to be true and complete as of the date of this Deed of Trust.

5.2. Covenants of Trustor. Trustor agrees, except in the ordinary course of business and in strict compliance with all applicable Hazardous Substance Laws, as follows:

(a) not to cause or permit the property to be used as a site for the use, generation, manufacture, storage, treatment, Release, discharge, disposal, transportation, or presence of any Hazardous Substance;

(b) not to cause, contribute to, permit, or acquiesce in any Release or threatened Release;

(c) not to change or modify the use of the Property without the prior written consent of Beneficiary;

(d) to comply with and to cause the Property and every invitee or occupant of the Property to comply with all Hazardous Substance Laws;

(e) to immediately notify Beneficiary in writing of and to provide Beneficiary with a reasonably detailed description of:

(i) any noncompliance of the Property with any Hazardous Substance Laws;

(ii) any Hazardous Substance Claim;

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(iii) any Release or Threatened Release;

(iv) not engage in any of the activities enumerated in Cal. Health & Safety Code section 25227 on land that is subject to a recorded land use restriction pursuant to former Health & Safety Code Section 25229, 25230, or 25398.7, as those sections read on January 1, 2012, or pursuant to Sections 25202.5, 25221, or 25355.5 of the same, unless the person obtains a specific approval in writing as required pursuant to Section 25227;

(f) if Trustor discovers a Release or the presence of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law, to:

(i) notify Beneficiary of that discovery together with a reasonably detailed description;

(ii) engage promptly after a request by Beneficiary, a qualified environmental engineer reasonably satisfactory to Beneficiary to investigate these matters and prepare and submit to Beneficiary a written report containing the findings and conclusions resulting from that investigation, all at the sole expense of Trustor, and

(iii) take, at Trustor's sole expense, all necessary actions to remedy, repair, clean up, or detoxify any Release or Hazardous Substance, including, but not limited to, any remedial action required by any Hazardous Substance Laws or any judgment, consent, decree, settlement, or compromise in respect of any Hazardous Substance Claims, these actions to be performed:

A. in accordance with Hazardous Substance Laws,

B. in a good and proper manner,

C. under the supervision of a qualified environmental engineer approved in writing by Beneficiary,

D. in accordance with plans and specifications for these actions approved in writing by Beneficiary, and

E. using licensed and insured qualified contractors approved in writing by Beneficiary;

(g) immediately furnish to Beneficiary copies of all written communications received by Trustor from any governmental authority or other person or given by Trustor to any person and any other information Beneficiary may reasonably request concerning any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law; and

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(h) keep Beneficiary generally informed regarding any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law.

5.3. Rights of Beneficiary. Upon Beneficiary's reasonable belief of the existence of a past or present Release or threatened Release not previously disclosed by Trustor in connection with the making of the Loan or the execution of this Deed of Trust or upon Beneficiary's reasonable belief that Trustor has failed to comply with any environmental provision of this Deed of Trust or any other Loan Document and upon reasonable prior notice (except in the case of an emergency) to Trustor, Beneficiary or its representatives, employees, and agents, may from time to time and at all reasonable times (or at any time in the case of an emergency) enter and inspect the Property and every part of it (including all samples of building materials, soil, and groundwater and all books, records, and files of Trustor relating to the Property) and perform those acts and things that Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the Security of this Deed of Trust, for the purpose of determining:

(a) the existence, location, nature, and magnitude of any past or present Release or threatened Release,

(b) the presence of any Hazardous Substances on or about the Property in violation of any Hazardous Substance Law, and

(c) the compliance by Trustor of every environmental provision of this Deed of Trust and every other Loan Document.

In furtherance of the purposes above, without limitation of any of its other rights, Beneficiary may:

(a) obtain a court order to enforce Beneficiary's right to enter and inspect the Property under Civil Code § 2929.5; and

(b) have a receiver appointed under Code of Civil Procedure § 564 to enforce Beneficiary's right to enter and inspect the Property for the purpose set forth above.

All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents, representatives, or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, will be paid by Trustor. All costs or expenses incurred by Trustee and Beneficiary pursuant to this Section (including without limitation court costs, consultant's fees, and attorney fees, whether incurred in litigation and whether before or after judgment) will bear interest at the Agreed Rate from the date they are incurred until those sums have been paid in full. Except as provided by law, any inspections or tests made by Beneficiary or its representatives, employees, and agents will be for Beneficiary's purposes only and will not be construed to create any responsibility or liability on the part of Beneficiary to Trustor or to any other person. Beneficiary will have the right, but not the obligation, to communicate with any governmental authority regarding any fact or reasonable belief of Beneficiary that constitutes or could constitute a breach of any of Trustor's obligations under any environmental provision contained in this Deed of Trust or any Loan Document.

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5.4. Waiver and Indemnity.

In consideration of the funds being secured by this Deed of Trust, Trustor:

(a) releases and waives any future claims against Beneficiary for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any Hazardous Substance Laws or under any Hazardous Substance Claim;

(b) agrees to reimburse Beneficiary, on demand, for all costs and expenses incurred by Beneficiary in connection with any review, approval, consent, or inspection relating to the environmental provisions in this Deed of Trust together with interest, after demand, at the Agreed Rate; and

(c) agrees to indemnify, defend, and hold Beneficiary and Trustee harmless from all losses, costs, claims, damages, penalties, liabilities, causes of action, judgments, court costs, attorney fees and other legal expenses, costs of evidence of title, cost of evidence of value, and other expenses (collectively, "**Expenses**"), including, but not limited to, any Expenses incurred or accruing after the foreclosure of the lien of this Deed of Trust, which either may suffer or incur and which directly or indirectly arises out of or is in any way connected with the breach of any environmental provision either in this Deed of Trust or in any Loan Document or as a consequence of any Release or threatened Release on the presence, use, generation, manufacture, storage, disposal, transportation, Release, or threatened Release of any Hazardous Substance on or about the Property, including the soils and groundwater, caused or permitted by Trustor, any prior owner or operator of the Property, any adjoining landowner or any other party, including, without limitation, the cost of any required or necessary repair, cleanup, remedy, or detoxification of any hazardous Substance and the preparation of any closure, remedial action, or other required plans, whether that action is required or necessary by reason of acts or omissions occurring prior to or following the recordation of this Deed of Trust. Trustor's obligations will survive the satisfaction, release, or cancellation of the indebtedness, the release and reconveyance or partial release and reconveyance of this Deed of Trust, and the foreclosure of the lien of this Deed of Trust or deed in lieu of the Deed of Trust.

5.5. Additional Covenants of Trustor.

(a) Trustor and Beneficiary agree that:

(i) this Section is intended as Beneficiary's written request for information and Trustor's written response concerning the environmental condition of the Property as provided by Code of Civil Procedure § 726.5; and

(ii) each representation, warranty, covenant, or indemnity made by Trustor in this Article or in any other provision of this Deed of Trust or any Loan Document that relates to the environmental condition of the Property is intended by Trustor and Beneficiary to be an "environmental provision" for purposes of Code of Civil Procedure § 736 and will survive the payment of the indebtedness and the termination or expiration of this Deed of Trust and will not be affected by Lender's acquisition of any interest in the Property, whether by full credit bid at foreclosure, deed in lieu of that, or otherwise. If there is any transfer of any portion of Trustor's interest in the Property, any successor-in-interest to Trustor agrees by its succession to that

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interest that the written request made pursuant to this Article will be deemed remade to the successor-in-interest without any further or additional action on the part of Beneficiary and that by assuming the debt secured by this Deed of Trust or by accepting the interest of Trustor subject to the lien of this Deed of Trust, the successor remakes each of the representations and warranties in this Deed of Trust and agrees to be bound by each covenant in this Deed of Trust, including, but not limited to, any indemnity provision.

(b) Even though Trustor may have provided Beneficiary with an environmental site assessment or other environmental report together with other relevant information regarding the environmental condition of the Property, Trustor acknowledges and agrees that Beneficiary is not accepting the Property as security for the Loan based on that assessment, report, or information. Rather, Beneficiary has relied on the representations and warranties of Trustor in this Deed of Trust, and Beneficiary is not waiving any of its rights and remedies in the environmental provisions of this Deed of Trust or any other Loan Document.

(c) Beneficiary or its agents, representatives, and employees may seek a judgment that Trustor has breached its covenants, representations, or warranties in Article II of this Deed of Trust or any other covenants, representations, or warranties that are deemed to be "environmental provisions" pursuant to Code of Civil Procedure § 736 (each an "**Environmental Provision**"), by commencing and maintaining an action or actions in any court of competent jurisdiction pursuant to Code of Civil Procedure § 736, whether commenced prior to or after foreclosure of the lien of this Deed of Trust. Beneficiary or its agents, representatives, and employees may also seek an injunction to cause Trustor to abate any action in violation of any Environmental Provision and may seek the recovery of all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary (collectively, "**Environmental Costs**") incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action required by any Hazardous Substances Law or any Hazardous Substance Claim, or which Beneficiary believes necessary to protect the Property. It will be conclusively presumed between Beneficiary and Trustor that all Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action of or to the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this Section (including without limitation court costs, consultant fees, and attorney fees, whether incurred in litigation and whether before or after judgment) will bear interest at the Agreed Rate from the date of expenditure until those sums have been paid in full. Beneficiary will be entitled to bid, at any trustee's or foreclosure sale of the Property, the amount of the costs, expenses, and interest in addition to the amount of other indebtedness.

(d) Beneficiary or its agents, representatives, and employees may waive its lien against the Property or any portion of it, including but not limited to the Improvements, to the extent that the Property or any portion of the Security is found to be environmentally impaired in accordance with Code of Civil Procedure § 726.5, and to exercise all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs, including, but not limited to, seeking an attachment order under Code of Civil Procedure § 483.010. As between Beneficiary and Trustor, for purposes of Code of Civil Procedure § 726.5, Trustor will have the burden of proving that Trustor or any

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related party (or any affiliate or agent of Trustor or any related party) was not in any way negligent in permitting the Release or threatened Release of the Hazardous Substances.

ARTICLE VI
ASSIGNMENTS OF RENTS, ISSUES AND PROFITS

6.1. Assignment.

Trustor hereby absolutely, irrevocably and unconditionally assigns to Beneficiary, as security for the Obligations, all rents, profits, deposits, royalties, income and other issues and similar benefits derived from the Security (collectively, the "**Rents**"), and hereby confers upon Beneficiary the right, power and authority to collect such Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in its name or in the name of Trustor, for all Rents, and apply the same to the Obligations secured hereby; provided, however, that Trustor shall have the right, as between Trustor and Beneficiary, to collect the Rents but not more than one (1) month in advance of the date due unless the written approval of Beneficiary has first been obtained, with the exception of security deposits and "first and last months' rent" collected from tenants in connection with Trustor's ordinary leasing of residential apartments within the Property), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and be continuing.

6.2. Collection Upon Default.

While any Event of Default remains uncured, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations hereby secured, enter upon and take possession of the Security, or any part thereof, and, with or without taking possession of the Security or any part thereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid Rents and all other monies which may have been or may hereafter be deposited with Trustor by any tenant to secure the payment of any Rent or for any services thereafter to be rendered by Trustor for any other obligation of any tenant to Trustor arising under any lease, and Trustor agrees that, upon the occurrence of any Event or Default hereunder, Trustor shall promptly deliver all Rents and other moneys to Beneficiary), and Beneficiary may apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys fees, whether or not suit is brought or prosecuted to judgment, against any indebtedness or Obligation of Trustor secured hereby, and in such order as Beneficiary may determine notwithstanding that said indebtedness or the performance of said Obligation may not then be due. The collection of Rents, or the entering upon and taking possession of the Security, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default or be deemed or construed to make Beneficiary a mortgagee-in-possession of the Security or any portion thereof.

6.3. Further Assignments.

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Upon demand of Beneficiary, Trustor shall, from time to time hereafter, execute, and deliver to Beneficiary recordable assignments of Trustor's interest in any or all leases, subleases, contracts, rights, licenses and permits now or hereafter affecting the Security or any portion thereof. Such assignments shall be made by instruments in form and substance satisfactory to Beneficiary; provided, however, that no such assignment shall be construed as imposing upon Beneficiary any obligation with respect thereto. Beneficiary may, at its option, exercise its rights hereunder or under any such specific assignment and such exercise shall not constitute a waiver of any right hereunder or under any such specific assignment.

ARTICLE VII
EVENTS OF DEFAULT AND REMEDIES

7.1. Events of Default.

Each of the following shall constitute Events of Default: (1) the occurrence of an "Event of Default" as defined in the Loan Agreement or as defined in any Debt Instrument; or (2) the failure to make any payment or perform any of Trustor's other Obligations now or hereafter secured by this Deed of Trust (subject to any applicable cure period).

7.2. Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default, the unpaid Principal of the Note and any other indebtedness and other Obligations secured hereby shall immediately become due and payable without presentment, protest notice or demand, all of which are hereby expressly waived, upon written notice by the Beneficiary to the Trustor and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

7.3. The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Security, or part thereof or interest therein, increase the income therefrom or protect the security thereof and, with or without taking possession of the Security, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including without limitation attorneys' fees, against any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Security the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default, and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

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(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Orange County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the Obligations secured hereby, or provided by law.

7.4. Foreclosure by Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust, the Loan Agreement and the Note which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid Principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary ("**Notice of Default**"), Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and election to sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after notice of sale having been given as required by law ("**Notice of Sale**"), sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise to the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (1) the unpaid Principal amount of the Note; (2) all other sums then secured hereby; and (3) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Security by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

7.5. Receiver

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If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

7.6. Application of Funds After Default.

Except as otherwise herein provided, upon the occurrence of an Event of Default hereunder, Beneficiary may, at any time without notice, apply any or all sums or amounts received and held by Beneficiary to pay insurance premiums, Impositions, or either of them, or as Rents or income of the Security, or as insurance or condemnation proceeds, and all other sums or amounts received by Beneficiary from or on account of Trustor or the Security, or otherwise, against any indebtedness or Obligation of the Trustor secured hereby, in such manner and order as Beneficiary may elect. The receipt, use or application of any such sum or amount shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust, or any of the rights or powers of Beneficiary under the terms of the Loan Agreement, this Deed of Trust or the Note, or any of the Obligations of Trustor or any guarantor under any other instruments or documents now or hereafter delivered in connection with the Loan Agreement or to cure or waive any default or notice of default under the Loan Agreement or any such instruments or documents; or to invalidate any act of Trustee or Beneficiary.

7.7. Costs of Enforcement.

If any Event of Default occurs, Beneficiary and Trustee, and each of them, may employ an attorney or attorneys to protect their rights hereunder. Trustor promises to pay to Beneficiary, on demand, the fees and expenses of such attorneys and all other costs of enforcing the Obligations secured hereby, including, without limitation, recording fees, the expense of a trustee, sale guarantee, Trustee's fees and expenses, receivers fees and expenses, and all other expenses, of whatever kind or nature, incurred by Beneficiary and Trustee, and each of them, in connection with the enforcement of the Obligations secured hereby, whether or not such enforcement includes the filing of a lawsuit. Until paid, such sums shall be secured hereby and shall bear interest at the Agreed Rate.

7.8. Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

7.9. No Waiver.

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(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the Obligations hereunder shall be deemed or construed to be a consent to or waiver of Obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (1) grants forbearance or an extension of time for the payment of any sums secured hereby, (2) takes other or additional security or the payment of any sums secured hereby, 3) waives or does not exercise any right granted in the Loan Agreement, (4) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Agreement, (5) consents to the granting of any easement or other right affecting the Security, or (6) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

7.10. Suits to Protect the Security.

The Beneficiary shall have power to: (1) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (2) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (3) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

7.11. Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

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ARTICLE VIII
MISCELLANEOUS

8.1. Amendments.

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

8.2. Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey, without warranty, the Security to Trustor, or to the person or persons legally entitled thereto.

8.3. Notices.

(a) If at any time after the execution of this Deed of Trust it shall become necessary or convenient for one of the parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered United States mail, return receipt requested, postage prepaid and:

if intended for Beneficiary shall be addressed to:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

if intended for Trustors shall be addressed to:

[TRUSTOR]

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

8.4. Successors and Joint Trustors.

All Obligations of Trustor secured by this Deed of Trust, shall also apply to and bind any permitted transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an Obligation of the Trustor and a transferee, such Obligation shall be deemed

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to be a joint and several Obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all Obligations of Trustor shall be deemed to be a joint and several Obligation of each and every entity and person comprising Trustor.

8.5. Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

8.6. Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

8.7. Governing Law and Venue.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California. In the event of any legal action to enforce or interpret this Deed of Trust, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

8.8. Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

8.9. Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

8.10. Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

8.11. Substitution of Trustee.

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Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Security is situated, shall be conclusive proof of proper appointment of the successor trustee.

8.12. Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceedings in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

8.13. Conflicts.

If any term or provision of this Deed of Trust conflicts with any term of provision of the Loan Agreement, the term or provision of the Loan Agreement shall control to the extent of such conflict.

8.14. Statements by Trustor.

Trustor shall, at its cost, within ten (10) days after notice thereof from Beneficiary, deliver to Beneficiary a written statement setting forth to the best of its knowledge and information, the amounts then unpaid and secured by this Deed of Trust and stating whether Trustor is aware of any offset or defense against such amounts.

8.15. Beneficiary Statements.

For any statement or accounting requested by Trustor or any other entitled person pursuant to Section 2943 or Section 2954 of the California Civil Code or pursuant to any other provision of applicable law, or for any other document or instrument furnished to Trustor by Beneficiary, Beneficiary may charge the maximum amount permitted by law at the time of the request therefor, or if there be no such maximum, then in accordance with Beneficiary's customary charges therefor or the actual cost to Beneficiary therefor, whichever is greater.

8.16. Statute of Limitations.

Except insofar as now or hereafter prohibited by law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

8.17. Trust Irrevocable; No Offset.

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The Trust created hereby is irrevocable by Trustor. No offset or claim that Trustor now has or may in the future have against Beneficiary shall relieve Trustor from paying the indebtedness or performing any other Obligation contained herein or secured hereby.

8.18. Corrections.

Trustor shall, upon request of Beneficiary, promptly correct any defect, error or omission which may be discovered in the contents hereof or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Beneficiary to carry out more effectively the purposes thereof, to subject to, the lien and security interest hereby created any of Trustor's properties, rights or interests covered or intended to be covered hereby, or to perfect and maintain such lien and security interest.

8.19. Further Assurance.

Trustor, Beneficiary and Trustee agree to do or cause to be done such further acts and things and to execute and deliver or to cause to be executed and delivered such additional assignments, agreements, powers and instruments, as any of them may reasonably require or deem advisable to keep valid and effective the charges and liens hereof, to carry into effect the purposes of this Deed of Trust or to better assure and confirm unto any of them their rights, powers and remedies hereunder; and, upon request by Beneficiary, shall supply evidence of fulfillment of each of the covenants herein contained concerning which a request for such evidence has been made.

8.20. Waiver of Jury Trial**.**

Unless prohibited by Federal, State or local laws, each party acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Deed of Trust and/or any claim of injury or damage to the fullest extent permitted by applicable law.

ARTICLE IX
WAIVERS

9.1. Waivers and Related Matters

(a) To the fullest extent allowed by law, Trustor hereby waives: (i) presentment, demand, protest, notice of dishonor, notice of protest and all other notices and demands of every kind, and all suretyship defenses of every kind that would otherwise be available in connection with this Deed of Trust, and (ii) all rights of redemption, valuation, appraisement, stay of executive, notice of election to mature or declare due the whole of the Obligation and marshaling in the event of foreclosure of the liens hereby created.

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(b) Trustor hereby authorizes Beneficiary, at any time and from time to time without notice and without affecting this Deed of Trust in any way, to: (i) accept new or additional instruments, documents, agreements, security or guaranties in connection with all or any part of the Obligations; (ii) accept partial payments on the Obligations; and (iii) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Obligations and any security or guaranties therefor, and apply any such security and direct the order or manner of sale thereof and bid and purchase at any such sale.

(c) Trustor hereby waives any right to require Beneficiary to (i) proceed against any person; (ii) proceed or exhaust any collateral held from any person; or (iii) pursue any other remedy in Beneficiary's power. Upon the occurrence of any Event of Default, Beneficiary is hereby expressly given the right, at its option, to proceed in the enforcement of this Deed of Trust, independently of any other remedy or security Beneficiary may at any time hold in connection with the Obligations, and Beneficiary shall not in any way be obligated or otherwise required to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Deed of Trust.

(d) Trustor hereby waives any defense arising by reason of: (i) any disability or other defense of Trustor or any other person; (ii) the cessation from any cause whatsoever, other than full payment and performance of the Obligations, of the Obligations of Trustor or any other person; or (iii) any act or omission by Beneficiary which directly or indirectly results in or aids in the discharge or release of Trustor, or any other person, any Obligation, or any collateral by operation of law or otherwise.

The waivers set forth in this Article IX shall also apply, to the fullest extent permitted by law to all other real and/or personal property of Trustor now or hereafter assigned to Beneficiary as security for the Obligations. Trustor warrants and agrees that each, of the waivers set forth above are made with Trustor's full knowledge of their significance and consequences, with the understanding that events giving rise to any defense waived may diminish, destroy or otherwise adversely affect rights which Trustor otherwise may have against Beneficiary or others, or against collateral, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any of the waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective to the maximum extent permitted by law.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

Signature to Follow

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TRUSTOR:

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APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By Signed by: Jacqueline Guzman 8452584753D3488...

Deputy

Dated 2/2/2026

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EXHIBIT A
LEGAL DESCRIPTION

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PROMISSORY NOTE SECURED BY DEED OF TRUST
(XXX FUNDS)

($XXXXX) _____, 2026

FOR VALUE RECEIVED, the undersigned [XXXXXXXXX] ("**Borrower**") promises to pay to the COUNTY OF ORANGE, a political subdivision of the state of California, (the "**County**"), or order at Santa Ana, California or such other place as the County may designate in writing, the principal sum of [XXXX] ($XXX) plus interest on the terms specified below.

1. Agreement. This Note is given in accordance with that certain Loan Agreement executed by and between the County and the Borrower of even date herewith (the "**Loan Agreement**"), and in connection with that certain Regulatory Agreement executed by and between the County and the Borrower dated as of the same date as this Note (the "**Regulatory Agreement").** The obligations of the Borrower under this Note shall be subject to the terms of the Loan Agreement, the Deed of Trust of even date herewith which secures performance under this Note, the Assignment of Leases, the Regulatory Agreement, and the other Loan Documents, all of which are hereby incorporated by reference. Capitalized terms used but not defined herein shall have the meaning as set forth in the Loan Agreement.

2. Interest and Repayment.

(a) Borrower promises to pay simple interest recalculated annually based upon the outstanding principal amount at the rate of three percent (3%) per annum. Such simple interest shall begin to accrue the date escrow closes.

(b) Borrower promises to repay the indebtedness during the Qualified Project Period (defined in the Loan Agreement) of the Loan as follows:

(1) Commencing on the date six (6) months after closing of the Borrower's previous year's books and every one-year anniversary date thereafter during the Qualified Project Period, Borrower shall make annual payments to County of the then available Residual Receipts (hereinafter defined), but only to the extent said Residual Receipts are available; and

(2) At the expiration of the Qualified Project Period, as set forth in the Loan Agreement, the then outstanding principal amount of this Note together with all accrued, but unpaid interest thereon shall become all due and payable.

(c) Notwithstanding anything to the contrary set forth in this Paragraph 2, during the Qualified Project Period for so long as Borrower (i) timely makes the payments required under this Note, (ii) is not in breach of any of the terms, covenants or conditions of this Note, and (iii) there is no uncured Event of Default under the Loan Agreement or any other Loan Document, County agrees that then available Residual Receipts otherwise payable in their entirety to the Borrower shall be divided and 50% shall go to the Borrower and XXX and XXXX hundredths percent (XX.XX%) shall go to the County. This Paragraph 2(c) shall have no

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further force or effect immediately (i) upon an occurrence of any failure by Borrower to make timely payments hereunder, (ii) a breach of any term, covenant or condition hereunder or (iii) an Event of Default under any Loan Document which continues to remain uncured after the expiration of any cure period. In the event the Loan is timely reinstated in full as permitted under California law prior to foreclosure with all outstanding monies, costs, and expenses owed to County paid in full, then in such event the Residual Receipts sharing agreement stated hereinabove in this Paragraph 2 (c) shall also be reinstated.

(d) For purposes of this Note, the terms listed below are defined as follows:

(1) **"Residual Receipts"** means, during the Qualified Project Period, .the Annual Project Revenue (as defined below) less (i) Annual Operating Expenses (as defined below) as approved by the County in an annual audit submitted by the developer and approved by the County, in the County's reasonable discretion; (ii) obligated debt service payments on the Project as approved by the County, in the County's reasonable discretion; (iii) scheduled deposits to reserves, as approved by the County, in the County's reasonable discretion; (iv) deferred developer fees, as approved by the County, in the County's reasonable discretion; and (v) partnership management or asset management fees as approved by the County, in the County's reasonable discretion; (vi) amounts (approved by all Project lenders) expended to restore the Project after a casualty loss or condemnation; (vii) costs for accounting and auditing the books and records of the Project reasonably approved by the County; (viii) franchise tax filing fees. and (x) required deposits under the Loan Agreement for Operating Reserves and Replacement Reserves.

(2) **"Annual Project Revenue"** means the Net Operating Income (NOI), if any, from the project as calculated one hundred eighty (180) days after the close of each fiscal year. NOI shall mean all of the rental revenue from the residential portion of the project, including, but not limited to, rent payments, governmental assistance housing payments, laundry and other vending machine and pay telephone income. Annual Project Revenue shall not include tenant security deposits, capital contributions, insurance or condemnation proceeds, income received for the purpose of completing the project, or funding received for the purpose of social services to the residents.

(3) **"Annual Operating Expenses"** means all regular and customary annual s operating expenses of the project as approved by the County in an annual audit submitted by the developer and approved by the County, in the County's reasonable discretion incurred in relation to the operation of the Project as reflected on the annual budget for the Project that Borrower shall prepare and abide by each year during the Term (as defined in the Loan Agreement) of this Loan. Said Annual Operating Expenses shall include reasonable property management and administrative fee, as approved by the County, utility charges, operating and maintenance expenses as authorized in the NOFA under which the funds subject to this Note were made, Project property taxes, Project insurance premiums and County annual loan monitoring fees, as set forth in the Loan Agreement. Director reserves the right to at any time review and approve each or any annual budget during the Term hereof and any changes to any said annual budget requested by Director shall be promptly implemented by Borrower.

(4) **Annual Operating Expenses –Exclusions**. Notwithstanding the foregoing, in no event shall Annual Operating Expenses include any costs, fees, fines, charges,

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penalties, awards, judgments or expenses (including, but not limited to legal and accounting fees and expenses) which are due to or arising out of the Borrower's (A) breach or default of this Loan, any Loan Document or any Mortgage Loan Document (B) fraudulent acts or willful misconduct or (C) breach or default under any other contract, lease or agreement pertaining to the Project. Annual Operating Expenses shall also not include other expenses not related to the Project's operations such as depreciation, amortization, accrued principal and interest expense on deferred payment debt, intra-partnership or other internal loans of the operating entity and capital improvement expenditures if paid from a replacement reserve account. For purposes of this paragraph, customary investor capital contributions, and approved repayment of documented operating deficit advances permitted under the Borrower's partnership agreement, shall not be deemed "internal loans."

3. Payments.

(a) All amounts due and payable under the Note are payable at the address provided to the Borrower by the County, or at such other place or places as the County may designate to the Borrower in writing from time to time. Any payment under this Note shall be paid in advance, on the first day of the month in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts and which on the respective dates on which such payments are due shall be in immediately available funds.

(b) All payments and prepayments received by County pursuant to the terms hereof shall be applied in the following manner: first, to the payment of all expenses, charges, costs and fees incurred by or payable to County by Borrower pursuant to the terms of the Loan Documents (in such order and manner as County, in its sole discretion, may elect, however all Residual Receipts, prepayments and any other loan payments will be applied [**proportionally to [both]** the HOME Loan, the MHSA Loan, and the HSA Loan], as such terms are defined in the Loan Agreement, based upon the original loan amount.); second to the payment of all interest accrued to the date of such payment; and third, to the payment of the outstanding principal until paid in full. Notwithstanding anything to the contrary contained herein, after the occurrence and during the continuation of an Event of Default (as such term is defined in the Loan Agreement), all amounts received by County from any party shall be applied in such order as County, in its sole discretion, may elect.

4. Prepayments. Borrower may prepay all or part of the principal balance and accrued interest due under this Note without penalty.

a. Cost Savings Obligation. Subject to the requirements of TCAC and other lenders providing loans to the Project that have been approved by County, Borrower hereby agrees to provide and pay to County a "Cost Savings" payment for the Project in an amount to be determined based on the "Audit" (as those terms are described in subparagraph (a) below) to be conducted upon completion of Construction of the Project.

i. Audit to Determine Cost Savings Amount. The actual amount of Cost Savings to be paid to County shall be determined after the Audit, as hereafter described, and the amount of such Cost Savings shall be equal to the amount by which the total sources of permanent financing for the Project exceed the costs of development incurred for the Project (which costs include, but are not limited to, the hard and soft costs incurred by Borrower to perform

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predevelopment activities and construct the Project (including all permitted deferred Borrower fee). The amount of Cost Savings to reduce the principal balance of the County Loan shall be proportional to the amount of contribution by the public agency soft lenders. Within 120 days after construction completion, Borrower shall submit a final audit of the costs of development of the Project in accordance with the requirements of the Tax Credits and generally accepted accounting principles ("GAAP") and generally accepted auditing standards (herein referred to as "Audit"). If the Audit determines that the total sources of permanent financing for the Project (which financing includes, but is not limited to, the soft lender public agency loans), the equity raised by the sale of the Tax Credits, and any other funding obtained for the Project (if applicable)) exceed Borrower's total costs to develop the Project, such excess shall be considered the "**Cost Savings**" for the Project

ii. Cost Savings Payment as Payment of Principal on Loan. Subject to the requirements of TCAC and other lenders providing loans to the Project that have been approved by County, the Cost Savings for the Project, once determined by the Audit pursuant to Section 4(a) above and subject to Section 4(c) below, shall be due and paid by Borrower to County and allocated and credited as a principal payment on the County Loan, as and when paid. Any Cost Savings above and beyond the amount needed to fully repay the County Loan may be used by Borrower in its discretion.

iii. Timing of Payment of Cost Savings. The Cost Savings for the Project shall become due and payable by Borrower to County on the Conversion Date.

5. Security. This Note is secured by, among other things, a Deed of Trust covering real and personal property including, but not limited to, the Property and the Project (as such terms are defined in the Loan Agreement).

6. Waivers.

(a) Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time at the County's sole discretion and that the County may accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Borrower.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the County with any person now or hereafter liable for payment of this Note shall operate to release, discharge, modify, change, or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights:

(1) to offset, deduct, or withhold any payments or charges due under this Note for any reasons whatsoever;

(2) of presentment for payment, demand, protest and notices of dishonor and protest; and

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(3) of diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights and interests in and to properties securing payment of this Note.

7. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

8. Joint and Several Obligations. This Note is the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

9. Acceleration. If any of the payments required by the terms hereof shall not be paid when the same becomes due, or if the payment due on the maturity date of this Note is not paid when due, whether by acceleration or otherwise, or if an Event of Default (as defined in the Loan Agreement) occurs under the Loan Agreement or other default under any other Loan Document occurs, then, or at any time thereafter, the whole of the unpaid principal and interest owing on this Note shall, at the option of County and without notice, become immediately due and payable. This option may be exercised at any time after any such event and the acceptance of one or more installments or other payments from any person thereafter shall not constitute a waiver of County's option. County's failure to exercise said option in connection with any particular event or series of events shall not be construed as a waiver of the provisions hereof as regards that event or any subsequent event. The Loan Agreement and other Loan Documents may also contain provisions which provide for the automatic acceleration of amounts owing under this Note upon the occurrence of certain specified events. County shall have, and be entitled to exercise, upon the occurrence of any Event of Default or other event described above, all rights and remedies available to County under the Loan Agreement, this Note, the other Loan Documents or at law or in equity. All such rights and remedies shall be cumulative.

10. Prohibition Against Transfer of Interest. The Borrower shall not make any sale, assignment or conveyance, or transfer in any other form, nor any further pledge, encumbrance, or mortgaging of the Property and/or the Project or any part thereof or of any of its interest therein, other than in accordance with the terms of this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust and the other Loan Documents.

11. Default Interest; Default Under Other Loan Documents. All covenants, conditions, and agreements contained in this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust and the other Loan Documents are hereby made a part of this Note, and the Borrower agrees that the unpaid balance of the then principal amount of this Note, together with all accrued interest thereon and charges owing, shall, at the option of the County hereof, become immediately due and payable, and thereafter until paid bear interest at the rate of twelve percent (12%) per annum (which rate shall in no event exceed the highest interest rate then permitted at law and if it does, it will be reduced to said lower amount) (the "**Default Rate**"), compounded annually upon the failure of the Borrower to make any payment hereunder as and when due (after expiration of any cure period); upon the failure of the Borrower to perform or observe any other term or provision of this Note; or upon the occurrence of any event

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(whether termed default, event of default, or similar term) which (after the expiration of any cure period) under the terms of this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust or other Loan Document shall entitle the County to exercise rights or remedies thereunder.

12. Definitions. Capitalized terms not defined in this Note shall have the same meanings as defined in the Loan Agreement, the terms of which are incorporated into this Note by this reference.

13. Governing Law. This Note shall be construed in accordance with and be governed by the laws of the State of California.

14. Severability. If any provision of this Note shall be judicially determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

15. Captions. The captions and headings in this Note are merely for convenience and substantively are not part of this Note.

16. JURY TRIAL WAIVER; VENUE. UNLESS PROHIBITED BY FEDERAL, STATE OR LOCAL LAWS, IN ANY JUDICIAL ACTION OR PROCEEDING ARISING FROM OR RELATING TO THE LOAN OR THE LOAN DOCUMENTS, INCLUDING ANY ACTION OR PROCEEDING INVOLVING A CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, BORROWER HEREBY WAIVES ANY RIGHT IT OR THEY MAY HAVE TO REQUEST OR DEMAND A TRIAL BY JURY. VENUE FOR ANY ACTION RELATED TO THE LOAN OR LOAN DOCUMENTS SHALL BE IN AN APPROPRIATE COURT IN ORANGE COUNTY, CALIFORNIA SELECTED BY COUNTY TO WHICH BORROWER HEREBY CONSENTS.

17. Joint and Several Liability. If Borrower consists of more than one person or entity, each shall be jointly and severally liable for the performance of Borrower's obligations under this Note.

18. Notices. All notices to be given pursuant to this Note shall be given as provided in the Loan Agreement.

19. Calculation of Interest. Interest hereunder shall be calculated on the basis of a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days each, except that interest due and payable for a period less than a full month shall be calculated by dividing (a) the product of (i) the actual number of days elapsed in such period, (ii) the outstanding principal balance hereunder during that period and (iii) the Note interest rate in effect hereunder during that period by (b) 360.

20. Number and Gender. In this Note the singular shall include the plural and the masculine gender shall include the feminine and neuter genders, and vice versa, if the context so requires.

21. Time. Time is of the essence in this Note.

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22. No Waiver by the County. No waiver of any breach, default, or failure of condition under the terms of this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust or any other Loan Document or the obligations secured thereby shall be implied from any failure of the County to take, or any delay by the County in taking, action with respect to such breach, default or failure, or any form of previous waiver of any similar or unrelated breach, default or failure; and waiver of any term of this Note, the Loan Agreement, the Regulatory Agreement, the Deed of Trust or any other Loan Document or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

23. Amendments and Modifications. This Note may not be changed orally, but only by an amendment in writing signed by Borrower and the County.

24. Non-Recourse. The County will neither seek nor obtain judgment against the Borrower for payment of principal or interest under the Note or for other obligations under the Loan Documents following a judicial foreclosure (or to the extent permitted by law, a nonjudicial foreclosure of the Deed of Trust), and the County's sole recourse against the Borrower for any default in the payment of principal or interest is limited to the Property and the Project and any other collateral of the Loan; provided, however, nothing in this Paragraph 24 will be deemed to limit or prejudice the rights of County to:

(a) foreclose the Deed of Trust or enforce any of its other rights or remedies under the Loan Documents; or

(b) name the Borrower or the general partners of Borrower as a party defendant in any action, proceeding or arbitration, subject to the limitations of this Section; or

(c) assert any unpaid amounts on the Loan as a defense or offset to or against any claim or cause of action arising out of or pertaining to the Project made or alleged against the County by the Borrower or any of its general partners; or

(d) exercise self-help remedies such as set off or nonjudicial foreclosure against or sale of any real or personal property collateral or security; or

(e) proceed against any entity or person, including Borrower and the general partners of Borrower with respect to the enforcement of any leases, bonds, policies of insurance, or other agreements (other than the Loan Documents); or

(f) recover damages against Borrower or the general partners of Borrower for fraud, breach of warranty, failure to maintain insurance, waste, or material misrepresentation; or

(g) recover any condemnation proceeds or insurance proceeds or other similar funds or payments attributable to the Property and/or the Project that under the terms of the Loan Documents should have been paid to Lender; or

(h) recover any tenant security deposits, prepaid rents, or other similar sums paid to or held by Borrower or any other entity or person in connection with the Property and the

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Project; or

(i) recover the value of any personalty or fixtures removed by Borrower from the Project after the occurrence of an Event of Default

(j) recover the rents and profits of the Property and the Project accruing from and after the occurrence of an Event of Default that have not been applied to pay any portion of the Loan, operating, and maintenance expenses of the Property and/or the Project, insurance, premiums, impositions, deposits into a reserve for replacement, or other sums required by the Loan Documents; or

(k) recover any amounts owing to the County under indemnity provisions (including indemnity provisions pertaining to Hazardous Materials as such term is defined in the Loan Agreement) in the Loan Documents; or

(l) recover funds to reimburse County for sums expended by County for the protection or preservation of the Property, the Project or County's interest therein (including, without limitation, payment of any real property taxes, assessments or other charges which would create liens on any portion of the Property or Project.

The limitation of liability set forth in this Section 24 shall be deemed void and have no force or effect if Borrower or any general partner of Borrower attempts to materially delay any foreclosure of or on the Deed of Trust or any other collateral for the Loan, or if the Borrower or any of its general partners claim that this Agreement or any related documents are invalid or unenforceable to an extent that would preclude foreclosure. Notwithstanding anything to the contrary set forth in the immediately preceding sentence, in the event Borrower contests any foreclosure proceeding in good faith and Borrower prevails in such action, or in the event Borrower and the County agree to a settlement of any such action which gave rise to the foreclosure proceeding, the Loan shall remain nonrecourse. Any liability of Borrower or any of the general partners of Borrower for any obligations arising in connection with the matters set forth in clauses (a) through (l) inclusive will be personal liability and may be asserted against and recovered from its or their interest in the Property and/or Project as well as against any of its and their other assets. Nothing contained in this Section impairs the validity of this Note or any related documents or any lien or security interest created or perfected by it.

IN WITNESS WHEREOF, Borrower has executed this Promissory Note as of the day and year first above written.

Signature Page follows

TEMPLATE

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BORROWER:

TEMPLATE

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APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By Signed by: Jacqueline Guzman 8452584753D3488..., Deputy

Dated 2/2/2026

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RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

_____

_____

REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS

By and Between

COUNTY OF ORANGE, a political subdivision of the State of California,

and

[BORROWER]

TEMPLATE

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REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "**Regulatory Agreement**" or "**Agreement**") is made and entered into as of _____2026, by and between the COUNTY OF ORANGE, a political subdivision of the State of California (the "**County**") and [**XXXXX]** (the "**Borrower**").

RECITALS

A. For purposes of this Agreement, Borrower intends to construct a housing project on that certain real property located in [XXX], County of Orange, State of California, and more particularly described in **Exhibit "A**" attached hereto and incorporated herein (the "**Property**").

B. Borrower intends to develop and operate on the Property a [XXXX] unit affordable housing apartment community, comprised [XXXXXXXX] restricted to provide permanent supportive housing to eligible tenants (collectively, the "**Project**").

C. The Orange County Board of Supervisors approved providing financial assistance to the Project, from County [XXX] funds, on [XXXX].

D. The County desires to provide a loan to Borrower subject to the Borrower's agreement, amongst other things, to encumber the Property with certain rental restrictions, all as more particularly set forth in this Agreement and the Loan Agreement.

E. Borrower is financing the acquisition of the Property and the construction of the improvements and related costs and expenses through, among others, sources listed in that certain Loan Agreement between the County and the Borrower.

F. Relevant to this Agreement, the County has agreed to loan Borrower the sum of $[XXXX] from xxx Funds, the repayment of which is to be secured by the Project and will be evidenced by, among other documents, a promissory note secured by a deed of trust.

G. The Borrower has agreed to develop **[XXX] (X) units** for Qualified Tenants with the funds which will house eligible individuals who are part of the Target Population (as hereinafter defined).

H. The County and the Borrower now desire to enter into this Agreement to set forth their agreement regarding the affordable housing restrictions for the Project and to cause said affordable housing restrictions to run with the land.

NOW, THEREFORE, the County and the Borrower hereby agree as follows:

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DEFINITIONS

1. **Definitions**. Unless otherwise defined herein or in the Loan Agreement (as such term is defined below), capitalized terms used in this Regulatory Agreement shall have the respective meanings assigned to them in this Section 1:

1.1. **"Act"** means Chapter 8 (commencing with Section 33750) of Part 1 of Division 24 of the Health and Safety Code of the State of California, as amended.

1.2. **"Adjusted Income"** shall mean the adjusted income of all persons who intend to reside in one residential unit, calculated in the manner which complies with determinations of income for low income families under the Department of Housing and Urban Development's Section 8 Program of the United States Housing Act of 1937, as amended.

1.3. **"Area"** means Orange County.

1.4. **"Borrower"** means **[XXXXX]**.

1.5. **"Code"** means the United States Internal Revenue Code of 1986, as amended hereafter, or any successor statute thereto.

1.6. **"County"** means the County of Orange, a political subdivision of the state of California.

1.7. "**Director**" means the OC Community Resources Director or her or his designee.

1.8. **"Housing Act"** means the United States Housing Act of 1937, as amended, or its successor.

1.9. **"Loan"** means the loan made by the County to the Borrower pursuant to the Loan Agreement for the purpose of financing the acquisition, construction and development of the Project.

1.10. **"Loan Agreement"** means that certain Loan Agreement between the County and the Borrower of even date herewith as it may be amended from time to time, the terms of which are hereby incorporated herein by this reference.

1.11. **"Median Income for the Area"** shall mean the median income for the Area as most recently determined by the United States Department of Housing and Urban Development ("HUD") and published by the State of California. In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, the County shall provide the Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD and the State.

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1.12. **"Parties"** shall mean the County and the Borrower.

1.13. **"Project"** means collectively the Property and the structures and related buildings and other improvements located on the Property from time to time together with all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements.

1.14. **"Property"** means the real property legally described in **Exhibit "A",** which is attached hereto and by this reference incorporated herein, and all rights and appurtenances thereunto appertaining.

1.15. **"Qualified Project Period"** shall mean the period beginning upon fulfillment of the conditions precedent set forth in Article I/V of the Loan Agreement and ending on the date which is fifty-five (55) years after the beginning of the Qualified Project Period.

1.16. **"Qualified Tenant" or "Qualified Tenants"** shall collectively mean the individuals who are part of the Target Population, as defined below, occupying the Restricted Units with the Adjusted Incomes more particularly described in Exhibit "**B**" attached hereto and incorporated herein. The income of individuals shall be determined in a manner consistent with determinations of lower income households under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, in a manner consistent with such determinations under such program as is in effect immediately before such termination). In no event, however, will the occupant of a Restricted Unit be considered to be a Qualified Tenant if the occupant is a student, and is not entitled to file a federal income tax return.

1.17. **"Regulations"** means the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time.

1.18. **"Regulatory Agreement" or "Agreement"** means this Regulatory Agreement and Declaration of Restrictive Covenants.

1.19. **"Restricted Unit" or "Restricted Units"** means the dwelling units in the Project identified on Exhibit "B" attached hereto and incorporated herein required to be rented to, or held available for occupancy by Qualified Tenants who are part of the Target Population pursuant to the terms, covenants and conditions of this Agreement, including, but not limited to, the rental restrictions and other matters set forth in said Exhibit "**B**" and the other Loan Documents.

1.20. **"Target Population"** means individuals and families [who qualify to inhabit a senior citizen housing development pursuant to California Civil Code section 51.3 and occupy the Restricted Units] [who are experiencing homelessness, as defined in California Health & Safety Code section 50675.1.3, subdivision (l),] [and who are part of the population to be served under the Mental Health Services Act

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which include extremely low income (30% of Area Median Income for Orange County), homeless individuals who has a serious mental disorder as defined in WIC 5600.3, verified by a State Licensed Mental Healthcare Professional and has been deemed to meet the MHSA Housing Program eligibility (MHSA Certified) by Health Care Agency MHSA Housing Program staff and as further described in the Loan Agreement]. [who are homeless or who are at risk of homelessness, as defined in Part 578.3 of Title 24 of the Code of Federal Regulations, and who are inherently impacted by or at increased risk for medical diseases or conditions due to the COVID-19 pandemic or other communicable diseases.]

1.21. **"Term"** is defined under Section 8 of this Agreement.

COUNTY FUNDED UNIT REQUIREMENTS

2. **County Requirements as to Restricted Units**. The Borrower hereby represents, warrants and covenants as follows:

(a) Use of Restricted Units. Borrower shall restrict the use, occupancy and rental of the Restricted Units of the Project to Qualified Tenants during the entire Qualified Project Period at the occupancy and rental rates provided for in **Exhibit "B"** attached hereto and incorporated herein. Borrower shall not rent nor permit the rental of any Restricted Unit in the Project except as provided in said Exhibit "B".

(b) Notifying Qualified Tenants. Borrower shall adopt written tenant selection policies and criteria that meet all of the following requirements:

i. Are consistent with the purpose of providing housing for Qualified Tenants and families.

ii. Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease.

iii. Provide for:

A. The selection of Qualified Tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

B. The prompt written notification to any rejected applicant of the grounds for any rejection.

iv. Carry out the affirmative marketing procedures of the County, to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market Area to the program. Borrower and the County shall cooperate to effectuate this provision prior to the initial renting, upon occurrence of a vacancy, or upon the re-renting of any Restricted Unit.

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v. The Borrower agrees to provide to Qualified Tenants notice of all rent increases pursuant to applicable California law.

(c) Qualified Tenant Protections. The Restricted Units shall be rented to eligible and Qualified Tenants in accordance with the following terms.

i. Lease. The Lease between Borrower and a Qualified Tenant must be for not less than one (1) year, unless otherwise agreed to in writing by both the Qualified Tenant and the Borrower.

ii. Prohibited Lease Terms. The Lease between the Borrower and any Qualified Tenant may not contain any of the following provisions:

A. Agreement to be sued. Agreement by the Qualified Tenant to be sued, to admit guilt or to a judgment in favor of the Borrower in a lawsuit brought in connection with the lease.

B. Treatment of property. Agreement by the Qualified Tenant that the Borrower may take, hold, or sell personal property of household members without notice to the Qualified Tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the Qualified Tenant concerning disposition of personal property remaining in the Restricted Unit after the Qualified Tenant has moved out of the Restricted Unit. The Borrower may dispose of this personal property in accordance with applicable state law.

C. Excusing owner from responsibility. Agreement by the Qualified Tenant not to hold the Borrower or its agents legally responsible for any action or failure to act, whether intentional or negligent.

D. Waiver of notice. Agreement of the Qualified Tenant that the Borrower may evict the Qualified Tenant or household members without notice to the Qualified Tenant.

E. Waiver of legal proceedings. Agreement by the Qualified Tenant that the Borrower may evict the Qualified Tenant or household members without instituting a civil court proceeding in which the Qualified Tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

F. Waiver of a jury trial. Agreement by the Qualified Tenant to waive any right to a trial by jury.

G. Waiver of right to appeal court decision. Agreement by the Qualified Tenant to waive the Qualified Tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

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H. Qualified Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the Qualified Tenant to pay attorney's fees or other legal costs even if the Qualified Tenant wins in a court proceeding by the Borrower against the Qualified Tenant. The Qualified Tenant, however, may be obligated to pay costs if the Qualified Tenant loses.

(d) Termination of Tenancy. Borrower may not terminate the tenancy or refuse to renew the lease of a Qualified Tenant except for serious or repeated violation of the terms and conditions of the Lease; for violation of applicable federal, state, or local law; for completion of the transitional housing tenancy period (if the housing is transitional); or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by the Borrower's service upon the Qualified Tenant of a written notice specifying the grounds for the action.

(e) Nondiscrimination Covenant**.** By acceptance hereof, the Borrower agrees, for itself, its successors and assigns, to refrain from restricting the rental, or lease of the Project on the basis of race, color, creed, religion, ancestry, sex, marital status, national origin or age of any person unless permitted under applicable law. All leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, and this lease or sublease is made and accepted upon and subject to the following conditions: That there be no discrimination against or segregation of, any person or group of persons, on account of race, color, creed, religion, handicap, national origin, sex, sexual orientation, marital status, age or ancestry in the leasing, subleasing, transferring, use or enjoyment of the land herein leased or subleased, nor shall the lessee himself or herself, or any persons claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subleases, or subtenants in the land herein leased."

(f) Non-Qualifying Adjusted Income. Subject to the applicable requirements and provisions of, and changes to, Section 42 of the Code, if, upon recertification of the income of a Qualified Tenant of a Restricted Unit, the Borrower determines that a Qualified Tenant has an Adjusted Income exceeding 30% of Median Income for the Area, adjusted for household size in accordance with the Act, as defined in Section 1.2 above, such Qualified Tenant may be permitted to continue to occupy the Restricted Unit at the rental rate as provided for in Exhibit B, until the Qualified Tenant chooses to vacate the Restricted Unit. After the Restricted Unit is vacated, the Restricted Unit shall be re-rented to a Qualified Tenant pursuant to the terms, covenants and conditions of this Agreement.

(g) Loss of Project Based Voucher Subsidy.

1. It is anticipated that during the Qualified Project Period the Project will maintain Project Based Voucher ("**PBV**") Restricted Units, supported by Project-

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Based Section 8 rental subsidy payments set forth in Exhibit "B" (the "**Rental Subsidy**"). If, during the Qualified Project Period, any change in federal law or regulations occurs, or any action (or inaction) by Congress or any federal or State agency occurs, which results in a reduction, termination or nonrenewal of the Rental Subsidy through no fault of Borrower, such that the Rental Subsidy shown on the Financing Plan (as defined in the Loan Agreement) is no longer available (or available in a lesser amount), Borrower may request approval of the County to increase the rent on one or more of the PBV Restricted Units, to an adjusted income that does not exceed sixty percent (60%) of Area Median Income, adjusted for actual household size, to occupy the Restricted Units, and (b) increase the rent on one or more of the Restricted Units, to rents that are affordable to households with an adjusted income that does not exceed sixty percent (60%) of Area Median Income , adjusted for actual household size.

2. The rent increase is subject to the following requirements: (1) concurrently with the request, Borrower shall provide the County with evidence of the anticipated reduction, termination, or nonrenewal of the Rental Subsidy, (2) a Management Plan (as defined in Section 1.27/20 of the Loan Agreement) for the Project for the County's approval pursuant to Sections 4/5.1 and 7/8.8 of the Loan Agreement, showing the impact of the loss or reduction of the Rental Subsidy, (3) a proposed operating budget reflecting the rent increases (the "**Operating Budget**"), and (4) a description of efforts to obtain alternate sources of rent. The number of Restricted Units subject to the rent increase and the amount of the proposed increase may not be greater than (i) the number or amount required to ensure that the Project generates sufficient income to cover its operating costs, required deposits to replacement reserves, and debt service payments on approved financing as shown on the Operating Budget, and (ii) such amount as is necessary for the Project to maintain a Debt Service Coverage Ratio of at least 1.15 to 1.00. As used herein, **"Debt Service Coverage Ratio"** means, for any period, the ratio of (x) net operating income for such period to (y) all principal and interest payments due and payable during such period, regardless of whether the Project is generating sufficient cash flow. In addition, upon a reduction, termination or nonrenewal of the Rental Subsidy as described above, Borrower hereby agrees to the following:

i. Borrower shall use good faith commercially reasonable efforts to obtain alternative sources of rental subsidies and shall provide the County with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents to be reduced. Upon receipt of any alternative rental subsidies, Borrower shall reduce the rents back to the original restrictions found in Exhibit "B" to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs, required replacement reserves and debt service of the Project as shown on the Operating Budget and to maintain a Debt Service Coverage Ratio of 1.15 to 1.0; and

ii. Borrower shall provide Qualified Tenants in the Restricted Units with notice of any rent increase pursuant to Section 2(g)(4), below, and shall notify the Qualified Tenant that if they have received a tenant-based voucher from the Orange

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County Housing Authority they may use the tenant-based voucher for their Restricted Unit.

3. All rent increases as provided in this Section 2(g), are subject to County approval pursuant to the terms of this Section 2(g). No later than sixty (60) days prior to the proposed implementation of any rent increase, Borrower shall submit to the County a schedule of any proposed increase in the rent. The County will disapprove a rent increase allowed under Section 2(g)(1) if it does not comply with the restrictions set forth in Section 2(g)(2). Notwithstanding the foregoing, rent increases for the Restricted Units shall be subject to review and approval of the County, whose approval will not to be unreasonably withheld or delayed, as described above.

4. Borrower shall give Qualified Tenants of all Restricted Units written notice at least sixty (60) days prior to any rent increase.

3. **Qualified Tenants; Records, Reports and Monitoring**. During the Qualified Project Period, the Borrower shall submit to the County (i) not later than July 15, of each year, a report showing the necessary information to allow the County to determine the Owner's compliance with this Regulatory Agreement, and (ii) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the County in order to comply with reporting requirements of HUD, or the State of California. Borrower agrees to fully comply with County's requirements for monitoring the affordability of the Project.

(a) Monitoring Fee. To ensure that the management of the Project remains in compliance with the terms of this Agreement, and unless prohibited by Federal, State or local laws, the Partnership shall pay an annual monitoring fee ("**Annual Fee**") of eight thousand five hundred fifty ($760), which will be used to offset the reasonable costs associated with monitoring the entirety of the 8 Restricted Units within the Project to ensure compliance of this Agreement during its Term. The Annual Fee shall be incorporated into the operating pro forma required below. The Annual Fee will be due each subsequent year for the Qualified Project Period on or within thirty (30) days of the day and month that this Agreement was entered into as set forth on page one hereof. The Annual Fee will be adjusted annually. The annual adjustment shall be in accordance with the change in the Consumer Price Index for Los Angeles –Anaheim - Riverside (All Urban Consumers – All Items) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. This adjustment shall be calculated by means of the following formula:

$$A = B \times \frac{C}{D}$$

Where: A = Adjusted Annual Fee

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B = Annual Fee (as such Annual Fee may have been previously adjusted)

C = Average monthly index for the most recent twelve-month period

D = Average monthly index for the twelve-month period preceding the date of this Loan Agreement.

In the event that the Consumer Price Index (CPI) ceases to use 1982-84 = 100 as the basis of calculation, or if, in County's sole judgment, a substantial change is made in the method used by the federal government to determine the CPI or the items used to calculate the CPI, then the CPI shall be converted to the figure that would have been calculated at (or as close to such figures as shall be practical) had the manner of calculating the CPI in effect at the date of this Agreement not been altered.

In the event that the CPI is not issued or published for the period for which such minimum Annual Fee is to be adjusted and computed hereunder, or in the even that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government selected by County, shall be used and if none is so published, then another index general recognized as authoritative shall be substituted by County.

In the event that the Borrower is required to pay a monitoring fee pursuant to this section any amounts paid towards the monitoring fee County Loan to the Borrower shall be credited to the amount due under this section, such that the maximum monitoring fee shall not exceed $760, as adjusted in accordance with this section.

4. **Management**. Borrower shall manage the Restricted Units in accordance with a management plan prepared by Borrower and approved by the Director, describing Borrower's standards for operating, managing and maintaining the Restricted Units, including, but not limited to, the components listed below (the "Management Plan"). The Management Plan shall provide for occupancy standards that are appropriate for the Restricted Units. Borrower shall manage the Restricted Units in accordance with the approved Management Plan, including such amendments as may be approved in writing from time to time by the Director, for the Qualified Project Period. The components of the Management Plan shall include:

(b) Management Agent. During the Qualified Project Period, Borrower shall be the management agent or Borrower shall submit the name and qualifications of the proposed management agent. If the management agent is not Borrower, the County shall approve or disapprove the proposed management agent in writing based on the experience and qualifications of the management agent.

(c) Management Agreement. At the outset of the Qualified Project Period, Borrower shall submit a copy of the proposed management agreement specifying the

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amount of the management fee, and the relationship and division of responsibilities between Borrower and management agent.

(d) Marketing Plan. The marketing plan will apply to all of the units in the Project, including the Restricted Units, except the Manager's Unit. The Borrower shall submit a marketing plan for review and approval by the Director. The Marketing Plan must contain procedures that include marketing of the units to all residents, regardless of gender, throughout Orange County including residents of unincorporated areas and other incorporated cities. For certain developments, including but not limited to those receiving Project Based Section 8 from the cities of Anaheim, Garden Grove or Santa Ana, or those subject to special zoning ordinances requiring preference for City residents, further documentation from the Borrower will be required demonstrating that residents throughout the County will have equal opportunity at obtaining units in the Project. Restricted Units assisted in this project are required to utilize the Coordinated Entry System (CES) for referrals. Such procedures shall be applicable for initial rent-up and ongoing marketing of all the units in the Project throughout the Qualified Project Period. Borrower shall advertise vacancies of the Restricted Units in general distribution newspapers that circulate throughout the County. Where the Borrower utilizes other forms of advertising, such advertising shall also be distributed throughout the County.

(d) Annual Budget and Projected Cash Flows. Concurrently with the beginning of the Qualified Project Period, and annually thereafter not later than seventy-five (75) days after the close of each calendar year (December 31) thereafter, Borrower shall submit, in a form that is acceptable to the County, a projected operating budget and cash flow for the Project to the County.

(e) County Right to Replace Management Agent. If at any time the County determines that the Project is not being managed or maintained in accordance with the approved Management Plan, Borrower shall change the management agent or the practices complained of, upon receipt of written notice from the County. The County may require Borrower to change management practices or to terminate the management contract and designate and retain a different management agent, to be approved by the County. The management agreement shall provide that it is subject to termination by Borrower without penalty, upon thirty (30) days prior written notice, at the direction of the County. Within ten (10) days following a direction of the County to replace the management agent, Borrower shall select another management agent or make other arrangements satisfactory to the County for continuing management of the Project.

5. **Maintenance; Compliance with Law**. During the Qualified Project Period, Borrower agrees to maintain all interior and exterior improvements, including landscaping, on the Project in good condition, repair and sanitary condition (and, as to landscaping, in a healthy condition) and in accordance with any Management Plan approved by the County under this Agreement (including without limitation any landscaping and signage), as the same may be amended from time to time, and all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction

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and all their respective departments, bureaus, and officials. Borrower acknowledges the great emphasis the County places on quality maintenance to protect its investment and to provide quality low-income housing for its constituents and to ensure that all County subsidized affordable housing projects within the County are not allowed to deteriorate due to deficient maintenance. In addition, Borrower shall keep the Project free from all graffiti and any accumulation of debris or waste material. Borrower shall promptly make all repairs and replacements necessary to keep the Project in good condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials.

In the event that Borrower breaches any of the covenants contained in this Section 5 and such default continues for a period of five (5) days after written notice from the County (with respect to graffiti, debris, waste material, and general maintenance) or thirty (30) days after written notice from the County (with respect to landscaping and building improvements), then the County, in addition to whatever other right or remedy it may have under the Loan Agreement, the other Loan Documents, this Regulatory Agreement or at law or in equity, shall have the right to enter upon the Project and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the County shall be permitted (but is not required) to enter upon the Project and perform all acts and work necessary to protect, maintain and preserve the improvements and landscaped areas on the Project. Borrower shall promptly pay to the County, as applicable, the amount of the expenditure arising from such acts and work of protection, maintenance, and preservation by the County and/or costs of such cure, including a fifteen percent (15%) administrative charge.

6. **Consideration**. The County has made the Loan for the purpose, among others, of inducing the Borrower to provide affordable housing in the County of Orange. In consideration of the Loan to the Borrower, the Borrower has entered into this Agreement and has agreed to restrict the Restricted Units of the Project on the terms and conditions set forth herein.

7. **Sale or Transfer of the Project.** Except for Permitted Transfers, as defined in the Loan Agreement, the Borrower hereby covenants and agrees not to voluntarily sell, transfer or otherwise dispose of the Property or the Project, or any portion thereof (other than for individual tenant use as contemplated hereunder), without obtaining the prior written consent of the County. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Property or the Project in violation of this Section 7 shall be null, void and without effect, shall cause a reversion of title to the Borrower and shall be ineffective to relieve the Borrower of its obligations under this Agreement. Any transfer of the Property or the Project to any entity, whether or not affiliated with the Borrower, shall be subject to the provisions of this Section 7.

8. **Term.** This Agreement and all and each of the provisions hereof shall become effective upon its execution and delivery, shall remain in full force and effect for the period provided herein and in the Loan Agreement, and, shall terminate in its entirety at

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the expiration of the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the discharge of the Loan and termination of the Loan Agreement. In the event that the Conversion Date, as defined in the Loan Agreement, does not occur and the Qualified Project Period does not commence, as set forth in the Loan Agreement, the restrictions of this Agreement shall have no effect and the County shall provide the Borrower with a release of this Agreement.

9. **Covenants to Run with the Land**.

(a) All conditions, covenants, and restrictions contained in this Agreement shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by County, its successors and assigns, against Borrower, its successors and assigns, to or of the Project or any portion thereof or any interest therein, and any party in possession or occupancy of said Project or portion thereof.

(b) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that County shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of County and such covenants shall run in favor of County for the entire period during which such covenants shall be in force and effect, without regard to whether County is or remains an owner of any land or interest therein to which such covenants relate. County shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any action at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

(c) The County and its successors and assigns, and Borrower and the permitted successors and assigns of Borrower in and to all or any part of the fee title to the Project, shall jointly have the right upon written agreement signed by both parties to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements, or restrictions contained in this Agreement without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having any interest less than a fee in the Project. The covenants contained in this Agreement, without regard to technical classification shall not benefit or be enforceable by any owner of any other real property within or outside the Project, or any person or entity having any interest in any other such realty.

(d) No breach of any of the provisions of this Agreement shall impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Property or the Project or any portion thereof.

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10. **Burden and Benefit**. The County and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Property and the Project in that the Borrower's legal interest in the Project is rendered less valuable thereby. The County and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touching and concerning the land is the enhancement and increased enjoyment and use of the Project by Qualified Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by the furthering of public purposes for which the Loan was made.

11. **Uniformity; Common Plan**. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Project.

DEFAULT AND REMEDIES

12. **Default**. Each of the following shall constitute an "Event of Default" by Borrower under this Agreement:

(a) Failure to Make Payments. Borrower fails to make any payment of due the County under this Agreement within ten (10) days after receiving written notice for said payment from the County;

(b) Non-Monetary Failure to Perform. Borrower fails to timely perform, comply with or observe any of the terms, covenants, or conditions of this Agreement (other than those provisions elsewhere referred to in this Section 12) and such failure continues uncured or without Borrower commencing to diligently cure for thirty (30) days after notice thereof in writing is given by the County to Borrower;

(c) Mortgage Loan Document Breach. Any default or breach of Borrower which continues uncured after the expiration of any applicable cure period under the Loan Agreement (including, but not limited to, the obligations of the Borrower under Article VIII of the Loan Agreement), any Loan Document or any other loan document including, but not limited to, the Mortgage Loan Documents, as defined and set forth in the Loan Agreement;

(d) Voluntary Suspension. The voluntary suspension of Borrower's business or the dissolution or termination of the partnership (if any) constituting Borrower;

(e) Unauthorized Transfer. Borrower’s sale or other transfer of the Project in violation of this Agreement;

(f) Fraud or Material Misstatement or Omissions. Any fraudulent act or omission of Borrower' pertaining to or made in connection with the Loan, Loan Documents or the Project;

(g) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Borrower to be bankrupt or insolvent, (ii) approving as

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properly filed a petition seeking reorganization of Borrower or seeking any arrangement for Borrower under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Borrower in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Borrower, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of sixty (60) days unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period will apply under this subsection 12(g) as well; or Borrower shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the County, the indebtedness evidenced by the Note; or

(h) Project Monies. Borrower's misapplication or embezzlement of Project monies.

13. **Remedies**. The occurrence of any Event of Default shall, either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the Loan and shall give the County the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents or otherwise available at law or in equity or by statute (and all of the County's rights and remedies shall be cumulative), including but not limited to the following:

(a) Acceleration of Note. The County shall have the right to cause all indebtedness of the Borrower to the County under the Note, together with any accrued interest thereon, to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest, or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Borrower shall be liable to pay the County on demand all expenses, costs and fees (including, without limitation, attorneys' fees and expenses) paid or incurred by the County in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The County shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under this Agreement and/or the Loan Documents or to enjoin acts on things, which may be unlawful, or in violation of the provisions of this Agreement and/or the Loan Documents.

(c) Right to Cure at Borrower's Expense. The County shall have the right to cure any monetary default by Borrower under this Agreement. The Borrower agrees to reimburse the County for any funds advanced by the County to cure a monetary default

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by Borrower upon demand therefore, together with interest thereon at the rate of twelve percent (12%) per annum or the maximum rate permitted by law, whichever rate is lesser, from the date of expenditure until the date of reimbursement.

(d) Remedies Cumulative. No right, power, or remedy given to the County by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

(e) Waiver of Terms and Conditions. No waiver of any default or breach by Borrower hereunder shall be implied from any omission by the County to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the County to or of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement or the Loan Documents, nor shall it invalidate any act done pursuant to notice of default, or prejudice the County in the exercise of any right, power, or remedy hereunder or under the Loan Documents, unless in the exercise of any such right, power, or remedy all obligations of Borrower to County are paid and discharged in full.

MISCELLANEOUS PROVISIONS

14. **Recording and Filing**. The Borrower shall cause this Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of the County of Orange and in such other places as the County may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

15. **Governing Law**. This Agreement shall be governed by the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

16. **Amendments**. This Agreement shall be amended only by a written instrument executed by the parties hereto, or their successors in title and duly recorded in the real property records of the County of Orange.

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17. **Notices**.

(a) Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Borrower:

County:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

Notice shall be deemed given three business days after the date of mailing.

18. **Severability**. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

19. **Additional Terms.**

(a) Indemnity. To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the County and its elected officials, officers, governing members, employees, attorneys and agents (collectively, the "Indemnified Parties"), from and against any and all losses, damages, claims, actions, liabilities, costs and expenses of any and every conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject to under any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

i. this Agreement or the execution or amendment thereof in connection with the transactions contemplated thereby;

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ii. Borrower's ownership or operation of the Property and the Project or any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Property and the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, operation or rehabilitation of, the Project or any part thereof;

iii. any lien or charge upon payments by the Borrower to the County, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the County in respect of any portion of the Project;

iv. any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Property or the Project or any part thereof;

v. any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any Loan Document or any of the documents or instruments relating to said Loan Documents that the County relied upon in making the Loan; except to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment and payment for of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement; and

vi. any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the failure of the Borrower to provide relocation benefits as required under State and Federal relocation law rules, statutes, or guidance.

(b) Time. Time is of the essence in this Agreement.

(c) Construction. Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa, words imparting persons shall include firms, associations, partnerships and corporations, and words of either gender shall include the other gender.

(d) Waiver of Jury Trial. Unless prohibited by Federal, State or local laws, each party to this Agreement hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action arising under any Loan Document or in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to any Loan Document, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether sounding in contract or tort or

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otherwise; and each party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

(e) Nonliability. By accepting or approving anything required to be performed or given to County under this Agreement, County shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by County to anyone.

(f) Obligations Unconditional and Independent. Notwithstanding the existence at any time of any obligation or liability of County to Borrower, or any claim by Borrower against County, in connection with this Agreement or otherwise, Borrower hereby waives any right it might otherwise have (a) to offset any such obligation, liability or claim against Borrower's obligations under this Agreement or (b) to claim that the existence of any such obligation, liability or claim excuses the nonperformance by Borrower of any of its obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

SIGNATURE PAGES TO FOLLOW

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BORROWER:

TEMPLATE

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COUNTY:

COUNTY OF ORANGE, a political subdivision of the state of California

By:_____
Julia Bidwell, Director
OC Community Resources,
OC Housing and Community Development
County of Orange

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By Signed by: Jacqueline Guzman 8452584753D3488... _____
Deputy

Dated 2/2/2026 _____

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EXHIBIT A
LEGAL DESCRIPTION

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EXHIBIT B
EXTREMELY LOW QUALIFIED TENANT/UNIT MIX
[LOCATION], California

RENT & AFFORDABILITY SCHEDULE

Number of Restricted Units	Number of Bedrooms	* Gross Restricted **Rental Rate**	**Utility Allowance	***Net Restricted Rental Rate	Income Limit based on Area Median Income (AMI)	Age Restriction (if any)	Project Based Section 8 Units	Number of Years Restricted
								55
Total							Total 0	

* Restricted Rental Rate is based on the 2026 Area Median Income (AMI) published by HUD annually and does not include the utility allowance deduction. UPDATED RENTAL RATE TO BE PROVIDED AT START OF QUALIFIED PROJECT PERIOD.

** Utility allowance is based on the 2026 utility schedule published by the Orange County Housing Authority annually and will be updated at HAP execution to reflect updated utility schedule.

*** Rent increases shall be limited to no more than the lower of rent established as affordable based on the Median Income for the Area and the affordability restrictions set forth above, which is adjusted annually by HUD and published by the State of California, except as otherwise provided in this Regulatory Agreement and/or the Loan Agreement Section 4.1(d)

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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor, Santa Ana, CA 92705
Attn: Director

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "**Agreement**") is entered into as of _____, 2026 by and among (i) COUNTY OF ORANGE, a political subdivision of the State of California, (the "**County**") (ii) XXXXXXXX, XXXXXXX (the "**Subordinate Lender**"), and (iii) XXXXXXXX (the "**Borrower**").

RECITALS

A. The County is making a loan (the "**Senior Mortgage Loan**") to the Borrower in the original principal amount of ($XXXXX).The Senior Mortgage Loan is or will be secured by a senior mortgage lien (the "**Senior Mortgage**") on a multifamily housing project known as [Project Name], located in the [City], CA (the "**Property**") and as more fully described in Exhibit A attached hereto. The Borrower's obligation to repay the Senior Mortgage Loan is evidenced by a Promissory Note of even date herewith (the "**Senior Mortgage Note**").

B. The Borrower and the Subordinate Lender have previously entered or will enter into agreements pursuant to which the Subordinate Lender has agreed to lend to Borrower ($XXXXX) in XXXX (**XXX)** and XXXX Program funds (the "**Subordinate Loan**") which Subordinate Loan is secured by, among other things, a mortgage lien against the Property.

C. The County has agreed to permit the Subordinate Loan to remain as subordinate mortgage liens against the Property subject to all of the conditions contained in this Agreement.

D. The Subordinate Lender has agreed to subordinate its mortgage lien to the lien of the Senior Mortgage.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference and made a part of this Agreement, the County, the Subordinate Lender and the Borrower agree as follows:

DEFINITIONS

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In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means [insert entity] a California limited partnership, and any other Person (other than the County) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the County is not open for business.

"County" means the County of Orange, a political subdivision of the State of California.

"Default Notice" means: (a) a copy of the written notice from the County to the Borrower stating that a Senior Mortgage Loan Default has occurred under the Senior Mortgage Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan or that a Regulatory Agreement Default has occurred. Each Default Notice shall specify the default upon which such Default Notice is based.

"Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"Regulatory Agreement Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Regulatory Agreement to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Regulatory Agreement for curing the default.

"Senior Mortgage Loan Default" means the occurrence of either a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Senior Mortgage Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Senior Mortgage Loan Documents for curing the default, or an "Event of Default" as that term is defined in the Senior Mortgage Loan Documents.

"Senior Mortgage Loan Documents" means the Senior Mortgage Note and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Mortgage Loan.

"Subordinate Lender" means the Orange County Housing Finance Trust, a California public agency formed pursuant to California Government Code section 6500 et. seq., and any other Person

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who becomes the legal holder of the Subordinate Notes after the date of this Agreement.

"Subordinate Loan Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"Subordinate Loan Documents" means the Subordinate Note, the Subordinate Mortgage, Subordinate Regulatory Agreement, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

"Subordinate Mortgage" means the mortgages or deeds of trust encumbering the Property as security for the Subordinate Loan, which were previously recorded in the applicable land records.

"Subordinate Note" means the promissory note issued by the Borrower to the Subordinate Lender, or order, to evidence the Subordinate Loan.

"Subordinate Regulatory Agreement" means the Regulatory Agreement and Declaration Of Restrictive Covenants to be recorded by the Subordinate Lender in connection with the Subordinate Loan.

SECTION 1 --COUNTY CONSENT TO MORTGAGE LIENS

1. Permission to Place Mortgage Lien Against Property.

The County has agreed and hereby consents to, notwithstanding the prohibition against inferior liens on the Property contained in the Senior Mortgage Loan Documents and subject to the provisions of this Agreement, the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the Senior Mortgage) which secure the Borrower's obligation to repay the Subordinate Notes and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan. Such consent is subject to the condition that each of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 are true and correct as of the date of this Agreement. If any of the representations and warranties made by the Borrower and the Subordinate Lender in Section 2 is not true and correct as of the date of this Agreement, the provisions of the Senior Mortgage Loan Documents applicable to unpermitted liens on the Property shall apply.

SECTION 2 - BORROWER AND LENDER REPRESENTATIONS AND WARRANTIES

2. Borrower's and Subordinate Lender's Representations and Warranties.

2.1. The Borrower and the Subordinate Lender each makes the following representations and warranties to the County:

2.1.1. **Relationship of Borrower to Subordinate Lender and Borrower.** The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts that would lead it to believe that the Subordinate Lender is an Affiliate of the Borrower.

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SECTION 3 - BORROWER'S REPRESENTATIONS AND WARRANTIES

3. Borrower's Representations and Warranties.

3.1. The Borrower makes the following representations and warranties to the County and City:

3.1.1. **Subordinate Loan Documents.** The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, County prior to the date of this Agreement. Borrower shall deliver to County an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

3.1.2. **Senior Loan Documents**. The executed Senior Loan Documents are substantially in the same forms as, when applicable, those submitted to Subordinate Lender prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

SECTION 4 - SUBORDINATION

4. Terms..

4.1. **Subordinate Lender Agreement to Subordinate.** The County and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the Senior Mortgage Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage and the other Senior Mortgage Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Mortgage and the other Senior Mortgage Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Mortgage, curing defaults by the Borrower under the Senior Mortgage Loan Documents or for any other purpose expressly permitted by the Senior Mortgage, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property).

4.2. **Subordinate Lender Subordination of Subrogation Rights.** The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Mortgage.

4.3. **Payments Before Senior Mortgage Loan Default.** Until the Subordinate Lender receives a Default Notice of a Senior Mortgage Loan Default from the County, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the

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Subordinate Loan Documents.

4.4. **Payments After Senior Mortgage Loan Default.** The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Mortgage Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the County's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the County with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loans, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the County's prior written consent. If the Subordinate Lender receives written notice from the County that the Senior Mortgage Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the County, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the County shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the County in accordance with the provisions of this Section 4.4.

4.5. **Remitting Subordinate Loan Payments to County.** If, after the Subordinate Lender receives a Default Notice from the County in accordance with Section 4.4 above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the County and unless the County otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the County, properly endorsed to the County, to be applied to the principal of, interest on and other amounts due under the Senior Mortgage Loan Documents in accordance with the provisions of the Senior Mortgage Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the County, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and County acknowledge and agree that payments received by the Subordinate Lender, and remitted to the County under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the County waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

4.6. **Subordinate Lender Agreement Not to Commence Bankruptcy Proceeding.** The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the County's prior written consent.

SECTION 5 – DEFAULT OF SUBORDINATE LOAN DOCUMENTS

5. Terms.

5.1. **Notice of Default and Cure Rights.** The Subordinate Lender shall deliver to the

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County a Default Notice within five (5) Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the County shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The County shall have the right, but not the obligation, to cure any Subordinate Loan Default or Regulatory Agreement Default (as applicable) within sixty (60) days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such sixty (60) day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents. All amounts paid by the County in accordance with the Senior Mortgage Loan Documents to cure a Subordinate Loan Default or Regulatory Agreement Default (as applicable) shall be deemed to have been advanced by the County pursuant to, and shall be secured by the lien of, the Senior Mortgage.

5.2. **Subordinate Lender's Exercise of Remedies After Notice to County.** If a Subordinate Loan Default or Regulatory Agreement Default occurs and is continuing, the Subordinate Lender agrees that, without the County's prior written consent, it will not commence foreclosure proceedings with respect to the Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating one or both of the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given the County at least sixty (60) days' prior written notice; during such sixty (60) day period, however, the Subordinate Lender shall be entitled to exercise and enforce all other rights and remedies available to the Subordinate Lender under the Subordinate Loan Documents and/or under applicable laws.

5.3. **Cross Default.** The Borrower and the Subordinate Lender agree that any of a Subordinate Loan Default or Regulatory Agreement Default shall constitute a Senior Mortgage Loan Default under the Senior Mortgage Loan Documents and the County shall have the right to exercise all rights or remedies under the Senior Mortgage Loan Documents in the same manner as in the case of any other Senior Mortgage Loan Default. If the Subordinate Lender notifies the County in writing that any Subordinate Loan Default or Regulatory Agreement Default of which the County has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that County has not conducted a sale of the Property pursuant to its rights under the Senior Mortgage Loan Documents, any Senior Mortgage Loan Default under the Senior Mortgage Loan Documents arising solely from such Subordinate Loan Default or Regulatory Agreement Default shall be deemed cured, and the Senior Mortgage Loan shall be reinstated, provided, however, that the County shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the County during such Senior Mortgage Loan Default.

SECTION 6 – DEFAULT UNDER SENIOR MORTGAGE LOAN DOCUMENTS

6. Terms.

6.1. **Notice of Default and Cure Rights.** The County shall deliver to the Subordinate Lender a Default Notice within five (5) Business Days in each case where the County has given a Default Notice to the Borrower. Failure of the County to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the County's rights and remedies under the Senior Loan

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Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Mortgage Loan Default within sixty (60) days following the date of such notice; provided, however, that the County shall be entitled during such sixty (60) day period to continue to pursue its remedies under the Senior Mortgage Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period Subordinate Lender keeps current all payments required by the Senior Mortgage Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or County's secured position relative to the Property, as determined by County in its sole discretion, then County may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the County to cure a Senior Mortgage Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

6.2. **Cross Default.** The Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Mortgage Loan Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the County has accelerated the maturity of the Senior Mortgage Loan, or (ii) the County has taken affirmative action to exercise its rights under the Senior Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Mortgage. At any time after a Senior Mortgage Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any Senior Mortgage Loan Default to the satisfaction of the County, as evidenced by written notice from the County to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Mortgage Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Mortgage Loan Default had never occurred.

SECTION 7 -- MISCELLANEOUS

7. Terms.

7.1. The Borrower, the County and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Mortgage Loan Documents, the Subordinate Loan Documents, and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the County and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the County and the Subordinate Lender under the Senior Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the County and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the County and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Mortgage Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any Senior Mortgage Loan Default or Subordinate Loan

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Default, as the case may be other than that, if any, provided, respectively under the Senior Mortgage Loan Documents, the Subordinate Loan Documents; or create any other right or benefit for Borrower as against County or Subordinate Lender.

7.2. **Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the County under the Senior Mortgage Loan Documents.** Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

7.2.1. **Protection of Security Interest.** The Subordinate Lender shall not, without the prior written consent of the County in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure Senior Mortgage Loan Defaults pursuant to Section 6.1 above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

7.2.2. **Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the Senior Mortgage remains a lien on the Property the following provisions shall apply:

7.2.2.1. The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the County's rights under the Senior Mortgage Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the County; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

7.2.2.2. All proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Mortgage Loan) in the manner determined by the County in its sole discretion; provided, however, that if the County elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Mortgage Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Mortgage Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the County agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the County and the Subordinate Lender over the application of Casualty proceeds, the decision of the County, in its sole discretion, shall prevail.

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7.2.3. **No Modification of Subordinate Loan Documents.** The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Mortgage Loan Documents have been paid in full, it will not, without the prior written consent of the County in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loans, increase the interest rate on the Subordinate Loan, or otherwise amend the terms of the Subordinate Loan in a manner that creates an adverse effect upon the County under the Senior Mortgage Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the County's consent shall be void ab initio and of no effect whatsoever.

7.3. **Modification or Refinancing of Senior Mortgage Loan.**

Subject to the final sentence hereof, the Subordinate Lender consents to any agreement or arrangement in which the County waives, postpones, extends, reduces or modifies any provisions of the Senior Mortgage Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Mortgage Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Mortgage Loan, the Senior Mortgage Note, the Senior Mortgage, the Senior Mortgage Loan Documents and County shall mean, respectively, the refinance loan, the refinance note, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note. Notwithstanding anything to the contrary in this Section 7.3, the County shall not, without the prior written consent of the Subordinate Lender in each instance, which will not be unreasonably withheld, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Senior Mortgage Loan Documents, increasing the required payments due under the Senior Mortgage Loan, decreasing the term of the Senior Mortgage Loan, or increasing the interest rate on the Senior Mortgage Loan (other than on account of regular fluctuations in the variable interest rate on the Senior Mortgage Loan or in connection with charging default rate of interest following a Senior Mortgage Loan Default), except that the Senior Lender shall have the right to advance funds to cure Subordinate Loan Defaults pursuant to Section 5.1, above, and advance funds pursuant to the Senior Mortgage Loan Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property, curing other defaults by Borrower under the Senior Mortgage Loan Documents, or protecting the Senior Lender’s security interest in the Property.

7.4. **Default by the Subordinate Lender or County.**

If the Subordinate Lender or County defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

7.5. **Notices.**

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Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as notices and referred to singly as a "notice") which the County or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two (2) days after mailing in the United States), addressed to the respective parties as follows:

COUNTY:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

SUBORDINATE LENDER:

BORROWER:

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

7.6. **General.**

7.6.1. **Assignment/Successors.** This Agreement shall be binding upon the Borrower, the County and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the County and the Subordinate Lender.

7.6.2. **No Partnership or Joint Venture.** The County's permission for the placement of the Subordinate Loan Documents does not constitute the County as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

7.6.3. **County's and Subordinate Lender's Consent.** Wherever the County's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the County in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by

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any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

7.6.4. **Further Assurances.** The Subordinate Lender, the County and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to (i) evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Mortgage or (ii) further evidence the intent of this Agreement.

7.6.5. **Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

7.6.6. **Governing Law.** This Agreement shall be governed by the laws of the State of California.

7.6.7. **Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

7.6.8. **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Mortgage Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the County pursuant to Section 4 hereof; (iii) the acquisition by the County of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Mortgage; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

-Signature Pages Follow-

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COUNTY:

COUNTY OF ORANGE, a political subdivision of the state of California

By:_____
Julia Bidwell, Director
OC Community Resources,
OC Housing and Community Development
County of Orange

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By_____
Signed by:
Jacqueline Guzman
8452584753D3488...
Deputy

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BORROWER:

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SUBORDINATE LENDER

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EXHIBIT A
LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

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RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

ASSIGNMENT OF LESSOR'S INTEREST IN LEASES, RENTS AND PROFITS
(XXX FUNDS)

THIS ASSIGNMENT OF LESSOR'S INTEREST IN LEASES, RENTS AND PROFITS (the "**Assignment**") is dated for reference purposes only as of _____, 2026 and is made by the COUNTY OF ORANGE, a political subdivision of the state of California, (the "**County**") and [BORROWER], (the "**Borrower**").

RECITALS

A. Borrower proposes to borrow from County the principal sum of the Loan as such term is defined in that separate Loan Agreement between Borrower and County of even date herewith. The Loan is evidenced by a Promissory Note ("**Note**") executed by Borrower payable to County in the principal amount of the Loan and is secured by, among other things, a Deed of Trust, Assignment of Rents and Security Agreement ("**Deed of Trust**"), encumbering certain real property and improvements currently on such property or which are to be constructed thereon, described in **Exhibit "A"** attached hereto and incorporated herein by this reference ("**Property**"), by the security interests granted under this Assignment and by other security instruments specified in the Note, Deed of Trust or other Loan Documents entered into relating to the Loan. Unless otherwise noted, all defined terms used in this Assignment shall have the same meaning ascribed to them under said Loan Agreement.

B. Borrower has entered into and will hereafter be entering, into Leases, as defined hereafter, regarding the Property.

C. The County Note and Deed of Trust, as well as all rights interests and remedies with respect to Leases, Rents and other collateral described in this Assignment shall at all times be subject and subordinate to the senior collateral rights and interest in such items as provided for in the Senior Deed of Trust (as defined in the Loan Agreement).

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NOW, THEREFORE, in consideration of County's agreement to make the Loan, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower covenants and agrees as follows:

BORROWER ASSIGMENT AND OBLIGATIONS; COUNTY RIGHTS

1. **Assignment**. Borrower absolutely and unconditionally grants and assigns to County as of the date hereof:

(a) all of Borrower's right, title and interest in, to and under all leases, licenses and other rental agreements of any kind relating to the use or occupancy of the Property and any portion thereof, which are currently if effect for the Property or are entered into on or after the date of this Assignment (collectively referred to as "**Leases**" and each individually as a "**Lease**"). The Leases shall include (i) all guarantees of and security for lessees' performance under any and all Leases and (ii) all amendments, extensions, renewals or modifications thereto which are permitted hereunder; and

(b) all rents (and payments in lieu of rents), and tenant expense reimbursements at any time payable under any and all Leases, any and all security deposits received or to be received by Borrower pursuant to any and all Leases, and all rights and benefits accrued or to accrue to Borrower under any and all Leases (collectively, "**Rent**").

2. **Obligations Secured**. This Assignment secures the payment and performance of all present and future obligations of Borrower to County under the Note, the Deed of Trust, any Loan Documents that are executed by Borrower and under any other agreement, which recites that, it is secured hereby.

3. **License**. This Assignment shall constitute a present and absolute assignment to County. However, Borrower shall have the right under a license (the "**License**") granted hereby to collect and use at the time of, but not prior to, the date provided for payment, all of the Rent and to retain and use the same in accordance with the terms and provisions of the Note, Deed of Trust, and other Loan Documents; provided, that such license shall be revoked automatically upon the occurrence of a Default as defined below. County shall not revoke the License prior to an Event of Default.

4. **Covenants**. Borrower covenants and agrees as follows:

(a) at Borrower's sole cost to: (i) perform the duties and obligations of lessor under the Leases and to enforce performance by the lessees of the obligations contained in the Leases; (ii) enforce all remedies available to Borrower in case of default by the lessees under any of the Leases and prosecute and defend any action, arbitration or other controversy relating to any of the Leases or to Borrower's interest in any of the Leases in the ordinary course of Borrower's business; (iii) give County prompt notice of any material default by Borrower which occurs with respect to any of the Leases, and complete copies of any notice of default; (iv) exercise Borrower's best efforts to keep all portions of the Property designated as lease property leased at all times; (v) upon County's request, deliver to County a fully executed photocopy and a counterpart original of each and every Lease; (vi) execute and record such additional assign-

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ments of any Lease, in form and substance reasonably acceptable to County, as County may request; and (vii) execute and deliver such additional documents and instruments as County may reasonably request from time to time to carry out the purpose of this Assignment; and

(b) except with County's prior written consent, which consent will not be arbitrarily withheld, not to either orally or in writing: (i) enter into any Leases after the date of this Assignment which are not in compliance with the applicable provisions of the Loan Agreement, Regulatory Agreement and other Loan Documents; (ii) execute any other assignment relating to any of the Leases or collect the rent in advance, other than to collect one (1) month in advance of the time when it becomes due; (iii) terminate, modify or amend any of the terms of the Leases or in any manner release or discharge any lessee from any obligations thereunder; (iv) consent to any assignment or subletting by any lessee of the Leases; or (v) do or permit anything to be done to impair the validity or enforceability of any of the Leases. Any such attempted action in violation of the provisions of this Paragraph 4(b) shall be null and void.

(c) to duly observe, perform, and discharge the obligations, terms, covenants, conditions and warranties of the Loan Agreement, Note and Deed of Trust or other Loan Documents entered into relating to the Loan.

5. **Representations and Warranties**. Borrower hereby represents and warrants:

(a) Borrower is and will be the sole owner of lessor's interest in each Lease;

(b) each Lease, when executed and delivered, will be valid and enforceable in accordance with its terms, will constitute the entire agreement between the lessee named therein and Borrower, and there will be no amendments, written or oral, to such agreements except in the ordinary course of business, without County's prior written consent; and

(c) none of the lessor's interests in, and no Rent under, any of the Leases has been transferred or assigned except as expressly provided for in the Loan Agreement; and

(d) Borrower is the owner of the Property, and has good title to the Leases, any contracts of sale that exist or may be made relating to the sale of a portion of the Property, and any Rent, money, rights or claims under the Leases or contracts of sale, and no other person firm, or corporation has any right, title, or interest in them.

DEFAULT AND REMEDIES

6. **Default**. "**Default**" shall mean (i) the failure to perform any obligation hereunder or the failure to be true of any representation or warranty of Borrower herein, or (ii) the existence of any "**Event of Default**" as defined in and under the Note, Deed of Trust, or any of the other Loan Documents. Any breach or Default by Borrower under this Assignment shall constitute an Event of Default under the Note, Deed of Trust, and related Loan Documents.

7. **Remedies**. In addition to the remedies contained in the Note, Deed of Trust, and other Loan Documents, County shall have the following rights and remedies upon Default:

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(a) to demand, receive and enforce all Rent and other amounts arising or accruing under the Leases, and any and all amendments to each Lease, or from the Property;

(b) to collect, sue for, settle, compromise and give acquittances or releases for all of the rent and pursue all remedies for the enforcement of the Leases and Borrower's rights in and under the Leases as Borrower might have pursued, but for this Assignment;

(c) to take possession of the Property, and have, hold, manage, lease and operate the same on such terms and for such period of time as County may deem proper and, either with or without taking possession of the Property, in its own name, make from time to time all alterations, renovations, repairs or replacements thereto as County deems proper.

County may exercise the foregoing rights and remedies (i) at Borrower's cost and expense, and in the name of Borrower or County as the latter may determine in its sole discretion; (ii) prior to, simultaneously with or subsequent to the exercise of any rights or remedies under the Note, Deed of Trust, or any of the other Loan Documents; (iii) either in person or by its agent; (iv) with or without bringing any action or proceeding or having a receiver appointed; (v) without regard to the adequacy of any security held by County for the obligations secured hereby; (vi) without notice or remand on Borrower except as otherwise provided herein; and (vii) without releasing Borrower from any obligations under this Assignment, the Note, Deed of Trust, or any of the other Loan Documents.

8. **Tenants Entitled to Rely on County's Requests**. Borrower hereby irrevocably authorizes and directs each tenant and any successor to the interest of each tenant under the Leases, upon receipt of any written request of County stating that a Default or Event of Default exists in the payments due under, or in the performance of any of the terms, covenants or conditions of, this Assignment, the Note, the Deed of Trust, or any other Loan Document to pay to County the rents, royalties, issues and profits due and to become due under the Leases. Borrower agrees that such tenant shall have the right to rely upon any such statement and request by County that such tenant shall pay such rents, royalties, issues and profits to County without any obligation or right to inquire as to whether such Default or Event of Default actually exists notwithstanding any notice from or claim of Borrower to the contrary and that Borrower shall have no right or claim against such tenant for any such rents, royalties, issues and profits so paid by such tenant to County. Upon the curing of all Defaults and Events of Default, County shall give written notice thereof to such tenant and thereafter, until the possible receipt of any further similar written request of County, such tenant shall pay the rents, royalties, issues and profits to Borrower.

9. **Proceeds**. County shall apply any and all Rent collected by it, and any and all sums, which County may receive or collect pursuant to this Assignment, in the following manner:

(a) First, to pay the portion of the obligations secured by this Assignment attributable to the costs and expenses of operation and collection;

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(b) Second, to pay all other obligations secured by this Assignment in any order and proportions as County in its sole discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it. County shall have no liability for any funds, which it does not actually receive.

10. **Indemnification and Reimbursement**. Borrower hereby indemnifies, defends and agrees to hold County harmless from and against any and all costs, expenses and attorneys' fees, including allocated costs for services of County's in-house professionals, arising out of: (a) any liability County may incur under any Lease or by reason of this Assignment; (b) County's defense of any claims or demands arising under any Lease or by reason of this Assignment; or (c) actions taken by County which it deems necessary to conserve the value of the Property.

11. **Effect of Assignment**. This Assignment shall not cause County to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Property by the lessees or any other parties, any dangerous or defective condition of the Property, any environmental condition or occurrence on or affecting the Property, or any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee, invitee or other person. County shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (i) the exercise of the rights, remedies or powers granted to County in this Assignment; (ii) the failure or refusal of County to perform or discharge any obligation, duty or liability of Borrower arising under the Leases or this Assignment; or (iii) any loss sustained by Borrower or any third party resulting from County's failure to lease the Property after the occurrence of a Default or Event of Default or from any other act or omission of County in managing the Property after the occurrence of a Default or Event of Default unless such loss is caused by the gross negligence, willful misconduct or bad faith of County, and no such liability shall be asserted against or imposed upon County, all such liability being expressly waived and released by Borrower.

12. **Foreclosure**. Upon issuance of any deed pursuant to any judicial or nonjudicial foreclosure of the Deed of Trust or any deed in lieu of foreclosure, all right, title and interest of Borrower in and to the Leases and the rents shall, by virtue of this Assignment, vest in and become the absolute Property of the grantee or grantees of any such deed without any further act or assignment by Borrower. Borrower hereby irrevocably appoints County, and its successors and assigns, as its attorney-in-fact, to: (i) execute all instruments of assignment or further assurance in favor of any such grantee of any deed, as may be necessary or desirable for such purpose; and (ii) after a Default under this Assignment, take any other action permitted under Paragraph 7 hereof; provided, however, that County as such attorney-in-fact shall only be accountable for such funds as are actually received by County. Nothing contained in this Assignment shall prevent County at County's sole discretion from terminating any subordinate Lease through such foreclosure.

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13. **Release**. County may take or release security for the performance of the obligations referred to in Paragraph 2 and County may release any party primarily or secondarily liable for the performance of any such obligations, all without prejudice to any of County's rights under this Assignment.

MISCELLANEOUS

14. **Notices.**

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the County or the Borrower is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two (2) days after mailing in the United States), addressed to the respective parties as follows:

COUNTY:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

BORROWER:

[TO BE PROVIDED]

15. **Definitions/Interpretations**. The terms "lessor" and "lessors" as used in this Assignment shall include all owners, landlords, licensors and other parties in a similar position with respect to the Leases. The terms "lessee" and "lessee" shall include any tenants, licensees, occupants and any other parties in a similar position and shall also include any guarantors of or other obligors under the Leases. Any reference in this Assignment to "Lease" or "Lease" shall be construed as including any extension, renewals, amendments or modifications thereto. The term "including" shall mean "including but not limited to."

16. **Integration**. This Assignment and the other Loan Documents contain the entire agreement of the parties and supersede any and all prior negotiations. In the event of any conflict between the terms of this Assignment and the terms of the Deed of Trust, the Deed of Trust shall control.

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17. **Waiver**. No delay or omission to exercise any power or remedy accruing to County upon any breach or Default of Borrower under this Assignment shall impair any such right, power or remedy of County, nor shall such delay or omission be construed as a waiver of any such breach or Default or an acquiescence therein or in any similar breach or Default thereafter occurring; nor shall any waiver of any single breach or Default be deemed a waiver of any other previous or subsequent breach or Default. Any waiver, permit, consent or approval of any kind or character on the part of County of any provision or condition of this Assignment must be in writing and shall be effective only to the extent specifically set forth in the writing. All remedies, either under this Assignment, by law or otherwise, afforded to County, shall be cumulative and not alternative.

18. **Term**. This Assignment shall become effective as of the date of its recordation in the Official Records of Orange County and shall remain in effect until it is terminated in writing by County or the Loan is repaid in full, whichever occurs first.

19. **Successors and Assigns**. This Assignment is binding on Borrower, its heirs, successors and assigns and shall inure to the benefit of County, its successors and assigns. Notwithstanding the foregoing, this Assignment is subject to restrictions on assignment by Borrower as set forth in the Loan Documents.

20. **Prevailing Law**. This Assignment shall be governed by and construed in accordance with the laws of the State of California, without regard to the choice of law rules of that state. In the event of any legal action to enforce or interpret this Assignment, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

21. **Multiple Originals; Counterparts**. This Assignment may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts. This Assignment shall become effective when the parties have duly executed this Assignment and it has been duly recorded in the Official Records of Orange County. Delivery of this Agreement shall be effectuated by electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication).

22. **Waiver of Jury Trial.** Each party acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Assignment and/or any claim of injury or damage to the fullest extent permitted by applicable law.

IN WITNESS WHEREOF, Borrower has executed this Assignment as of the date first above written.

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BORROWER:

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COUNTY:

COUNTY OF ORANGE, a political subdivision of the state of California

By:_____
Julia Bidwell, Director
OC Community Resources,
OC Housing and Community Development
County of Orange

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By Signed by: Jacqueline Guzman 8452584753D3488... _____
Deputy

Dated 2/2/2026

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EXHIBIT A
LEGAL DESCRIPTION

TEMPLATE

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MENTAL HEALTH SERVICES ACT (MHSA)
CAPITALIZED OPERATING SUBSIDY RESERVE (COSR) LOAN AGREEMENT

This **MENTAL HEALTH SERVICES ACT (MHSA) CAPITALIZED OPERATING SUBSIDY RESERVE (COSR) LOAN AGREEMENT** (the "**COSR Loan Agreement**" or "**Agreement**") is made and entered into as of _____, 2026, by and between **[ ]** ("**Borrower**"), and COUNTY OF ORANGE**,** a political subdivision of the State of California **("County")**. The Borrower and County may be referred collectively as the "**Parties**."

RECITALS:

A. [ADDITIONAL RECITALS]

B. The Orange County Board of Supervisors approved a COSR Loan to the Borrower from [ ] on [ ] in the amount of [$XXXX].

NOW, THEREFORE, for and in consideration of the making of the MHSA Loan and the COSR Loan, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions**. The following terms used in this Agreement shall have the meanings set forth below in this Section 1. Any term used in this Agreement and not defined herein shall have the meaning given to that term in the Borrower Loan Agreement.

(a) "**Annual Bifurcated Independent Audit**" independent annual audit, conducted by a certified public accountant, that is bifurcated and distinguishes between the annual income and expenses for the MHSA Assisted Units in order to determine, among other things, the amount of any operating deficit specifically attributed to the MHSA Assisted Units.

(b) "**Annual Operating Expense(s)**" means County approved operating expenses solely attributable to MHSA Assisted Units in excess of the income attributable to those units, including, but not limited to administration expenses, salaries and benefits, utility charges, maintenance expenses, Project property taxes, Project insurance premiums and annual monitoring fee when applicable. Except as provided in this Agreement under Section 2(b), asset management, partnership management, and deferred development fees attributable to the MHSA Assisted Units are not eligible Annual Operating Expenses.

(c) "**Capitalized Transition Reserve"** shall at a minimum, cover expenses for one year, preventing rent increases following the loss of rental assistance or exhaustion of COSR funds. A transition plan must be submitted to the County for approval two years before the estimated COSR exhaustion date. If rental assistance is no longer available or the Project experiences a loss of rental subsidy, the Borrower may request approval to allow households with 50% AMI to occupy MHSA Assisted Units and increase rent on MHSA Assisted Units affordable to households with 50% AMI, if allowable under the MHSA Regulatory Agreement.

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(d) "**COSR Disbursement(s)**" means, for each year from the First Disbursement Date until, unless exhausted earlier, or up to 240 days after the twentieth (20th) Fiscal Year following the First Disbursement Date, the amount of COSR funding necessary upon review of the Annual Bifurcated Independent Audit delivered pursuant to Section 3(a), and the County's determination of the MHSA Operating Expense Deficits as defined below or otherwise in its sole discretion as contemplated in this Agreement.

(e) "**COSR Disbursement Request Form**" means the form attached as Exhibit "**A**", which may be amended from time to time.

(f) "**COSR Fund**" means the funds encumbered pursuant to this Agreement to defray the deficits solely attributable of operating the MHSA Assisted Units.

(g) "**COSR Loan Amount**" means the total amount of the COSR Loan that shall be distributed over a 15/20 year term pursuant to this Agreement.

(h) "**COSR Loan**" means the loan made by the County to the Borrower, in the maximum amount of up to $XXXX, pursuant to this Agreement, and evidenced by the COSR Note, and secured by the COSR Deed of Trust.

(i) "**Disbursement Period**" means the interval between disbursements from the COSR Fund, which interval shall be no shorter than once a year.

(j) "**First Disbursement Date**" means the date on which the Initial COSR Disbursement is due under the COSR Note on or after the Conversion Date.

(k) "**Fiscal Year**" means a 12-month accounting period that the Borrower uses for financial and tax reporting purposes. For purposes of this Agreement, the Project's Fiscal Year runs from [DATE] to [DATE].

(l) "**Ineligible Annual Operating Expense(s)**" means operating expenses that are not an eligible use for the COSR Disbursement, included but not limited to the following: (i) amortized debt service payments; (ii) costs and/or expenses associated with non-MHSA Assisted Units; (iii) any loan payments; (iv) ground lease payments; (v) sponsor distributions; (vi) any deposit to reserves beyond those required by the State of California Housing & Community Development Department under the Uniform Multi-Family Regulations, including reserves required by other Project financing sources; (vii) MHSA Assisted Unit tenant permanent vacancy loss payments beyond 60 days; (viii) supportive services costs not authorized or included as part of the Project's operating budget; (iv) loan balloon payments; (x) costs associated with limited partner buyout, substitution, or assignment of ownership interest, at any time, including at any potential recapitalization (restructure of debt or re-syndication) transaction; (xi) accrued residual receipt payments, monitoring, or servicing fees owed to other lenders from prior years (xii) any other costs not approved by the County in writing.

(m) "**Initial COSR Disbursement**" means the COSR Disbursement funded on the First Disbursement Date subject to the requirements found in Section 2(a) below.

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(n) "**MHSA Assisted Units**" means units within the Project that have been funded with MHSA funds. In this Project, the MHSA Assisted Units are comprised of [#NUMBER OF UNITS] [TYPE OF UNIT].

(o) "**MHSA Operating Expense Deficits**" is the amount by which operating costs and the anticipated vacancies of the MHSA Assisted Units as defined herein exceed the anticipated revenue of qualifying households of the MHSA Assisted Units for the Fiscal Year in which the COSR Disbursement is to be allocated.

(p) "**Disbursement Request Amount**" the amount of COSR funding being requested on the COSR Disbursement Request Form and necessary based on the Annual Bifurcated Independent Audit delivered pursuant to Section 3 below. In no event shall the COSR Disbursement Request Amount exceed seven percent (7%) of the total COSR Loan Amount unless the County, in its sole discretion, makes an exception on account of documented extraordinary expenses submitted to County for its approval.

(q) "**Operating Budget**" means the Annual Operating Expenses (as defined in the MHSA Note) associated with operating the Project for the applicable Fiscal Year and shall be submitted in a form provided by the County. The Operating Budget shall be bifurcated and distinguish the operating expenses for both the MHSA Assisted Units and those units whose operating expenses are not eligible for assistance from the COSR Fund.

(r) "**Term**" means term of this Agreement which shall commence on the First Disbursement Date and ends on the date the awarded funds in the COSR Fund is either exhausted or on the fifteenth/twentieth (15/20th) Fiscal Year following the First Disbursement Date; provided, however, the term of the COSR Note shall remain in full force and effect in accordance with its terms.

2. **COSR Fund**.

(a) ***Establishment.*** Prior to the Conversion Date, the County shall encumber the COSR Fund for the Project with the total amount of COSR Loan. The County shall be required to monitor the COSR Fund balance in order to ensure long-term sustainability of the COSR Fund.

(b) ***Use***. Subject to the security interest of the County and other rights of County set forth in this Agreement, the COSR Fund shall be maintained for the payment of the MHSA Operating Expense Deficits specifically attributed to the Annual Operating Expenses of the MHSA Assisted Units as defined in the COSR Note. County shall not be obligated to make disbursements from the COSR Fund for the operating costs of non-MHSA Assisted Units. Notwithstanding the foregoing, asset management fees and partnership management fees attributable to the MHSA Assisted Units that cannot be paid for out of cash flow from the non- MHSA Assisted Units may only be paid as part of the COSR Disbursement if all other eligible Annual Operating Expenses have been paid and the total amount of the COSR Disbursement for the requested Fiscal Year does not exceed 5% of the total COSR Loan.

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(c) *MHSA Assisted Unit Vacancy; Temporary and Permanent.* The Borrower may use funds from the COSR Disbursement toward the operating costs of an MHSA Assisted Unit for temporary vacancies due to MHSA eligible tenant placement in a medical and/or institutional facility so long as (a) the temporary vacancy does not extend beyond 60 days; (b) the MHSA eligible tenant is expected to return to the MHSA Assisted Unit; and (c) the MHSA eligible tenant's portion of the rent is paid. The Borrower may use funds from the COSR Disbursement toward 80% of the County approved tenant portion of the rent for an MHSA Assisted Unit permanently vacated for a maximum of 60 days to allow the Coordinated Entry System to complete its process for referral of an MHSA Eligible tenant.

(d) ***Early Disbursements***. County reserves the right to begin making COSR Disbursements earlier than the Disbursement Period if County determines, in its sole and unappealable discretion, there is an extraordinary and documented circumstance, through no fault of the Borrower.

3. **Disbursements**.

(a) ***Requests for Disbursement***. County shall disburse funds from the COSR Fund, as follows:

(i) *Initial COSR Disbursement.* Sixty days prior to the Conversion Date, Borrower shall submit both the Operating Budget for the first Fiscal Year of the Project, in a form acceptable to the County, and a completed COSR Disbursement Request Form, indicating a Disbursement Request Amount for the Initial COSR Disbursement. Commencing on the First Disbursement Date, County shall disburse to Borrower the Initial COSR Disbursement so long as the Operating Budget and COSR Disbursement Request Form have been submitted within the time frame established herein.

(ii) *Subsequent COSR Disbursements.* Subsequent COSR Disbursements shall require the Borrower to submit an Annual Bifurcated Independent Audit and a completed COSR Disbursement Request Form, indicating a Disbursement Request Amount shall be performed on the Project by and at the expense of Borrower no later than the one hundred and eightieth (180) day of the end of Project's Fiscal Year. If determined necessary or appropriate by County, after review of the most recently obtained Annual Bifurcated Independent Audit, Borrower's requested COSR Disbursement set forth herein shall be adjusted, so that the COSR Disbursement for that Fiscal Year is be sufficient to meet the anticipated MHSA Operating Expense Deficit. The Parties agree that any adjustment to the COSR Disbursement above the 7% of the total COSR Loan Amount shall reduce the total amount of funds in the COSR Fund such that the COSR Fund may be exhausted before the end of the Term.

(b) ***Conditions Precedent***. Except as provided above, disbursement from the COSR Fund shall be made pursuant to Section 3 and no more frequently than once every

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Disbursement Period. Disbursements shall be approved only if the following conditions precedent have been satisfied, as determined by County:

(i) *Exhaustion of Other Sources of COSR*. The Borrower has exhausted all other sources of COSR available to it for the Project.

(ii) *Maintenance of required Capitalized Transition Reserve.* The Borrower shall maintain the Capitalized Transition Reserve during the Term of the COSR.

(iii) *Continuous Pursuit of MHSA Operating and Rental Subsidies for MHSA Assisted Units*. The Borrower identified, on an annual basis, what rental and/or operation subsidies for the MHSA Assisted Units it has pursued during the previous Fiscal Year when submitting a request for COSR Disbursement pursuant to Section 3.

(iv) *No Default*. There shall exist no condition, event or act that would constitute a default (with or without notice and/or lapse of time) under this Agreement other COSR Loan Documents or any of the ARPA-SLFRF Loan Documents (collectively, the "**Borrower Loan Documents**" or "**Loan Documents**".)

(v) *Representations and Warranties*. All representations and warranties of Borrower set forth in this Agreement and in the Borrower Loan Documents are true and correct in all material respects.

(vi) *Continuing Compliance*. Borrower shall be in full compliance with the provisions of this Agreement, the other Borrower Loan Documents and any request or demand by County permitted hereby.

(vii) *Approvals*. All required for the operating costs of the Project have been obtained.

(viii) *Contracts*. County shall have the right to approve all contracts or work with subcontractors, contractors or other parties providing labor or services in connection with the use of the COSR Disbursement on the MHSA Assisted Units ("**COSR Contract**"). Upon the County's request, Borrower shall provide the contract or subcontract to the County.

(ix) *Legal Compliance*. The use of the COSR Disbursement does not violate any laws, ordinance, rules or regulations, or restrictions applicable to the Mortgaged Property and/or the MHSA eligible tenants residing in the MHSA Assisted Units.

(c) **COSR Loan**. Each disbursement from the COSR Fund by the County to the Borrower shall constitute a portion of the COSR Loan.

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4. **Inspection**. County or any of its agents may periodically inspect any COSR Contracts in progress and upon completion during normal business hours or at any other reasonable time upon reasonable prior written notice to Borrower (except in an emergency, as determined by the County in its sole discretion, or after an Event of Default, in which event no such prior notice shall be required); provided, however that not more than one inspection shall be required for each COSR Disbursement request.

5. **Insufficient Account**. The insufficiency of any balance in the COSR Fund shall not abrogate the Borrower's agreement to fulfill all preservation and operation covenants in the Borrower Loan Documents. In the event that the balance of the COSR Fund is less than the current estimated cost to make the COSR Disbursement required under this Agreement, County shall inform the Borrower of the shortage within 15 days of a completed COSR Disbursement Request Form submission to the County.

6. **Security Agreement**. Borrower hereby conveys, pledges, transfers and grants to County a security interest pursuant to the law in and to all money in the COSR Fund, as the same may increase or decrease from time to time, for the purpose of securing Borrower's obligations under this Agreement and to further secure Borrower's obligations under the COSR Note, the COSR Deed of Trust, and the other Borrower Loan Documents.

7. **Events of Default**. The following constitutes an "Event of Default:"

(a) *Non-Monetary Failure to Perform*. Borrower fails to timely perform, comply with or observe any of the terms, covenants, or conditions of this Agreement or any other Loan Document and such failure continues uncured or without Borrower commencing to diligently cure for thirty (30) days after notice thereof in writing is given by the County to Borrower, provided that if Borrower has commenced cure but cannot complete such cure reasonably within thirty (30) days, Borrower shall have ninety (90) days from the date of notice to cure such failure without such failure constituting an event of default.

(b) *Ineligible Use of COSR Disbursement*. The Borrower's use of COSR Disbursement funds toward Ineligible Annual Operating Expenses, except as authorized under this Agreement.

(c) *Breach of Representation or Warranty*. Any breach of any representation and warranty set forth in this agreement or in the Loan Documents.

8. **Post Default**. If Borrower defaults in the performance of its obligations under this Agreement or under the COSR Note, COSR Deed of Trust or any other Borrower Loan Document (beyond any applicable notice and cure period), the County and its successors and assigns shall have all remedies available to them under Article 9 of the Uniform Commercial Code of the Property Jurisdiction and under any other applicable law and, in addition, may retain all money in the COSR Fund and in the County's discretion, may apply such amounts, without restriction and without any specific order of priority, to the payment of any and all indebtedness or obligations of Borrower set forth in the COSR Note, COSR Deed of Trust or any other Borrower Loan Document, including, but not limited to, principal, interest, taxes, insurance, reasonable attorneys' fees and

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costs (including those of in-house counsel) and disbursements actually incurred and/or operating costs to the Mortgaged Property.

9. **Additional Remedies**. In addition to the remedies found in Section 8, above, the occurrence of an Event of Default shall either at the option of the County or automatically where so specified, relieve the County of any obligation to make or continue the COSR Disbursement required under this Agreement and shall give the County the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents or otherwise available at law or in equity or by statute (and all of the County's rights and remedies shall be cumulative), including but not limited to the following:

(a) *Acceleration of Note*. The County shall have the right to cause all indebtedness of the Borrower to the County under this Agreement and the COSR Note to become immediately due and payable. The Borrower waives all right to presentment, demand, protest or notice of protest, or dishonor. The County may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the County as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the COSR Deed of Trust. The Borrower shall be liable to pay the County on demand all reasonable expenses, costs and fees (including, without limitation, attorneys' fees and expenses) paid or incurred by the County in connection with the collection of the COSR Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the COSR Loan.

(b) *Specific Performance*. The County shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Borrower to perform its obligations and covenants under this Agreement and the Loan Documents or to enjoin acts on things that may be unlawful or in violation of the provisions of this Agreement the Loan Documents.

(c) *Right to Cure at Borrower's Expense*. The County shall have the right to cure any monetary default by Borrower under a loan other than the COSR Loan. The Borrower agrees to reimburse the County for any funds advanced by the County to cure a default by Borrower upon demand therefore, together with interest thereon at the rate of twelve percent (12%) per annum (which rate shall in no event exceed the maximum rate permitted by law and if it does, said rate shall be reduced to the maximum rate then permitted by law), from the date of expenditure until the date of reimbursement.

10. **Remedies Cumulative**. No right, power, or remedy given to the County by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such instrument, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

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11. **Compliance with Laws; Insurance Requirements**.

(a) ***Compliance with Laws***. All operating costs incurred in connection with the MHSA Assisted Units and funded for a COSR Disbursement shall comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Mortgaged Property and applicable insurance requirements including, without limitation, applicable fair housing laws, environmental regulations, and requirements of insurance underwriters.

(b) ***Insurance Requirements***. Borrower must maintain insurance required under the Borrower Loan Documents.

12. **COSR Disbursement Use**. County's disbursement of moneys from the COSR Fund shall not be deemed a certification or endorsement by the County that the manner by which the COSR Disbursement has been used is in accordance with Section 11. Borrower shall at all times have the sole responsibility for ensuring that all uses of the COSR Distribution is in accordance with all such governmental requirements or state and/or federal law.

13. **Termination**. If not sooner terminated by the written concurrence of the Parties, this Agreement shall terminate upon the payment in full of the awarded COSR Disbursements. Notwithstanding the foregoing, any and all provisions herein relating to the indemnification of the County shall survive such termination. Two years prior to the termination of the awarded COSR Funds, Borrower shall submit to the County a transition plan, in a form acceptable to the County.

14. **Determinations by County**. Except to the extent expressly set forth in this Agreement to the contrary, in any instance where the consent or approval of the County may be given or is required, or where any determination, judgment or decision is to be rendered by the County under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the County, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

15. **Release; Indemnity**.

(a) ***Release***. Borrower covenants and agrees that, in performing any of their rights or duties under this Agreement, the County and its elected officials, officers, governing members, employees, attorneys and agents, shall not be liable for any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any and every conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments), except to the extent such liability for any losses, claims, damages, liabilities or expenses arises out of the willful misconduct or gross negligence of such party.

(b) ***Indemnity***. Borrower hereby agrees to indemnify and hold harmless the County and its respective agents and employees from and against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys' fees and costs and disbursements, which may be imposed or incurred by any of them in connection with this Agreement, except that the County will not be indemnified

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for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such party.

16. **Governing Law; Venue**. This Agreement shall be governed by and enforced in accordance with the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement or any of the Loan Documents, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

17. **Successors and Assigns**. This Agreement shall be binding upon and shall inure to the benefit of the Borrower and the County, and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities. The County acknowledges and agrees that the Borrower, at its option, may assign its respective rights and interests under this Agreement and the other Borrower Loan Documents in whole or in part as set forth in Section 22 below or in the Borrower Loan Agreement, and upon such assignment all the terms and provisions of this Agreement or the other Borrower Loan Documents shall inure to the benefit of such assignee to the extent so assigned. Notwithstanding the, foregoing Borrower may not assign or delegate its rights, interests or obligations under this Agreement without first obtaining the County's prior written consent.

18. **Severability**. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

19. **Expenses**. Borrower shall pay to the County, upon demand, the amount of any and all expenses, including, without limitation, reasonable attorneys' fees (including reasonable time charges of attorneys who may be employees of the County), which the County may incur in connection with (a) the exercise or enforcement of any of their rights hereunder, (b) the failure by Borrower to perform or observe any of the provisions hereof, or (c) the breach by Borrower of any representation or warranty of Borrower set forth herein. Such expenses, together with interest thereon computed at the Default Rate set forth in the COSR Note from the date on which such expenses are incurred to the date of payment thereof, shall constitute indebtedness secured by the COSR Deed of Trust.

20. **Remedies Cumulative**. In the event of Borrower's default under this Agreement, the County may exercise all or any one or more of its rights and remedies available under this Agreement, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the County from exercising any other right or remedy available to the County. The County may exercise any such remedies from time to time as often as may be deemed necessary by the County.

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21. **No Agency or Partnership**. Nothing contained in this Agreement shall constitute the County as a joint venturer, partner or agent of Borrower, or render the County liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

22. **Transfer of Mortgaged Property or Ownership Interests in Borrower**. If a Transfer (as defined in the COSR Deed of Trust) of all or part of the Mortgaged Property or of an ownership interest in Borrower shall occur, which Transfer requires the prior written consent of the County, the transferee(s) shall be required to assume the transferor's duties and obligations under this Agreement and the other Borrower Loan Documents and shall be required to execute and deliver to the County such documents as the County requires to effectuate such assumption of duties and obligations. No transfer and assumption shall relieve the transferor of any of its duties or obligations under this Agreement or any of the other Borrower Loan Documents, unless the Borrower has obtained the prior written consent of the County to the release of such duties and obligations.

23. **Entire Agreement; Amendment**. This Agreement contains the complete and entire understanding of the parties with respect to the matters covered herein. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument.

24. **No Waiver by the County**. No waiver of any breach, default, or failure of condition under the terms of this Agreement, the COSR Note, the COSR Deed of Trust or any other Loan Document or the obligations secured thereby shall be implied from any failure of the County to take, or any delay by the County in taking, action with respect to such breach, default or failure, or any form of previous waiver of any similar or unrelated breach, default or failure; and waiver of any term of this COSR Note, the COSR Loan Agreement, the COSR Deed of Trust or any other COSR Loan Document or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver

25. **Further Assurances**. Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that the County may reasonably request, in order to protect any right or interest granted by this Agreement or to enable the County to exercise and enforce its rights and remedies under this Agreement.

26. **No Amendment; Conflicts**. Nothing contained in this Agreement shall be construed to amend, modify, alter, change or supersede the terms and provisions of the COSR Note, the COSR Deed of Trust and/or the Borrower Loan Agreement; and, if there is a conflict between the terms and provisions of this Agreement and those of the COSR Note, the COSR Deed of Trust and/or the Borrower Loan Agreement, then the terms and provisions of the COSR Note, the COSR Deed of Trust and/or the Borrower Loan Agreement shall control.

27. **Limitation of Liability**. The personal liability of Borrower for performance of the obligations hereunder is limited in the manner and to the extent provided in the COSR Note.

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28. **Notices**. All notices given under this Agreement shall be in writing and shall be sent to the respective addresses of the parties, in the manner set forth in the COSR Deed of Trust.

29. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

30. **Captions**. The captions of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement.

31. **Waiver of Trial by Jury**. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE COUNTY (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF FOR ANY REASON THIS WAIVER IS DEEMED TO BE UNENFORCEABLE, ALL SUCH DISPUTES SHALL BE RESOLVED BY JUDICIAL REFERENCE PURSUANT TO THE PROVISIONS OF SECTION 8.7 OF THE COSR DEED OF TRUST.

32. **Time of the Essence**. Time is of the essence with respect to this Agreement.

33. **Attached Exhibit**. The following Exhibit is attached to this Agreement and is incorporated by reference herein as if more fully set forth in the text hereof:

Exhibit A – COSR Disbursement Request Form

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

TEMPLATE

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IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement or caused this Agreement to be duly executed and delivered by their respective authorized representatives as of the date first set forth above.

BORROWER:

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COUNTY:

COUNTY OF ORANGE, a political subdivision of the state of California

By:_____
Julia Bidwell, Director
OC Community Resources,
OC Housing and Community Development
County of Orange

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By_____
Signed by:
Jacqueline Guzman
8452584753D3488...
Deputy

Dated 2/2/2026

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EXHIBIT A

COSR DISBURSEMENT REQUEST FORM

Modifications may be made to the text of this Exhibit from time to time.

ATTACHED HERETO

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OC Community Resources
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor
Santa Ana, CA 92705

EXHIBIT A –
CAPITALIZED OPERATING SUBSIDY RESERVE (COSR) FUNDS
INSTRUCTIONS FOR REQUESTING PAYMENTS

To request a payment of Capitalized Operating Subsidy Reserve (COSR) Funds from OC Housing and Community Development (OCHCD), please follow these instructions:

1. Developer/management agent shall complete, sign and date a **COSR Request Form**. The request shall be submitted to the OCHCD approximately 60 days before the MHSA permanent loan closes or no later than 180 days after the end of the property's fiscal year. Payment will be made in advance payment for the upcoming operating year; this advance payment is at the County's sole and absolute discretion.

Disbursement Schedule:

Action	Requirement	Timeframe
Initial Disbursement Request for Operating FY 1 at permanent loan close	Developer/management agent submits the FY 1 Operating Budget and FY 1 COSR Disbursement Request Form	Submittal date – approximately 60 days before the MHSA permanent loan closes
Disbursement Request for Operating FY 2 and beyond	Developer/management agent submits the FY 2 Operating Budget, FY 2 COSR Disbursement Request Form, and FY 1 bifurcated annual independent audit	No later than 180 days after the end of the FY 1

2. Developer/management agency shall complete and submit (with the payment request form) a **regulatory agreement self-certification compliance checklist**. Please note that this is a self-certification of compliance from the payment requestors.
3. A current **annual audit** of the development's actual income and expenses (submitted no later than 180 days after the end of each of the development's fiscal years) shall be on file with the OCHCD at the time of payment request. The annual audit shall reflect the actual distribution of the operating subsidy funds for that previous fiscal year and any unspent operating subsidy funds for that fiscal year, if applicable.
4. Developer/management agent shall attach a **rent report** (template provided by OCHCD) and **rent rolls** to the payment request as evidence of the amount of the subsidy funds required for the MHSA units. The subsidy payment request shall be based on the difference between the actual paid MHSA portion of rent (by the tenant households) and the calculation of the current year's 30% AMI rent in Orange County.

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OC Community Resources
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor
Santa Ana, CA 92705

5. A current **annual operating budget** of the development's projected Operating Expenses and Anticipated Income shall be submitted to the OCHCD no later than 180 days prior to the beginning of the development's fiscal year and shall be on file at the time of the payment request. The annual operating budget shall reflect the distributions of the operating subsidy funds anticipated to be requested by developer/management agent for that year.
6. The completed application and required documents shall be submitted to the OCHCD for review and approval a minimum of twenty (20) business days prior to the desired distribution date. The OCHCD will review each payment request and compliance with the Rent Subsidy Agreement and Regulatory Agreement within ten (10) business days of submission and either approve or deny. If denied, the OCHCD shall provide a written correspondence indicating the reasons for denial and instructions for resubmitting the request with any additional required information or corrective action. If approved, the OCHCD will process the payment request for distribution to developer/management agent for the identified MHSA development

Disclaimer:

The development may not be eligible for a payment if any of the following conditions apply:

- MHSA Assisted Unit are not rented to MHSA households
- MHSA household occupying the MHSA Assisted Unit has other tenant-based operating subsidies
- MHSA Assisted Unit receives other project-based operating or rental subsidies that were not anticipated in the original underwriting excluding the rent subsidy reserve held and administered by the OC Housing and Community Development.
- Developer is in default under the regulatory agreement or other loan documents and all applicable cure periods have expired.

Please note that submission of the self-certification compliance checklist form (#1 above) set forth within these instructions for requesting a Capitalized Operating Subsidy Reserve Payment (by the payment requestor) and its acceptance by OCHCD to allow for approval of the requested payment does not preclude OCHCD or other County Department or Agency from completing its own comprehensive compliance review at a later date and determining that the developer/owner/requestor may or may not be in full compliance with all applicable regulatory agreements.

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OC Community Resources
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor
Santa Ana, CA 92705

Regulatory Agreement Compliance Certification Form and Checklist

Name of Project: _____
Name of Developer/Owner:_____
Number of Restricted Units:_____
Population Served:_____
Income Limit Range:_____

General Conditions of the Project's Regulatory Agreement with the OC Housing & Community Development	Initial to acknowledge compliance with the noted general conditions
Use, occupancy and rental of the restricted units have been limited to qualified tenants as set forth within the project's regulatory agreement	
Owner/Management agent has adopted written tenant selection policies that are consistent with the requirements set forth within the project's regulatory agreement.	
The owner/management agent is in compliance with the nondiscrimination covenant set forth within the project's regulatory agreement.	
The owner/management agent has submitted to County, no later than 180 days after the end of the property's fiscal year, a report showing the information necessary to allow the County to determine the Owner's compliance with the project's regulatory agreement.	
The owner/management agent is managing the restricted units in accordance with an approved management plan.	
The owner is not in default or failed to make payments on any of the project loans and is in good standing with all lenders on the noted project (as of the date of certification).	
There has been no unauthorized sale or transfer of the project.	

Certification:

To the best of my knowledge, information and belief, the undersigned hereby certifies that the above acknowledgements are true and correct, and the noted project is in compliance with the regulatory agreement for said project.

Owner/Management Agent:	Signature of Authorized Owner/Agent Official:	Date of Signature:

Disclaimer: Acceptance of this self-certification by the OC Housing & Community Development does not preclude the County or a partner agency from completing a comprehensive compliance review of the development at any time and determining that the development is or is not in compliance with applicable regulations and/or agreements.

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OC Community Resources

OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor
Santa Ana, CA 92705

REQUEST FOR DISBURSEMENT OF CAPITALIZED OPERATING SUBSIDY RESERVE (COSR) FUNDS

Project Name:		Period Covered:
Property Address (include city, state and zip code):		
Name of Developer/Project Owner:		Contact Name & Telephone No. Advance Payment ☐
Total # of MHSA Assisted Units for which Subsidy Payment is available:		
Total # of Units in the Development:		
Original Years Projected for Subsidy:		
Projected Years Remaining for Subsidy:		
Year Requested:		
Amount Requested (current request): $		
Projected Balance: $		
Purpose:		
The undersigned owner/management agent hereby requests that OC Housing & Community Development disburse funds as provided by the COSR Agreement and MHSA Regulatory Agreement. To the best of our knowledge, information and belief, the sum requested is required as COSR assistance. The undersigned hereby certifies that the fund will be used to cover the shortfall in Operating Expenses for the subsidized MHSA Housing Units within the above noted project.		
Owner/Management Agent:	**Signature of Authorized Owner/Agent Official:**	**Date of Request/Signature:**
For OC Housing & Community Development Staff Only:		
Request reviewed by:		Title:
Name/Title of Payment Authorization Official:		
Signature of Authorized Official to approve payment:		

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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

MENTAL HEALTH SERVICES ACT
CAPITALIZED OPERATING SUBSIDY RESERVE
DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT ("**Deed of Trust**") is made as of _____, 2026, by **[**BORROWER**]**, ("**Trustor**"), to_____, as trustee ("**Trustee**"), for the benefit of the COUNTY OF ORANGE, a political subdivision of the state of California, as beneficiary ("**Beneficiary**").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's fee interest in the property located in Orange County, State of California, that is described in Exhibit A, attached hereto and incorporated herein by this reference (the "**Property**"), on which Trustor intends to/has construct[ed] and intends to/has been operate/ing a residential development commonly known as [PROJECT NAME].

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including without limiting the generality of the foregoing, all tenements, hereditament and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings, improvements and landscaping of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property (sometimes collectively referred to as the "**Improvements**");

TOGETHER WITH all building materials and equipment now or hereafter delivered to said Property and intended to be installed therein;

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TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, strips and gores of land adjacent to or used in connection with the Property and/or Improvements;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all oil, gas and mineral rights (including royalty and leasehold rights relating thereto), all water and water rights and shares of stock relating thereto, all leases of all or any portion of the Property or Improvements entered into by Trustor as lessor or lessee, all options to purchase or lease all or any portion of the Property and/or Improvements, all deposits made with or other security given by Trustor to third parties including, utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by and proceeding or purchase in lieu thereof of the whole or any part of such property; and

TOGETHER WITH all articles of personal property or fixtures now or hereafter attached to, located on, installed in or used in and about the Property and/or Improvements, including without limitation, all partitions, generators, screens, boilers, furnaces, pipes, plumbing, elevators, cleaning and sprinkler systems, fire extinguishing machinery and equipment, water tanks, heating, ventilating, air conditioning and air cooling machinery and, equipment, gas and electric machinery and equipment and other appliances, machinery and equipment and other fixtures of every nature, all of which shall remain real property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the Property in any manner.

TOGETHER WITH all present and future accounts, general intangibles, chattel paper, deposit accounts, investment property, instruments and documents as those terms are defined in the California Commercial Code, now or hereafter relating or arising with respect to the Property and/or Improvements and/or the use thereof or any improvements thereto, including without limitation: (i) all rights to the payment of money, including escrow proceeds arising out of the sale or other disposition of all or any portion of the Property and/or Improvements; (ii) all deposit accounts and other accounts and funds created under or pursuant to the Loan Agreement (as defined below), and the other Loan Documents, all amounts now or hereafter on deposit herein, and all interest and other earnings thereon; (iii) all use permits, occupancy permits, construction and building permits, and all other permits and approvals required by any governmental or quasi-governmental authority in connection with the development, construction, use, occupancy or operation of the Property and/or Improvements; (iv) any and all agreements relating to the occupancy and/or operation of the Property and/or Improvements, including without limitation service, property management, landscaping, gardening , consulting and other contracts of every nature (to the extent the same are assignable); (v) all lease or rental agreements; (vi) all names under which the Property and/or Improvements are now or hereafter known and all rights to carry on business under any such names or any variant thereof; (vii) all trademarks relating to the Property and/or Improvements and/or the use, occupancy or operation thereof; (viii) all goodwill relating to the Property and/or Improvements and/or the use, occupancy or operation thereof; (ix) all insurance proceeds and condemnation awards arising out

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of or incidental to the ownership, use, occupancy or operation of the Property and/or Improvements; (x) all reserves, deferred payments, deposits, refunds, cost savings, bonds, insurance policies and payments of any kind relating to the Property and/or Improvements; (xi) all water stock, if any, relating to any Property and/or Improvements; (xii) all supplements, modifications and amendments to the foregoing and all present and future accessions, additions, attachments, replacements and substitutions of or to any or all of the foregoing; and (xiii) all cash and noncash proceeds and products of any or all of the foregoing, including without limitation all monies, deposit accounts, insurance proceeds and other tangible or intangible property received upon a sale or other disposition of any of the foregoing, whether voluntary or involuntary; and

TOGETHER WITH all present and future goods, equipment and inventory, as those terms are defined in the California Commercial Code, and all other present and future personal property of any kind or nature whatsoever, now or hereafter located at, upon or about the Property and/or Improvements, or used or to be used in connection with or relating or arising with respect to the Property and/or Improvements, the use thereof or any improvements thereto.

All of the foregoing, together with the Property, is herein referred to as the "Security". To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING:

(a) Payment of and performance of all indebtedness of Trustor to Beneficiary as set forth in the Loan Agreement (defined in Section 1.5 below) and , if payment is required, the Note (defined in Section 1.6 below) in the original principal amount of **[AMOUNT OF LOAN]** ($XXX) until paid or canceled. Said principal and other payments shall be due and payable as provided in the Loan Agreement and the Note. The Loan Agreement and the Note and all their terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced;

(b) Payment and performance of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust with interest thereon as provided herein;

(c) Payment and performance of every other obligation, covenant or agreement of Trustor contained in this Deed of Trust and in the other "Loan Documents" (as such term is defined in the Loan Agreement);

(d) Payment and performance of all renewals, extensions, supplements, amendments and other modifications of any of the foregoing, including without limitation modifications that are evidenced by new or additional documents or that change the rate of interest on any obligation.

All of the foregoing obligations are referred to collectively herein as the "Obligations".

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

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ARTICLE I
DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

1.1. **"Debt Instrument"** means any debt, loan, mortgage, deed of trust, regulatory agreement or security instrument relating to the Property or the Security, including, but not limited to, the Loan Documents.**"Hazardous Substance"** means:any oil, flammable substance, explosive, radioactive material, hazardous waste or substance, toxic waste or substance or any other waste, material, or pollutant that

(i) poses a hazard to the Property or to persons on the Property or

(ii) causes the Property to be in violation of any Hazardous Substance Law;

(b) asbestos in any form;

(c) urea formaldehyde foam insulation;

(d) transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls;

(e) radon gas;

(f) any chemical, material, or substance defined as or included in the definition of "hazardous substance," "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state, or federal law or under the regulations adopted or publications promulgated pursuant to those laws, including, but not limited to, any Hazardous Substance Law, Code of Civil Procedure § 564, as amended from time to time, Code of Civil Procedure § 726.5, as amended from time to time, Code of Civil Procedure §736, as amended from time to time, and Civil Code § 2929.5, as amended from time to time;

(g) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or which may pose a hazard to the health and safety of the occupants of the Property or the owners or occupants of property adjacent to or surrounding the Property, or any other person coming on the Property or any adjacent property; and

(h) any other chemical, material, or substance that may pose a hazard to the environment.

1.3. "**Hazardous Substance Claim**" means any enforcement, cleanup, removal, remedial, or other governmental, regulatory, or private actions, agreements, or orders threatened, instituted, or completed pursuant to any Hazardous Substance Law together with all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution,

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cost-recovery compensation, loss, or injury resulting from the presence, release or discharge of any Hazardous Substance.

1.4. "**Hazardous Substance Law**" means any federal, state, or local law, ordinance, regulation, or policy relating to the environment, health, and safety, any Hazardous Substance (including, without limitation, the use, handling, transportation, production, disposal, discharge, or storage of the substance), industrial hygiene, soil, groundwater, and indoor and ambient air conditions or the environmental conditions on the Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USCS §§ 9601 et seq.], as amended from time to time; the Hazardous Substances Transportation Act [49 USCS §§ 1801 et seq.], as amended from time to time; the Resource Conservation and Recovery Act [42 USCS §§ 6901 et seq.], as amended from time to time; the Federal Water Pollution Control Act [33 USCS §§ 1251 et seq.], as amended from time to time; the Hazardous Substance Account Act [Health and Safety Code §§ 25300 et seq.], as amended from time to time; the Hazardous Waste Control Law [Health and Safety Code §§ 25100 et seq.], as amended from time to time; the Medical Waste Management Act [Health and Safety Code §§ 25015 et seq.], as amended from time to time; and the Porter-Cologne Water Quality Control Act [Water Code §§ 13000 et seq.], as amended from time to time.

1.5. "**Loan Agreement**" means that certain Mental Health Services Act Capitalized Operating Subsidy Reserve Agreement, which terms and provision are incorporated into this Deed of Trust by reference, of even date herewith between Trustor and Beneficiary.

1.6. "**Note**" means that certain Mental Health Services Act Capitalized Operating Subsidy Reserve Promissory (COSR) Promissory Note Secured by Deed of Trust of even date herewith executed by the Trustor, the payment of which is secured by this deed of Trust.

1.7. "**Principal**" means the aggregate of all principal due under the Note.

1.8. "**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of Hazardous Substances that goes into the soil, surface water, or groundwater of the Property, whether or not caused by, contributed to, permitted by, acquiesced to, or known to Trustor.

ARTICLE II
GENERAL COVENANTS OF TRUSTOR REGARDING THE PROPERTY, IMPROVEMENTS AND SECURITY

2.1. Payment of Secured Obligations.

Trustor shall duly and punctually pay and perform all Obligations, including but not limited to all terms, covenants, conditions and agreements set forth in the Debt Instruments, the Loan Agreement, the Note and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

2.2. Maintenance, Repair and Modification.

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(a) The Trustor agrees that at all times prior to full payment of the sum owed under the Note, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition and repair and in a prudent and businesslike manner. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals to the Security, which are necessary or appropriate. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

(b) Trustor shall not remove, demolish or substantially alter any of the Improvements, other than to make repairs in the ordinary course of business of a non-structural nature which serve to preserve or increase the value of the Security without Beneficiary's prior written consent, which consent shall not be unreasonably withheld so long as Trustor provides reasonable evidence to Beneficiary that, following such demolition and restoration and/or alteration, the Improvements shall have a fair market value at least equal to their fair market value prior to such demolition and restoration and/or alteration; Trustor shall complete promptly and in a good and workmanlike manner any Improvement which may now or hereafter be constructed and promptly restore in like manner any Improvement which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor; Trustor shall comply with all laws, ordinances, rules, regulations, covenants, conditions, restrictions and orders of any governmental authority now or hereafter affecting the conduct or operation of Trustor's business or the security or any part thereof or requiring any alteration or improvement to be made thereon; Trustor shall not commit, suffer or permit any act to be done in, upon or to the Security or any part thereof in violation of any such laws, ordinances, rules, regulations or orders, or any covenant, condition or restriction now or hereafter affecting the Security; Trustor shall not commit or permit any waste or deterioration of the Security, and shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; Trustor will not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Security or otherwise would impair the security of Beneficiary in the Security; Trustor shall comply with the provisions of all leases, if any, constituting a portion of the Security; Trustor shall not abandon the Security or any portion thereof or leave the Security unprotected, unguarded, vacant or deserted; Trustor shall not initiate, join in or consent to any change in any zoning ordinance, general plan, specific plan, private restrictive covenant or other public or private restriction limiting the uses which may be made of the Security by Trustor or by the owner thereof; Trustor shall secure and maintain in full force all permits necessary for the use, occupancy and operation of the Security; except as otherwise prohibited or restricted by the Loan Agreement and the other instruments and documents executed in connection with the transaction to which the Loan Agreement pertains or any of them, Trustor shall do any and all other acts which may be reasonably necessary to protect or preserve the value of the Security and the rights of Trustee and Beneficiary with respect thereto.

2.3. Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except

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those required or desirable for installation and maintenance of public utilities including, without limitation, water, gas, electricity, sewer, telephone and telegraph, or those required by law.

2.4. Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined below) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so paid by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the indebtedness secured by the lien of this Deed of Trust, and shall bear interest from the date such expenses are paid at the Agreed Rate (as defined in Section 3.1(d) below).

2.5. Payment of the Principal.

If required pursuant to the terms of the Note, the Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

2.6. Fixture Filing and Security Agreement.

(a) To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixture filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code and Trustor hereby grants to Beneficiary a security interest in all of Trustor's right, title and interest, whether now existing or hereafter arising, in and to any portion of the Property which constitutes personal property (the "**Personal Property**").

(b) Trustor hereby represents and warrants to Beneficiary that: (1) Trustor is the owner of the Personal Property and no other person has any right, title, claim or interest (by way of security interest or other lien or charge or otherwise) in, against or to the Personal Property other than any senior lender or lien holder approved in writing by Beneficiary; (2) the Personal Property is free from all liens, security interests, encumbrances and adverse interests, except Permitted Encumbrances (hereinafter defined); (3) no financing statement or similar filing covering any of the Personal Property, and naming any secured party other than Beneficiary and the holders of Permitted Encumbrances, is on file in any public office; (4) each account, general intangible, chattel paper, deposit account, instrument, document, agreement, contract or right to the payment of money constituting Personal Property (collectively, the "Rights to Payment"), if any, is genuine and enforceable in accordance with its terms against the party obligated to pay the same and (5) the Personal Property is not used nor was the Personal Property purchased for personal or family use by Trustor.

(c) Trustor hereby agrees: (1) to pay, prior to delinquency, all taxes, assessments, charges, encumbrances and liens now or hereafter imposed upon or affecting all or any part of

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the Personal Property; (2) not to amend, modify, supplement, terminate or cancel any of the Personal Property; (3) without the prior written consent of Beneficiary, not to remove all or any part of the tangible Personal Property from the Property; (4) to give Beneficiary thirty (30) days' prior written notice of any change in Trustor's residence, principal place of business, chief executive office or trade names or styles; (5) to appear in and defend any action or proceeding which may affect the Personal Property (including, without limitation, actions, proceedings and claims which may affect Trustor's title to the Personal Property or the validity or priority of Beneficiary's security interest in the Personal Property); (6) to indemnify Beneficiary against all claims, demands and liabilities of every kind caused by the Personal Property; and (7) to permit Beneficiary to enter Trustor's premises to inspect the Personal Property. Trustor further agrees (8) to fully and timely perform all of its obligations under and with respect to all Rights of Payment and to diligently enforce all of the obligations of each obligor thereunder; (9) not to amend, modify, supplement, cancel or terminate any of the Rights to Payment in any material respect without the prior written consent of Beneficiary; (10) to keep the Rights to Payment and all proceeds free and clear of all defaults, defenses, rights of offset and counterclaim; (11) to take or bring, in Beneficiary's name or in the name of Trustor, as Beneficiary may require, all actions, suits or proceedings deemed reasonably necessary or desirable by Beneficiary to effect collection or to realize upon Rights to Payment; and (12) not to commingle Rights to Payment or collections thereunder with other property.

(d) As soon as practicable, and in any event within ten (10) days, Trustor shall notify Beneficiary of: (1) any attachment or other legal process levied against any of the Personal Property; (2) any information received by Trustor which may in any manner materially and adversely affect the value of the Personal Property or the rights and remedies of Beneficiary with respect thereto; and (3) the removal of any of the Personal Property to a new location other than in the ordinary course of business and the removal of any records of Trustor relating to the Personal Property to any location other than the Land and Improvements.

(e) Trustor hereby irrevocably constitutes and appoints Beneficiary as its attorney-in-fact to, after the occurrence and during the occurrence of an Event of Default: (1) perform any obligation of Trustor hereunder in Trustor's name or otherwise; (2) give notice of Beneficiary's rights in the Rights to Payment, to enforce the same, and make extension agreements with respect thereto; (3) release persons liable on the Rights to Payment and to give receipts and acquittances and compromise disputes in connection therewith; (4) release security for the Rights to Payment; (5) resort to security for the Rights to Payment in any order; (5) prepare, execute, file, record or deliver notes, assignments, schedules, designation statements, financing statements, continuation statements, termination statements, and other documents to perfect preserve or release Beneficiary's interest in the Rights to Payment; and (6) do all acts and things and execute all documents in the name of Trustor or otherwise, deemed by Beneficiary as necessary, proper and convenient in connection with the preservation, perfection or enforcement of its rights hereunder. The power of attorney granted hereunder is coupled with an interest and is irrevocable.

2.7. Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to

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convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts that the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

2.8. Operation of the Security.

The Trustor agrees and covenants to operate the Security in full compliance with the Loan Agreement and the Debt Instruments.

2.9. Inspection of the Security.

The Trustor covenants and agrees that at any and all reasonable times, the Beneficiary and its duly authorized agents, attorney's experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect all or any portion of the Security, including, but not limited to, the right to inspect and copy all reports and records pertaining thereto.

2.10. Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

2.11. Subrogation and Waiver of Offset.

(a) Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Security, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust; provided, however, that this waiver of subrogation shall not be effective with respect to any policy of insurance permitted or required by this Deed of Trust if (i) such policy prohibits, or if coverage thereunder would be reduced as a result of, such waiver of subrogation and (ii) Trustor is unable to obtain from a carrier issuing such insurance a policy that, by special endorsement or otherwise, permits such a waiver of subrogation.

(b) Except as otherwise specifically provided herein, all amounts payable by Trustor pursuant to this Deed of Trust shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or

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otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Security or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Security or any part thereof; (iii) any title defect or encumbrance or any eviction from the Security or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms hereof or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

2.12. Utilities.

Trustor shall pay or cause to be paid when due all utility charges which are incurred for the benefit of the Security or which may become a charge or lien against the Security for gas, electricity, water, sewer services or other fees and charges for utilities furnished to the Security and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Security or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon.

2.13. Actions by Beneficiary to Preserve Property.

If Trustor fails to make any payment or to do any act as and in the manner provided in this Deed of Trust, Beneficiary and Trustee, and each of them, each in its own discretion, without obligation to do so, without releasing Trustor from any Obligation, and subject only to the notice and cure provisions of the Loan Agreement, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting their general and other powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall each and are hereby given the right, but not the obligation: (i) to enter upon and take possession of the Security; (ii) to make additions, alterations, repairs and improvements to the Security which either of them consider necessary or proper to keep the Security in good condition and repair; (iii) to appear and participate in any action or proceeding which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect the security of this Deed of Trust or be prior or superior hereto; and (v) in exercising such powers to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Trustor shall reimburse Beneficiary on demand for all costs incurred by Beneficiary in connection with actions which Beneficiary deems advisable to protect its interest under the Loan Agreement and all such amounts shall bear interest at the Agreed Rate following demand and be secured hereby.

2.14. Transfer of Property by Trustor.

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Prior to repayment of the Note, Trustor agrees that Trustor shall not sell or transfer the Security or any interest therein or sell or transfer all or substantially all of the assets of Trustor or any of them except as may be provided in the Loan Agreement.

2.15. Additional Security.

No other security now existing, or hereafter taken, to secure the Obligations secured hereby or the liability of any maker, surety guarantor or endorser with respect to such Obligations, or any of them, shall be impaired or affected by the execution of this Deed of Trust; and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the Security, or any extension of the time of payment of the indebtedness shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, surety, guarantor or endorser for the payment of said indebtedness. In the event Beneficiary at any time holds additional security for any of the Obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

2.16. Liens.

Trustor shall not cause, incur suffer or permit to exist or become effective any lien, encumbrance or charge upon all or any part of the Property, the Improvements or any interest therein other than (a) easements, rights of way, covenants, conditions, restrictions, liens and other title limitations approved in writing by Beneficiary prior to the execution of this Deed of Trust, and (b) immaterial easements and rights of way which are required by governmental authorities as a condition to the use and operation of the Improvements which are approved in writing by Beneficiary after the execution of this Deed of Trust (the "**Permitted Encumbrances**"). Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges upon the Security, or any part thereof or interest therein other than the Permitted Encumbrances; provided, that the existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof. Trustor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Trustor shall first deposit with the Beneficiary a bond or other security satisfactory to Beneficiary in such amounts as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim or shall post a bond authorized by statute in lieu thereof, and provided further that Trustor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Trustor shall fail to remove and discharge any such lien, encumbrance, or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, without inquiring into the validity of such lien, encumbrance or charge nor into the existence of any defense or offset thereto, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in court a bond or the amount claimed, or otherwise giving security for such claim, in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, together

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with interest thereon from the date of such expenditure at the Agreed Rate and, until paid, such sums shall be secured hereby.

2.17. Beneficiary's Powers.

Without affecting the liability of any other person liable for the payment of any Obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Security not then or theretofore released as security for the full amount of all unpaid Obligations, Beneficiary may, from time to time and without notice: (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such Obligation (to the extent that Beneficiary is so allowed under the Loan Agreement), (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Security, (e) take or release any other or additional security for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto. By accepting payment or performance of any Obligation secured by this Deed of Trust after the payment or performance thereof is due or after the filing of notice of default and election to sell (other than satisfaction in full of the Obligations), Beneficiary shall not have thereby waived its right to require prompt payment or performance, when due, of all other Obligations secured hereby, or to declare a default for failure so to pay or perform, or to proceed with the sale under any notice of default and election to sell theretofore given by Beneficiary, or with respect to any unpaid balance of the indebtedness secured hereby. The acceptance by Beneficiary of any sum in an amount less than the sum then due shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due. Trustor's failure to pay the entire sum then due shall continue to be a default, notwithstanding the acceptance of partial payment, and, until the entire sum then due shall have been paid, Beneficiary or Trustee shall at all times be entitled to declare a default and to exercise all the remedies herein conferred, and the right to proceed with a sale under any notice of default and election to sell shall in no way be impaired, whether or not such amounts are received prior or subsequent to such notice. No delay or omission of Trustee or Beneficiary in the exercise of any other right or power hereunder shall impair such right or power or any other right or power nor shall the same be construed to be a waiver of any default or any acquiescence therein.

2.18. Suits to Protect Property.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or any additional or other security for the obligations secured, the interest of Beneficiary of the rights, powers and duties of Trustee, and to pay all costs and expenses, including without limitation, cost of evidence of title and attorneys' fees, in any action or proceeding in which Beneficiary or Trustee may appear to be made a party, including, but not limited to, foreclosure or other proceeding commenced by those claiming a right to any part of the Property under subordinate liens, in any action to partition or condemn all or part of the Property, whether pursued to final judgment, and in any exercise of the power of sale in this Deed of Trust, whether the sale is actually consummated.

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ARTICLE III
TAXES AND INSURANCE; ADVANCES

3.1. Taxes, Other Governmental Charges and Utility Charges.

(a) Trustor shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other charges of any kind, including without limitation non-governmental levies or assessments such as maintenance charges, levies or other charges resulting from covenants, conditions and restrictions affecting the Security, which are assessed or imposed upon the Security or upon Trustor as owner or operator of the Security, or become due and payable, and which create or may create a lien upon the Security, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all the above collectively hereinafter referred to as "**Impositions**"); provided, however, that if, by law, any Imposition is payable, or may at the option of the taxpayer be paid, in installments, Trustor may pay the same in installments (together with any interest charged) as the same become due and before any fine, penalty or cost may be added thereto for the nonpayment of any such installment. Notwithstanding the foregoing, Trustor shall have the right to diligently contest, in good faith and by appropriate proceedings, the validity of any Imposition, so long as Trustor demonstrates to Beneficiary that Trustor is maintaining sufficient reserves for the payment of all contested liabilities and so long as the security and value of Beneficiary's interest under this Deed of Trust are not impaired as a result of such contest.

(b) If at any time after the date hereof there shall be assessed or imposed (1) a tax or assessment on the Security in lieu of or in addition to the Impositions payable by Trustor pursuant to this Section 3.1 hereof, or (2) a license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding Obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in this Section and Trustor shall pay and discharge the same as herein provided with respect to the payment of Impositions. If Trustor fails to pay such Impositions prior to delinquency or if Trustor is prohibited by law from paying such Impositions, Beneficiary may at its option declare all Obligations secured hereby, together with all accrued interest thereon, immediately due and payable. Anything to the contrary herein notwithstanding, Trustor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Beneficiary or on the Obligations secured hereby.

(c) Trustor shall deliver to Beneficiary within thirty (30) days after the date upon which any such Imposition is due and payable by Trustor official receipts of the appropriate taxing authority, or other proof satisfactory to Beneficiary, evidencing the payment thereof. Trustor shall not suffer, permit or initiate the joint assessment of any real and personal property which may constitute all or a portion of the Security and the personal property or suffer, permit or initiate any other procedure whereby the lien of real property taxes and the lien of personal property taxes shall be assessed, levied or charged to the Security as a single Lien. Trustor shall cause to be furnished to Beneficiary a tax reporting service, covering the Property, of a type and duration, and with a company, reasonably satisfactory to Beneficiary.

(d) In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the

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same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law (hereinafter the "**Agreed Rate**"), shall become an additional Obligation of Trustor to the Beneficiary and shall be secured hereby, and Trustor agrees to pay all such amounts.

3.2. Insurance.

(a) Trustor agrees to provide insurance conforming in all respects to that required under the Loan Agreement at all times until all amounts secured by this Deed of Trust have been paid and all other Obligations secured hereunder fulfilled, and this Deed of Trust reconveyed. All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense.

(b) All said insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to the Beneficiary and/or shall name Beneficiary as an additional insured, as Beneficiary may require, and shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policies notwithstanding any act or negligence of Trustor or any party holding under Trustor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim and deduction against Trustor. At Beneficiary's option, Trustor shall furnish Beneficiary with an original of all required policies of insurance and/or a certificate of insurance with all required endorsements for each required policy setting forth the coverage, the limits of liability, the deductible, if any, the name of the carrier, the policy number, and the period of coverage, which certificates and endorsements shall be executed by authorized officials of the companies issuing such insurance, or any agents or attorneys-in-fact authorized to issue said certificates and endorsements (in which event each such certificate and endorsements shall be accompanied by a notarized affidavit, agency agreement or power of attorney evidencing the authority of the signatory to issue such certificate on behalf of the insurer named therein), accompanied by a certificate from Trustor that the insurance satisfies the requirements of the Loan Agreement, and that Beneficiary may conclusively rely on such certificates. If Beneficiary consents, Trustor may provide any of the required insurance through blanket policies carried by Trustor and covering more than one location; provided, however, all such policies shall be in form and substance and issued by companies satisfactory to Beneficiary.

(c) At least thirty (30) days prior to the expiration of each required policy, Trustor shall deliver to Beneficiary evidence satisfactory to Beneficiary of the payment of premium and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust or the Loan Agreement. All such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and the insurance company, such policies will not be canceled, allowed to lapse without renewal, surrendered or materially amended (which term shall include any reduction in the scope, or limits of coverage) without at least thirty (30) days prior written notice to Beneficiary.

(d) In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance required by Section 3.2

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hereof and any unearned premiums paid thereon shall, without further act, be assigned to and shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Property, and Trustor hereby appoints Beneficiary its lawful attorney-in-fact to execute an assignment thereof and any other document necessary to effect such transfer.

3.3. Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Agreement, the Beneficiary, after at least twenty (20) days prior written notice to Trustor, may (but shall be under no Obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become an additional Obligation of the Trustor to the Beneficiary (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the Agreed Rate.

ARTICLE IV
DAMAGE, DESTRUCTION OR CONDEMNATION

4.1. Casualties.

Trustor shall give prompt written notice to Beneficiary upon the occurrence of casualty to or in connection with the Security or any part thereof, whether or not covered by insurance. In the event of such casualty Trustor hereby absolutely and unconditionally assigns to Beneficiary all insurance proceeds which it may be entitled to receive and such proceeds shall be delivered to and held by Beneficiary to be applied to Beneficiary's expenses in settling, prosecuting or defending any insurance claim, and then to the restoration of any portion of the Security that has been damaged or destroyed to the same condition, character and value as existed prior to such damage or destruction so long as the following conditions are satisfied: (i) Trustor is not in default hereunder (other than any default resulting from such casualty), (ii) Beneficiary's security is not materially impaired, (iii) all income (from the Security or otherwise) required to pay all debt service and operating expenses of the Security during such restoration and thereafter will be equal to or greater than the income which was required to pay such debt service and operating expenses prior to the casualty, (iv) Trustor evidences to the satisfaction of Beneficiary that the insurance required to be maintained hereunder will be available to the Trustor during restoration and thereafter, (v) Beneficiary shall have approved the plans and specifications for such restoration, which approval shall not be unreasonably withheld or delayed, and (vi) in the event that in Beneficiary's sole judgment the insurance proceeds and any amounts deposited with a senior lender are not sufficient to accomplish restoration, Trustor deposits with the Beneficiary or senior lender, as required by that senior lender pursuant to the terms of the senior Debt Instrument, within five days of demand by Beneficiary, the additional amounts necessary to accomplish restoration. Proceeds disbursed for restoration will be released to Trustor in accordance with Beneficiary's then current customary disbursement procedures. In the event any of the conditions set forth above are not satisfied or if the insurance proceeds shall not be applied to the restoration of the Security within thirty days after receipt of such proceeds by Beneficiary, Beneficiary may release such proceeds to Trustor without such release being

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deemed a payment of any indebtedness secured hereby, rather than apply such proceeds to the restoration of the Security. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If the Security is restored at a cost less than the available insurance proceeds, then such excess proceeds shall, if Trustor is not then in default hereunder, be paid over to Trustor. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise, settle and collect all claims, proceeds and awards assigned to Beneficiary, but shall not be responsible for any failure to collect any claim, proceeds or award, regardless of the cause of the failure.

4.2. Condemnation.

Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceeding for the condemnation or other taking for public or quasi-public use of the Security or any part thereof, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice or other information regarding such proceedings, action, taking or damage, Trustor shall promptly notify Trustee and Beneficiary of such fact. Trustor shall then, if requested by Beneficiary, file or defend its right thereunder and prosecute the same with due diligence to its final disposition and shall cause any award or settlement to be paid to Beneficiary in accordance with the provisions of the Loan Agreement. At Beneficiary's option, Beneficiary or Trustor may be the nominal party in such proceeding but in any event Beneficiary shall be entitled, without regard to the adequacy of its security, to participate in, appear in, prosecute and settle, jointly with Trustor to control the same and to be represented therein by counsel of its choice, and Trustor will deliver, or cause to be delivered, to Beneficiary such instruments as may be requested by it from time to time to permit such participation. Trustor and Beneficiary agree to act in good faith with respect to any consent, settlement, or award arising out of said prosecution. If the Security or any part thereof is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceedings, all compensation, awards, damages, rights of action proceeds and settlements payable to Trustor by virtue of its interest in the security shall be and hereby are assigned, transferred and set over into Beneficiary to be held by it, in trust, subject to the lien and security interest of this Deed of Trust. All such proceeds shall be first applied to reimburse Trustee and Beneficiary, for all costs and expenses, including reasonable attorneys' fees, incurred in connection with the collection of such award or settlement, and then to the restoration of any portion of the Security that has been taken to the similar condition, character and value as existed prior to such taking so long as the following conditions are satisfied: (i) Trustor is not in default hereunder, (ii) Beneficiary's security is not materially impaired, (iii) all income (from the Security or otherwise) required to pay all debt service and operating expenses of the Security during such restoration and thereafter will be equal to or greater than the income which was required to pay such debt service and operating expenses prior to the casualty, (iv) Trustor evidences to the satisfaction of Beneficiary that the insurance required to be maintained hereunder will be available to the Trustor during restoration and thereafter, (v) Beneficiary shall have approved the plans and specifications for such restoration, and (vi) in the event that in Beneficiary's sole judgment the insurance proceeds and any amounts deposited with a senior lender are not sufficient to accomplish restoration, Trustor deposits with the Beneficiary or senior lender, as required by that senior lender pursuant to the terms of the senior Debt Instrument, within five days of demand by Beneficiary, the additional amounts necessary to accomplish restoration. Application or release of proceeds as provided herein shall

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not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

ARTICLE V
ENVIRONMENTAL COVENANTS OF TRUSTOR

5.1. Disclosures By Trustor. Except as disclosed in writing to, and acknowledged and accepted in writing by Beneficiary, Trustor represents and warrants that:

(a) during the period of Trustor's ownership of the Property

(i) there has been no use, generation, manufacture, storage, treatment, disposal, discharge, Release, or threatened Release of any Hazardous Substance by any person on or around the Property except in such small quantities as are customary and usual in the ordinary course of constructing, using and operating a residential housing business on the Property and in strict compliance with all Hazardous Substances Laws, and

(ii) there have been no Hazardous Substances transported over or through the Property;

(b) after diligent inquiry, Trustor has no knowledge of, or reason to believe that, there has been:

(i) any use, generation, manufacture, storage, treatment, disposal, Release, or threatened Release of any hazardous waste or substance by any prior owners or prior occupants of the Property or by any third parties onto the Property, or

(ii) any actual or threatened litigation or claims of any kind by any person relating to these matters;

(c) no Hazardous Substances in excess of permitted levels or reportable quantities under applicable Hazardous Substance Laws are present in or about the Property or any nearby real property that could migrate to the Property;

(d) no Release or threatened Release exists or has occurred;

(e) no underground storage tanks of any kind are or ever have been located in or about the Property;

(f) the Property and all operations and activities at, and the use and occupancy of, the Property comply with all applicable Hazardous Substance Laws;

(g) Trustor is now in strict compliance with, every permit, license, and approval required by all applicable Hazardous Substance Laws for all activities and operations at, and the use and occupancy of, the Property;

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(h) to the best of Trustor's knowledge, after diligent inquiry, there are no Hazardous Substance Claims pending or threatened with regard to Property or against Trustor;

(i) to its knowledge the Property has not been nor is it within 2,000 feet of any other property designated as "hazardous waste property" or what was formerly known as "border zone property," as applicable, pursuant to former Health and Safety Code §§ 25220 et seq., as those sections read on January 1, 2012, and no proceedings for a determination of this designation are pending or threatened;

(j) to the best of its knowledge after diligent inquiry, there exists no occurrence or condition on any real property adjoining or within 2,000 feet of the Property that would cause the Property or any part of it to be designated as "hazardous waste property" or what was formerly known as "border zone property," as applicable, pursuant to former Health and Safety Code §§ 25220 et seq., as those sections read on January 1, 2012, and any regulation adopted in accordance with that section;

(k) that the use of the Property shall be residential housing;

(l) any written disclosure submitted by or on behalf of Trustor to Beneficiary concerning any Release or threatened Release, past or present compliance by Trustor or other person of any Hazardous Substance Laws applicable to the Property, the past and present use and occupancy of the Property, and any environmental concerns relating to the Property, was true and complete when submitted and continues to be true and complete as of the date of this Deed of Trust.

5.2. Covenants of Trustor. Trustor agrees, except in the ordinary course of business and in strict compliance with all applicable Hazardous Substance Laws, as follows:

(a) not to cause or permit the property to be used as a site for the use, generation, manufacture, storage, treatment, Release, discharge, disposal, transportation, or presence of any Hazardous Substance;

(b) not to cause, contribute to, permit, or acquiesce in any Release or threatened Release;

(c) not to change or modify the use of the Property without the prior written consent of Beneficiary;

(d) to comply with and to cause the Property and every invitee or occupant of the Property to comply with all Hazardous Substance Laws;

(e) to immediately notify Beneficiary in writing of and to provide Beneficiary with a reasonably detailed description of:

(i) any noncompliance of the Property with any Hazardous Substance Laws;

(ii) any Hazardous Substance Claim;

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(iii) any Release or Threatened Release;

(iv) not engage in any of the activities enumerated in Cal. Health & Safety Code section 25227 on land that has been designated as an hazardous waste facility or border zone property, as applicable, and is subject to a recorded land use restriction pursuant to former Health & Safety Code Section 25229, 25230, or 25398.7, as those sections read on January 1, 2012, or pursuant to Sections 25202.5, 25221, or 25355.5 of the same, unless the person obtains a specific approval in writing as required pursuant to Section 25227;

(f) if Trustor discovers a Release or the presence of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law, to:

(i) notify Beneficiary of that discovery together with a reasonably detailed description;

(ii) engage promptly after a request by Beneficiary, a qualified environmental engineer reasonably satisfactory to Beneficiary to investigate these matters and prepare and submit to Beneficiary a written report containing the findings and conclusions resulting from that investigation, all at the sole expense of Trustor, and

(iii) take, at Trustor's sole expense, all necessary actions required by applicable Hazardous Substances Laws to remedy, repair, clean up, or detoxify any Release or Hazardous Substance, including, but not limited to, any remedial action required by any Hazardous Substance Laws or any judgment, consent, decree, settlement, or compromise in respect of any Hazardous Substance Claims, these actions to be performed:

A. in accordance with Hazardous Substance Laws,

B. in a good and proper manner,

C. under the supervision of a qualified environmental engineer approved in writing by Beneficiary,

D. in accordance with plans and specifications for these actions approved in writing by Beneficiary, and

E. using licensed and insured qualified contractors approved in writing by Beneficiary;

(g) immediately furnish to Beneficiary copies of all written communications received by Trustor from any governmental authority or other person or given by Trustor to any person and any other information Beneficiary may reasonably request concerning any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law; and

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(h) keep Beneficiary generally informed regarding any Release, threatened Release, Hazardous Substance Claim, or the discovery of any Hazardous Substance on or about the Property in violation of any Hazardous Substance Law.

5.3. Rights of Beneficiary. Upon Beneficiary's reasonable belief of the existence of a past or present Release or threatened Release not previously disclosed by Trustor in connection with the making of the Loan or the execution of this Deed of Trust or upon Beneficiary's reasonable belief that Trustor has failed to comply with any environmental provision of this Deed of Trust or any other Loan Document and upon reasonable prior notice (except in the case of an emergency) to Trustor, Beneficiary or its representatives, employees, and agents, may from time to time and at all reasonable times (or at any time in the case of an emergency) enter and inspect the Property and every part of it (including all samples of building materials, soil, and groundwater and all books, records, and files of Trustor relating to the Property) and perform those acts and things that Beneficiary deems necessary or desirable to inspect, investigate, assess, and protect the Security of this Deed of Trust, for the purpose of determining:

(a) the existence, location, nature, and magnitude of any past or present Release or threatened Release,

(b) the presence of any Hazardous Substances on or about the Property in violation of any Hazardous Substance Law, and

(c) the compliance by Trustor of every environmental provision of this Deed of Trust and every other Loan Document.

In furtherance of the purposes above, without limitation of any of its other rights, Beneficiary may:

(a) obtain a court order to enforce Beneficiary's right to enter and inspect the Property under Civil Code § 2929.5; and

(b) have a receiver appointed under Code of Civil Procedure § 564 to enforce Beneficiary's right to enter and inspect the Property for the purpose set forth above.

All costs and expenses incurred by Beneficiary with respect to the audits, tests, inspections, and examinations that Beneficiary or its agents, representatives, or employees may conduct, including the fees of the engineers, laboratories, contractors, consultants, and attorneys, will be paid by Trustor. All costs or expenses incurred by Trustee and Beneficiary pursuant to this Section (including without limitation court costs, consultant's fees, and attorney fees, whether incurred in litigation and whether before or after judgment) will bear interest at the Agreed Rate from the date they are incurred until those sums have been paid in full. Except as provided by law, any inspections or tests made by Beneficiary or its representatives, employees, and agents will be for Beneficiary's purposes only and will not be construed to create any responsibility or liability on the part of Beneficiary to Trustor or to any other person. Beneficiary will have the right, but not the obligation, to communicate with any governmental authority regarding any fact or reasonable belief of Beneficiary that constitutes or could constitute a breach of any of Trustor's obligations under any environmental provision contained in this Deed of Trust or any Loan Document.

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5.4. Waiver and Indemnity.

In consideration of the funds being secured by this Deed of Trust, Trustor:

(a) releases and waives any future claims against Beneficiary for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any Hazardous Substance Laws or under any Hazardous Substance Claim;

(b) agrees to reimburse Beneficiary, on demand, for all costs and expenses incurred by Beneficiary in connection with any review, approval, consent, or inspection relating to the environmental provisions in this Deed of Trust together with interest, after demand, at the Agreed Rate; and

(c) agrees to indemnify, defend, and hold Beneficiary and Trustee harmless from all losses, costs, claims, damages, penalties, liabilities, causes of action, judgments, court costs, attorney fees and other legal expenses, costs of evidence of title, cost of evidence of value, and other expenses (collectively, "**Expenses**"), including, but not limited to, any Expenses incurred or accruing after the foreclosure of the lien of this Deed of Trust, which either may suffer or incur and which directly or indirectly arises out of or is in any way connected with the breach of any environmental provision either in this Deed of Trust or in any Loan Document or as a consequence of any Release or threatened Release on the presence, use, generation, manufacture, storage, disposal, transportation, Release, or threatened Release of any Hazardous Substance on or about the Property, including the soils and groundwater, caused or permitted by Trustor, any prior owner or operator of the Property, any adjoining landowner or any other party, including, without limitation, the cost of any required or necessary repair, cleanup, remedy, or detoxification of any hazardous Substance and the preparation of any closure, remedial action, or other required plans, whether that action is required or necessary by reason of acts or omissions occurring prior to or following the recordation of this Deed of Trust. Trustor's obligations will survive the satisfaction, release, or cancellation of the indebtedness, the release and reconveyance or partial release and reconveyance of this Deed of Trust, and the foreclosure of the lien of this Deed of Trust or deed in lieu of the Deed of Trust.

5.5. Additional Covenants of Trustor.

(a) Trustor and Beneficiary agree that:

(i) this Section is intended as Beneficiary's written request for information and Trustor's written response concerning the environmental condition of the Property as provided by Code of Civil Procedure § 726.5; and

(ii) each representation, warranty, covenant, or indemnity made by Trustor in this Article or in any other provision of this Deed of Trust or any Loan Document that relates to the environmental condition of the Property is intended by Trustor and Beneficiary to be an "environmental provision" for purposes of Code of Civil Procedure § 736 and will survive the payment of the indebtedness and the termination or expiration of this Deed of Trust and will not be affected by Lender's acquisition of any interest in the Property, whether by full credit bid at foreclosure, deed in lieu of that, or otherwise. If there is any transfer of any portion of Trustor's interest in the Property, any successor-in-interest to Trustor agrees by its succession to that

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interest that the written request made pursuant to this Article will be deemed remade to the successor-in-interest without any further or additional action on the part of Beneficiary and that by assuming the debt secured by this Deed of Trust or by accepting the interest of Trustor subject to the lien of this Deed of Trust, the successor remakes each of the representations and warranties in this Deed of Trust and agrees to be bound by each covenant in this Deed of Trust, including, but not limited to, any indemnity provision.

(b) Even though Trustor may have provided Beneficiary with an environmental site assessment or other environmental report together with other relevant information regarding the environmental condition of the Property, Trustor acknowledges and agrees that Beneficiary is not accepting the Property as security for the Loan based on that assessment, report, or information. Rather, Beneficiary has relied on the representations and warranties of Trustor in this Deed of Trust, and Beneficiary is not waiving any of its rights and remedies in the environmental provisions of this Deed of Trust or any other Loan Document.

(c) Beneficiary or its agents, representatives, and employees may seek a judgment that Trustor has breached its covenants, representations, or warranties in Article II of this Deed of Trust or any other covenants, representations, or warranties that are deemed to be "environmental provisions" pursuant to Code of Civil Procedure § 736 (each an "**Environmental Provision**"), by commencing and maintaining an action or actions in any court of competent jurisdiction pursuant to Code of Civil Procedure § 736, whether commenced prior to or after foreclosure of the lien of this Deed of Trust. Beneficiary or its agents, representatives, and employees may also seek an injunction to cause Trustor to abate any action in violation of any Environmental Provision and may seek the recovery of all costs, damages, expenses, fees, penalties, fines, judgments, indemnification payments to third parties, and other out-of-pocket costs or expenses actually incurred by Beneficiary (collectively, "**Environmental Costs**") incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action required by any Hazardous Substances Law or any Hazardous Substance Claim, or which Beneficiary believes necessary to protect the Property. It will be conclusively presumed between Beneficiary and Trustor that all Environmental Costs incurred or advanced by Beneficiary relating to the cleanup, remedy, or other response action of or to the Property were made by Beneficiary in good faith. All Environmental Costs incurred by Beneficiary under this Section (including without limitation court costs, consultant fees, and attorney fees, whether incurred in litigation and whether before or after judgment) will bear interest at the Agreed Rate from the date of expenditure until those sums have been paid in full. Beneficiary will be entitled to bid, at any trustee's or foreclosure sale of the Property, the amount of the costs, expenses, and interest in addition to the amount of other indebtedness.

(d) Beneficiary or its agents, representatives, and employees may waive its lien against the Property or any portion of it, including but not limited to the Improvements, to the extent that the Property or any portion of the Security is found to be environmentally impaired in accordance with Code of Civil Procedure § 726.5, and to exercise all rights and remedies of an unsecured creditor against Trustor and all of Trustor's assets and property for the recovery of any deficiency and Environmental Costs, including, but not limited to, seeking an attachment order under Code of Civil Procedure § 483.010. As between Beneficiary and Trustor, for purposes of Code of Civil Procedure § 726.5, Trustor will have the burden of proving that Trustor or any

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related party (or any affiliate or agent of Trustor or any related party) was not in any way negligent in permitting the Release or threatened Release of the Hazardous Substances.

ARTICLE VI
ASSIGNMENTS OF RENTS, ISSUES AND PROFITS

6.1. Assignment.

Trustor hereby absolutely, irrevocably and unconditionally assigns to Beneficiary, as security for the Obligations, all rents, profits, deposits, royalties, income and other issues and similar benefits derived from the Security (collectively, the "**Rents**"), and hereby confers upon Beneficiary the right, power and authority to collect such Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in its name or in the name of Trustor, for all Rents, and apply the same to the Obligations secured hereby; provided, however, that Trustor shall have the right, as between Trustor and Beneficiary, to collect the Rents but not more than one (1) month in advance of the date due unless the written approval of Beneficiary has first been obtained, with the exception of security deposits and "first and last months' rent" collected from tenants in connection with Trustor's ordinary leasing of residential apartments within the Property), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and be continuing.

6.2. Collection Upon Default.

While any Event of Default remains uncured, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations hereby secured, enter upon and take possession of the Security, or any part thereof, and, with or without taking possession of the Security or any part thereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid Rents and all other monies which may have been or may hereafter be deposited with Trustor by any tenant to secure the payment of any Rent or for any services thereafter to be rendered by Trustor for any other obligation of any tenant to Trustor arising under any lease, and Trustor agrees that, upon the occurrence of any Event or Default hereunder, Trustor shall promptly deliver all Rents and other moneys to Beneficiary), and Beneficiary may apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys fees, whether or not suit is brought or prosecuted to judgment, against any indebtedness or Obligation of Trustor secured hereby, and in such order as Beneficiary may determine notwithstanding that said indebtedness or the performance of said Obligation may not then be due. The collection of Rents, or the entering upon and taking possession of the Security, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default or be deemed or construed to make Beneficiary a mortgagee-in-possession of the Security or any portion thereof.

6.3. Further Assignments.

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Upon demand of Beneficiary, Trustor shall, from time to time hereafter, execute, and deliver to Beneficiary recordable assignments of Trustor's interest in any or all leases, subleases, contracts, rights, licenses and permits now or hereafter affecting the Security or any portion thereof. Such assignments shall be made by instruments in form and substance satisfactory to Beneficiary; provided, however, that no such assignment shall be construed as imposing upon Beneficiary any obligation with respect thereto. Beneficiary may, at its option, exercise its rights hereunder or under any such specific assignment and such exercise shall not constitute a waiver of any right hereunder or under any such specific assignment.

ARTICLE VII
EVENTS OF DEFAULT AND REMEDIES

7.1. Events of Default.

Each of the following shall constitute Events of Default: (1) the occurrence of an "Event of Default" as defined in the Loan Agreement or as defined in any Debt Instrument; or (2) the failure to make any payment or perform any of Trustor's other Obligations now or hereafter secured by this Deed of Trust (subject to any applicable cure period).

7.2. Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default, the unpaid Principal of the Note and any other indebtedness and other Obligations secured hereby shall immediately become due and payable without presentment, protest notice or demand, all of which are hereby expressly waived, upon written notice by the Beneficiary to the Trustor and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

7.3. The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Security, or part thereof or interest therein, increase the income therefrom or protect the security thereof and, with or without taking possession of the Security, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including without limitation attorneys' fees, against any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Security the collection of such Rents and the application thereof as aforesaid shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default, and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

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(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold, which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Orange County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the Obligations secured hereby, or provided by law.

7.4. Foreclosure by Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust, the Loan Agreement and the Note which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the unpaid Principal amount of the Note is immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of such notice from the Beneficiary ("**Notice of Default**"), Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Default and election to sell as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Default and after notice of sale having been given as required by law ("**Notice of Sale**"), sell the Security, at the time and place of sale fixed by it in said Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise to the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: (1) the unpaid Principal amount of the Note; (2) all other sums then secured hereby; and (3) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Security by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

7.5. Receiver

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If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

7.6. Application of Funds After Default.

Except as otherwise herein provided, upon the occurrence of an Event of Default hereunder, Beneficiary may, at any time without notice, apply any or all sums or amounts received and held by Beneficiary to pay insurance premiums, Impositions, or either of them, or as Rents or income of the Security, or as insurance or condemnation proceeds, and all other sums or amounts received by Beneficiary from or on account of Trustor or the Security, or otherwise, against any indebtedness or Obligation of the Trustor secured hereby, in such manner and order as Beneficiary may elect. The receipt, use or application of any such sum or amount shall not be construed to affect the maturity of any indebtedness secured by this Deed of Trust, or any of the rights or powers of Beneficiary under the terms of the Loan Agreement, this Deed of Trust or the Note, or any of the Obligations of Trustor or any guarantor under any other instruments or documents now or hereafter delivered in connection with the Loan Agreement or to cure or waive any default or notice of default under the Loan Agreement or any such instruments or documents; or to invalidate any act of Trustee or Beneficiary.

7.7. Costs of Enforcement.

If any Event of Default occurs, Beneficiary and Trustee, and each of them, may employ an attorney or attorneys to protect their rights hereunder. Trustor promises to pay to Beneficiary, on demand, the fees and expenses of such attorneys and all other costs of enforcing the Obligations secured hereby, including, without limitation, recording fees, the expense of a trustee, sale guarantee, Trustee's fees and expenses, receivers fees and expenses, and all other expenses, of whatever kind or nature, incurred by Beneficiary and Trustee, and each of them, in connection with the enforcement of the Obligations secured hereby, whether or not such enforcement includes the filing of a lawsuit. Until paid, such sums shall be secured hereby and shall bear interest at the Agreed Rate.

7.8. Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

7.9. No Waiver.

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(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. No consent or waiver, expressed or implied, by the Beneficiary to or any breach by the Trustor in the performance of the Obligations hereunder shall be deemed or construed to be a consent to or waiver of Obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (1) grants forbearance or an extension of time for the payment of any sums secured hereby, (2) takes other or additional security or the payment of any sums secured hereby, 3) waives or does not exercise any right granted in the Loan Agreement, (4) releases any part of the Security from the lien of this Deed of Trust, or otherwise changes any of the terms, covenants, conditions or agreements in the Loan Agreement, (5) consents to the granting of any easement or other right affecting the Security, or (6) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

7.10. Suits to Protect the Security.

The Beneficiary shall have power to: (1) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (2) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (3) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

7.11. Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

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ARTICLE VIII
MISCELLANEOUS

8.1. Amendments.

This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

8.2. Reconveyance by Trustee.

Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey, without warranty, the Security to Trustor, or to the person or persons legally entitled thereto.

8.3. Notices.

(a) Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Beneficiary or the Trustor is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two (2) days after mailing in the United States):

if intended for Beneficiary shall be addressed to:

County of Orange
OC Community Resources/
OC Housing & Community Development
1501 E. St. Andrew Place, 1st Floor,
Santa Ana, CA 92705
Attn: Director

if intended for Trustors shall be addressed to:

[TRUSTOR]

Any notice, demand or communication shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed in the manner herein specified, on the delivery date or date delivery is refused by the addressee, as shown on the return receipt. Either party may change its address at any time by giving written notice of such

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change to Beneficiary or Trustor as the case may be, in the manner provided herein, at least ten (10) days prior to the date such change is desired to be effective.

8.4. Successors and Joint Trustors.

All Obligations of Trustor secured by this Deed of Trust, shall also apply to and bind any permitted transferee or successors in interest. Where the terms of the Deed of Trust have the effect of creating an Obligation of the Trustor and a transferee, such Obligation shall be deemed to be a joint and several Obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all Obligations of Trustor shall be deemed to be a joint and several Obligation of each and every entity and person comprising Trustor.

8.5. Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

8.6. Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

8.7. Governing Law and Venue.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California. In the event of any legal action to enforce or interpret this Deed of Trust, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

8.8. Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

8.9. Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

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8.10. Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

8.11. Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Security is situated, shall be conclusive proof of proper appointment of the successor trustee.

8.12. Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceedings in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

8.13. Conflicts.

If any term or provision of this Deed of Trust conflicts with any term of provision of the Loan Agreement, the term or provision of the Loan Agreement shall control to the extent of such conflict.

8.14. Statements by Trustor.

Trustor shall, at its cost, within ten (10) days after notice thereof from Beneficiary, deliver to Beneficiary a written statement setting forth to the best of its knowledge and information, the amounts then unpaid and secured by this Deed of Trust and stating whether Trustor is aware of any offset or defense against such amounts.

8.15. Beneficiary Statements.

For any statement or accounting requested by Trustor or any other entitled person pursuant to Section 2943 or Section 2954 of the California Civil Code or pursuant to any other provision of applicable law, or for any other document or instrument furnished to Trustor by Beneficiary, Beneficiary may charge the maximum amount permitted by law at the time of the request therefor, or if there be no such maximum, then in accordance with Beneficiary's customary charges therefor or the actual cost to Beneficiary therefor, whichever is greater.

8.16. Statute of Limitations.

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Except insofar as now or hereafter prohibited by law, the right to plead, use or assert any statute of limitations as a plea or defense or bar of any kind, or for any purpose, to any debt, demand or obligation secured or to be secured hereby, or to any complaint or other pleading or proceeding filed, instituted or maintained for the purpose of enforcing this Deed of Trust or any rights hereunder, is hereby waived by Trustor.

8.17. Trust Irrevocable; No Offset.

The Trust created hereby is irrevocable by Trustor. No offset or claim that Trustor now has or may in the future have against Beneficiary shall relieve Trustor from paying the indebtedness or performing any other Obligation contained herein or secured hereby.

8.18. Corrections.

Trustor shall, upon request of Beneficiary, promptly correct any defect, error or omission which may be discovered in the contents hereof or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Beneficiary to carry out more effectively the purposes thereof, to subject to, the lien and security interest hereby created any of Trustor's properties, rights or interests covered or intended to be covered hereby, or to perfect and maintain such lien and security interest.

8.19. Further Assurance.

Trustor, Beneficiary and Trustee agree to do or cause to be done such further acts and things and to execute and deliver or to cause to be executed and delivered such additional assignments, agreements, powers and instruments, as any of them may reasonably require or deem advisable to keep valid and effective the charges and liens hereof, to carry into effect the purposes of this Deed of Trust or to better assure and confirm unto any of them their rights, powers and remedies hereunder; and, upon request by Beneficiary, shall supply evidence of fulfillment of each of the covenants herein contained concerning which a request for such evidence has been made.

8.20. Waiver of Jury Trial.

Unless prohibited by Federal, State or local laws, each party acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Deed of Trust and/or any claim of injury or damage to the fullest extent permitted by applicable law.

ARTICLE IX
WAIVERS

9.1. Waivers and Related Matters

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(a) To the fullest extent allowed by law, Trustor hereby waives: (i) presentment, demand, protest, notice of dishonor, notice of protest and all other notices and demands of every kind, and all suretyship defenses of every kind that would otherwise be available in connection with this Deed of Trust, and (ii) all rights of redemption, valuation, appraisement, stay of executive, notice of election to mature or declare due the whole of the Obligation and marshaling in the event of foreclosure of the liens hereby created.

(b) Trustor hereby authorizes Beneficiary, at any time and from time to time without notice and without affecting this Deed of Trust in any way, to: (i) accept new or additional instruments, documents, agreements, security or guaranties in connection with all or any part of the Obligations; (ii) accept partial payments on the Obligations; and (iii) waive, release, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, compromise, liquidate and enforce all or any part of the Obligations and any security or guaranties therefor, and apply any such security and direct the order or manner of sale thereof and bid and purchase at any such sale.

(c) Trustor hereby waives any right to require Beneficiary to (i) proceed against any person; (ii) proceed or exhaust any collateral held from any person; or (iii) pursue any other remedy in Beneficiary's power. Upon the occurrence of any Event of Default, Beneficiary is hereby expressly given the right, at its option, to proceed in the enforcement of this Deed of Trust, independently of any other remedy or security Beneficiary may at any time hold in connection with the Obligations, and Beneficiary shall not in any way be obligated or otherwise required to proceed upon or against and/or exhaust any other security or remedy before proceeding to enforce this Deed of Trust.

(d) Trustor hereby waives any defense arising by reason of: (i) any disability or other defense of Trustor or any other person; (ii) the cessation from any cause whatsoever, other than full payment and performance of the Obligations, of the Obligations of Trustor or any other person; or (iii) any act or omission by Beneficiary which directly or indirectly results in or aids in the discharge or release of Trustor, or any other person, any Obligation, or any collateral by operation of law or otherwise.

The waivers set forth in this Article IX shall also apply, to the fullest extent permitted by law to all other real and/or personal property of Trustor now or hereafter assigned to Beneficiary as security for the Obligations. Trustor warrants and agrees that each, of the waivers set forth above are made with Trustor's full knowledge of their significance and consequences, with the understanding that events giving rise to any defense waived may diminish, destroy or otherwise adversely affect rights which Trustor otherwise may have against Beneficiary or others, or against collateral, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any of the waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective to the maximum extent permitted by law.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

Signature to Follow

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TRUSTOR:

TEMPLATE

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APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By Signed by: Jacqueline Guzman 8452584753D3488...

Deputy

Dated 2/2/2026

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EXHIBIT A
LEGAL DESCRIPTION

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MENTAL HEALTH SERVICES ACT
CAPITALIZED OPERATING SUBSIDY RESERVE(COSR) PROMISSORY NOTE
SECURED BY DEED OF TRUST

($XXXXX) [Date] 2026

FOR VALUE RECEIVED, the undersigned [XXXXXXXXX] ("**Borrower**") promises to pay to the COUNTY OF ORANGE, a political subdivision of the state of California (the "**County**"), or order at Santa Ana, California or such other place as the County may designate in writing, the principal sum of [XXXX] ($XXX) plus interest on the terms specified below.

1. Agreement. This promissory note (the "**COSR Note**") is given in accordance with that certain Mental Health Services Act Capitalized Operating Subsidy Reserve Loan Agreement executed by and between the County and the Borrower of even date herewith (the "**COSR Loan Agreement**"). The obligations of the Borrower under this COSR Note shall be subject to the terms of the COSR Loan Agreement, the COSR Deed of Trust, Assignment of Rents, and Security Agreement of even date herewith which secures performance under this COSR Note, and the other COSR Loan Documents, all of which are hereby incorporated by reference. Capitalized terms used but not defined herein shall have the meaning as set forth in the COSR Loan Agreement.

2. Payment; Forgivable; The parties agree and understand that the intent of this COSR Note is that it will be forgivable at the end of the Term. Notwithstanding the foregoing, repayment of the **entire** amount under this COSR Note will be required if an Event of Default occurs. For purposes of this Section 2., the Term for the COSR Note shall be twelve (12) months after the obligations set forth in COSR Loan Agreement have been fulfilled and the County has confirmed that no Event of Default, as defined in the COSR Loan Agreement, has occurred.

3. Repayment.

(a) If repayment is required due to an Event of Default, all amounts due and payable under the COSR Note are payable at the address provided to the Borrower by the County, or at such other place or places as the County may designate to the Borrower in writing from time to time. Any payment under this COSR Note shall be made in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts and which on the respective dates on which such payments are due shall be in immediately available funds.

(b) All repayments received by County pursuant to the terms hereof shall be applied in the following manner: first, to the payment of all expenses, charges, costs and fees incurred by or payable to County by Borrower pursuant to the terms of the COSR Loan Documents (in such order and manner as County, in its sole discretion, may elect); and, second, to the payment of the outstanding principal until paid in full. Notwithstanding anything to the contrary contained herein, after the occurrence and during the continuation of an Event of Default (as such term is defined in the COSR Loan Agreement), all amounts received by County from any party shall be applied in such order as County, in its sole discretion, may elect.

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4. Security. This COSR Note is secured by, among other things, a COSR Deed of Trust covering real and personal property including, but not limited to, the Property and the Project (as such terms are defined in the COSR Loan Agreement).

5. Waivers.

(a) Borrower expressly agrees that this COSR Note or any payment hereunder may be extended from time to time at the County's sole discretion and that the County may accept security in consideration for any such extension or release any security for this COSR Note at its sole discretion all without in any way affecting the liability of Borrower.

(b) No extension of time for payment of this COSR Note or any installment hereof made by agreement by the County with any person now or hereafter liable for payment of this COSR Note shall operate to release, discharge, modify, change, or affect the original liability of Borrower under this COSR Note, either in whole or in part.

(c) The obligations of Borrower under this COSR Note shall be absolute and Borrower waives any and all rights:

(1) to offset, deduct, or withhold any payments or charges due under this COSR Note for any reasons whatsoever;

(2) of presentment for payment, demand, protest and notices of dishonor and protest; and

(3) of diligence in taking any action to collect any sums owing under this COSR Note or in proceeding against any of the rights and interests in and to properties securing payment of this COSR Note.

6. Attorney Fees and Costs. Borrower agrees that if any amounts due under this COSR Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this COSR Note, whether or not suit is filed.

7. Joint and Several Obligations. This COSR Note is the joint and several obligation of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

8. Acceleration. If any of the payments required by the terms hereof shall not be paid within thirty (30) days after the same becomes due, whether by acceleration or otherwise, or if an Event of Default (as defined in the COSR Loan Agreement) occurs under the COSR Loan Agreement or other default under any other COSR Loan Document occurs, following notice and not less than a thirty (30) day opportunity to cure, then, or at any time thereafter, the whole of the principal owing on this COSR Note shall, at the option of County and without notice, become immediately due and payable. This option may be exercised at any time after any such event and the acceptance of one or more installments or other payments from any person thereafter shall not constitute a waiver of County's option. County's failure to exercise said option in connection with any particular event or series of events shall not be construed as a waiver of the

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provisions hereof as regards that event or any subsequent event. The COSR Loan Agreement and other COSR Loan Documents may also contain provisions, which provide for the automatic acceleration of amounts owing under this COSR Note upon the occurrence of certain specified events. County shall have, and be entitled to exercise, upon the occurrence of any Event of Default or other event described above, all rights and remedies available to County under the COSR Loan Agreement, this COSR Note, the other COSR Loan Documents or at law or in equity. All such rights and remedies shall be cumulative.

9. Prohibition Against Transfer of Interest. The Borrower shall not make any sale, assignment or conveyance, or transfer in any other form, nor any further pledge, encumbrance, or mortgaging of the Property and/or the Project or any part thereof or of any of its interest therein, other than in accordance with the terms of this COSR Note, the COSR Loan Agreement, the COSR Deed of Trust and the other COSR Loan Documents.

10. Default Under Other COSR Loan Documents. All covenants, conditions, and agreements contained in this COSR Note, the COSR Loan Agreement, COSR Deed of Trust and the other COSR Loan Documents are hereby made a part of this COSR Note, and the Borrower agrees that the unpaid balance of the principal amount of this COSR Note, shall, at the option of the County hereof, become immediately due and payable. Upon the failure of the Borrower to perform or observe any other term or provision of this COSR Note; or upon the occurrence of any event (whether termed default, event of default, or similar term) which (after the expiration of any cure period) under the terms of this COSR Note, the COSR Loan Agreement, the COSR Deed of Trust or other COSR Loan Document shall entitle the County to exercise rights or remedies thereunder.

11. Definitions. Capitalized terms not defined in this COSR Note shall have the same meanings as defined in the COSR Loan Agreement, the terms of which are incorporated into this COSR Note by this reference.

12. Governing Law. This COSR Note shall be construed in accordance with and be governed by the laws of the State of California.

13. Severability. If any provision of this COSR Note shall be judicially determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

14. Captions. The captions and headings in this COSR Note are merely for convenience and substantively are not part of this COSR Note.

15. JURY TRIAL WAIVER; VENUE. UNLESS PROHIBITED BY FEDERAL, STATE OR LOCAL LAWS, IN ANY JUDICIAL ACTION OR PROCEEDING ARISING FROM OR RELATING TO THE LOAN OR THE LOAN DOCUMENTS, INCLUDING ANY ACTION OR PROCEEDING INVOLVING A CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, BORROWER HEREBY WAIVES ANY RIGHT IT OR THEY MAY HAVE TO REQUEST OR DEMAND A TRIAL BY JURY. VENUE FOR ANY ACTION RELATED TO THE COSR LOAN OR COSR LOAN DOCUMENTS SHALL BE IN AN APPROPRIATE COURT IN ORANGE COUNTY, CALIFORNIA SELECTED BY COUNTY TO WHICH BORROWER HEREBY CONSENTS.

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16. Joint and Several Liability. If Borrower consists of more than one person or entity, each shall be jointly and severally liable for the performance of Borrower's obligations under this COSR Note.

17. Notices. All notices to be given pursuant to this COSR Note shall be given as provided in the COSR Loan Agreement.

18. Number and Gender. In this COSR Note the singular shall include the plural and the masculine gender shall include the feminine and neuter genders, and vice versa, if the context so requires.

19. Time. Time is of the essence in this COSR Note.

20. No Waiver by the County. No waiver of any breach, default, or failure of condition under the terms of this COSR Note, the COSR Loan Agreement, the COSR Deed of Trust or any other COSR Loan Document or the obligations secured thereby shall be implied from any failure of the County to take, or any delay by the County in taking, action with respect to such breach, default or failure, or any form of previous waiver of any similar or unrelated breach, default or failure; and waiver of any term of this COSR Note, the COSR Loan Agreement, the COSR Deed of Trust or any other COSR Loan Document or any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

21. Amendments and Modifications. This COSR Note may not be changed orally, but only by an amendment in writing signed by Borrower and the County.

22. Non-Recourse. This COSR Note is a nonrecourse obligation of Borrower and the County must resort only to the Project or the Property, or both, for repayment (if required) should Borrower fail to repay (if required) the sums evidenced hereby. The County will neither seek nor obtain judgment against the Borrower for payment of principal or interest under the COSR Note or for other obligations under the COSR Loan Documents following a judicial foreclosure (or to the extent permitted by law, a nonjudicial foreclosure of the COSR Deed of Trust), and the County's sole recourse against the Borrower for any default in the payment of principal or interest is limited to the Property and the Project and any other collateral of the Loan; provided, however, nothing in this Paragraph 22 will be deemed to limit or prejudice the rights of County to:

(a) foreclose the COSR Deed of Trust or enforce any of its other rights or remedies under the COSR Loan Documents; or

(b) name the Borrower or the general partners of Borrower as a party defendant in any action, proceeding or arbitration, subject to the limitations of this Section; or

(c) assert any unpaid amounts on the Loan as a defense or offset to or against any claim or cause of action arising out of or pertaining to the Project made or alleged against the County by the Borrower or any of its general partners; or

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(d) exercise self-help remedies such as set off or nonjudicial foreclosure against or sale of any real or personal property collateral or security; or

(e) proceed against any entity or person, including Borrower and the general partners of Borrower with respect to the enforcement of any leases, bonds, policies of insurance, or other agreements (other than the Loan Documents); or

(f) recover damages against Borrower or the general partners of Borrower for fraud, breach of warranty, failure to maintain insurance, waste, or material misrepresentation; or

(g) recover any condemnation proceeds or insurance proceeds or other similar funds or payments attributable to the Property and/or the Project that under the terms of the Loan Documents should have been paid to Lender; or

(h) recover any tenant security deposits, prepaid rents, or other similar sums paid to or held by Borrower or any other entity or person in connection with the Property and the Project; or

(i) recover the value of any personalty or fixtures removed by Borrower from the Project after the occurrence of an Event of Default; or

(j) recover the rents and profits of the Property and the Project accruing from and after the occurrence of an Event of Default that have not been applied to pay any portion of the Loan, operating, and maintenance expenses of the Property and/or the Project, insurance, premiums, impositions, deposits into a reserve for replacement, or other sums required by the Loan Documents; or

(k) recover any amounts owing to the County under indemnity provisions (including indemnity provisions pertaining to Hazardous Materials as such term is defined in the COSR Deed of Trust) in the Loan Documents; or

(l) recover funds to reimburse County for sums expended by County for the protection or preservation of the Property, the Project or County's interest therein (including, without limitation, payment of any real property taxes, assessments or other charges which would create liens on any portion of the Property or Project.

The limitation of liability set forth in this Section 22 shall be deemed void and have no force or effect if Borrower or any general partner of Borrower attempts to materially delay any foreclosure of or on the COSR Deed of Trust or any other collateral for the Loan, or if the Borrower or any of its general partners claim that this Agreement or any related documents are invalid or unenforceable to an extent that would preclude foreclosure. Notwithstanding anything to the contrary set forth in the immediately preceding sentence, in the event Borrower contests any foreclosure proceeding in good faith and Borrower prevails in such action, or in the event Borrower and the County agree to a settlement of any such action which gave rise to the foreclosure proceeding, the Loan shall remain nonrecourse. Any liability of Borrower or any of the general partners of Borrower for any obligations arising in connection with the matters set forth in clauses (a) through (l) inclusive will be personal liability and may be asserted against and recovered from its or their interest in the Property and/or Project as well as against any of its and

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their other assets. Nothing contained in this Section impairs the validity of this COSR Note or any related documents or any lien or security interest created or perfected by it.

IN WITNESS WHEREOF, Borrower has executed this COSR Note as of the day and year first above written.

Signature Page follows

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BORROWER:

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APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By Signed by: Jacqueline Guzman 8452584753D3488..., Deputy

Dated 2/2/2026

TEMPLATE

Cal. Code Regs. tit. 14 § 15378

Section 15378 - Project

(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100- 65700.

(2) An activity undertaken by a person which is supported in whole or in part through public agency contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

(1) Proposals for legislation to be enacted by the State Legislature;

(2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);

(3) The submittal of proposals to a vote of the people of the state or of a particular community that does not involve a public agency sponsored initiative. (*Stein* v. *City of Santa Monica*, (1980) 110 Cal. App. 3d 458; *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165);

(4) The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

(5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the lead agency could describe the project as either the adoption of a particular regulation under subdivision (a)(1) or as a development proposal which will be subject to several governmental approvals under subdivisions (a)(2) or (a)(3), the lead agency shall

describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the lead agency principle as described in Article 4.

Cal. Code Regs. Tit. 14, § 15378

1. Amendment of subsection (b)(3), repealer and new subsection (b)(5) and amendment of NOTE filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
2. Amendment of subsection (a) and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of subsections (b)(1)-(5) and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect repealing subsection (b)(5) and amending NOTE filed 7-22-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
5. Amendment of subsection (b)(3) and new subsection (b)(5) filed 9-7-2004; operative 9-7-2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
6. Change without regulatory effect amending subsection (d) and NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21065, Public Resources Code; Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District, (1992) 9 Cal.App.4th 464; and Fullerton Joint Union High School District v. State Board of Education, (1982) 32 Cal.3d 779; Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County (1975) 51 Cal.App.3d 648; and Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98.

1. Amendment of subsection (b)(3), repealer and new subsection (b)(5) and amendment of Note filed 8-19-94; operative 9-19-94 (Register 94, No. 33).
2. Amendment of subsection (a) and Note filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).
3. Amendment of subsections (b)(1)-(5) and amendment of Note filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).
4. Change without regulatory effect repealing subsection (b)(5) and amendingNote filed 7-22-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 30).
5. Amendment of subsection (b)(3) and new subsection (b)(5) filed 9-7-2004; operative 9-7-2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).
6. Change without regulatory effect amending subsection (d) and Note filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

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§ 55.27 Documentation.

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or Certifying Officer for a responsible entity authorized by 24 CFR part 58) shall require that the following actions be documented:

(1) When required by § 55.20(c), practicable alternative sites have been considered outside the floodplain or wetland, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government, whichever geographic area is most appropriate to the proposed action. Actual sites under review must be identified and the reasons for the nonselection of those sites as practicable alternatives must be described; and

(2) Under § 55.20(e)(2), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain or wetland as identified in § 55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with § 55.24, § 55.25, or § 55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a responsible entitysubject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for responsible entitiessubject to 24 CFR part 58).

[59 FR 19107, Apr. 21, 1994, as amended at 78 FR 68734, Nov. 15, 2013]

§ 55.28 Use of individual permits under section 404 of the Clean Water Act for HUD Executive Order 11990 processing where all wetlands are covered by the permit.

(a) *Processing requirements.* HUD (or the responsible entity subject to 24 CFR part 58) shall not be required to perform the steps at § 55.20(a) through (e) upon adoption by HUD (or the responsible entity) of the terms and conditions of a Section 404 permit so long as:

(1) The project involves new construction on a property located outside of the 100-year floodplain (or the 500-year floodplain for critical actions);

(2) The applicant has submitted, with its application to HUD (or to the recipient under programs subject to 24 CFR part 58), an individual Section 404 permit (including approval conditions) issued by the U.S. Army Corps of Engineers (USACE) (or by a State or Tribal government under Section 404(h) of the Clean Water Act) for the proposed project; and

(3) All wetlands adversely affected by the action are covered by the permit.

(b) Unless a project is excluded under § 55.12, processing under all of § 55.20 is required for new construction in wetlands that are not subject to section 404 of the Clean Water Act and for new construction for which the USACE (or a State or Tribal government under section 404(h) of the Clean Water Act) issues a general permit under Section 404.

[78 FR 68734, Nov. 15, 2013]

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

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AUTHORITY: 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321–4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

SOURCE: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

§ 58.1 Purpose and applicability.

(a) *Purpose.* This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) *Applicability.* This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

(1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) [Reserved]

(3)(i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of

the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading ''Annual Contributions for Assisted Housing'' in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note);

(9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 110 Stat. 834), in accordance with section 11(m));

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

(i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

(ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z–13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any

Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56127, Sept. 29, 2003]

EFFECTIVE DATE NOTE: At 89 FR 20056, Mar. 20, 2024, § 58.1 was amended by revising paragraph (b)(11), effective June 18, 2024. For the convenience of the user, the revised text is set forth as follows:

§ 58.1 Purpose and applicability.

* * * * *

(b) * * *

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992 on trust land and on fee land within an Indian reservation, and on fee land owned by the Indian Tribe outside of the Tribe's Indian reservation boundaries, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

* * * * *

§ 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) *Certifying Officer* means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of § 58.13.

(3) *Extraordinary Circumstances* means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS;

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

(4) *Project* means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

(5) *Recipient* means any of the following entities, when they are eligible recipients or grantees under a program listed in § 58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) With respect to Public Housing Programs under § 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under § 58.1(b)(6)(ii) or Section 8 assistance under § 58.1(b)(6)(iii), a public housing agency;

(vi) Any direct grantee of HUD for a special project under § 58.1(b)(7);

(vii) With respect to the FHA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;

(viii) With respect to the Self-Help Homeownership Opportunity Program under § 58.1(b)(9), any direct grantee of HUD.

(ix)(A) With respect to NAHASDA assistance under § 58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

(B) With respect to the Section 184 Indian Housing Loan Guarantee program under § 58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under §58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) *Release of funds.* In the case of the FHA Multifamily Housing Finance Agency Program under §58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

(7) *Responsible Entity.* Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in §58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) listed in §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(8) *Unit Density* refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) *Tiering* means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

(10) *Vacant Building* means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

(1) CDBG—Community Development Block Grant;

(2) CEQ—Council on Environmental Quality;

(3) EA—Environmental Assessment;

(4) EIS—Environmental Impact Statement;

(5) EPA—Environmental Protection Agency;

(6) ERR—Environmental Review Record;

(7) FONSI—Finding of No Significant Impact;

(8) HUD—Department of Housing and Urban Development;

(9) NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990;

(10) NEPA—National Environmental Policy Act of 1969, as amended;

(11) NOI/EIS—Notice of Intent to Prepare an EIS;

(12) NOI/RROF—Notice of Intent to Request Release of Funds;

(13) ROD—Record of Decision;

(14) ROF—Release of Funds; and

(15) RROF—Request for Release of Funds.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

§ 58.4 Assumption authority.

(a) *Assumption authority for responsible entities: General.* Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) *Particular responsibilities of the States.* (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any nongovernmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) States must exercise HUD's responsibilities in accordance with § 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5.

(c) *Particular responsibilities of Indian tribes.* An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h–2).

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971–1975 Comp., p. 559, particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see § 55.10 of this subtitle A.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted

in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) *Sole source aquifers.* (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h–3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency—40 CFR part 149).

(e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536).

(f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) *Air quality.* (1) The Clean Air Act (42 U.S.C. 7401 *et. seq.*) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).

(h) *Farmlands protection.* (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture—7 CFR part 658).

(i) *HUD environmental standards.* (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in §51.303(a)(3).

(2)(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) *Environmental justice.* Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

§58.6 Other requirements.

In addition to the duties under the laws and authorities specified in §58.5 for assumption by the responsible entity under the laws cited in §58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under §58.34(a)(12) and/or the applicability of §58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under §58.34 or categorically excluded under §58.35(a) or (b).

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44

CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.

(b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

(1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(2) The person failed to obtain and maintain flood insurance.

(c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998; 78 FR 68734, Nov. 15, 2013]

Subpart B—General Policy: Responsibilities of Responsible Entities

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(b), except as otherwise provided in § 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in § 58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

[68 FR 56128, Sept. 29, 2003]

§ 58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct

the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with § 58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

§ 58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by § 58.71, a responsible entity's certifying officer is the ''responsible Federal official'' as that term is used in section 102 of NEPA and in statutory provisions cited in § 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in § 58.5. The Certifying Officer must also:

(a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

§ 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in § 58.5 and § 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

[63 FR 15271, Mar. 30, 1998]

§ 58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer

determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

§ 58.17 [Reserved]

§ 58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

(a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs, and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.

(b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

[68 FR 56129, Sept. 29, 2003]

Subpart C—General Policy: Environmental Review Procedures

§ 58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

§ 58.22 Limitations on activities pending clearance.

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under § 58.34, or is categorically excluded (except in extraordinary circumstances) under § 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in § 58.34(b) and § 58.35(d), but the recipient must comply with applicable requirements under § 58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option

by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) *Self-Help Homeownership Opportunity Program (SHOP).* In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) *Relocation.* Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

[68 FR 56129, Sept. 29, 2003]

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in § 58.5 and § 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

§ 58.30 Environmental review process.

(a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with § 58.32.

(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

§ 58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: *functional aggregation* when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; *geographic aggregation* when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or *a combination of aggregation approaches*, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) *Multi-year project aggregation*—(1) *Release of funds.* When a recipient's planning and program development

provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in § 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

§ 58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

§ 58.34 Exempt activities.

(a) Except for the applicable requirements of § 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in § 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(1) Environmental and other studies, resource identification and the development of plans and strategies;

(2) Information and financial services;

(3) Administrative and management activities;

(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;

(5) Inspections and testing of properties for hazards or defects;

(6) Purchase of insurance;

(7) Purchase of tools;

(8) Engineering or design costs;

(9) Technical assistance and training;

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

(12) Any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in § 58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and

meets the conditions specified for such exemption under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]

§ 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see § 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in § 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to § 58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in § 58.5:

(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

(6) Combinations of the above activities.

(b) *Categorical exclusions not subject to § 58.5.* The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying

out any applicable requirements under § 58.6.

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.

(c) *Circumstances requiring NEPA review.* If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998; 68 FR 56129, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

EFFECTIVE DATE NOTE: At 89 FR 20056, Mar. 20, 2024, § 58.35 was amended by adding paragraph (b)(8), effective June 18, 2024. For the convenience of the user, the added text is set forth as follows:

§ 58.35 Categorical exclusions.

* * * * *

(b) * * *

(8) HUD's guarantee of loans for one- to-four family dwellings on trust land and on fee land within an Indian reservation and on fee land owned by the Indian Tribe outside the Tribe's Indian Reservation boundaries, under the Direct Guarantee procedure for the Section 184 Indian Housing loan guarantee program without any review or approval of the application for the loan guarantee by HUD or the responsible entity or approval of the loan guarantee by HUD before the execution of the contract for construction or rehabilitation and the loan closing.

* * * * *

§ 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under § 58.37, the responsible entity should proceed directly to an EIS.

§ 58.37 Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under § 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where § 58.53 is applicable.

(e) *Recommended EIS Format.* The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

§ 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR) and shall be available for public review. The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format that the responsible entity shall use to prepare the ERR. The DECO may prescribe alternative formats as necessary to meet specific program needs.

(a) *ERR Documents.* The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

(1) Describe the project and the activities that the recipient has determined to be part of the project;

(2) Evaluate the effects of the project or the activities on the human environment;

(3) Document compliance with applicable statutes and authorities, in particular those cited in § 58.5 and 58.6; and

(4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) *Other documents and information.* The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

[61 FR 19122, Apr. 30, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

Subpart E—Environmental Review Process: Environmental Assessments (EA's)

§ 58.40 Preparing the environmental assessment.

The DECO shall establish a prescribed format that the responsible entity shall use to prepare the EA. The DECO may prescribe alternative formats as necessary to meet specific program needs. In preparing an EA for a particular proposed project or other action, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in §58.5 and §58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to §58.43.

(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

§58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by §58.70. If the notices are released as a combined notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which ''notice'' their comments address.

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

§58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with §58.21:

(a) Notice of Finding of No Significant Impact (FONSI).	15 days when published or, if no publication, 18 days when mailing and posting
(b) Notice of Intent to Request Release of Funds (NOI-RROF).	7 days when published or, if no publication, 10 days when mailing and posting

(c) Concurrent or combined notices.	15 days when published or, if no publication, 18 days when mailing and posting

[68 FR 56130, Sept. 29, 2003]

§ 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

(a) There is a considerable interest or controversy concerning the project;

(b) The proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) The project is unique and without precedent.

§ 58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not in the original finding.

(b)(1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.

(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

§ 58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in § 58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

§ 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the FEDERAL REGISTER for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

(a) The ERR contains a decision based on a finding pursuant to § 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

(1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

§ 58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

§ 58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under § 58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

§ 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

§ 58.59 Public hearings and meetings.

(a) *Factors to consider.* In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

(4) The extent to which public involvement has been achieved through other means.

(b) *Procedure.* All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the responsible entity's name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.

§58.60 Preparation and filing of environmental impact statements.

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

(1) Five copies to EPA Headquarters;

(2) Five copies to EPA Regional Office;

(3) Copies made available in the responsible entity's and the recipient's office;

(4) Copies or summaries made available to persons who request them; and

(5) FEIS only—one copy to State, HUD Field Office, and HUD Headquarters library.

(c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

(d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

(e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

Subpart H—Release of Funds for Particular Projects

§58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by §58.43 and §58.45 before the certification is signed by the responsible entity.

§58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in §58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in §58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall

advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

§ 58.72 HUD or State actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in § 58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated § 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

§ 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to § 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in § 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

§ 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

§ 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to § 58.40 or to make the written determination required by §§ 58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

§ 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection.

(d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

§ 58.77 Effect of approval of certification.

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at § 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in § 58.1(b).

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

(c) *Implementation of environmental review decisions.* Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) *Responsibility for monitoring and training.* (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under § 58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

PART 60—PROTECTION OF HUMAN SUBJECTS

Sec.

60.101 To what does this policy apply?
60.102 Definitions for purposes of this policy.
60.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
60.104 Exempt research.
60.105–60.106 [Reserved]

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County Executive Office

Memorandum

RECEIVED
2026 FEB -5 PM 2:30
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

February 10, 2026

To: Clerk of the Board of Supervisors

From: Michelle Aguirre, County Executive Officer

Signed by:
Michelle Aguirre
1B08898A0E6A4FA...

Subject: Supplemental Request According to Board Rule 21

S30C

The County Executive Office is requesting a Supplemental Agenda Staff Report for the February 10, 2026, Board Hearing.

Agency: Sheriff-Coroner
Subject: Hazard Mitigation Consultant Firm Services
Districts: All Districts

Reason Item is Supplemental:
Tetra Tech, Inc., shall support the update of the County's Multi-Jurisdiction Local Hazard Mitigation Plan (MJHMP). This MJHMP will include both the County of Orange and the Orange County Fire Authority. The plan will fully align with FEMA's Local Mitigation Planning Policy Guide (2025), the Local Mitigation Planning Handbook (2025), and additional requirements specific to California. The final Local Hazard Mitigation Plan (LHMP) document will be approved by FEMA and adopted by the governing boards of both participating jurisdictions. The County of Orange has an emergency management program accredited through the Emergency Management Accreditation Program. This project will incorporate and meet those accreditation standards. The Agenda Staff Report and attachment were finalized after the filing deadline to the Clerk of the Board.

Justification: The Sheriff-Coroner Department is requesting this item be placed on the February 10, 2026, Board agenda since the planning process and plan development will include extensive public participation and the solicitation of feedback from the public and specific stakeholders, leveraging innovative approaches and existing resources like the Orange County Disabilities and Access and Functional Needs Working Group, the Orange County Emergency Management Organization, with the scheduled kick-off meeting taking place in March 2026.

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Concur: Doug Chaffee

Doug Chaffee, Chair of the Board of Supervisors

cc: Board of Supervisors
County Executive Office
County Counsel

Docusign Envelope ID: 929819F9-F0B6-4F79-B2CE-2FAA1EE1FCAA

Agenda Item *Clerk's Use Only* S30C

SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

MEETING DATE: 2/10/2026

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): All Districts

SUBMITTING AGENCY/DEPARTMENT: Sheriff-Coroner Department

DEPARTMENT HEAD REVIEW: *Department Head Signature*

DEPARTMENT CONTACT PERSON(S): Cory Martino (714) 647-1817
Michelle Anderson (714) 628-7158

RECEIVED
2026 FEB -5 PM 2:30
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

SUBJECT: Hazard Mitigation Consultant Firm Services

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
Signed by: Michelle Aguirre 1B08898A0E6A4FA... *CEO Signature*	Approved as to Form DocuSigned by: Annie Loo 87726761D1E947E... *County Counsel Signature*	Discussion *Action* 3 Votes Board Majority

Budgeted: Yes **Current Year Cost:** $126,575 **Annual Cost:** FY 2026-27 $173,425

Staffing Impact: No **# of Positions:** N/A **Sole Source:** N/A
Current Fiscal Year Revenue: N/A
Funding Source: See Financial Impact Section **County Audit in last 3 years** No
Levine Act Review Completed: N/A
Prior Board Action: 3/11/2025 #33, 11/19/2024 #28, 3/26/2024 #33

RECOMMENDED ACTION(S)

Authorize the County Procurement Officer or Deputized designee to execute the Contract with Tetra Tech, Inc., for Hazard Mitigation Consultant Firm Services for a one-year term effective upon Board of Supervisors approval in the not to exceed amount of $300,000, renewable for one additional one-year term.

SUMMARY:

Approval of the Hazard Mitigation Consultant Firm Services contract will allow the Sheriff Departments' Emergency Management Division to initiate the planning process and revision of the County's and Orange County Fire Authority's Local Multi-Jurisdictional Hazard Mitigation Plan.

BACKGROUND INFORMATION:

The Orange County Board of Supervisors (Board) has designated the Sheriff-Coroner Department (Sheriff) as the lead agency in matters of emergency preparedness and disaster response for all types of emergencies

such as earthquakes, fires, debris flows, tsunamis, civil disturbances, energy crisis, nuclear power plant emergencies, terrorism and acts of war. The Emergency Management Division (EMD) provides emergency management planning, preparedness, response, recovery, and mitigation services to the County of Oranges' (County) Departments/Agencies and the County Operational Area (OA). There are currently over 100 jurisdictions in the OA encompassing all County departments and agencies, public and private organizations and the general population within the boundaries of the County.

On March 26, 2024, the Board approved the grant application and adopted a resolution to apply for $225,000 through the Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance program. The application proposed to procure consultant assistance in support of revising the County's Multi-Jurisdiction Local Hazard Mitigation Plan (MJHMP) by such activities as performing hazard analysis, quantifying risk and vulnerability, engaging the Whole Community in the planning process, and compiling the required documentation. The final product proposed is to meet the requirements set forth in 44 CFR Part 201, including but not limited to allowing input from the public and neighboring/overlapping jurisdictions, documents the assessment of hazard vulnerability and impacts, incorporates land use and development trends, and documents proposed mitigation projects to be considered for implementation to address the risks and vulnerabilities identified. The MJHMP will fully align with the FEMA Local Mitigation Planning Policy Guide (2025), the Local Mitigation Planning Handbook (2025), and additional requirements specific to California. The final MJHMP document will be approved by the California Office of Emergency Services and FEMA, and adopted by the governing boards of both the County and Orange County Fire Authority. The final MJHMP will also incorporate and meet the Emergency Management Accreditation Program standards related to hazard identification, assessment, and mitigation.

On November 19, 2024, the Board authorized the acceptance of the grant award of $239,946 and committing to a 25 percent funding match. On March 11, 2025, the Board approved an updated resolution to reflect a change in the FEMA funding source, with no material change to the grant, or award and matching amounts.

Based on the grant application and acceptance, on June 2, 2025, Sheriff issued a Request for Proposal solicitation for a Hazard Mitigation Consultant Firm Services. On June 30, 2025, Sheriff received eight responses. The proposals were submitted by Atlas Planning Solutions, IEM International Inc., Integrated Solutions Consulting, Jacob Green and Associates Inc., Michael Baker International, Tetra Tech, Inc. (Tetra Tech), Witt O'Brien's LLC, and WSP USA Inc. An evaluation panel evaluated all proposals and negotiations concluded on August 19, 2025, with Tetra Tech.

Below are the evaluation criteria and rankings:

Evaluation Criteria	**Max Points – Phase 1**	**Max Points - Phase 2**
Firm's Background, Qualifications & Experience	175 *(29.2% of Total)*	325 *(36.1% of Total)*
Key Personnel/Proposed Staffing	150 *(25% of Total)*	200 *(22.2% of Total)*
Quality, Effectiveness of Work Plan/ Project Approach	125 *(20.8% of Total)*	300 *(33.3% of Total)*
Organization/ Completeness of Response	25 *(4.2% of Total)*	50 *(5.6% of Total)*
Compliance with the County Model Contract	25 *(4.2% of Total)*	25 *(2.8% of Total)*
Cost Proposal	100 *(4.2% of Total)*	
Total:	600	900

Proponent scores are detailed in the table below.

Proponent Name	Total Max Score – Phase 1	Total Max Score – Phase 2
Tetra Tech, Inc.	468	815.6
Michael Baker International	464.8	809.2
WSP USA Inc.	443.8	790.6
IEM International Inc	443.4	770.4
Jacob Green and Associates Inc.	381.6	678.6
Atlas Planning Solutions	375.4	671.8
Integrated Solutions Consulting	371.2	670.6
Witt O'Brien's, LLC	365	656.8

Proponent Name	Total Average Rank
Tetra Tech, Inc.	2
Michael Baker International	2.2
WSP USA Inc.	2.6
IEM International Inc	3.2
Jacob Green and Associates Inc.	6.3
Atlas Planning Solutions	6.6
Integrated Solutions Consulting	7
Witt O'Brien's, LLC	6.1

Sheriff now requests the Board authorize the County Procurement Officer or Deputized designee to execute the contract with Tetra Tech for Hazard Mitigation Consultant Firm Services, in the amount of $300,000 for the initial one-year term effective upon Board approval, renewable for one additional one-year term, as noted in the Recommended Action. An analysis was completed to verify the contract provides the County with persons specially trained, experienced, expert and competent to perform the special services in accordance with the law.

Sheriff staff have conducted due diligence on Tetra Tech. Reference checks were satisfactory and completed with the City of Roseville, San Mateo County, and Sonoma County. Sheriff has verified there are no concerns that must be addressed with respect to Contractor's ownership/name, litigation status or conflicts with County interests. This contract includes Circle Point as an authorized subcontractor. See Attachment C for Contract Summary. The Orange County Preference Policy is not applicable to this contract.

FINANCIAL IMPACT:

This expense will have a revenue offset of $225,000. There are sufficient appropriations in the FY 2025-26 Budget, and it will most likely be addressed in FY 2026-27 Budget The contract is contingent upon funding availability awarded through the Federal Emergency Management Agency and use subject to those grant terms and conditions. In the event funding is reduced or terminated, the County may renegotiate the level of services and/or terminate the contract, as necessary.

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STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – Contract MA-060-25011505
Attachment B - Rating Summary and Final Individual Score Sheets
Attachment C - Contract Summary Form
Attachment D - FEMA Local Mitigation Planning Policy Guide 2025
Attachment E – FEMA Local Mitigation Planning Handbook 2025

Docusign Envelope ID: F53BBCA7-1D39-484A-A560-746F51EE8F4B

Contract MA-060-25011505

For

Hazard Mitigation Consultant Firm

Between

Sheriff-Coroner

And

Tetra Tech, Inc.

Docusign Envelope ID: F53BBCA7-1D39-484A-A560-746F51EE8F4B

CONTRACT

MA-060-25011505
BETWEEN
COUNTY OF ORANGE
AND
TETRA TECH, INC.
FOR
HAZARD MITIGATION CONSULTANT FIRM

This Contract MA-060-25011505 for Hazard Mitigation Consultant Firm (Contract) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California ("County"), and Tetra Tech, Inc., a Delaware Corporation (Contractor), with County and Contractor sometimes referred to as Party or collectively as Parties.

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work

Attachment B – Payment and Compensation

Attachment C- Certification Regarding Anti-Lobbying

RECITALS

WHEREAS, Contractor and County are entering into this Contract for Hazard Mitigation Consultant Firm under a firm fixed fee Contract; and,

WHEREAS, County solicited Contract for Hazard Mitigation Consultant Firm as set forth herein, and Contractor represented that it is qualified to provide Hazard Mitigation Consultant Firm to the County as further set forth here; and,

WHEREAS, Contractor agrees to provide Hazard Mitigation Consultant Firm to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B; and,

WHEREAS, the County Board of Supervisors has authorized the Procurement Officer or designee to enter into a Contract for Hazard Mitigation Consultant Firm with the Contractor; and,

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

Docusign Envelope ID: F53BBCA7-1D39-484A-A560-746F51EE8F4B

GENERAL TERMS AND CONDITIONS

1. Governing Law and Venue:

This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

2. Entire Contract:

This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

3. Amendments:

No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

4. Taxes:

Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.

5. Delivery:

Time of delivery of commodities and services is of the essence in this Contract. County reserves the right to refuse any commodities and services and to cancel all or any part of the commodities not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed scope of work. Acceptance of any part of the order for commodities shall not bind County to accept future shipments nor deprive it of the right to return commodities already accepted at Contractor's expense. Over shipments and under shipments of commodities shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all commodities or services have actually been received and accepted in writing by County.

Docusign Envelope ID: F53BBCA7-1D39-484A-A560-746F51EE8F4B

6. Acceptance Payment:

Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the commodities/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

7. Warranty:

Contractor expressly warrants that the commodities covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in the Insurance and Indemnification section, and as more fully described in the Insurance and Indemnification section harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

8. Patent/Copyright Materials/Proprietary Infringement:

Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in the Insurance and Indemnification section, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.

9. Assignment:

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

10. Non-Discrimination:

In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

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11. Termination:

In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of Contractor. Exercise by County of its right to terminate Contract shall relieve County of all further obligation.

12. Consent to Breach Not Waiver:

No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

13. Independent Contractor:

Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

14. Performance Warranty:

Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction**.** Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other commodities/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

15. Changes:

Contractor shall make no changes in the work or perform any additional work without County's specific written approval.

16. Change of Ownership/Name, Litigation Status, Conflicts with County Interests:

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

Notwithstanding other notice or termination provisions contained herein, County reserves the right to immediately terminate this Contract, as of the date on which the County provides written determination of termination of this Contract under this provision anytime upon or after assignment, in the event that the

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County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services or commodities under this Contract. In the event of an immediate termination under this provision, the Contractor shall promptly refund the County an amount equal to the pro rata portion of any charges the County paid in advance for any remaining portion of the Contract after the date of termination. Likewise, the County shall not be liable for payment for any remaining services not yet provided and accepted by the County under this Contract after the date of termination for any payments to be made in arrears pursuant to the terms of the Contract.

17. Force Majeure:

Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

18. Confidentiality:

Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

19. Compliance with Laws:

Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of the Insurance and Indemnification section, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

Contractor shall remain in compliance and in good standing, maintaining current and active business entity and/or nonprofit registration status, with all applicable federal, state and local registration requirements at the time of execution of the contract through the duration of the term of the Contract, and shall provide annual confirmation of current and active status to County through the term of the Contract.

20. Freight:

Prior to County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under Contract.

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21. Severability:

If any term, covenant, condition or provision of this Contract 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.

22. Attorney Fees:

In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.

23. Interpretation:

This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.

24. Employee Eligibility Verification:

Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

25. Audits/Inspections:

Contractor agrees to permit County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of Contract including, but not limited to, the costs of administering Contract. County will provide reasonable notice of such an audit or inspection.

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County reserves the right to audit and verify Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to County's project manager.

26. Contingency of Funds:

Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

27. Expenditure Limit:

Contractor shall notify County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against Contract reach 75 percent of the dollar limit on Contract. County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on Contract unless a change order to cover those costs has been issued.

28. California Public Records Act:

Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract may be subject to disclosure pursuant to the California Public Records Act, California Government Code Section 7920.000 et seq. Contractor shall not respond to any California Public Records Act request directed at County; all responses shall be handled by County.

INDEMNIFICATION AND INSURANCE PROVISIONS

1. Indemnification

Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve Contractor of any insurance requirements of obligations created elsewhere in this Contract.

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2. General Insurance Requirements

Prior to the provision of services under this Contract, the Contractor agrees to carry all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage current, provide Certificates of Insurance, and endorsements to the County during the entire term of this Contract.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIR)'s shall be clearly stated on the Certificate of Insurance. Any SIR in excess of Fifty Thousand Dollars $50,000 shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from Contractor. If Contractor is self-insured, Contractor will indemnify the County for any and all claims resulting or arising from Contractor's services in accordance with the indemnity provision stated in this contract.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com).** It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below.

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

All insurance policies required by this Contract shall waive all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees, and agents*** when acting within the scope of their appointment or employment.

Contractor shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation

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may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within ten (10) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not provide acceptable Certificates of Insurance and endorsements to County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

3. Commercial General Liability

Minimum limits and coverage

$1,000,000 per occurrence; $2,000,000 aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on occurrence basis utilizing Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

A. An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad naming the County of Orange its elected and appointed officials, officers, employees, and agents as Additional Insureds, or provide blanket coverage, which will state As Required by Written Contract.

B. A primary non-contributory endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary, and any insurance or self-insurance maintained by the County shall be excess and non-contributing.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

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4. Automobile Liability including coverage for owned, non-owned and hired vehicles

Minimum limits and coverage

$1,000,000 combined Single Limit

Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

5. Workers' Compensation

Minimum limits and coverage

Statutory

Required Endorsements

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents, and employees*** or provide blanket coverage, which will state ***As Required by Written Contract.***

6. Employers Liability Insurance

Minimum limits and coverage

$1,000,000 per accident or disease

ADDITIONAL TERMS AND CONDITIONS

1. Scope of Contract:

This Contract specifies contractual terms and conditions by which County will procure Hazard Mitigation Consultant Firm Items from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".

2. Term of Contract:

This Contract shall commence upon execution of all necessary signatures and continue for one (1) calendar year from that date, unless otherwise terminated by County.

3. Renewal:

This Contract may be renewed by mutual written agreement of both Parties for one (1) additional one year term. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.

4. Adjustments – Scope of Work:

No adjustments made to the Scope of Work will be authorized without prior written approval of County assigned Deputy Purchasing Agent.

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5. Bills and Liens:

Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article "Indemnification" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

6. Breach of Contract:

The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

A. Terminate Contract immediately, pursuant to the General Terms and Conditions section, "Termination" Article herein;

B. Afford Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

C. Discontinue payment to the Contactor for and during the period in which Contractor is in breach; and

D. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.

7. Stop Work:

The County may, at any time, by written stop work order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a period of 90 days after the stop work order is delivered to the Contractor and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor or within any extension of that period to which the parties shall have agreed, the County shall either: 1) cancel the stop work order, or 2) terminate the Contract in whole or in part in writing as soon as feasible. County is not required to provide thirty (30) days' notice of the termination of the Contract to Contractor if a stop work order has been issued by County.

8. Civil Rights:

Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.

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9. Conflict of Interest – Contractor's Personnel:

Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to Contractor, Contractor's officers, directors, employees, agents, and subcontractors associated with accomplishing work and services hereunder. Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of County.

Contractor shall notify County, in writing, of any potential or actual conflicts of interest between Contractor and County that may arise prior to, or during the period of, Contract performance, including, but not limited to, whether any known County public officer's child is an officer or director of, or has an ownership interest of ten (10) percent or more in, Contractor. While Contractor will be required to provide this information without prompting from County any time there is a change regarding conflict of interest, Contractor must also provide an update to County upon request by County.

10. Conflict of Interest – County Personnel:

County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

11. W-9/W-8 Requirements

Department of the Treasury, Internal Revenue Service Form W-9 Requirement:

Effective June 3, 2006, all Contractors, entering into a contract with the County, who are not already established in the County Financial System as an Auditor-Controller Vendor, will be required to submit to the County a federal Form W-9, or form W-8 for foreign vendors. The County will inform the Contractor, at the time of award, if the Form W-9, or W-8, will be required.

A. In order to comply with this County requirement, within ten days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the contract administrator, the County DPA, the required W-9 or W-8. *Out of State Vendors may be required to submit a 587/590 Form.*

12. Contractor's Project Manager and Key Personnel:

Contractor shall appoint a Project Manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of County's Project Manager, which consent shall not be unreasonably withheld.

Contractor's Project Manager shall be assigned to this project for the duration of Contract and shall diligently pursue all work and services to meet the project time lines. County's Project Manager shall have the right to require the removal and replacement of Contractor's Project Manager from providing services to County under this Contract. County's Project manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal within five (5) business days after written notice by County's

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Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager. County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under Contract.

13. Contractor Personnel – Reference Checks:

Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.

14. Contractor's Expense:

The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.

15. Contractor Personnel – Uniform/Badges/Identification:

Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract. All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by Contractor and must be worn at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) days prior to any changes in this procedure.

16. Contractor's Records:

Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county will require written approval from County of Orange assigned Deputy Purchasing Agent.

17. Conditions Affecting Work:

Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in Contract.

18. Cooperative Contract:

This Contract is a cooperative contract and may be utilized by all County of Orange departments.

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The provisions and pricing of this Contract may be extended, at the option of Contractor, to any Municipal, County, Public Utility, Hospital, Educational Institution, or any other non-profit or governmental organization (the "Cooperative Program"). Parties in a Cooperative Program wishing to use this Contract will be responsible for issuing their own purchase documents / price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any agreement entered into with another agency or entity that is entered into pursuant to the provisions and pricing of this Contract a clause that binds the parties to the agreement to "indemnify, defend with counsel approved in writing by the County of Orange, California ("County"), and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided" under the agreement.. Failure to so include this clause voids the Contract's extension to a Cooperative Program and will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The County of Orange makes no guarantee of usage by other users of this Contract.

As a cost-recovery mechanism for County, a 2 percent administrative rebate on total sales from all subordinate contracts will be paid to the County for any contracts the Contractor agrees to enter into with another agency or entity, other than the County of Orange or a department thereof, under the provisions and pricing of this Contract. The County has partnered with Pavilion, a third-party administrator, responsible for managing all reporting and payments under this Cooperative Program. The Contractor shall provide quarterly Volume Sales Reports about additional sales to other entities under the provisions and pricing of this Contract. The Reports shall include the ordering agency, detail of items sold including description, quantity, and price, and shall include all transactions pertaining to sales under the Contract provisions and pricing for that Reporting Period. Contractor shall provide the Volume Sales Reports regardless of whether or not any sales have been conducted. Failure of the Contractor to provide quarterly reports as required may be deemed by the County as a material breach of the Contract. A late penalty of 15 percent on the value of the rebate may be assessed to the Contractor for each month the payments are not received.

Subordinate contracts must be executed prior to the expiration or earlier termination of this Contract and may survive the expiration of this Contract. This Cooperative Contract provision shall survive expiration or termination of this Contract.

19. Data – Title To:

All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.

20. Default – Re-Procurement Costs:

In case of Contract breach by Contractor, resulting in termination by County, County may procure the commodities and services from other sources. If the cost for those commodities and services is higher than under the terms of the existing Contract, Contractor will be responsible for paying County the difference between Contract cost and the price paid, and County may deduct this cost from any unpaid balance due

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Contractor. The price paid by County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

21. Disputes – Contract:

The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County 's Project Manager, as specified in Article titled "Notices" below, such matter shall be brought to the attention of the County DPA by way of the following process:

A. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.

B. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects Contract adjustment for which Contractor believes County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of commodities and/or provision of services. Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by County Deputy Purchasing Agent or his designee. If County fails to render a decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. Nothing in this section shall be construed as affecting County's right to terminate Contract for cause or termination for convenience as stated in Article "Termination" herein.

22. Drug-Free Workplace:

Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. Contractor will:

A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).

B. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:

1. The dangers of drug abuse in the workplace;

2. The organization's policy of maintaining a drug-free workplace

3. Any available counseling, rehabilitation and employee assistance programs; and

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4. Penalties that may be imposed upon employees for drug abuse violations.

C. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:

1. Will receive a copy of the company's drug-free policy statement; and

2. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

D. Failure to comply with these requirements may result in suspension of payments under Contract or termination of Contract or both, and Contractor may be ineligible for award of any future County contracts if County determines that any of the following has occurred:

1. Contractor has made false certification, or

2. Contractor violates the certification by failing to carry out the requirements as noted above.

23. EDD Independent Contractor Reporting Requirements:

Effective January 1, 2001, County of Orange is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom County pays $600 or more or with whom County enters into a contract for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department website located at http://www.edd.ca.gov/Employer_Services.htm

The failure of Contractor to timely submit the requested data shall constitute a material breach and grounds for termination of this Contract.

24. Emergency/Declared Disaster Requirements:

In the event of an emergency or if Orange County is declared a disaster area by County, state or federal government, Contract may be subjected to unusual usage. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by Contractor shall apply to serving County's needs regardless of the circumstances. If Contractor is unable to supply the goods/services under the terms of

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Contract, then Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from Contractor shall show both the emergency purchase order number and Contract number.

25. Error and Omissions:

All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary, and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

26. Equal Employment Opportunity:

Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

27. Headings:

The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and articles, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

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28. News/Information Release:

Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from County through County's Project Manager.

29. Notices:

Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned DPA, except through the course of the Parties' Project Managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor:	Tetra Tech, Inc.
Attn:	TDR Contracts
Address:	2301 Lucien Way, Suite 120 Maitland, FL. 32751
Phone:	(407) 735-6580
Email:	TDR.contracts@tetratech.com

County's Project Manager: Sheriff-Coroner	
Attn:	Christian Maurice Hobbs
Address:	2644 Santiago Canyon Rd Silverado, CA. 92676-9791
Phone:	(657) 532-6305
Email:	chobbs@ocsheriff.gov

cc: Sheriff-Coroner/Procurement Services

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Attn:	Crystal Milner, County DPA
Address:	320 N Flower Santa Ana, CA 92703
Phone:	(714) 834-4690
Email:	cmilner@ocsheriff.gov

30. Precedence:

Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

31. Subcontracting:

No performance of this Contract or any portion thereof may be subcontracted or otherwise delegated by Contractor, in whole or in part, without first obtaining the prior express written consent of County. Any attempt by Contractor to subcontract or delegate any performance of this Contract without the prior express written consent of County shall be invalid and shall constitute a material breach of this Contract, and any attempted assignment or delegation in derogation of this paragraph shall be void.

In the event that Contractor is authorized by County to subcontract, this Contract shall take precedence over the terms of the agreement between Contractor and subcontractor, and any agreement between Contractor and a subcontractor shall incorporate by reference the terms of this Contract. Contractor shall remain responsible for the performance of this Contract and indemnification of County notwithstanding the County's consent to Contractor's request for approval of a subcontractor. Under no circumstances shall County be required to directly monitor the performance of any subcontractor. All work performed by a subcontractor must be monitored by Contractor and must meet the approval of the County of Orange pursuant to the terms of this Contract.

Authorized Subcontractors for this project:

Circle Point
2100 W. Orangewood Ave # 215
Orange, CA. 92868

32. Termination – Orderly:

After receipt of a termination notice from County of Orange, Contractor may submit to County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written request of Contractor. Upon termination County agrees to pay Contractor for all services performed prior to termination which meet the requirements of Contract, provided, however, that such

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compensation combined with previously paid compensation shall not exceed the total compensation set forth in Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of Contract.

33. Usage:

No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. Contractor agrees to supply services and/or commodities requested, as needed by County of Orange, at rates/prices listed in Contract, regardless of quantity requested.

34. Usage Reports:

Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of Contract term, or any subsequent renewal term, if applicable.

35. Project Manager, County:

The County shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and key personnel. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

36. Permits and Licenses:

Contractor shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the permitted operation as set out herein. No permit approval or consent given hereunder by County in its governmental capacity shall affect or limit Contractor's obligations hereunder, nor shall any approvals or consents given by County as a party to this Contract, be deemed approval as to compliance or conformance with applicable governmental codes, laws, ordinances, rules, or regulations.

37. Follow-on Work:

No person, firm, subsidiary or subcontractor of a firm that has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a Contract for the performance of services, the purchase of goods or supplies, or the provision of any other related action which arises from or can reasonably be deemed an end-product of work performed under the initial consulting to consulting-related Contract.

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38. Liquidated Damages:

It is agreed by and between the contractor and the County that if this contract is not fully and completely performed within the terms of the contract, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the contractor, such as County overtime costs. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that contractor will pay to the County liquidated damages in a set amount of **$200.00** for each and every day of delay beyond August 3, 2026, for the draft MJHMP and August 17, 2026, for the revised MJHMP.

In the event the liquidated damages as set forth herein are not paid by the contractor, the County will deduct the amount of liquidated damages from any monies due contractor under this contract.

This provision may be invoked at the sole option of the County by notification to the contractor by certified return receipt mail.

If contract is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays caused by the County, (including but not limited to delayed response time to Contractor requests), the time of performance of this contract will be extended commensurate with the time required for the extra services and/or delays are attributable to the County's failure to perform, and no liquidated damages will accrue during the period of such extension.

Contractor shall provide a progress update to the County on outstanding tasks by June 19, 2026. Contractor shall identify any outstanding services that are non-essential or immaterial to the submission of a Cal OES/FEMA compliant MJHMP that would hinder Contractor's ability to meet the County's August 3, 2026, deadline. Contractor and County will then work in good faith to mutually determine what outstanding services are strictly necessary for the submission of a Cal OES/FEMA compliant MJHMP on or before the deadline.

The County acknowledges that due to the accelerated timeline, that accelerated review, feedback, and communication timelines may be necessary and County will substantively respond to all Contractor requests within three (3) business days of receipt, unless an alternate response timeframe is mutually agreed upon by the parties in writing.

If the deadlines herein are not met, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the contractor a right to extra time for performance.

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Additional Terms and Conditions - Federal Grant Funds

1. FEDERAL GRANT FUNDS

The following shall apply to purchases made through the expenditure of Federal Grant Funds by the Orange County Sheriff's Department.

A. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended— If this Agreement is in excess of $150,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

B. Energy Policy and Conservation Act Provision: Contractor shall follow mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

C. Certifications: Federal Grant Funds: Contractor is informed and understands that this Contract is being partially funded by Federal Grant Funds. Contractor agrees to the following in relation to executing this Contract.

1. Audit Records - With respect to all matters covered by this agreement all records shall be made available for audit and inspection by the grant agency and/or their duly authorized representatives for a period of three (3) years from the termination of this Contract.

2. Contractor will comply, with all requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3), as applicable.

3. Contractor will comply, with all requirements of Sections 103 and 107 of the Contractor Work and Safety Standards Act (40 U.S.C 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable."

D. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, if this Agreement meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.4, the Contractor shall agree as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. Contractor will not discharge, or in any other manner discriminate against, any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

4. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

6. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless

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exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

a. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

E. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) that Contractor shall comply with as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor is required to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

F. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

G. Rights to Inventions Made Under a Contract or Agreement. If this Agreement involves a Federal award meeting the definition of "funding agreement" under 37 CFR §401.2 (a) and the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Contractor must comply with the requirements of 37

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CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

H. Federal Grant recipients, subrecipients, contractors and subcontractors shall comply with 2 C.F.R. §200.323, Procurement of recovered materials.

I. Contracts for more than the federal Simplified Acquisition Threshold (SAT), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

J. All contracts in excess of the federal Micro-Purchase Threshold (MPT) must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.

K. Federal Grant recipients, subrecipients, contractors and subcontractors shall comply with the provision at Federal Acquisition Regulation (FAR) to implement the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA) (Pub. L. No. 115-232 [2018]) Section 889 (b)(1) – Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment.

L. Contractor shall comply with applicable provisions of Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards of the Code of Federal Regulations, https://www.ecfr.gov/cgibin/retrieveECFR?gp=&SID=2fb42dbbec4797fa42d02832e3f524f8&mc=true&n=pt2.1.200&r=PART&ty=HTML%20-%20ap2.1.200_1521.ii.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date following their respective signatures.

Tetra Tech, Inc.*

Signature	Name	Title	Date
Signed by: FECCB75D4C14419...	Jonathan Burgiel	Business Unit President	12/30/2025 | 08:20:53 PST
Signed by: DCED905AE6F7412...	Preston Hopson	Corporate Secretary	12/30/2025 | 08:20:22 PST

COUNTY OF ORANGE, A political subdivision of the State of California

COUNTY AUTHORIZED SIGNATURE:

Signature	Name	Title	Date
		Deputy Procurement Agent	

*If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signee to bind the corporation.

Approved by the Board of Supervisors: _____

Approved as to Form
Office of the County Counsel
Orange County, California

By: DocuSigned by: Annie Loo _____
Deputy

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ATTACHMENT A - SCOPE OF WORK

1. General Information:

Orange County is the third most populous County in California, and the sixth most populous in the nation. With over 3 million residents, the County has one of the most diverse populations and powerful economies in the United States. Thirty-four incorporated cities in the County are responsible for emergency planning within their jurisdictions. The County of Orange is responsible for the emergency planning of 205 square miles of unincorporated area and all County owned facilities and properties.

2. Overview of the Emergency Management Program:

The Orange County Board of Supervisors has designated the Sheriff-Coroner Department as the lead agency in matters of emergency preparedness and disaster response for all types of emergencies such as earthquakes, fires, debris flows, tsunamis, civil disturbances, energy crises, nuclear power plant emergencies, terrorism and acts of war. The Emergency Management Division (EMD) provides emergency management planning, preparedness, response, recovery, and mitigation services to the County of Orange Departments/Agencies and the Orange County Operational Area. There are currently over 100 jurisdictions in the Operational Area (OA) encompassing all County departments and agencies, public and private organizations and the general population within the boundaries of Orange County.

3. Project Overview:

Contractor shall support the update of the County's Multi-Jurisdiction Local Hazard Mitigation Plan (MJHMP). This MJHMP will include both the County of Orange and the Orange County Fire Authority. The plan will fully align with FEMA's Local Mitigation Planning Policy Guide (2022), the Local Mitigation Planning Handbook (2023), and additional requirements specific to California. The final Local Hazard Mitigation Plan (LHMP) document will be approved by FEMA and adopted by the governing boards of both participating jurisdictions. The County of Orange has an emergency management program accredited through the Emergency Management Accreditation Program. This project will incorporate and meet those accreditation standards.

A. Project Timeline:

Month	Activity & Due Dates	Related Task
January		
February		
March	1. Public Outreach 1 2. Kickoff Meeting 3. Comprehensive Outreach Strategy Development 4. Data Collection	Task 2: Stakeholder and Community Engagement Task 3: Risk Assessment and Hazard Profiling Task 4: Development of Mitigation Strategies Task 5: Plan Development and Drafting

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April	1. Working Group 2. Ongoing Community Engagement 3. Solution Identification 4. Plan Development and Drafting	Task 2: Stakeholder and Community Engagement Task 4: Development of Mitigation Strategies Task 5: Plan Development and Drafting
May	1. Public Outreach 2 2. Stakeholder Presentations a. DAFN b. EMC-SUB (put placeholder in Calendar) c. OCEMO 3. Plan Development and Drafting	Task 2: Stakeholder and Community Engagement Task 5: Plan Development and Drafting
June	1. Plan Development and Drafting 2. **June 19 –** Progress update identifying any outstanding services.	Task 5: Plan Development and Drafting
July	1. Plan Development and Drafting 2. **July 30th** Completed Presentation	Task 5: Plan Development and Drafting
August	1. **August 3rd** -Contractor submits draft MJHMP to OCSD. 2. **August 10 –** County submits proposed modifications to Contractor. 3. **August 17 –** Contractor submits revised MJHMP to County.	Task 6 Plan Adoption and Implementation
September		
October	1. **October 7th** Completed Agenda and Staff Report	Task 6 Plan Adoption and Implementation
November	1. **November 2nd** Last date for plan Revisions 2. **November 19th** OCFA Board of Directors adoption of LHMP	Task 6 Plan Adoption and Implementation
December	1. **December 1st** Approval and Adoption of LHMP at Board of Supervisor meeting 2. **December 15th** Current LHMP Expires	Task 6: Plan Adoption and Implementation

*The timeline in the above table is subject to change depending on project requirements and feasibility as mutually agreed upon by Contractor and County.

Due to the accelerated target timeline, County will substantively respond to all Contractor requests within three (3) business days of receipt unless an alternate response timeframe is mutually agreed upon

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by the parties in writing. If no feedback is received in the allotted timeframe, deliverables will be deemed accepted.

The County also acknowledges that the accelerated target timeline may not allow for the following rounds of plan review: admirative draft and internal stakeholder review.

The parties also acknowledge that the target timeline may be affected by updated FEMA planning requirements anticipated for release in 2026

4. Project Objectives: Contractor shall meet the Program Objectives and the Tasks as detailed below:

A. The final contract deliverable will be a FEMA-approved Hazard Mitigation Plan for the County of Orange and the Orange County Fire Authority (OCFA). The final plan will be submitted to and approved by FEMA and adopted by the governing boards of both participating jurisdictions before the expiration of the currently approved HMP in December 15, 2026. However, the County acknowledges that Contractor has no control over the timeline once the plan has been submitted to Cal OES and/or FEMA and Contractor cannot guarantee the date of plan approval.

B. The planning process and plan development will support Orange County agencies and OCFA as partners in hazard mitigation and lead entities for all mitigation actions. The planning process will be designed to maximize participation and add value to the mitigation efforts of individual agencies.

C. The planning process and plan development will include extensive public participation and the solicitation of feedback from the public and specific stakeholders, leveraging innovative approaches and existing resources like the Orange County Disabilities and Access and Functional Needs Working Group, the Orange County Emergency Management Organization (OCEMO), etc.

5. Project Phases: Task One

Task One: Project Management and the Planning Process

A. Kickoff Meeting: Conduct a kick-off meeting with representatives from all participating jurisdictions and key county agencies to discuss project objectives, roles, and responsibilities. Develop a framework for project communication and coordination.

B. Data Collection: Gather existing plans and other relevant documents, including:

1. Current Hazard Mitigation Plans
2. Current Emergency Operations Plans and Annexes
3. Other relevant documents, such as:
    a. County General Plan and elements

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b. Climate Action Plans

c. Floodplain Management Plans

d. Comprehensive Economic Development Strategy

e. Current Threat and Hazard Identification and Risk Assessment (THIRA) and other related documents

C. Coordination Structure: Designate a planning team that includes representatives from each jurisdiction and relevant agencies/departments and create a steering committee to oversee the project.

D. Documentation: Meeting agendas, minutes, rosters and documentation of attendance for all meeting participants will be the responsibility of the Contractor for all phases and aspects of the process. Contractor will document how the plan was prepared, including the schedule and activities that made up the plan's development as well as who was involved from each agency and jurisdiction.

6. Task Two: Stakeholder and Community Engagement

A. Comprehensive Outreach Strategy: Contractor will develop an outreach strategy to engage residents and other stakeholders, with an emphasis on identifying and engaging with underserved communities and people with disabilities and access and functional needs.

B. Stakeholder engagement: Contractor will lead discussions with stakeholders representing neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development as well as businesses, academia, and other private and non-profit interests. Stakeholders will be invited to join the planning process and provide feedback on draft plan documents.

C. Digital Engagement: Contractor will develop and execute a digital engagement campaign, including social media and traditional web site content as well as interactive components such as survey tools that will allow the public to provide input to guide hazard mitigation plan. All engagement content will be delivered in accessible formats.

D. Community Workshops: Contractor will plan and facilitate at least 6 workshops with stakeholders and residents focused on identified risks and discussing prioritized mitigation actions. Workshops will target the various unincorporated communities in Orange County and OCFA service areas and be informed by the risks relevant to each area.

E. Stakeholder Engagement Documentation: The Contractor, in collaboration with the planning team, will be responsible for documentation of public participation and supporting outreach for inclusion in the draft plan. This documentation will include how stakeholders were identified, invited and engaged, and document stakeholder participation from, at minimum, the following categories:

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1. Local and regional agencies involved in hazard mitigation activities
2. Agencies that have the authority to regulate development
3. Neighboring communities
4. Representatives of businesses, academia, and other private organizations
5. Representatives of nonprofit organizations, including community-based organizations, that work directly with and/or provide support to underserved communities and socially vulnerable populations

F. Public Engagement Documentation of public participation will include how the public had an opportunity to be involved in the current planning process, and what that participation entailed, including how underserved communities and vulnerable populations within the planning area were provided an opportunity to be involved.

7. Task Three: Risk Assessment and Hazard Profiling

A. Comprehensive Hazard Analysis: The Contractor will execute a comprehensive hazard identification and analysis process as described by federal law and guidance's, and the Emergency Management Accreditation Program standard. Contractor will gather existing data, reports and publications and use them to update and refine hazard profiles in county Hazard Analysis, considering climate impacts, changes in land use and development and specific regional vulnerabilities as well as identifying all the types of hazards that can occur (e.g. the different types of flood hazards – flash, riverine, coastal, etc.). The plan must include a description of all natural hazards that can affect the County and OCFA as well as its assets in and outside of the planning area. These descriptions must address:

1. Vulnerability of assets to each hazard, including:
    a. People (including underserved communities and socially vulnerable populations)
    b. Structures (including facilities, lifelines and critical infrastructure)
    c. Systems (including networks and capabilities)
    d. Natural, historic, and cultural resources
    e. Activities that have value to the community
2. Extent of hazard
3. Probability of hazard occurring
4. Impacts of hazard on identified assets

B. Vulnerability Analysis: Assess vulnerabilities countywide, with attention to critical infrastructure, community lifelines, underserved populations, and potential impacts from climate-related hazards.

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C. Inclusion of Historical Events: Incorporate documentation of past disasters and emergency declarations.

D. Inclusion of NFIP-insured structures: Document all properties at high risk of flooding, to include repetitive loss structures and severe repetitive loss structures

8. Task Four: Development of Mitigation Strategies

A. Mitigation Goals: In coordination with Hazard Mitigation Working Group, develop mitigation goal statements that focus on reducing risk and vulnerabilities from hazards identified in task three.

B. Existing Capabilities: Identify existing authorities, policies, programs, funding and resources that are available to support the mitigation strategy, including a discussion of the existing building codes and land use and development ordinances or regulations.

C. Solution Identification: Identify comprehensive range of specific mitigation actions suitable for all County agencies for each hazard identified in task three that consider and encourage natural and climate-resilient approaches

D. Mitigation Action Prioritization: Collaborate with County Agencies and OCFA to identify and prioritize mitigation actions. Emphasize equity-focused actions that address the needs of underserved and Disabilities and Access and Functional Needs working group (DAFN) communities. Prioritization will emphasize the extent to which benefits are maximized, in relation to the associated costs of the action.

9. Task Five: Plan Development and Drafting

A. The Contractor will serve as lead author for the final MJHMP document and ensure the final plan and meets all relevant state and federal requirements.

B. The Contractor will use County plan template and format.

C. The plan should be structured in a navigable, concise, and logical manner, facilitating successful review by CalOES and FEMA and maximizing accessibility to stakeholders and the public. At a minimum, public drafts and the final document will take measures to ensure web viewing compatibility and Section 508 compliance (See 29 U.S.C. §794d).

D. The Contractor will be responsible for completing Local Mitigation Plan Review Tool and transmitting final documents and review tools to Cal OES for review.

E. The final deliverable is a Plan that has been Approved by FEMA and adopted by the County of Orange and the Orange County Fire Authority

10. Task Six: Plan Adoption and Implementation

A. Plan Submittal: After submitting the final MJHMP along with the completed CalOES Review Tool, the Contractor will assist the County and OCFA with their respective adoption processes.

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B. Plan Revisions: If the MJHMP receives feedback requiring revisions, the Contractor will be responsible for making the necessary changes.

C. Plan Adoption: Once each governing body adopts the plan, the Contractor will obtain the final approval letter(s) from FEMA and incorporate the adoption and approval details into the final draft.

D. The finalized plan will then be hosted on the County website and made accessible to key County and OCFA representatives in both Microsoft Word and PDF formats.

Docusign Envelope ID: F53BBCA7-1D39-484A-A560-746F51EE8F4B

ATTACHMENT B - PAYMENT AND COMPENSATION

1. Compensation:

This is a firm fixed fee Contract between County and Contractor for Service Description as set forth in Attachment A, "Scope of Work".

Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles "Changes" and "Amendments" of County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

2. Fees and Charges:

A. County will pay the fees and charges in accordance with the provisions of this Contract. Payment shall be as follows:
Cost by Task:

Line Item	Activity	Cost
1	TASK 1: Project Management and the Planning Process	$44,770.00
2	TASK 2: Stakeholder and Community Engagement	$120,582.00
3	TASK3: Risk Management and Hazard Profiling	$70,780.00
4	TASK 4: Development of Mitigation Strategies	$21,887.00
5	TASK 5: Plan Development and Drafting	$31,610.00
6	TASK 6: Plan Adoption and Implementation	$10,371.00
	Project Total	**$300,000.00**

Total Contract amount not to exceed: $300,000.00

Approval by the Board of Supervisors is required for all service contracts where for any year of the contract, the annual value to any one contractor exceeds $200,000

Approval by the Board of Supervisors is required for all service contracts where the total contract value exceeds or is anticipated to exceed $1,000,000 when all contract years are taken into consideration for multi-year contracts.

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3. Price Increase/Decreases:

No price increases will be considered during the first year/term of the Contract. County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required for consideration of such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to County of Orange. County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of Contract. Adjustments increasing Contractor's profit will not be allowed.

4. Firm Discount and Pricing Structure:

Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to County during the term of this Contract not otherwise specified and provided for within this Contract.

5. Contractor's Expense:

Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.

6. Payment Terms – Payment in Arrears:

Invoices are to be submitted in **arrears** to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with Contractor.

Billing shall cover services and/or goods not previously invoiced. Contractor shall reimburse County of Orange for any monies paid to Contractor for goods or services not provided or when goods or services do not meet Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

7. Payment – Invoicing Instructions:

Payment **– Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

a. Contractor's name and address

b. Contractor's remittance address, if different from "A" above

c. Name of County Agency/Department

d. Delivery/Service address

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e. Contract # MA-060-25011505

f. Agency/Department's Account Number

g. Date of order

h. Product/Service description, quantity, and prices

i. Sales tax, if applicable

j. Freight/Delivery Charges, if applicable

k. Total

Invoices and support documentation are to be forwarded to:

County of Orange Sheriff-Coroner Department
Attn: Emergency Management
2644 Santiago Canyon Rd
Silverado, CA. 92676-9791
Or
Email: chobbs@ocsheriff.gov

8. Payment (Electronic Funds Transfer (EFT):

County of Orange offers contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to The County of Orange via an EFT Authorization Form. To request a form, please contact the agency/department Procurement Buyer listed in Contract. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.

9. County Observed Holidays:

New Year's Day
Martin Luther King Jr. Day
Lincoln's Birthday
Presidents Day
Memorial Day
Fourth of July Independence Day
Labor Day
Native American Day
Veteran's Day
Thanksgiving Day & Day After Thanksgiving
Christmas Day

Docusign Envelope ID: F53BBCA7-1D39-484A-A560-746F51EE8F4B

ATTACHMENT C

CERTIFICATION REGARDING ANTI-LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the 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 subrecipients 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. Code. 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.

The Contractor, **Tetra Tech, Inc.**, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signed by:
FECCB75D4C14419...
Signature of Contractor's Authorized Official

Jonathan Burgiel Business Unit President
Name and Title of Contractor's Authorized Official

Date 12/30/2025 | 08:20:53 PST

County of Orange
Sheriff-Coroner
Don Barnes, Sheriff
400 W. Civic Center Drive, Santa Ana, CA 92701

EVALUATION TABULATION

RFP No. RFP-060-2852501

Hazard Mitigation Consultant Firm

RESPONSE DEADLINE: June 30, 2025 at 4:00 pm

Report Generated: Wednesday, December 31, 2025

SELECTED VENDOR

VENDOR RECOMMENDED BY THE EVALUATION PROCESS

Vendor	Location	Score (Points)
Tetra Tech, Inc.	Maitland, FL	undefined

CONSENSUS SCORECARD SUMMARY

Vendor	1. Firm's Background, Qualification & Experience Points Based 325 Points (36.1%)	Key Personnel/Proposed Staffing Points Based 200 Points (22.2%)	Quality/Effectiveness of Work Plan/Project Approach 300 pts Points Based 300 Points (33.3%)	Organization/Completeness of Response Points Based 50 Points (5.6%)	Compliance with the County Model Contract Points Based 25 Points (2.8%)	Total Score (Max Score 900)
Atlas Planning Solutions	-	-	-	-	-	-
IEM International Inc	-	-	-	-	-	-
Integrated Solutions Consulting	-	-	-	-	-	-
Jacob Green and Associates Inc	-	-	-	-	-	-
Michael Baker International	-	-	-	-	-	-
Tetra Tech, Inc.	-	-	-	-	-	-

Vendor	1. Firm's Background, Qualification & Experience Points Based 325 Points (36.1%)	Key Personnel/Proposed Staffing Points Based 200 Points (22.2%)	Quality/Effectiveness of Work Plan/Project Approach 300 pts Points Based 300 Points (33.3%)	Organization/Completeness of Response Points Based 50 Points (5.6%)	Compliance with the County Model Contract Points Based 25 Points (2.8%)	Total Score (Max Score 900)
Witt O'Brien's, LLC	-	-	-	-	-	-
WSP USA Inc.	-	-	-	-	-	-

CONSENSUS SCORECARD DETAILS

Atlas Planning Solutions

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)

Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Total Score:

IEM International Inc

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)

Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Total Score:

Integrated Solutions Consulting

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)

Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Total Score:

Jacob Green and Associates Inc

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)

Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Total Score:

Michael Baker International

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)

Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Total Score:

Tetra Tech, Inc.

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)

Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Total Score:

Witt O'Brien's, LLC

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)

Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Total Score:

WSP USA Inc.

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)

Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Total Score:

VENDOR QUESTIONNAIRE PASS/FAIL

Question Title	Atlas Planning Solutions	IEM International Inc	Integrated Solutions Consulting	Jacob Green and Associates Inc	Michael Baker International	Tetra Tech, Inc.	WSP USA Inc.	Witt O'Brien's, LLC
Compliance Statements (PART 1)								
Validity of Proposal	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Certification of Understanding	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Question Title	Atlas Planning Solutions	IEM International Inc	Integrated Solutions Consulting	Jacob Green and Associates Inc	Michael Baker International	Tetra Tech, Inc.	WSP USA Inc.	Witt O'Brien's, LLC
Minimum Qualifications/Requirements Statement	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Certificate of Insurance	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
W-9 Requirements	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Department of the Treasury, Internal Revenue Service Form W-9 Requirements	Pass	No Response	Pass	No Response	Pass	Pass	Pass	Pass
Conflict of Interest	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Statement of Compliance	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Attachment for each proposed exception must include:		No Response	No Response	No Response	No Response	No Response	No Response	No Response
Non-Collusion Affidavit	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Non-Collusion Declaration - A	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Reason for Collusion:	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Non-Collusion Declaration - B	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Provide names of competing firms:	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Litigation against County of Orange in the past seven (7) years	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Question Title	Atlas Planning Solutions	IEM International Inc	Integrated Solutions Consulting	Jacob Green and Associates Inc	Michael Baker International	Tetra Tech, Inc.	WSP USA Inc.	Witt O'Brien's, LLC
Respondent shall provide detailed information regarding litigation (court and case number), liens, or claims involving any proposed subcontractors, or any company that holds a controlling interest in subcontractor firm(s), against County of Orange in the past seven (7) years.	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response
Name/Ownership Changes:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Respondent shall provide detailed information regarding any company ownership changes (including legal business names) in the past seven (7) years.	No Response	Pass	No Response	No Response	No Response	No Response	No Response	Pass
The Levine Act: County of Orange Campaign Contribution Disclosure	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Statement of Economic Interest (Form 700)	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Is your firm a County Of Orange Local Small Business (OCLSB) or a Disabled Veteran Business Enterprise (DVBE)?	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Question Title	Atlas Planning Solutions	IEM International Inc	Integrated Solutions Consulting	Jacob Green and Associates Inc	Michael Baker International	Tetra Tech, Inc.	WSP USA Inc.	Witt O'Brien's, LLC
OC Local Small Business (OCLSB) Preference And Disabled Veteran Business Enterprise (DVBE) Certifications	Pass	Pass	No Response	No Response	No Response	No Response	No Response	No Response
Contractor Safety	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Safety Data Sheets (SDS)	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Upon recommendation of contract award, Respondent will be required to submit the following documents within ten (10) days of County notification, unless otherwise specified in the RFP:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
I HAVE READ, UNDERSTOOD AND AGREE TO ALL STATEMENTS IN THIS REQUEST FOR PROPOSAL, AND TO THE TERMS, CONDITIONS AND ATTACHMENTS REFERENCED HEREIN.	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Company Profile & References (PART 2)								
Company Legal Name:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Question Title	Atlas Planning Solutions	IEM International Inc	Integrated Solutions Consulting	Jacob Green and Associates Inc	Michael Baker International	Tetra Tech, Inc.	WSP USA Inc.	Witt O'Brien's, LLC
Company Legal Status (corporation, partnership, etc.):	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Active licenses issued by the California State Contractor's License Board:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
DIR Registration No:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
DVBE Certification No:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
SBA Certification No:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Local Business Address:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Telephone Number:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Fax Number:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Email Address:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Length of time Respondent has been in business:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Length of time at current location:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Is your firm a sole proprietorship doing business under a different name?:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
If yes, please indicate sole proprietor's name and the name you are doing business under:	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response

Question Title	Atlas Planning Solutions	IEM International Inc	Integrated Solutions Consulting	Jacob Green and Associates Inc	Michael Baker International	Tetra Tech, Inc.	WSP USA Inc.	Witt O'Brien's, LLC
Is Respondent incorporated?:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
If yes, State of Incorporation:	Pass	Pass	Pass	No Response	Pass	Pass	Pass	Pass
Unique Entity Identifier Number (UEI)	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Federal Taxpayer ID Number:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
D-U-N-S Number	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Regular business hours:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Regular holidays and hours when business is closed:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Contact person in reference to this RFP:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Contact person for Accounts Payable:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Name of Project Manager:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
In the event of an emergency or declared disaster, the following information is required:	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
References	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Respondent's Proposal (PART 3)								
Respondent’s Proposal	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

Question Title	Atlas Planning Solutions	IEM International Inc	Integrated Solutions Consulting	Jacob Green and Associates Inc	Michael Baker International	Tetra Tech, Inc.	WSP USA Inc.	Witt O'Brien's, LLC
Key Personnel/Staffing Plan	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Cost	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
You have read and comply with the Federal Requirements uploaded as attachment B	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Additional Information	Pass	No Response	No Response	Pass	Pass	Pass	Pass	Pass

PHASE 2

EVALUATION CRITERIA

Criteria	Scoring Method	Weight (Points)
1. Firm's Background, Qualification & Experience	Points Based	325 *(36.1% of Total)*

Description:

Criteria	Scoring Method	Weight (Points)
Key Personnel/Proposed Staffing	Points Based	200 *(22.2% of Total)*

Description:

Criteria	Scoring Method	Weight (Points)
Quality/Effectiveness of Work Plan/Project Approach 300 pts	Points Based	300 *(33.3% of Total)*

Description:

Criteria	Scoring Method	Weight (Points)
Organization/Completeness of Response	Points Based	50 *(5.6% of Total)*

Description:

Criteria	Scoring Method	Weight (Points)
Compliance with the County Model Contract	Points Based	25 *(2.8% of Total)*

Description:

AGGREGATE SCORES SUMMARY

Vendor	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Total Score (Max Score 900)	Total Average Rank
Tetra Tech, Inc.	804 (4)	815 (1)	775 (3)	841 (1)	843 (1)	**815.6**	**2**
Michael Baker International	805 (3)	778 (3)	815 (1)	808 (2)	840 (2)	**809.2**	**2.2**
IEM International Inc	813 (2)	780 (2)	789 (2)	783 (3)	788 (4)	**790.6**	**2.6**
WSP USA Inc.	818 (1)	697 (4)	765 (4)	781 (4)	791 (3)	**770.4**	**3.2**

EVALUATION TABULATION
RFP No. RFP-060-2852501
Hazard Mitigation Consultant Firm

Vendor	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Total Score (Max Score 900)	Total Average Rank
Jacob Green and Associates Inc	710 (5)	600 (8)	615 (6.5)	730 (6)	738 (6)	**678.6**	**6.3**
Atlas Planning Solutions	629 (7)	605 (7)	665 (5)	725 (7)	735 (7)	**671.8**	**6.6**
Witt O'Brien's, LLC	656 (6)	670 (5)	605 (8)	710 (8)	712 (8)	**670.6**	**7**
Integrated Solutions Consulting	553 (8)	630 (6)	615 (6.5)	747 (5)	739 (5)	**656.8**	**6.1**

VENDOR SCORES BY EVALUATION CRITERIA

Vendor	1. Firm's Background, Qualification & Experience Points Based 325 Points (36.1%)	Key Personnel/Proposed Staffing Points Based 200 Points (22.2%)	Quality/Effectiveness of Work Plan/Project Approach 300 pts Points Based 300 Points (33.3%)	Organization/Completeness of Response Points Based 50 Points (5.6%)	Compliance with the County Model Contract Points Based 25 Points (2.8%)	Total Score (Max Score 900)
Tetra Tech, Inc.	302.4	190.6	252.8	45.8	24	**815.6**
Michael Baker International	287.2	184.8	270.8	42.4	24	**809.2**
IEM International Inc	278.6	178.2	264.6	45.2	24	**790.6**
WSP USA Inc.	267.6	179.8	257	42	24	**770.4**
Jacob Green and Associates Inc	213	164.2	245.4	32	24	**678.6**
Atlas Planning Solutions	231.4	160.4	217	39	24	**671.8**
Witt O'Brien's, LLC	226.4	157.2	224.4	38.6	24	**670.6**

EVALUATION TABULATION
RFP No. RFP-060-2852501
Hazard Mitigation Consultant Firm

Vendor	1. Firm's Background, Qualification & Experience Points Based 325 Points (36.1%)	Key Personnel/Proposed Staffing Points Based 200 Points (22.2%)	Quality/Effectiveness of Work Plan/Project Approach 300 pts Points Based 300 Points (33.3%)	Organization/Completeness of Response Points Based 50 Points (5.6%)	Compliance with the County Model Contract Points Based 25 Points (2.8%)	Total Score (Max Score 900)
Integrated Solutions Consulting	217.8	164.6	216	34.4	24	**656.8**

INDIVIDUAL PROPOSAL SCORES

Atlas Planning Solutions
1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)
Evaluator 1: 232
Evaluator 2: 210
Evaluator 3: 240
Evaluator 4: 240
Evaluator 5: 235
Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)
Evaluator 1: 146
Evaluator 2: 140
Evaluator 3: 200
Evaluator 4: 151
Evaluator 5: 165

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)
Evaluator 1: 180
Evaluator 2: 190
Evaluator 3: 160
Evaluator 4: 275
Evaluator 5: 280

Organization/Completeness of Response | Points Based | 50 Points (5.6%)
Evaluator 1: 50
Evaluator 2: 40
Evaluator 3: 40
Evaluator 4: 35
Evaluator 5: 30

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 25
Evaluator 3: 25
Evaluator 4: 24
Evaluator 5: 25

IEM International Inc

EVALUATION TABULATION
RFP No. RFP-060-2852501
Hazard Mitigation Consultant Firm

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)
Evaluator 1: 278
Evaluator 2: 300
Evaluator 3: 320
Evaluator 4: 240
Evaluator 5: 255

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)
Evaluator 1: 166
Evaluator 2: 175
Evaluator 3: 200
Evaluator 4: 180
Evaluator 5: 170

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)
Evaluator 1: 300
Evaluator 2: 240
Evaluator 3: 200
Evaluator 4: 293
Evaluator 5: 290

Organization/Completeness of Response | Points Based | 50 Points (5.6%)
Evaluator 1: 48

Evaluator 2: 40
Evaluator 3: 44
Evaluator 4: 46
Evaluator 5: 48
Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 25
Evaluator 3: 25
Evaluator 4: 24
Evaluator 5: 25
Integrated Solutions Consulting
1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)
Evaluator 1: 204
Evaluator 2: 230
Evaluator 3: 200
Evaluator 4: 230
Evaluator 5: 225
Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)
Evaluator 1: 140

Evaluator 2: 130
Evaluator 3: 200
Evaluator 4: 178
Evaluator 5: 175
Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)
Evaluator 1: 168
Evaluator 2: 200
Evaluator 3: 150
Evaluator 4: 282
Evaluator 5: 280
Organization/Completeness of Response | Points Based | 50 Points (5.6%)
Evaluator 1: 20
Evaluator 2: 45
Evaluator 3: 40
Evaluator 4: 33
Evaluator 5: 34
Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 25
Evaluator 3: 25

Evaluator 4: 24
Evaluator 5: 25

Jacob Green and Associates Inc
1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)
Evaluator 1: 232
Evaluator 2: 200
Evaluator 3: 200
Evaluator 4: 218
Evaluator 5: 215
Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)
Evaluator 1: 133
Evaluator 2: 135
Evaluator 3: 190
Evaluator 4: 180
Evaluator 5: 183
Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)
Evaluator 1: 280
Evaluator 2: 200
Evaluator 3: 180

Evaluator 4: 282

Evaluator 5: 285

Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Evaluator 1: 44

Evaluator 2: 40

Evaluator 3: 20

Evaluator 4: 26

Evaluator 5: 30

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Evaluator 1: 21

Evaluator 2: 25

Evaluator 3: 25

Evaluator 4: 24

Evaluator 5: 25

Michael Baker International

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)

Evaluator 1: 278

Evaluator 2: 300

Evaluator 3: 320

Evaluator 4: 263
Evaluator 5: 275
Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)
Evaluator 1: 160
Evaluator 2: 176
Evaluator 3: 200
Evaluator 4: 193
Evaluator 5: 195
Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)
Evaluator 1: 300
Evaluator 2: 235
Evaluator 3: 230
Evaluator 4: 292
Evaluator 5: 297
Organization/Completeness of Response | Points Based | 50 Points (5.6%)
Evaluator 1: 46
Evaluator 2: 42
Evaluator 3: 40
Evaluator 4: 36
Evaluator 5: 48

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 25
Evaluator 3: 25
Evaluator 4: 24
Evaluator 5: 25

Tetra Tech, Inc.

1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)
Evaluator 1: 325
Evaluator 2: 320
Evaluator 3: 320
Evaluator 4: 273
Evaluator 5: 274

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)
Evaluator 1: 170
Evaluator 2: 185
Evaluator 3: 200
Evaluator 4: 200
Evaluator 5: 198

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)
Evaluator 1: 240
Evaluator 2: 240
Evaluator 3: 190
Evaluator 4: 294
Evaluator 5: 300

Organization/Completeness of Response | Points Based | 50 Points (5.6%)
Evaluator 1: 48
Evaluator 2: 45
Evaluator 3: 40
Evaluator 4: 50
Evaluator 5: 46

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 25
Evaluator 3: 25
Evaluator 4: 24
Evaluator 5: 25

Witt O'Brien's, LLC
1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)
Evaluator 1: 232
Evaluator 2: 250
Evaluator 3: 200
Evaluator 4: 220
Evaluator 5: 230
Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)
Evaluator 1: 166
Evaluator 2: 135
Evaluator 3: 200
Evaluator 4: 145
Evaluator 5: 140
Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)
Evaluator 1: 187
Evaluator 2: 220
Evaluator 3: 150
Evaluator 4: 290
Evaluator 5: 275
Organization/Completeness of Response | Points Based | 50 Points (5.6%)

Evaluator 1: 50
Evaluator 2: 40
Evaluator 3: 30
Evaluator 4: 31
Evaluator 5: 42

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 25
Evaluator 3: 25
Evaluator 4: 24
Evaluator 5: 25

WSP USA Inc.
1. Firm's Background, Qualification & Experience | Points Based | 325 Points (36.1%)
Evaluator 1: 278
Evaluator 2: 250
Evaluator 3: 320
Evaluator 4: 245
Evaluator 5: 245

Key Personnel/Proposed Staffing | Points Based | 200 Points (22.2%)

Evaluator 1: 169
Evaluator 2: 160
Evaluator 3: 200
Evaluator 4: 180
Evaluator 5: 190

Quality/Effectiveness of Work Plan/Project Approach 300 pts | Points Based | 300 Points (33.3%)
Evaluator 1: 300
Evaluator 2: 220
Evaluator 3: 180
Evaluator 4: 290
Evaluator 5: 295

Organization/Completeness of Response | Points Based | 50 Points (5.6%)
Evaluator 1: 50
Evaluator 2: 42
Evaluator 3: 40
Evaluator 4: 42
Evaluator 5: 36

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 25

Evaluator 3: 25

Evaluator 4: 24

Evaluator 5: 25

PHASE 1

EVALUATION CRITERIA

Criteria	Scoring Method	Weight (Points)
Firm's Background, Qualifications & Experience	Points Based	175 *(29.2% of Total)*

Description:

Criteria	Scoring Method	Weight (Points)
Key Personnel/Proposed Staffing	Points Based	150 *(25% of Total)*

Description:

Criteria	Scoring Method	Weight (Points)
Quality/Effectiveness of Work Plan/Project Approach	Points Based	125 *(20.8% of Total)*

Description:

Criteria	Scoring Method	Weight (Points)
Organization/Completeness of Response	Points Based	25 *(4.2% of Total)*

Description:

Criteria	Scoring Method	Weight (Points)
Compliance with the County Model Contract	Points Based	25 *(4.2% of Total)*

Description:
***Note: Respondents submitting exceptions to the County Model Contract of this RFP, may receive a score of "0" for this criterion.**

Criteria	Scoring Method	Weight (Points)
Cost Proposal	Points Based	100 *(16.7% of Total)*

Description:
Respondent shall provide a sealed Cost Proposal for both Respondent and, if applicable, any subcontractors, at the time of interview. The Cost Proposal will be evaluated as follows:

A. Lowest price receives the full score of 100 points.
B. Other scores are proportional to the lowest price.

If County elects not to conduct interviews for this solicitation, Deputy Purchasing Agent will contact Respondents to coordinate the submission of the Cost Proposal.

AGGREGATE SCORES SUMMARY

EVALUATION TABULATION
RFP No. RFP-060-2852501
Hazard Mitigation Consultant Firm

Vendor	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Total Score (Max Score 600)	Total Average Rank
Tetra Tech, Inc.	448 (1.5)	474 (1)	428 (3)	495 (1)	495 (1)	**468**	**1.5**
Michael Baker International	439 (4)	470 (2.5)	458 (1)	465 (2)	492 (2)	**464.8**	**2.3**
WSP USA Inc.	448 (1.5)	470 (2.5)	418 (4)	435 (3.5)	448 (3)	**443.8**	**2.9**
IEM International Inc	445 (3)	465 (4)	433 (2)	435 (3.5)	439 (4)	**443.4**	**3.3**
Jacob Green and Associates Inc	385 (5)	415 (6)	318 (6.5)	392 (6)	398 (5)	**381.6**	**5.7**
Atlas Planning Solutions	356 (7)	396 (8)	343 (5)	387 (7)	395 (7)	**375.4**	**6.8**
Integrated Solutions Consulting	316 (8)	424 (5)	318 (6.5)	401 (5)	397 (6)	**371.2**	**6.1**
Witt O'Brien's, LLC	374 (6)	400 (7)	313 (8)	372 (8)	366 (8)	**365**	**7.4**

VENDOR SCORES BY EVALUATION CRITERIA

Vendor	Firm's Background, Qualifications & Experience Points Based 175 Points (29.2%)	Key Personnel/Proposed Staffing Points Based 150 Points (25%)	Quality/Effectiveness of Work Plan/Project Approach Points Based 125 Points (20.8%)	Organization/Completeness of Response Points Based 25 Points (4.2%)	Compliance with the County Model Contract Points Based 25 Points (4.2%)	Cost Proposal Points Based 100 Points (16.7%)	Total Score (Max Score 600)
Tetra Tech, Inc.	169.4	140.2	112.6	22.8	23	-	**468**
Michael Baker International	162.6	137.8	120	21.4	23	-	**464.8**
WSP USA Inc.	152.4	133.4	113.6	21.4	23	-	**443.8**

Vendor	Firm's Background, Qualifications & Experience Points Based 175 Points (29.2%)	Key Personnel/Proposed Staffing Points Based 150 Points (25%)	Quality/Effectiveness of Work Plan/Project Approach Points Based 125 Points (20.8%)	Organization/Completeness of Response Points Based 25 Points (4.2%)	Compliance with the County Model Contract Points Based 25 Points (4.2%)	Cost Proposal Points Based 100 Points (16.7%)	Total Score (Max Score 600)
IEM International Inc	154	128.6	115.2	22.6	23	-	**443.4**
Jacob Green and Associates Inc	115.6	118.6	107.8	16.6	23	-	**381.6**
Atlas Planning Solutions	130	110	92.6	19.8	23	-	**375.4**
Integrated Solutions Consulting	120	118.4	93.4	16.4	23	-	**371.2**
Witt O'Brien's, LLC	120.6	106	95.6	19.8	23	-	**365**

INDIVIDUAL PROPOSAL SCORES

Atlas Planning Solutions

Firm's Background, Qualifications & Experience | Points Based | 175 Points (19.4%)

Evaluator 1: 125

Evaluator 2: 130

Evaluator 3: 120

6 yrs experience. Partering with another firm to have the ability to meet the needs of this proposal.

Evaluator 4: 140

Evaluator 5: 135
Key Personnel/Proposed Staffing | Points Based | 150 Points (16.7%)
Evaluator 1: 110
Evaluator 2: 120
Evaluator 3: 100
Evaluator 4: 105
Evaluator 5: 115
Quality/Effectiveness of Work Plan/Project Approach | Points Based | 125 Points (13.9%)
Evaluator 1: 75
Evaluator 2: 103
Evaluator 3: 80
Evaluator 4: 100
Evaluator 5: 105
Organization/Completeness of Response | Points Based | 25 Points (2.8%)
Evaluator 1: 25
Evaluator 2: 21
Evaluator 3: 20
Evaluator 4: 18
Evaluator 5: 15

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 22
Evaluator 3: 23
Evaluator 4: 24
Evaluator 5: 25

Cost Proposal | Points Based | 100 Points (11.1%)
Evaluator 1: -
Evaluator 2: -
Evaluator 3: -
Evaluator 4: -
Evaluator 5: -

IEM International Inc

Firm's Background, Qualifications & Experience | Points Based | 175 Points (19.4%)
Evaluator 1: 150
Evaluator 2: 165
Evaluator 3: 160
40+ years of nationwide experience
Evaluator 4: 140
Evaluator 5: 155

Key Personnel/Proposed Staffing | Points Based | 150 Points (16.7%)
Evaluator 1: 125
Evaluator 2: 140
Evaluator 3: 128
Experienced leadership
Evaluator 4: 130
Evaluator 5: 120

Quality/Effectiveness of Work Plan/Project Approach | Points Based | 125 Points (13.9%)
Evaluator 1: 125
Evaluator 2: 118
Evaluator 3: 100
Evaluator 4: 118
Evaluator 5: 115

Organization/Completeness of Response | Points Based | 25 Points (2.8%)
Evaluator 1: 24
Evaluator 2: 20
Evaluator 3: 22
Evaluator 4: 23
Evaluator 5: 24

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Evaluator 1: 21

Evaluator 2: 22

Evaluator 3: 23

Evaluator 4: 24

Evaluator 5: 25

Cost Proposal | Points Based | 100 Points (11.1%)

Evaluator 1: -

Evaluator 2: -

Evaluator 3: -

Evaluator 4: -

Evaluator 5: -

Integrated Solutions Consulting

Firm's Background, Qualifications & Experience | Points Based | 175 Points (19.4%)

Evaluator 1: 110

Evaluator 2: 135

Evaluator 3: 100

Low involvement in California. No 2025 proposals listed.

Evaluator 4: 130

Evaluator 5: 125

Key Personnel/Proposed Staffing | Points Based | 150 Points (16.7%)
Evaluator 1: 105
Evaluator 2: 135
Evaluator 3: 100
Evaluator 4: 127
Evaluator 5: 125

Quality/Effectiveness of Work Plan/Project Approach | Points Based | 125 Points (13.9%)
Evaluator 1: 70
Evaluator 2: 110
Evaluator 3: 75
Evaluator 4: 107
Evaluator 5: 105

Organization/Completeness of Response | Points Based | 25 Points (2.8%)
Evaluator 1: 10
Evaluator 2: 22
Evaluator 3: 20
Evaluator 4: 13
Evaluator 5: 17

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21

Evaluator 2: 22

Evaluator 3: 23

Evaluator 4: 24

Evaluator 5: 25

Cost Proposal | Points Based | 100 Points (11.1%)

Evaluator 1: -

Evaluator 2: -

Evaluator 3: -

Evaluator 4: -

Evaluator 5: -

Jacob Green and Associates Inc

Firm's Background, Qualifications & Experience | Points Based | 175 Points (19.4%)

Evaluator 1: 125

Evaluator 2: 120

Evaluator 3: 100

Minimal project experience provided

Evaluator 4: 118

Evaluator 5: 115

Key Personnel/Proposed Staffing | Points Based | 150 Points (16.7%)

Evaluator 1: 100

Evaluator 2: 135

Evaluator 3: 95

Evaluator 4: 130

Evaluator 5: 133

Quality/Effectiveness of Work Plan/Project Approach | Points Based | 125 Points (13.9%)

Evaluator 1: 117

Evaluator 2: 115

Evaluator 3: 90

Lacking detail

Evaluator 4: 107

Evaluator 5: 110

Organization/Completeness of Response | Points Based | 25 Points (2.8%)

Evaluator 1: 22

Evaluator 2: 23

Evaluator 3: 10

Evaluator 4: 13

Evaluator 5: 15

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)

Evaluator 1: 21

Evaluator 2: 22

Evaluator 3: 23

Evaluator 4: 24

Evaluator 5: 25

Cost Proposal | Points Based | 100 Points (11.1%)

Evaluator 1: -

Evaluator 2: -

Evaluator 3: -

Evaluator 4: -

Evaluator 5: -

Michael Baker International

Firm's Background, Qualifications & Experience | Points Based | 175 Points (19.4%)

Evaluator 1: 150

Evaluator 2: 165

Evaluator 3: 160

Evaluator 4: 163

Evaluator 5: 175

Key Personnel/Proposed Staffing | Points Based | 150 Points (16.7%)

Evaluator 1: 120

Evaluator 2: 141
Evaluator 3: 140
Evaluator 4: 143
Evaluator 5: 145
Quality/Effectiveness of Work Plan/Project Approach | Points Based | 125 Points (13.9%)
Evaluator 1: 125
Evaluator 2: 120
Evaluator 3: 115
Evaluator 4: 117
Evaluator 5: 123
Organization/Completeness of Response | Points Based | 25 Points (2.8%)
Evaluator 1: 23
Evaluator 2: 22
Evaluator 3: 20
Evaluator 4: 18
Evaluator 5: 24
Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 22
Evaluator 3: 23

Evaluator 4: 24

Evaluator 5: 25

Cost Proposal | Points Based | 100 Points (11.1%)

Evaluator 1: -

Evaluator 2: -

Evaluator 3: -

Evaluator 4: -

Evaluator 5: -

Tetra Tech, Inc.

Firm's Background, Qualifications & Experience | Points Based | 175 Points (19.4%)

Evaluator 1: 175

Evaluator 2: 165

Evaluator 3: 160

Evaluator 4: 173

Evaluator 5: 174

Key Personnel/Proposed Staffing | Points Based | 150 Points (16.7%)

Evaluator 1: 128

Evaluator 2: 145

Evaluator 3: 130

Evaluator 4: 150
Evaluator 5: 148
Quality/Effectiveness of Work Plan/Project Approach | Points Based | 125 Points (13.9%)
Evaluator 1: 100
Evaluator 2: 120
Evaluator 3: 95
Evaluator 4: 123
Evaluator 5: 125
Organization/Completeness of Response | Points Based | 25 Points (2.8%)
Evaluator 1: 24
Evaluator 2: 22
Evaluator 3: 20
Evaluator 4: 25
Evaluator 5: 23
Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 22
Evaluator 3: 23
Evaluator 4: 24
Evaluator 5: 25

Cost Proposal | Points Based | 100 Points (11.1%)
Evaluator 1: -
Evaluator 2: -
Evaluator 3: -
Evaluator 4: -
Evaluator 5: -

Witt O'Brien's, LLC

Firm's Background, Qualifications & Experience | Points Based | 175 Points (19.4%)
Evaluator 1: 125
Evaluator 2: 128
Evaluator 3: 100
Evaluator 4: 120
Evaluator 5: 130

Key Personnel/Proposed Staffing | Points Based | 150 Points (16.7%)
Evaluator 1: 125
Evaluator 2: 120
Evaluator 3: 100
Evaluator 4: 95
Evaluator 5: 90

Quality/Effectiveness of Work Plan/Project Approach | Points Based | 125 Points (13.9%)
Evaluator 1: 78
Evaluator 2: 110
Evaluator 3: 75
Evaluator 4: 115
Evaluator 5: 100

Organization/Completeness of Response | Points Based | 25 Points (2.8%)
Evaluator 1: 25
Evaluator 2: 20
Evaluator 3: 15
Evaluator 4: 18
Evaluator 5: 21

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 22
Evaluator 3: 23
Evaluator 4: 24
Evaluator 5: 25

Cost Proposal | Points Based | 100 Points (11.1%)

Evaluator 1: -

Evaluator 2: -

Evaluator 3: -

Evaluator 4: -

Evaluator 5: -

WSP USA Inc.
Firm's Background, Qualifications & Experience | Points Based | 175 Points (19.4%)
Evaluator 1: 150
Evaluator 2: 162
Evaluator 3: 160
Evaluator 4: 145
Evaluator 5: 145
Key Personnel/Proposed Staffing | Points Based | 150 Points (16.7%)
Evaluator 1: 127
Evaluator 2: 145
Evaluator 3: 125
Evaluator 4: 130
Evaluator 5: 140
Quality/Effectiveness of Work Plan/Project Approach | Points Based | 125 Points (13.9%)

Evaluator 1: 125
Evaluator 2: 118
Evaluator 3: 90
Evaluator 4: 115
Evaluator 5: 120

Organization/Completeness of Response | Points Based | 25 Points (2.8%)
Evaluator 1: 25
Evaluator 2: 23
Evaluator 3: 20
Evaluator 4: 21
Evaluator 5: 18

Compliance with the County Model Contract | Points Based | 25 Points (2.8%)
Evaluator 1: 21
Evaluator 2: 22
Evaluator 3: 23
Evaluator 4: 24
Evaluator 5: 25

Cost Proposal | Points Based | 100 Points (11.1%)
Evaluator 1: -
Evaluator 2: -

Evaluator 3: -

Evaluator 4: -

Evaluator 5: -

Contract Summary Form

OC Expediter Requisition# 1730899
Tetra Tech, Inc.

SUMMARY OF SIGNIFICANT CHANGES

N/A

SUBCONTRACTORS

Circle Point is an authorized subcontractor.

CONTRACT OPERATING EXPENSES

See attached excerpt from the contract with Tetra Tech, Inc. for Hazard Mitigation Consultant Firm Services for a one-year term effective upon Board of Supervisors approval, in the not to exceed amount of $300,000, renewable for one additional one-year term.

2. Term of Contract:

This Contract shall commence upon execution of all necessary signatures and continue for one (1) calendar year from that date, unless otherwise terminated by County.

3. Renewal:

This Contract may be renewed by mutual written agreement of both Parties for one (1) additional one year term. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.

ATTACHMENT A - SCOPE OF WORK

1. General Information:

Orange County is the third most populous County in California, and the sixth most populous in the nation. With over 3 million residents, the County has one of the most diverse populations and powerful economies in the United States. Thirty-four incorporated cities in the County are responsible for emergency planning within their jurisdictions. The County of Orange is responsible for the emergency planning of 205 square miles of unincorporated area and all County owned facilities and properties.

2. Overview of the Emergency Management Program:

The Orange County Board of Supervisors has designated the Sheriff-Coroner Department as the lead agency in matters of emergency preparedness and disaster response for all types of emergencies such as earthquakes, fires, debris flows, tsunamis, civil disturbances, energy crises, nuclear power plant emergencies, terrorism and acts of war. The Emergency Management Division (EMD) provides emergency management planning, preparedness, response, recovery, and mitigation services to the County of Orange Departments/Agencies and the Orange County Operational Area. There are currently over 100 jurisdictions in the Operational Area (OA) encompassing all County departments and agencies, public and private organizations and the general population within the boundaries of Orange County.

3. Project Overview:

Contractor shall support the update of the County's Multi-Jurisdiction Local Hazard Mitigation Plan (MJHMP). This MJHMP will include both the County of Orange and the Orange County Fire Authority. The plan will fully align with FEMA's Local Mitigation Planning Policy Guide (2022), the Local Mitigation Planning Handbook (2023), and additional requirements specific to California. The final Local Hazard Mitigation Plan (LHMP) document will be approved by FEMA and adopted by the governing boards of both participating jurisdictions. The County of Orange has an emergency management program accredited through the Emergency Management Accreditation Program. This project will incorporate and meet those accreditation standards.

A. Project Timeline:

Month	Activity & Due Dates	Related Task
January		
February		
March	1. Public Outreach 1 2. Kickoff Meeting 3. Comprehensive Outreach Strategy Development 4. Data Collection	Task 2: Stakeholder and Community Engagement Task 3: Risk Assessment and Hazard Profiling Task 4: Development of Mitigation Strategies Task 5: Plan Development and Drafting

April	1. Working Group 2. Ongoing Community Engagement 3. Solution Identification 4. Plan Development and Drafting	Task 2: Stakeholder and Community Engagement Task 4: Development of Mitigation Strategies Task 5: Plan Development and Drafting
May	1. Public Outreach 2 2. Stakeholder Presentations a. DAFN b. EMC-SUB (put placeholder in Calendar) c. OCEMO 3. Plan Development and Drafting	Task 2: Stakeholder and Community Engagement Task 5: Plan Development and Drafting
June	1. Plan Development and Drafting 2. **June 19** – Progress update identifying any outstanding services.	Task 5: Plan Development and Drafting
July	1. Plan Development and Drafting 2. **July 30th** Completed Presentation	Task 5: Plan Development and Drafting
August	1. **August 3rd** -Contractor submits draft MJHMP to OCSD. 2. **August 10** – County submits proposed modifications to Contractor. 3. **August 17** – Contractor submits revised MJHMP to County.	Task 6 Plan Adoption and Implementation
September		
October	1. **October 7th** Completed Agenda and Staff Report	Task 6 Plan Adoption and Implementation
November	1. **November 2nd** Last date for plan Revisions 2. **November 19th** OCFA Board of Directors adoption of LHMP	Task 6 Plan Adoption and Implementation
December	1. **December 1st** Approval and Adoption of LHMP at Board of Supervisor meeting 2. **December 15th** Current LHMP Expires	Task 6: Plan Adoption and Implementation

*The timeline in the above table is subject to change depending on project requirements and feasibility as mutually agreed upon by Contractor and County.

Due to the accelerated target timeline, County will substantively respond to all Contractor requests within three (3) business days of receipt unless an alternate response timeframe is mutually agreed upon

by the parties in writing. If no feedback is received in the allotted timeframe, deliverables will be deemed accepted.

The County also acknowledges that the accelerated target timeline may not allow for the following rounds of plan review: admirative draft and internal stakeholder review.

The parties also acknowledge that the target timeline may be affected by updated FEMA planning requirements anticipated for release in 2026

4. **Project Objectives:** Contractor shall meet the Program Objectives and the Tasks as detailed below:

A. The final contract deliverable will be a FEMA-approved Hazard Mitigation Plan for the County of Orange and the Orange County Fire Authority (OCFA). The final plan will be submitted to and approved by FEMA and adopted by the governing boards of both participating jurisdictions before the expiration of the currently approved HMP in December 15, 2026. However, the County acknowledges that Contractor has no control over the timeline once the plan has been submitted to Cal OES and/or FEMA and Contractor cannot guarantee the date of plan approval.

B. The planning process and plan development will support Orange County agencies and OCFA as partners in hazard mitigation and lead entities for all mitigation actions. The planning process will be designed to maximize participation and add value to the mitigation efforts of individual agencies.

C. The planning process and plan development will include extensive public participation and the solicitation of feedback from the public and specific stakeholders, leveraging innovative approaches and existing resources like the Orange County Disabilities and Access and Functional Needs Working Group, the Orange County Emergency Management Organization (OCEMO), etc.

5. **Project Phases: Task One**

Task One: Project Management and the Planning Process

A. Kickoff Meeting: Conduct a kick-off meeting with representatives from all participating jurisdictions and key county agencies to discuss project objectives, roles, and responsibilities. Develop a framework for project communication and coordination.

B. Data Collection: Gather existing plans and other relevant documents, including:

1. Current Hazard Mitigation Plans
2. Current Emergency Operations Plans and Annexes
3. Other relevant documents, such as:
    a. County General Plan and elements

b. Climate Action Plans

c. Floodplain Management Plans

d. Comprehensive Economic Development Strategy

e. Current Threat and Hazard Identification and Risk Assessment (THIRA) and other related documents

C. Coordination Structure: Designate a planning team that includes representatives from each jurisdiction and relevant agencies/departments and create a steering committee to oversee the project.

D. Documentation: Meeting agendas, minutes, rosters and documentation of attendance for all meeting participants will be the responsibility of the Contractor for all phases and aspects of the process. Contractor will document how the plan was prepared, including the schedule and activities that made up the plan's development as well as who was involved from each agency and jurisdiction.

6. Task Two: Stakeholder and Community Engagement

A. Comprehensive Outreach Strategy: Contractor will develop an outreach strategy to engage residents and other stakeholders, with an emphasis on identifying and engaging with underserved communities and people with disabilities and access and functional needs.

B. Stakeholder engagement: Contractor will lead discussions with stakeholders representing neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development as well as businesses, academia, and other private and non-profit interests. Stakeholders will be invited to join the planning process and provide feedback on draft plan documents.

C. Digital Engagement: Contractor will develop and execute a digital engagement campaign, including social media and traditional web site content as well as interactive components such as survey tools that will allow the public to provide input to guide hazard mitigation plan. All engagement content will be delivered in accessible formats.

D. Community Workshops: Contractor will plan and facilitate at least 6 workshops with stakeholders and residents focused on identified risks and discussing prioritized mitigation actions. Workshops will target the various unincorporated communities in Orange County and OCFA service areas and be informed by the risks relevant to each area.

E. Stakeholder Engagement Documentation: The Contractor, in collaboration with the planning team, will be responsible for documentation of public participation and supporting outreach for inclusion in the draft plan. This documentation will include how stakeholders were identified, invited and engaged, and document stakeholder participation from, at minimum, the following categories:

1. Local and regional agencies involved in hazard mitigation activities
2. Agencies that have the authority to regulate development
3. Neighboring communities
4. Representatives of businesses, academia, and other private organizations
5. Representatives of nonprofit organizations, including community-based organizations, that work directly with and/or provide support to underserved communities and socially vulnerable populations

F. Public Engagement Documentation of public participation will include how the public had an opportunity to be involved in the current planning process, and what that participation entailed, including how underserved communities and vulnerable populations within the planning area were provided an opportunity to be involved.

7. Task Three: Risk Assessment and Hazard Profiling

A. Comprehensive Hazard Analysis: The Contractor will execute a comprehensive hazard identification and analysis process as described by federal law and guidance's, and the Emergency Management Accreditation Program standard. Contractor will gather existing data, reports and publications and use them to update and refine hazard profiles in county Hazard Analysis, considering climate impacts, changes in land use and development and specific regional vulnerabilities as well as identifying all the types of hazards that can occur (e.g. the different types of flood hazards – flash, riverine, coastal, etc.). The plan must include a description of all natural hazards that can affect the County and OCFA as well as its assets in and outside of the planning area. These descriptions must address:

1. Vulnerability of assets to each hazard, including:
    a. People (including underserved communities and socially vulnerable populations)
    b. Structures (including facilities, lifelines and critical infrastructure)
    c. Systems (including networks and capabilities)
    d. Natural, historic, and cultural resources
    e. Activities that have value to the community
2. Extent of hazard
3. Probability of hazard occurring
4. Impacts of hazard on identified assets

B. Vulnerability Analysis: Assess vulnerabilities countywide, with attention to critical infrastructure, community lifelines, underserved populations, and potential impacts from climate-related hazards.

C. Inclusion of Historical Events: Incorporate documentation of past disasters and emergency declarations.

D. Inclusion of NFIP-insured structures: Document all properties at high risk of flooding, to include repetitive loss structures and severe repetitive loss structures

8. Task Four: Development of Mitigation Strategies

A. Mitigation Goals: In coordination with Hazard Mitigation Working Group, develop mitigation goal statements that focus on reducing risk and vulnerabilities from hazards identified in task three.

B. Existing Capabilities: Identify existing authorities, policies, programs, funding and resources that are available to support the mitigation strategy, including a discussion of the existing building codes and land use and development ordinances or regulations.

C. Solution Identification: Identify comprehensive range of specific mitigation actions suitable for all County agencies for each hazard identified in task three that consider and encourage natural and climate-resilient approaches

D. Mitigation Action Prioritization: Collaborate with County Agencies and OCFA to identify and prioritize mitigation actions. Emphasize equity-focused actions that address the needs of underserved and Disabilities and Access and Functional Needs working group (DAFN) communities. Prioritization will emphasize the extent to which benefits are maximized, in relation to the associated costs of the action.

9. Task Five: Plan Development and Drafting

A. The Contractor will serve as lead author for the final MJHMP document and ensure the final plan and meets all relevant state and federal requirements.

B. The Contractor will use County plan template and format.

C. The plan should be structured in a navigable, concise, and logical manner, facilitating successful review by CalOES and FEMA and maximizing accessibility to stakeholders and the public. At a minimum, public drafts and the final document will take measures to ensure web viewing compatibility and Section 508 compliance (See 29 U.S.C. §794d).

D. The Contractor will be responsible for completing Local Mitigation Plan Review Tool and transmitting final documents and review tools to Cal OES for review.

E. The final deliverable is a Plan that has been Approved by FEMA and adopted by the County of Orange and the Orange County Fire Authority

10. Task Six: Plan Adoption and Implementation

A. Plan Submittal: After submitting the final MJHMP along with the completed CalOES Review Tool, the Contractor will assist the County and OCFA with their respective adoption processes.

B. Plan Revisions: If the MJHMP receives feedback requiring revisions, the Contractor will be responsible for making the necessary changes.

C. Plan Adoption: Once each governing body adopts the plan, the Contractor will obtain the final approval letter(s) from FEMA and incorporate the adoption and approval details into the final draft.

D. The finalized plan will then be hosted on the County website and made accessible to key County and OCFA representatives in both Microsoft Word and PDF formats.

ATTACHMENT B - PAYMENT AND COMPENSATION

1. Compensation:

This is a firm fixed fee Contract between County and Contractor for Service Description as set forth in Attachment A, "Scope of Work".

Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles "Changes" and "Amendments" of County Contract Terms and Conditions, which may require approval by the County Board of Supervisors.**

2. Fees and Charges:

A. County will pay the fees and charges in accordance with the provisions of this Contract. Payment shall be as follows:
Cost by Task:

Line Item	Activity	Cost
1	TASK 1: Project Management and the Planning Process	$44,770.00
2	TASK 2: Stakeholder and Community Engagement	$120,582.00
3	TASK3: Risk Management and Hazard Profiling	$70,780.00
4	TASK 4: Development of Mitigation Strategies	$21,887.00
5	TASK 5: Plan Development and Drafting	$31,610.00
6	TASK 6: Plan Adoption and Implementation	$10,371.00
	Project Total	**$300,000.00**

Total Contract amount not to exceed: $300,000.00

Approval by the Board of Supervisors is required for all service contracts where for any year of the contract, the annual value to any one contractor exceeds $200,000

Approval by the Board of Supervisors is required for all service contracts where the total contract value exceeds or is anticipated to exceed $1,000,000 when all contract years are taken into consideration for multi-year contracts.



Local Mitigation Planning Policy Guide

FP-206-21-0002

Effective April 11, 2025

OMB Collection #1660-0062

FEMA

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Foreword

The Local Mitigation Planning Policy Guide is the Federal Emergency Management Agency's (FEMA) official policy on and interpretation of the applicable statutes and mitigation planning regulations in 44 Code of Federal Regulations (CFR) Part 201. This policy applies to local governments that develop, update and implement local mitigation plans, as well as FEMA and state officials who review and approve those plans. This updated policy will become effective upon the date of release.

Mitigation planning is the foundation for guiding risk reduction investments. These investments build community resilience to future natural hazard events. The local mitigation planning process brings partners together to inform a risk reduction strategy that can be implemented using a wide range of public and private resources. Local mitigation plans demonstrate the commitment to mitigation across multiple sectors, such as infrastructure and economic development, to reduce natural hazard risk.

The local mitigation plan guides risk-informed decision-making at the local level. Local governments, including special districts, can use the mitigation plan to guide planning for resilience, land use and economic development.

This policy:

- Provides guidance to local governments to enable local mitigation plans to meet the mitigation planning requirements.
- Supports integration across FEMA programs, such as the National Flood Insurance Program, Hazard Mitigation Assistance, Rehabilitation of High Hazard Potential Dams Program, and the FEMA Building Codes Strategy.
- Aligns with the National Mitigation Framework and the National Mitigation Investment Strategy, a guide for whole community mitigation investments.
- Supersedes the April 19, 2022, version of the Local Mitigation Planning Policy Guide (FP 206-21-0002).

This policy will be reviewed, reissued, revised and/or rescinded within four years of the issue date. FEMA will monitor and evaluate this policy based on stakeholder feedback and any regulatory or statutory updates.

1. Introduction

1.1. Purpose of the Local Mitigation Planning Policy Guide

Local hazard mitigation plans form the foundation of a community's long-term strategy to reduce disaster losses and break the cycle of disaster damage, reconstruction and repetitive damage. FEMA supports local mitigation planning to achieve the following:

- Foster partnerships among all levels of government.
- Develop and strengthen non-governmental and private partnerships.
- Promote more disaster-resilient communities.
- Reduce the costs associated with disaster response and recovery by promoting mitigation activities.

Community resilience is the ability of a community to prepare for and adapt to anticipated hazards and withstand and recover rapidly from disruptions. Activities such as disaster preparedness (which includes prevention, protection, mitigation, response and recovery)are key steps to resilience.

The *Local Mitigation Planning Policy Guide* is FEMA's official policy on, and interpretation of, local hazard mitigation planning requirements. The guide facilitates consistent evaluation and approval of local mitigation plans and compliance with the mitigation planning requirements when updating plans. The primary users of this guide are the federal and state[1] officials who review and approve local mitigation plans, recognizing that state and local planners also use the guide to understand minimum mitigation planning requirements. Local mitigation planners are encouraged to use the guide and other related materials to better understand the regulatory and policy requirements as well as fully leverage the planning process to engage stakeholders and increase community resilience. For additional information and examples of the various ways to meet and exceed the regulatory requirements, planners are directed to FEMA's Mitigation Planning training and guidance, including the Local Mitigation Planning Handbook ("Handbook")[2].

[1] For mitigation planning, the term "state" includes any state of the United States, the District of Columbia, American Samoa, Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands [44 CFR § 201.2 Definitions].

[2] The current version of the Local Mitigation Planning Handbook is available at Create a Hazard Mitigation Plan | FEMA.gov

1.2. Planning is the Foundation for Mitigation Investments

Local mitigation plans are investment strategies that communities develop throughout the planning process to identify hazards, assess risks and vulnerabilities, and develop mitigation strategies that can be funded using a wide range of resources. As stated in 44 CFR § 201.1(b), "the purpose of mitigation planning is for state, local and Indian tribal governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from those hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide range of resources." This coordinated process allows mitigation investments to be based on a community-based, risk-informed decision-making process.[3] The local mitigation planning process helps the whole community understand the importance of mitigation and develop mitigation actions based on current and future risks and capabilities.

1.2.1. National Mitigation Investment Strategy

The National Mitigation Investment Strategy is a single national strategy for advancing mitigation investment to reduce risks posed by natural hazards and increasing the nation's resilience to natural hazards. The National Mitigation Investment Strategy's objective is to identify and measure the effectiveness of mitigation investments, and to inform decisions on when and where to make investments. The Investment Strategy encourages the whole community, including individuals, to invest in pre- and post-disaster mitigation by adopting three shared goals:

- **Goal 1: Show How Mitigation Investments Reduce Risk**
  The whole community will build a shared understanding of mitigation investment and its value. Specifically, the whole community will understand how effective mitigation investments can protect people, homes, neighborhoods, cultural and historic resources, ecosystems and lifelines (for example, communications, energy, transportation and water). The federal government and its non-federal partners will create a shared vocabulary and common measures to communicate information about risk and find opportunities to educate, hire, train and develop a base of qualified mitigation professionals.

- **Goal 2: Coordinate Mitigation Investments to Reduce Risk**
  The whole community will coordinate mitigation investments through shared risk information, reinforced strategies for risk reduction, and easier access to existing funding. Such coordination will help the whole community justify mitigation investments and choose the most cost-effective and reasonable actions.

- **Goal 3: Make Mitigation Investment Standard Practice**
  The whole community will factor mitigation into investment decisions, especially for buildings

[3] The mitigation planning process closely aligns with the principles laid out by the Comprehensive Preparedness Guide 101.

and infrastructure. The federal government and its non-federal partners will use and expand financial products and approaches for mitigation investment—including funding, incentives and financial risk transfer opportunities. The federal government and its non-federal partners also will make mitigation standard professional practice critical to safeguarding lifelines, services, and national safety and security.

Local hazard mitigation plans are the opportunity for local governments to discuss, apply, and meet the three shared goals of the Investment Strategy. A plan based on a comprehensive engagement strategy, risk communication, and understanding whole-community needs and capabilities sets the foundation for guiding investment decisions to reduce risk using a wide range of public and private resources.

1.2.2. Hazard Mitigation Assistance

FEMA makes funding available for planning through the Hazard Mitigation Assistance (HMA) grant programs, including but not limited to: the Hazard Mitigation Grant Program (HMGP); HMGP-Post Fire; the Building Resilient Infrastructure and Communities (BRIC) Program; the Flood Mitigation Assistance (FMA) Program; and Safeguarding Tomorrow Revolving Loan Fund.

Approved mitigation plans are a requirement for local governments, including special districts, to be eligible for the projects funded under the HMA and other FEMA programs, including the Rehabilitation of High Hazard Potential Dams (HHPD). Additionally, Public Assistance funding is available to implement mitigation measures for damaged eligible facilities to protect against future damages, so long as the recipient has an approved state mitigation plan. Mitigation plans must be reviewed and updated every five years and formally adopted by each participating jurisdiction's governing body as part of receiving approval. See Section 1.4 for additional guidance and authorities for FEMA assistance programs that provide planning grants or require mitigation plans as a condition of eligibility.

1.3. Authorities and References

This policy bases the requirements for approval on a number of authorities, including:

1.3.1. Authorities

Laws:

- Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended.
- National Flood Insurance Act of 1968, as amended.
- National Dam Safety Program Act (Pub. L. 92-367), as amended.

Regulations:

- 44 CFR Part 201 Mitigation Planning.

- 44 CFR, Part 60, Subpart A, including § 60.3 Flood plain management criteria for flood-prone areas.
- 44 CFR Part 77 Flood Mitigation Grants[4].
- 44 CFR Part 206 Subpart N. Hazard Mitigation Grant Program.

1.3.2. References

Presidential Policy Directives (PPD):

- PPD 8 National Preparedness (March 2011).
- PPD 21 Critical Infrastructure Security and Resilience (February 2013).

FEMA and U.S. Department of Homeland Security doctrine:

- National Mitigation Investment Strategy (August 2019).
- National Preparedness Goal (Second Edition, September 2015).
- National Response Framework, 4th Edition (October 28, 2019).
- National Mitigation Framework (June 2016).
- National Disaster Recovery Framework (December 10, 2024), and subsequent updates.

FEMA Policies:

- Restrictions on Grant Obligations to State, Tribal, and Local Governments without a FEMA-Approved Mitigation Plan (FP 306-112-1, August 19, 2013).
- Hazard Mitigation Assistance Program and Policy Guide (July 30, 2024), and subsequent updates.
- Rehabilitation of High Hazard Potential Dams Grant Program Guidance (FP 104-008-7, June 2020), and subsequent updates.

1.4. Organization of the Guide

This guide comprises six main sections that describe the purpose of the guide, local, state and FEMA responsibilities, and the requirements for local hazard mitigation plans.

- **Section 1: Introduction** – Describes the purpose and organization of this guide, overall approach for plan reviews, authorities and references, and how planning is the foundation for mitigation investments.

- **Section 2: Roles and Responsibilities** – Describes the roles and responsibilities of local jurisdictions, states and FEMA related to mitigation planning.

[4] This is the CFR citation for the Flood Mitigation Assistance Program.

- Section 3: Guiding Principles – Explains how to approach plan development and updates while meeting the requirements for mitigation planning.
- Section 4: Local Planning Requirements – Provides detailed guidance on how FEMA interprets the regulations through the individual elements of local mitigation planning, i.e., requirements for planning process, risk assessment, mitigation strategy, plan maintenance, plan update and plan adoption.
- Section 5: Completing the Plan Review Tool – Provides instructions on how FEMA will complete the Local Mitigation Plan Review Tool (PRT), including the Plan Review Checklist and Plan Assessment.
- Section 6: Plan Review and Approval Procedure – Describes the plan review procedure from submittal through approval, including methods of communication among FEMA, states and local governments that develop and update local mitigation plans.
- Appendix A: Local Mitigation Plan Review Tool – For use by state and FEMA plan reviewers to determine if a plan meets the local mitigation planning requirements, to provide more comprehensive feedback to the participating jurisdiction(s) where the plan exceeds minimum local mitigation plan requirements, and to suggest improvements. Local staff may use the PRT as a checklist to ensure all requirements have been addressed.
- Appendix B: Sample Adoption Resolution – Provides a sample adoption resolution to assist jurisdictions, including special districts.
- Appendix C: APA and Approval Status Letters – Includes sample approval status letters that can be modified and sent to plan participants.
- Appendix D: Amendment and Joining Procedures – Includes amendment and annexation procedures for multi-jurisdictional plans.
- Appendix E: Acronyms and Definitions – Defines all acronyms and terms used throughout this guide.
- Appendix F: Code of Federal Regulations – Includes text of the relevant portions of the CFR related to local hazard mitigation plans.
- Appendix G: High Hazard Potential Dam Grant Program Mitigation Planning Requirements – Describes the requirements in the Rehabilitation of High Hazard Potential Dams Grant Program for mitigation planning.

2. Roles and Responsibilities

This section outlines the local, state and FEMA responsibilities regarding the update, review and approval of a local mitigation plan.

2.1. Local Responsibilities (44 CFR § 201.3(d))

Local governments, including special districts, seeking plan approval are responsible for participating in the planning process and meeting all requirements in Section 4 of this guide. This includes adopting the plan in accordance with local laws. Adoption demonstrates the local government's commitment to implement the mitigation strategy.

This guide uses the terms "jurisdiction," "community" and "participant" interchangeably. These terms refer to any local government developing or updating a local mitigation plan. 44 CFR § 201.2 defines "local government" as:

"any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribe or authorized tribal organization,[5] or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity."

According to 44 CFR § 201.6(a)(4), local governments may work together to create a multi-jurisdictional plan. For multi-jurisdictional plans, one community should be designated as the lead jurisdiction. This may be any of the participants, such as a county, a council of governments or a regional planning entity. When FEMA HMA planning grants are used, the lead jurisdiction is often the sub-recipient. The lead jurisdiction is responsible for ensuring each participating jurisdiction meets the requirements laid out in Section 4, prior to submitting the plan to the state, and then FEMA, for approval. The lead jurisdiction is also responsible for coordinating the plan submission and adoption by all participating jurisdictions.

Individual jurisdictions participating in a multi-jurisdictional plan must meet the mitigation planning requirements, adopt the plan and provide documentation to FEMA (via the state). Once the agency receives the jurisdiction's adoption, FEMA will issue an approval letter for the jurisdiction. Additional steps must be met for jurisdictions seeking approval after one year of the Approvable Pending Adoption (APA) date (see Section 4.6 Element F-2).

[5] Section 1.2 of the 2017 Tribal Mitigation Plan Review Guide details Tribal participation in multi-jurisdictional planning.

Requirements for Tribal mitigation plans (44 CFR § 201.7) vary from the requirements for local governments (44 CFR § 201.6), as tribes have the option to be recipients for certain FEMA non-emergency assistance. Tribal governments participating with local governments in multi-jurisdictional mitigation plans (per 44 CFR § 201.7(a)(4)), should refer to the requirements detailed in the Tribal Mitigation Plan Review Guide.

2.2. State Responsibilities (44 CFR § 201.3(c))

The state will provide technical assistance and training to local governments to assist them in applying for HMA planning grants and developing mitigation plans. The objective of this state training and technical assistance is to ensure local governments understand the requirements as early as possible, to create more effective planning processes, and to decrease the time for plan approval by reducing the number of required revisions. In addition to other funding opportunities, states may make available the use of up to 7% of HMGP funding for state, tribal and/or local planning.

The State Hazard Mitigation Officer (SHMO), or their designee, is responsible for completing initial reviews of all local mitigation plans. The SHMO or designee also review any plans from tribal governments (including tribes participating with local governments in multi-jurisdictional plans) that want the option of being a subrecipient to the state.

States have authority to review plans under 44 CFR § 201.6(d)(1):

Plans must be submitted to the State Hazard Mitigation Officer (SHMO) for initial review and coordination. The State will then send the plan to the appropriate FEMA Regional Office for formal review and approval. Where the State point of contact for the FMA program is different from the SHMO, the SHMO will be responsible for coordinating the local plan reviews between the FMA point of contact and FEMA.

States have the authority to seek revisions to local plans submitted to them for review. When forwarding plans to FEMA for final review and approval, states are acknowledging and confirming that the plan meets all of the plan requirements in 44 CFR Part 201 and the PRT. The state may have identified plan requirements in addition to those required by 44 CFR Part 201, which FEMA does not review. Those additional requirements may be added to Element G of the PRT, where applicable.

The state is responsible for reviewing and submitting approvable state, local and, as applicable, tribal mitigation plans to FEMA. If the state is consistently submitting plans that are not approvable, FEMA and the state will meet to determine a corrective action plan. FEMA recognizes that there may be temporary capacity challenges during an active disaster and will work with states experiencing those issues. States that opt to participate in the Program Administration by States (PAS) agreement with FEMA and receive the plan approval delegation authority have additional program-specific mitigation planning responsibilities. For more information on PAS requirements, refer to the Hazard Mitigation Assistance Guidance, Program Administration by States Pilot, HMGP, October 2017, or

subsequent policies, as applicable. States reviewing plans for approval under a PAS agreement must meet all the statutory and regulatory requirements of a FEMA review and approval.

States are encouraged to communicate with local governments regarding local mitigation plan expiration dates, consequences of not having an approved local mitigation plan with respect to eligibility for certain FEMA assistance programs, and availability of mitigation planning technical assistance and training. Communication should be consistent, regular and well in advance of plan expiration dates, to prepare for quality application development and timely submissions to meet known assistance program application cycles and deadlines.

2.3. FEMA Responsibilities (44 CFR § 201.3(b))

The responsibilities of the FEMA Regional Administrator include providing technical assistance and training to state, local and tribal governments regarding the mitigation planning process. FEMA is responsible for the final approval of all local mitigation plans after state review (except where this authority is delegated to states under the PAS agreement). Once a state (that does not have a PAS agreement) has reviewed a local mitigation plan and submits the plan to FEMA, FEMA is responsible for the overall coordination of the plan's review, tracking and approval.

FEMA is responsible for communicating mitigation plan expiration dates, consequences of not having an approved mitigation plan with respect to eligibility for certain FEMA assistance programs, and availability of mitigation planning technical assistance and training.

3. Guiding Principles

This guide lays out the overall approach and, in later sections, more specific standards for planners to consider when preparing to develop or update a local mitigation plan, and for FEMA and state approvers to use to be consistent and fair in implementing the regulatory requirements.

The following guiding principles should be considered in advance of developing or updating a local mitigation plan:

- **Plan and Invest for the Future**: The plan is based on the experiences of the past and present and on projections for the future. The planning process sets the direction for years and decades into the future, using the best available information, tools and resources from partners and stakeholders to make a strong case for mitigation investments and implementing actions. Consider all possible types of mitigation actions (land use regulations, building codes, etc.) to address current and future risks.

- **Collaborate and Engage Early**: The planning process brings together community-based partners representing the interests of the whole community. It includes those able to implement mitigation actions using a wide range of resources, and leaders from the community. Meaningful representation and collaboration within the community is critical for effective mitigation planning to reduce disaster suffering and losses. Federal, state and local engagement is also critical for successful mitigation planning, as partners from all levels of government bring additional resources including, but not limited to, data, funding and technical expertise.

- **Integrate Community Planning**: Design the planning process to fit the unique needs of each community. Integrating hazard risk with the most appropriate planning scale and processes, such as land use, economic development, housing, infrastructure, resilience planning and/or natural resource planning, will minimize conflicting initiatives, such as development in hazard-prone areas. Prepare a single-jurisdiction plan or participate in a multi-jurisdictional one, based on local capabilities.

The plan development process and each five-year update are opportunities to advance the previous and ongoing mitigation efforts, integrate the plan with other community planning initiatives, improve engagement with community-based organizations and accurately reflect changes in risk and recalibrate the mitigation strategy and priorities.

3.1. Right-Sizing Plan Development and Update

The scope of the mitigation plan development and update needs to reflect the unique situation and most effective path (e.g., number of jurisdictions participating, size of the planning area, and the stakeholder engagement process). The participants choose this scope. Many factors will guide decisions made by plan participants to meet their specific needs.

Every five years, the mitigation plan needs to be reviewed and updated, as circumstances may change (e.g., disasters, increased areas of development within hazard- prone areas, or other impacts from changing population and demographics). All these affect the risk profile, and changes in staff and local leadership may also change the mitigation strategy and priorities.

44 CFR § 201.6(d)(3):

A local jurisdiction must review and revise its plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for mitigation project grant funding.

Each local participant seeking approval for a mitigation plan must engage in the planning and public participation process (Element A) to review and revise the plan. Updated plans must specifically address the requirements for plan updates (Element E), along with each of the sub-elements, as detailed in Section 4. Communities must review all the other required elements for local mitigation plans for continued relevance, and revise them accordingly.

During the five-year planning cycle, jurisdictions may experience little or no change to hazard risk and vulnerability that would significantly alter the existing vulnerability analysis and the associated mitigation actions. Where hazard risk has not significantly changed, a jurisdiction may simply use the update process to review, fill in gaps and verify existing information. The updated plan must document that the information was reviewed and remains accurate.

The scope of a plan update needs to reflect the reasons for the update in addition to the five-year review cycle (e.g., major disaster events, significant changes in risk, a more robust outreach and engagement process to bring new partners and additional community-based partners to the process), and focus on changes since the last update. It does not need to involve a full rewrite. The plan updates need to be carefully scaled to reflect the magnitude of the update – that is, the update may be small if relatively little has changed, or it may be large if more engagement is needed to bring together partners and stakeholders due to changes in demographics, development, and disaster frequency and intensity.

3.2. Approach for Plan Review and Approval Process

The mitigation planning requirements are focused on outcomes. This provides flexibility in how the mitigation plan requirements are met and allows innovation for communities with unique conditions and circumstances, by specifying what must be done in the process and documented in the plan, but not specifying how to do it. FEMA recognizes the inherent differences among local governments. Some local governments, including special districts, have less capacity and capability to manage hazard mitigation planning and mitigation actions, including applying for FEMA's HMA grants. However, each mitigation plan requirement ensures the planning process has a strong foundation and will result in effective outcomes to reduce risks from future natural hazards. This places each community in a better position to implement mitigation actions when opportunities arise, using a wide range of public and private resources.

4. Local Planning Requirements

This section provides detailed guidance on how FEMA interprets the various regulations required for all local mitigation plans. The local mitigation plan requirements include the following elements:

- Element A: Planning Process.
- Element B: Hazard Identification and Risk Assessment.
- Element C: Mitigation Strategy.
- Element D: Plan Maintenance.
- Element E: Plan Update.
- Element F: Plan Adoption.
- Element G: High Hazard Potential Dams (required for HHPD Grant Program).
- Element H: Additional State Requirements.

Many requirements call for the plan to "document," "describe," "provide" and "include" information. FEMA does not require any specific format for the plan or its content, and recognizes that many variations and types of documentation, such as narratives, tables, lists, maps, etc., may meet a requirement.

The Local Mitigation Plan Review Tool (PRT) is used to document that each requirement is met for each participating jurisdiction. Local staff may use the PRT as a checklist to ensure all requirements have been addressed. FEMA and the state may also use the PRT to provide additional feedback to local governments, including special districts, that exceed the requirements. FEMA and the state may use the PRT to recommend improvements that may increase effectiveness. See Appendix A: Local Mitigation Plan Review Tool.

Specific terms used in the relevant regulation and this guidance are defined in Appendix E: Acronyms and Definitions, and inserted where necessary. For example, many plan sections require a "discussion" or "description." FEMA considers the plan to be a written record of the planning process that forms the basis for future actions and decisions. Therefore, many of these terms have the same meaning: to document *how and what* was considered and done as part of the process.

Finally, an important distinction must be made between the words "shall," "must" and "should," as used in the Mitigation Planning regulation at 44 CFR Part 201. Any use of the terms "shall" or "must" denotes a mandatory requirement for plan approval. Any use of the term "should" signifies a recommended action that is encouraged and may increase the effectiveness of the plan, but is not mandatory or necessary for plan approval. These "shoulds" can assist with meeting the "musts" and will strengthen the overall plan.

4.1. Element A: Planning Process

Overall Intent. The planning process section of the mitigation plan documents how the plan was developed, who was involved and what data and information were used to build or update the plan. A successful planning effort includes active participation and buy-in from community leaders, stakeholders and the public. Collaboration among various sectors ensures that mitigation capabilities continue to grow and that comprehensive mitigation includes strategies for all community sectors. Examples of sectors with mitigation capabilities are those agencies and stakeholders responsible for:

- Emergency management.
- Economic development.
- Housing.
- Health, education and human services.
- Infrastructure (including transportation and other community lifelines).
- Natural and cultural resources.

In addition, FEMA's National Response Framework, 4th Edition identifies critical community lifelines which are the most fundamental services in the community that, when stabilized, enable all other aspects of society to function. Community lifelines include the following:

- Safety and Security.
- Food, Hydration and Shelter.
- Health and Medical.
- Energy.
- Communications.
- Transportation.
- Hazardous Materials.
- Water Systems.

Efforts to mitigate potential impacts to community lifelines are key to building resilience. These community lifelines connect to the sectors in the National Mitigation Framework and the Recovery Support Functions under the National Disaster Recovery Framework; the same agencies and departments that support these sectors also often support community lifelines and the recovery mission.

Involving members from these key sectors in the planning process will result in a shared understanding of risks. It will also help build widespread support for directing financial, technical and human resources toward natural hazard risk reduction.

Documenting the planning process is a crucial step for future plan updates. By building on the work that has already been done, the community can incorporate best practices and insights learned from previous processes while avoiding past challenges.

Element A Requirements
A1. Does the plan document the planning process, including how it was prepared and who was involved in the process for each jurisdiction? (Requirement 44 CFR § 201.6(c)(1))
A1-a. The plan must describe the current planning process. Documentation requirements typically are met with a narrative description, but may also include other records such as copies of meeting minutes, sign-in sheets or newspaper articles. When a narrative description is provided, supporting documentation such as meeting minutes, sign-in sheets, etc., does not need to be included in the plan itself. Planners are encouraged to retain supporting documentation in a Plan Appendix as a record of how decisions were made and who was involved. **Document** means to provide factual evidence for how the participants developed/updated the plan. **Involvement** means being engaged and actively participating in the development of the plan; providing input and directly providing, affecting or editing plan content as the representative of the participating jurisdiction(s) or organization. *If applicable, ensure that participating Community Rating System (CRS) jurisdictions maximize points throughout the planning process.*
A1-b. The plan must list the representatives from each of the participants in the current plan that will seek approval, and how they participated in the planning process. The plan must identify who participated, by agency and title. **Participant** means any local government or entity developing or updating a local mitigation plan. **Participation** means being engaged and having the chance to provide input on the plan. It can be defined and met in a variety of ways (such as attendance at meetings, reviewing and commenting on drafts, etc.).

Element A Requirements
A2. Does the plan document an opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and non-profit interests to be involved in the planning process? (Requirement 44 CFR § 201.6(b)(2))

A2-a. The plan must provide documentation of an opportunity for stakeholders to be involved in the current planning process. Documentation of this opportunity must identify how ***each*** of the following types of stakeholders were presented with this opportunity, as applicable.

1. Local and regional agencies involved in hazard mitigation activities:
   - Examples include public works, emergency management, local floodplain administration and Geographic Information Systems (GIS) departments.
2. Agencies that have the authority to regulate development:
   - Examples include: zoning, planning, community and economic development departments; building officials; planning commissions; or other elected officials.
3. Neighboring communities:
   - Examples include adjacent local governments, including special districts, such as those that are affected by similar hazard events or may share a mitigation action or project that crosses boundaries. Neighboring communities may be partners in hazard mitigation and response activities, or may be where critical assets, such as dams, are located.
4. Representatives of businesses, academia, and other private organizations:
   - Examples include private utilities or major employers that sustain community lifelines.
5. Representatives of nonprofit organizations, including community-based organizations.
   - Examples include housing, healthcare or social service agencies.

An **opportunity to be involved** in the planning process means that these stakeholders are invited to be engaged or are asked to provide information or input to inform the plan's content.

Community Lifelines are the most fundamental services in the community that, when stabilized, enable all other aspects of society to function. The integrated network of assets, services and capabilities that provide community lifeline services are used day to day to support recurring needs. Lifelines enable the continuous operation of critical government and business functions and are essential to human health and safety or economic security, as described in the National Response Framework, 4th Edition.

The specific entities may be defined by each jurisdiction based on the unique characteristics of the local government, including special districts. The purpose of inviting input is to integrate natural hazard risk reduction across all community systems, as well as encouraging implementation of mitigation actions.

Element A Requirements
A3. Does the plan document how the public was involved in the planning process during the drafting stage and prior to plan approval? (Requirement 44 CFR § 201.6(b)(1))
A3-a. The plan must document how the public had an opportunity to be involved in the current planning process, and what that participation entailed. The opportunity must occur during the plan's development, which means prior to the plan's submission for formal review. In addition, the plan must document how public feedback was included throughout the planning process. *Examples of documentation include, but are not limited to, narratives, materials from open meetings, screenshots of social media postings and/or interactive websites with drafts for public review and comment, questionnaires or surveys through utility bills, etc.*
A4. Does the plan describe the review and incorporation of existing plans, studies, reports and technical information? (Requirement 44 CFR § 201.6(b)(3))
A4-a. The plan must document what existing plans, studies, reports and technical information were reviewed and how they were incorporated, if appropriate, into the development/update of the plan. For jurisdictions with structures for which National Flood Insurance Program (NFIP) coverage is available, regulatory flood mapping products[6] are required to be incorporated, if appropriate. *Participants may use other jurisdiction-specific materials, including non-regulatory flood mapping products, that improve upon NFIP regulatory flood mapping products.* *Gaps and limitations may be addressed as actions in the mitigation strategy, in particular for items that require additional assistance.* **Incorporate** means to reference or include information from other existing sources to form the content of the mitigation plan. *The documentation requirement may be met with narrative or citations (i.e., footnotes, in-text citations or a bibliography). Examples of the types of existing sources include, but are not limited to: the state hazard mitigation plan; local plans (such as comprehensive/master/general land use, economic development, capital improvement, affordable housing, resource management, resilience, etc.); and hazard-specific reports and plans (such as Community Wildfire Protection Plans).*

[6] **Regulatory flood mapping products** are intended to be used as the basis for official actions required by the NFIP (https://www.fema.gov/flood-maps/products-tools/products). These can be found via the FEMA Map Service Center (https://msc.fema.gov/portal/home).

4.2. Element B: Risk Assessment

Overall Intent. The Risk Assessment identifies the hazards that can affect jurisdictions participating in the mitigation plan. It analyzes each of these hazards with respect to: where each hazard might affect the planning area (location); its potential magnitude (extent); how often events have happened in the past (previous occurrences); how likely they are to occur in the future (future probability); what parts of the community are most likely to be affected (vulnerability); and the potential consequences (impacts).

There is no prescribed method for how to present this information, and the location, extent, previous occurrences and future probability can be described or presented in a way that satisfies all requirements together. For example, for some hazards, one map with explanatory text could provide information on location, extent and future probability.

Risk Assessments provide the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Therefore, it is very important to use current and accurate information, even if the most sophisticated technology is not available for conducting the analysis of that information. This analysis provides the basis for the actions in the Mitigation Strategy, so local risk assessments must provide sufficient information to enable the jurisdiction to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. Risk Assessments need to clarify the connection between the vulnerabilities identified for participating jurisdictions and the actions they will take to reduce losses to people and property.

Risk, for the purpose of hazard mitigation planning, is the potential for damage or loss created by the interaction of natural hazards with assets, such as buildings, infrastructure, or natural and cultural resources.

Risk Assessments are not a static part of the plan. Conditions such as population, demographics and land use change over time, and the Risk Assessment must consider how these changes will alter the jurisdiction's vulnerabilities to future hazard events. The mitigation planning regulation (44 CFR § 201.6(c)(2)(i)) and (d)(3)) require a consideration of the probability of future hazard events, and requires plan updates to reflect changes in development.

Every community may experience impacts from future hazard events differently, depending on its geographic location and its own land use and development patterns. Local mitigation planning is an opportunity to carefully understand the best available information about future risks, and translate it into meaningful actions in the present to reduce those risks.

Element B: Risk Assessment Requirements
B1. Does the plan include a description of the type, location and extent of all natural hazards that can affect the jurisdiction? Does the plan also include information on previous occurrences of hazard events and on the probability of future hazard events? (Requirement 44 CFR § 201.6(c)(2)(i))
B1-a. The plan must include a description of all natural hazards that can affect the jurisdiction(s) in the planning area and their assets, such as dams, located outside of the planning area. This requirement may be met with either a narrative description or definition. The plan must provide the rationale if omitting any natural hazards that are commonly recognized to affect the participant(s) in the planning area. There is no prescribed method for explaining the omission, but the plan must demonstrate the lack of risk to the participant(s) that omits the hazard. **Natural hazards** are a source of harm or difficulty created by a meteorological, environmental or geological event. Natural hazards, such as flooding and earthquakes, impact the built environment, including dams and levees. *Identifying hazards includes identifying all the types of hazards that can occur, e.g., the different types of flood hazards (flash, riverine, storm surge, debris flows, ice jams, dam/levee failure, etc.).*
B1-b. The plan must include information on location for each identified hazard. **Location** is defined as the unique geographic boundaries within the planning area, or assets outside of geographic boundaries that may be affected by the identified hazard. Maps are an efficient way to illustrate location. However, location may be described through plan narratives or other formats. *If maps are used, provide sufficient detail and scale to clearly identify the hazard locations within and/or affecting assets owned by the participating jurisdiction(s). If narrative descriptions are used, they must contain enough detail to clearly identify the area(s) (and assets, as applicable) that will be affected by the hazard.*
B1-c. The plan must provide the extent of the hazards that can affect the planning area. When describing extent using charts or scales (e.g., Saffir-Simpson scale for hurricane wind speed; Enhanced Fujita scale for tornado), the plan must document how the scale applies to each jurisdiction. **Extent** is defined as the range of anticipated intensities of the identified hazards. The information must relate to each of the plan participants or the planning area, depending on the hazard. Extent is most commonly expressed using various scientific scales.
B1-d. The plan must include information on previous hazard events for each hazard that affects the planning area. At a minimum, this includes any state and federal major disaster declarations for the planning area since the last update. *Previous occurrences can be included in a variety of ways, but should include an emphasis on significant events, as determined by the community. If no events have occurred for a hazard, this must be stated.*

Element B: Risk Assessment Requirements
B1-e. The plan must include the probability of future events for the identified hazards that can affect the planning area. Probability may be met in a variety of ways; however, general descriptors must be quantitatively defined. Probability must include the type, location and range of anticipated intensities of identified hazards. **Probability of future hazard events** means the likelihood of the hazard occurring or reoccurring. It may be defined in historical frequencies, statistical probabilities, hazard probability maps and/or general descriptors (e.g., unlikely, likely, highly likely). If general descriptors are used, they must be quantified or defined in the plan. For example, "highly likely" could be defined as "100% chance of occurrence next year" or "one event every year."
B1-f. For multi-jurisdictional plans, when hazard risks differ across the planning area and between participating jurisdictions, the plan must specify the unique and varied risk information for each applicable jurisdiction and their assets outside the planning area.
B2. Does the plan include a summary of the jurisdiction's vulnerability and the impacts on the community from the identified hazards? Does this summary also address NFIP insured structures that have been repetitively damaged by floods? (Requirement 44 CFR § 201.6(c)(2)(ii))
B2-a. The plan must describe the vulnerability of each participant to the identified hazards. The description must include current and future assets (including people) and the risk that makes them susceptible to damage from the identified hazards. For plan updates, the risk assessment must meet element E1-a. The risk assessment must describe the vulnerability of plan participant(s) to each identified hazard. The vulnerability description must include a summary (such as a problem statement) of the hazard and its consequences or effects on the participant(s) and their assets. A list of assets without context is not sufficient. **Vulnerability** is a description of which assets, including structures, systems, populations and other assets as defined by the community, within locations identified to be hazard prone, are at risk from the effects of the identified hazard(s). **Assets** are determined by the community and include, but are not limited to: ▪ People. ▪ Structures (including facilities, lifelines and critical infrastructure). ▪ Systems (including networks and capabilities). ▪ Natural, historic, and cultural resources. ▪ Activities that have value to the community. *To form the vulnerability description, plan participant(s) may identify which specific assets are most important and most susceptible to damage or loss from hazards. (For example, this may be expressed as replacement cost).*

Element B: Risk Assessment Requirements
B2-b. The plan must describe the potential impacts on each participating jurisdiction and its identified assets. **Impacts** are the consequences or effects of each hazard on the participant's assets identified in the vulnerability assessment. For example, impacts could be described by referencing historical disaster damages with an estimate of potential future losses (such as percentage of damage vs. total exposure). *Gaps and limitations may be addressed as actions in the mitigation strategy, in particular for items that require additional assistance.*
B2-c. The plan must address repetitively flooded NFIP-insured structures by including the estimated numbers and types (residential, commercial, institutional, etc.) of repetitive/severe repetitive loss properties. *Participants should consider addressing all properties at high risk of flooding that may not be NFIP repetitive loss properties. For example, properties in the Special Flood Hazard Area (SFHA) with their lowest floor below the established Base Flood Elevation are at risk of flood damage from the base flood and potentially from more frequent flood events.* **Repetitive loss structure** means a structure covered under an NFIP flood insurance policy that (1) has incurred flood-related damage on two occasions, in which the cost of repair, on average, equaled or exceeded 25% of the value of the structure at the time of each such flood event; and (2) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage. (44 CFR § 77.2(i)) **Severe repetitive loss structure** means a structure that is covered under an NFIP flood insurance policy and has incurred flood-related damage (1) for which four or more separate claims have been made under flood insurance coverage, with the amount of each claim (including building and contents payments) exceeding $5,000 and with the cumulative amount of such claims payments exceeding $20,000; or (2) for which at least two separate flood insurance claims payments (building payments only) have been made, with cumulative amount of such claims exceeding the value of the insured structure. (44 CFR § 77.2(j)) *Use of flood insurance claim and disaster assistance information is subject to The Privacy Act of 1974, as amended, which prohibits public release of the names of policyholders or recipients of financial assistance and the amount of the claim payment or assistance. However, maps showing general areas where claims have been paid can be made public.* ***If a plan includes the names of policyholders or recipients of financial assistance, or the amount of the claim payment or assistance, the plan cannot be approved until the information covered by the Privacy Act is removed from the plan or is properly protected per the Privacy Act.***

4.3. Element C: Mitigation Strategy

Overall Intent. The mitigation strategy serves as the long-term blueprint for reducing the potential losses identified in the risk assessment. The Stafford Act directs local mitigation plans to describe hazard mitigation actions and establish a strategy to implement those actions. Therefore, all other requirements for a local mitigation plan lead to and support the mitigation strategy as a means to reduce risk and vulnerabilities over the long term.

The mitigation strategy includes the development of goals and prioritized hazard mitigation actions. Goals are long-term policy statements and global visions that support the mitigation strategy. A critical step in the development of specific hazard mitigation actions and projects is assessing existing authorities, policies, programs, and resources and capabilities to use or modify local tools to reduce losses and vulnerability from profiled hazards.

In the plan update, goals and actions are either reaffirmed or updated based on current conditions, including the completion of hazard mitigation initiatives, an updated or new risk assessment, or changes in state or local priorities.

Element C: Mitigation Strategy Requirements
C1. Does the plan document each jurisdiction's existing authorities, policies, programs and resources and its ability to expand on and improve these existing policies and programs? (Requirement 44 CFR § 201.6(c)(3))
C1-a. The plan must describe how the existing authorities, policies, programs, funding and resources of each participant are available to support the mitigation strategy. This must include a discussion of the existing building codes and land use and development ordinances or regulations. Capabilities may be described in a table or narrative. **Discussion** means a narrative or other materials that provide context on a section of the plan. *Describing the current capabilities provides a rationale for which mitigation projects can be undertaken to address the vulnerabilities identified in the Risk Assessment.*
C1-b. The plan must describe the ability of each participant to expand on and improve the capabilities described in the plan. If the participants do not have the ability or authority to expand and/or improve their capabilities, the plan must describe this lack of ability or authority. *Gaps and limitations for each participant may be addressed as actions in the mitigation strategy.*

Element C: Mitigation Strategy Requirements
C2. Does the plan address each jurisdiction's participation in the NFIP and continued compliance with NFIP requirements, as appropriate? (Requirement 44 CFR § 201.6(c)(3)(ii))
C2-a. The plan must describe participation in the NFIP for each participant, as applicable, in accordance with NFIP regulatory requirements. The following information must be provided for each participant.[7] 1. Adoption of NFIP minimum floodplain management criteria via local regulation. 2. Adoption of the latest effective Flood Insurance Rate Map (FIRM), if applicable. 3. Implementation and enforcement of local floodplain management regulations to regulate and permit development in SFHAs. 4. Appointment of a designee or agency to implement the addressed commitments and requirements of the NFIP. 5. Description of how participants implement the substantial improvement/substantial damage provisions of their floodplain management regulations after an event. Simply stating, "The community will continue to comply with the NFIP" is not sufficient to meet the requirement. Jurisdictions not currently participating in the NFIP, where a Flood Hazard Boundary Map or FIRM has been issued, may meet this requirement by describing why the community does not participate in the NFIP. *For jurisdictions that voluntarily participate in the CRS, it is highly recommended that this description also include related activities and address any issues raised during community assistance and monitoring activities.*
C3. Does the plan include goals to reduce/avoid long-term vulnerabilities to the identified hazards? (Requirement 44 CFR § 201.6(c)(3)(i))
C3-a. The plan must include goals to reduce the risk of the identified hazards. The goals must be consistent with the hazards identified in the plan. Goals may be presented as general statements applying to more than one hazard, or they may be itemized to each of the identified hazards. **Goals** are broad, long-term policy and vision statements that explain what is to be achieved by implementing the mitigation strategy.

[7] For jurisdictions that voluntarily participate in the NFIP, note that floodplain management criteria for flood-prone areas is described in 44 CFR § 60.3.

Element C: Mitigation Strategy Requirements
C4. Does the plan identify and analyze a comprehensive range of specific mitigation actions and projects for each jurisdiction being considered to reduce the effects of hazards, with emphasis on new and existing buildings and infrastructure? (Requirement 44 CFR § 201.6(c)(3)(ii))
C4-a. The mitigation strategy must include an analysis of a comprehensive range of actions or projects that the participants considered to specifically address vulnerabilities identified in the risk assessment. Actions considered must emphasize reducing risk to existing buildings, structures and infrastructure, as well as limiting risk to new development and redevelopment. *It is important for all actions considered to be documented, be as specific as possible, and be clearly linked to the vulnerabilities and impacts identified in the risk assessment. This includes actions for alleviating data deficiencies or building up capabilities related to mitigation implementation. Documenting all ideas provides a record of what actions were considered, and why. Additionally, this creates a list of actions that can be reconsidered as conditions change.* **Analyzing a comprehensive range** means considering mitigation alternatives spanning all types of solutions. These may include local plans and regulations, structure and infrastructure projects, natural systems protection, and education and awareness programs. This analysis helps a jurisdiction select actions based on its own capabilities, as well as the social, technical and economic feasibility of the action. A **mitigation action** is a measure, project, plan or activity proposed to reduce current and future vulnerabilities described in the risk assessment.
C4-b. Each plan participant must identify one or more mitigation actions the participant(s) intends to implement for each hazard addressed in the risk assessment. The actions must be achievable and demonstrate how the mitigation activities reduce the risks identified in the risk assessment. *The actions may apply to physical infrastructure, as well as the populations within the planning area. Actions may apply to one or more participants, as long as each participant is clearly associated with one or more actions.* *Non-mitigation actions can be included in a plan but will not be considered as part of the mitigation action requirement. These include actions that do not contribute to a long-term solution for the problem they are intended to address.* *Plan updates may validate and include previously included actions if those actions are being reconsidered for implementation to reduce the risks of identified hazards in the plan's current risk assessment.*

Element C: Mitigation Strategy Requirements
C5. Does the plan contain an action plan that describes how the actions identified will be prioritized (including cost benefit review), implemented and administered by each jurisdiction? (Requirement 44 CFR § 201.6(c)(3)(iii)); (Requirement 44 CFR § 201.6(c)(3)(iv))
C5-a. The plan must describe the criteria used for prioritizing the implementation of the actions. The criteria must include an emphasis on the extent to which benefits are maximized, in relation to the associated costs of the action. *Although a full benefit-cost analysis is not necessary, the plan must demonstrate that proposed mitigation actions will be prioritized by weighing the cost of the action versus the benefits the action will produce, in addition to other prioritization factors. Another example of a prioritization method may be that jurisdictions establish a minimum threshold for the dollar amount, types or number of benefits an action must have to be considered for implementation. Or they could simply prioritize actions with more benefits than other alternatives.* *Other methodologies are acceptable if the plan demonstrates that the action's monetary and non-monetary benefits were specifically emphasized and considered in the community's decision-making process. Qualitative benefits (quality of life, natural and beneficial values, etc.) may be used, especially in considering mitigation actions that alleviate long-term risks.*
C5-b. The action plan must identify who is responsible for administering each action, along with the action's potential funding sources and expected time frames for completion. The plan must provide the position, office, department or agency responsible for implementing/administrating the identified mitigation actions. Names are not required, but the plan must provide enough detail for users to determine who within the jurisdiction will implement or administer the mitigation action. *The plan must identify applicable potential funding sources, with details beyond generic terms such as "federal," "state" and/or "local." The identified funding sources must be relevant to implementing the associated actions.* *The plan must identify expected time frames for completion. General terms like "short-term," "medium-term" and "long-term" must be defined. "Ongoing" is acceptable when used appropriately (e.g., for multi-phased projects).*

4.4. Element D: Plan Maintenance

Overall Intent. The mitigation plan is a living document that guides actions over time. Continually documenting the process makes the next plan update easier. The plan is a blueprint for reducing risk and protecting community investments. Having a process for maintaining the plan reflects the recognition that things change. Not only is there a need to track progress on implementing the mitigation strategy, but new information may become available, and disasters may happen. The plan needs to be revisited at regular intervals to keep it relevant, and the planning team needs to decide how that will be done. At a minimum, this must be done every five years, but it should also be done after major disaster events or if new conditions significantly change risk.

Plan maintenance means keeping the plan accurate, current, and relevant over the five-year approval period. It includes monitoring, evaluating and updating the plan – and generally keeping the planning process active. Plan maintenance is critical to ensure participants use the plan to continually reduce hazard risk.

Element D: Plan Maintenance Requirements
D1. Is there discussion of how each community will continue public participation in the plan maintenance process? (Requirement 44 CFR § 201.6(c)(4)(iii))
D1-a. The plan must describe how the participant(s) will continue to seek public participation after the plan has been approved and during the plan's implementation, monitoring, and evaluation. *The plan may contain a narrative description or an itemized list of steps, demonstrating the prescribed method that will be followed to obtain future public participation.* *Special consideration should be given to identifying and using unique and meaningful ways to keep the public engaged in the process.* *Examples include, but are not limited to: periodic presentations on the plan's progress to elected officials, schools or other community groups; annual questionnaires or surveys; public meetings; postings on social media; and interactive websites.*
D2. Is there a description of the method and schedule for keeping the plan current (monitoring, evaluating and updating the mitigation plan within a five-year cycle)? (Requirement 44 CFR § 201.6(c)(4)(i))
D2-a. The plan must identify how, when and by whom the plan will be tracked for implementation over its five-year cycle (monitoring). *Monitoring may be described by including a narrative description or an itemized list of steps demonstrating the prescribed method that will be followed to monitor the plan after plan approval and during the plan's implementation.* **Monitoring** means tracking the implementation of the plan over time. For example, monitoring may include a system for tracking the status of the identified hazard mitigation actions.
D2-b. The plan must identify how, when and by whom the plan will be assessed for effectiveness at achieving its stated purpose and goals (evaluating). *The evaluation method may be described by including a narrative description or an itemized list of steps demonstrating the prescribed method that will be followed to evaluate the plan after plan approval and during the plan's implementation, and prior to the plan's update.* **Evaluating** means assessing the effectiveness of the plan at achieving its stated purpose and goals.
D2-c. The plan must identify how, when and by whom the plan will be reviewed and revised at least once every five years (updating). *The update method may be described by including a narrative description or an itemized list of steps that will be followed to update the plan prior to resubmission for approval and during the plan's implementation.* **Updating** means reviewing and revising the plan at least once every five years.

Element D: Plan Maintenance Requirements
D3. Does the plan describe a process by which each community will integrate the requirements of the mitigation plan into other planning mechanisms, such as comprehensive or capital improvement plans, when appropriate? (Requirement 44 CFR § 201.6(c)(4)(ii))
D3-a. The plan must describe the community's process to integrate the plan's data, information, and hazard mitigation goals and actions into other planning mechanisms. **Integrate** means to include hazard mitigation principles, vulnerability information and mitigation actions into other existing community planning to leverage activities that have co-benefits, reduce risk and increase resilience. **Planning mechanisms** refers to the governance structures used to manage local land use development and community decision-making, such as budgets, comprehensive plans, capital improvement plans, economic development strategies, or other long-range plans.
D3-b. The plan must identify the local planning mechanisms where hazard mitigation information/ actions may be integrated. The identified list of planning mechanisms must be applicable to the plan participant(s) and not contradict the identified capabilities.
D3-c. A multi-jurisdictional plan must describe each participant's individual process for integrating information from the mitigation strategy into their identified planning mechanisms. *This element may be met with a general narrative description if the process is applicable to each of the plan participants; however, any participant who cannot apply the same process as other plan participants must include their unique process for integration.*

4.5. Element E: Plan Update

Overall Intent. To continue to effectively represent the jurisdiction's overall strategy for reducing its risks from natural hazards, the mitigation plan must reflect how current conditions have changed since the last plan. This will require an assessment of the current development patterns and development pressures, as well as an evaluation of any new hazard or risk information. The plan update is an opportunity for the jurisdiction to assess its previous goals and action plan, evaluate progress in implementing hazard mitigation actions, and adjust its actions to address the current realities.

If growth conditions and community priorities have changed very little (such as through new leadership, new funding sources or recent hazard conditions), much of the text in the updated plan may be unchanged. This is acceptable as long as the plan still fits the priorities of the community and reflects the current conditions. Plan readers can recognize a good plan update by its documentation of the community's progress or changes in their hazard mitigation program, along with the community's continued engagement in the mitigation planning process.

Where jurisdictions have experienced changes in development (planned, increase or decline), the plan update must discuss how development changes have altered vulnerability. If no development changes have occurred since the last version of the plan, this must be stated.

Where hazard risk has not changed significantly, a jurisdiction may use the update process to review and verify existing risk information. The updated risk assessment must document which information has been reviewed and remains accurate.

Element E: Plan Update Requirements
E1. Was the plan revised to reflect changes in development? (Requirement 44 CFR § 201.6(d)(3))
E1-a. The plan must describe changes in development that have occurred in hazard-prone areas and how they have increased or decreased the vulnerability of each jurisdiction since the previous plan was approved. If no development changes affected the jurisdiction's overall vulnerability, this must be stated with the plan. **Changes in development** means recent development (for example, construction completed since the last plan was approved, or development planned or under consideration by the jurisdiction), or conditions that may affect the risks and vulnerabilities of the jurisdictions (for example, declining populations or projected increases in population, or foreclosures). This can also include changes in local policies, standards, codes, regulations, land use regulations and other conditions.
E2. Was the plan revised to reflect changes in priorities and progress in local mitigation efforts? (Requirement 44 CFR § 201.6(d)(3))
E2-a. The plan must describe how it was revised due to a change in priorities for each jurisdiction. This can be done as a narrative or with detailed statements in the appropriate sections of the plan. The priorities to be considered are defined by the participant(s). If the participant(s) has no change in priorities since the last approval of the mitigation plan, this must be stated.
E2-b. The plan must describe the status of all hazard mitigation actions in the previous plan by identifying whether they have been completed or not, for each jurisdiction. For actions that are not complete, the plan must state whether the action is no longer relevant or will be included in the updated action plan.
E2-c. The updated plan must explain how the jurisdiction(s) integrated information from the mitigation plan into other planning mechanisms, as a demonstration of progress in local hazard mitigation efforts. If information from the previous plan was not integrated into other planning mechanisms, this must be stated.

4.6. Element F: Plan Adoption

Overall Intent. Adoption by the local governing body or bodies demonstrates the jurisdiction's commitment to the hazard mitigation goals and actions outlined in the plan. Adoption legitimizes the plan and authorizes responsible agencies to perform their responsibilities. Updated plans are adopted anew to demonstrate the community's recognition of the current planning process, acknowledge changes from the previous five years, and validate the priorities for hazard mitigation actions. Without adoption, the jurisdiction has not completed the mitigation planning process and will not be eligible for certain FEMA assistance, such as HMA or HHPD grant program funding for mitigation actions.

Element F: Plan Adoption Requirements
F1. For single-jurisdictional plans, has the governing body of the jurisdiction formally adopted the plan to be eligible for certain FEMA assistance? (Requirement 44 CFR § 201.6(c)(5))
F1-a. The jurisdiction must provide documentation of plan adoption, usually a resolution by the governing body or other authority, to receive approval. Documentation may be provided in the form of meeting minutes, resolutions, signed letter or any other method to demonstrate that official adoption by the participant has occurred. *See Section 6, Plan Review and Approval, for more information on the process to adopt the plan after review by the state and FEMA.*
F2. For multi-jurisdictional plans, has the governing body of each jurisdiction officially adopted the plan to be eligible for certain FEMA assistance? (Requirement 44 CFR § 201.6(c)(5))
F2-a. To receive approval, the participants must adopt the plan and provide documentation that the adoption has occurred. Participants that submit their adoption documentation separately from the other multi-jurisdictional plan participants will not receive a new expiration date. Participating jurisdictions that adopt the plan more than one year after Approvable Pending Adoption (APA) status has been issued must either: ▪ Validate that their information in the plan remains current with respect to both the risk assessment (no recent hazard events, no changes in development) and their mitigation strategy (no changes necessary); or ▪ Make the necessary updates before submitting the adoption resolution to FEMA.

4.7. Element G: High Hazard Potential Dams (Required for HHPD Grant Program Eligibility)

Overall Intent. Critical infrastructure like dams and levees provide recreation, water supply, floodplain management, energy and other important functions. Dam owners and operators can be private, non-profit or public. They are important participants/stakeholders in local mitigation planning processes.

The National Dam Safety Program Act (Pub. L. 92–367), as amended, 33 U.S.C. § 467f-2, authorizes FEMA to provide High Hazard Potential Dams (HHPD) Rehabilitation Grant Program assistance for the rehabilitation of dams that fail to meet minimum dam safety standards and pose unacceptable risk to life and property. To be eligible for HHPD grants, local governments with jurisdiction over the area of an eligible dam must have an approved local hazard mitigation plan that includes all dam

risks and complies with the Robert T. Stafford Act, as amended.[8] Non-profit organizations seeking funding must ensure that the dam is within a local jurisdiction with an approved hazard mitigation plan that includes all dam risks.

FEMA developed the criteria in this section in consultation with the National Dam Safety Review Board in 2021. For more information, see FEMA Policy 104-008-7, Rehabilitation of High Hazard Potential Dams Grant Program Guidance and subsequent HHPD Notices of Funding Opportunities and policies.

At a minimum, local mitigation plans must address the subset of state-regulated dams considered HHPDs.[9] The Federal Guidelines for Dam Safety; Hazard Potential Classification System for Dams[10] states that dams assigned the high hazard potential classification are those where failure or mis-operation will probably cause loss of human life. It should be noted that states may use other terminology to classify dams. FEMA understands that the list of HHPDs may change from year to year. The local plan does not need to be updated every time the list of HHPDs changes. The plan approval period remains five years.

For each HHPD included in the hazard mitigation plan, the local community mitigation planning lead is encouraged to coordinate with the dam owner and the state dam safety office to determine any issues/risks associated with that dam. This information must be included in the local hazard mitigation plan. A FEMA mitigation planning risk assessment must follow the requirements set forth at 44 CFR Part 201; it does not involve the level of detailed technical engineering analysis required by the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, etc. For the mitigation plan, all dam risk can be presented as a summary description. Detailed analyses are not required.

Hazard mitigation goals are broad, long-term policy and vision statements. Goals do not need to mention specific actions, specific dams, or use the term "high hazard potential dam." Projects submitted for consideration for HHPD funding must be consistent with the goals and actions identified in the current, approved hazard mitigation plan.

[8] The mitigation planning requirements of the Rehabilitation of High Hazard Potential Dams grants were developed in 2021 through consultation with the National Dam Safety Review Board, in accordance with the National Dam Safety Act, as amended in December 2020.

[9] Dams eligible for the HHPD classification have additional requirements, and therefore may not include all HHPDs within the local jurisdiction. This subset of dams is defined at 33 U.S. Code (U.S.C.) § 467(4)(A) and 33 U.S.C. § 467f-2(4).

[10] FEMA/ICODS, 2004

Element G: High Hazard Potential Dams
HHPD1: Did the plan describe the incorporation of existing plans, studies, reports and technical information for HHPDs?
To meet this requirement with a specific focus on HHPDs, the mitigation plan must include descriptions of: **HHPD1-a:** How the local government coordinated with local dam owners and/or the state dam safety agency. NOTE: Ensure sensitive and/or personally identifiable information is protected. **HHPD1-b:** Information shared by the state and/or local dam owners. Examples may include: ▪ Location and size of the population at risk, as well as potential impacts to institutions and critical infrastructure/facilities/lifelines. ▪ Inundation maps, emergency action plans, floodplain management plans and/or data or summaries provided by dam breach modeling software, such as HEC-RAS, DSS-WISE HCOM, DSS-WISE Lite, FLO-2D, as well as more detailed studies.
HHPD2: Did the plan address HHPDs in the risk assessment?
To meet this requirement with a specific focus on HHPDs, the mitigation plan must: **HHPD2-a:** Describe the risks and vulnerabilities to and from HHPDs, including: ▪ Potential cascading impacts of storms, seismic events, landslides, wildfires, etc. on dams that might affect upstream and downstream flooding potential. ▪ Potential significant economic, environmental or social impacts, as well as multi-jurisdictional impacts, from a dam incident. ▪ Location and size of populations at risk from HHPDs, as well as potential impacts to institutions and critical infrastructure/facilities/lifelines. ▪ Methodology and/or assumptions for risk data and inundation modeling. **HHPD2-b:** Document the limitations and describe the approach for addressing deficiencies.
HHPD3: Did the plan include mitigation goals to reduce long-term vulnerabilities from HHPDs?
To meet this requirement with a specific focus on HHPDs, the mitigation plan must: **HHPD3-a:** Address a reduction in vulnerabilities to and from HHPDs as part of its own goals or with other long-term strategies. The plan does not need to include a goal specific to HHPDs alone. **HHPD3-b:** Link proposed actions to reducing long-term vulnerabilities consistent with the goals.

Element G: High Hazard Potential Dams
HHPD4: Did the plan include actions that address HHPDs, and prioritize mitigation actions to reduce vulnerabilities from HHPDs?
To meet this requirement with a specific focus on HHPDs, the mitigation plan must: **HHPD4-a:** Describe a range of specific actions, such as: ▪ Rehabilitating/removing dams. ▪ Adopting and enforcing land use ordinances in inundation zones. ▪ Elevating structures in inundation zones. ▪ Adding flood protection, such as berms, floodwalls or floodproofing, in inundation zones. **HHPD4-b:** Describe the criteria used for prioritizing actions related to HHPDs. **HHPD4-c:** Identify the position, office, department or agency responsible for implementing and administering the action related to mitigating hazards to or from HHPDs.

4.8. Element H: Additional State Requirements (Optional)

In some cases, states may have additional requirements for local plans. If so, the states can specify those requirements in Element H of the Local Plan Requirements. These state-specific elements may be required to be "met" before the plan is advanced for approval or achieves APA status. FEMA will not review Element H in a regulatory review and approval of a local hazard mitigation plan.

5. Completing the Plan Review Tool

The Plan Review Tool (PRT) (see Appendix A) documents where the information to meet the requirements in 44 CFR § 201.6 can be found in the local mitigation plan. The PRT offers states and FEMA Mitigation Planners an opportunity to provide feedback to the plan participant(s) on required revisions and recommendations for the next update cycle. The PRT also provides an opportunity for participants to conduct a self-assessment before submitting their plan for approval, to ensure they have successfully met all requirements. The PRT is divided into four sections.

1. Cover Page
2. Multi-Jurisdictional Summary Sheet
3. Plan Review Checklist
4. Plan Assessment

When reviewing plans for approval, FEMA will use this PRT, based on the requirements in 44 CFR § 201.6.

5.1. Cover Page

The **cover page** documents general information on the plan as well as plan submittal and review information. It includes the plan title, plan point of contact, date received and plan reviewers. Plan submissions must include a completed cover page with all information relevant to maintaining plan approval records. This information must correspond with the data in the program's database and system of record, the Mitigation Planning Portal.

5.2. Multi-Jurisdictional Summary Sheet

The **multi-jurisdictional summary sheet** is a worksheet used to document whether each jurisdiction met the requirements of each plan element (planning process; hazard identification and risk assessment; mitigation strategy; plan maintenance, plan updates and plan adoption). For multi-jurisdictional plans, a multi-jurisdictional summary sheet must be completed. It will list each participating jurisdiction and which required elements for each jurisdiction were met or not met. This table is not meant to serve as an individual plan review, but as a guide to demonstrate where additional information may be needed.

5.3. Plan Review Checklist and Plan Assessment

5.3.1. Plan Review Checklist

The **Plan Review Checklist** provides the evaluation criteria for the plan and documents whether the plan addressed all requirements. Once completed, the Plan Review Checklist will identify the location of relevant or applicable content that is included in the plan and required for plan approval. Each element of the plan is individually evaluated against the requirement to determine if the plan requirements, by element and/or sub-element, have been "met" or "not met." For each sub-element deemed to be "not met," "required revisions" must be identified. This clearly explains the revisions required for plan approval. In each required revision, where applicable, the sub-elements should be referenced using the appropriate numbers (A1-a, etc.). The requirements for each element and sub-element are described in detail in Section 4: Local Plan Requirements of this guide.

5.3.2. Plan Assessment

The purpose of the **Plan Assessment** is to offer the participant(s) more comprehensive feedback on the quality and utility of the plan, in a narrative format. The audience for the Plan Assessment includes not only the local agency responsible for developing or updating the plan, but also elected officials, local departments and agencies, and others involved in implementing the local mitigation plan. FEMA will complete the Plan Assessment. It gives the approvers the opportunity to provide feedback and information to the local government(s) on: 1) suggested improvements to the plan; 2) specific sections in the plan where the local government(s) has gone above and beyond the minimum requirements; 3) recommendations for plan implementation; and 4) ongoing partnership(s) and information on other FEMA programs that may provide input to the plan, such as Risk MAP, the NFIP, and Building Science, or fund mitigation actions, such as HMA, HHPD grants, and the National Earthquake Hazards Reduction Program. The Plan Assessment is incorporated into the PRT to tie these strengths and opportunities more directly to their respective plan elements. These comments are not regulatory and will not re-state information contained elsewhere in the PRT. Rather, they should be open-ended and provide the community with suggestions for improvements or recommended revisions.

6. Plan Review and Approval Procedure

6.1. Mitigation Plan Submittal

6.1.1. Local

Local governments are encouraged, but not required, to submit a PRT to the state that indicates the locations within the plan where material for meeting the required elements and sub-elements is found. Local mitigation plans and the PRT may be submitted with the adoption resolutions from all participating jurisdictions, or without resolutions, prior to adoption, as explained in Section 6.4.

6.1.2. State

The state is responsible for the initial review and coordination of all local mitigation plans within that state. Once the state completes that initial review and determines that the plan has met the requirements, the state submits the plan to the respective FEMA Regional Office (*see* FEMA Regional Office contact information at https://www.fema.gov/about/organization/regions), requesting FEMA approval. If the state has been delegated approval authority for local mitigation plans, the state will perform the review in accordance with the PAS agreement.

The submittal to FEMA consists of a transmittal letter or email from the SHMO, Governor's Authorized Representative, or other delegated state officer, identifying:

- The local mitigation plan to be approved.
- The participants seeking approval.[11]
- The funding source and grant number information, if applicable.[12]
- The lead jurisdiction, if applicable.
- If the plan has already been adopted by the participating local jurisdictions (including special districts), with copies of any adoption resolution(s) not in the plan itself.

[11] Federally recognized tribes participating in a multijurisdictional plan with local jurisdiction(s) must be reviewed against the tribal requirements in 44 CFR § 201.7. To aid the review process, states should identify whether the tribal government is federally recognized (and reviewed under 44 CFR § 201.7) or not (and reviewed under 44 CFR § 201.6).

[12] If HMA funding was used for the planning process, ensure the participants are the same ones listed in the grant application for funding. If not, coordinate with the recipient to update the HMA planning subaward scope of work.

Plans must be submitted electronically. Paper copies may be requested to ease review and approval; if paper copies are submitted, electronic copies must be provided. If the state sends a paper copy, it should include an "ATTENTION:" line on the mailing label, with "Mitigation Planning" in addition to the FEMA Regional office (example: ATTENTION: FEMA Region ##, Mitigation Planning).

6.1.3. FEMA

Upon receipt, the FEMA Regional office will provide confirmation to the state by phone, email, mail or other means.

6.2. Mitigation Plan Review

6.2.1. Review Time Frames

FEMA will review all local mitigation plans submitted to the agency using this guide, including the PRT, and any subsequent updates.

FEMA will work with state officials to ensure plans are approved in a timely manner. When revisions are required, FEMA will follow up with the state to ensure a common understanding of any deficiencies and to provide training and/or technical assistance to the state as needed. Plans will be prioritized in the order of submission unless other arrangements are coordinated in advance.

FEMA will review all local mitigation plans within 45 calendar days, whenever possible (44 CFR § 201.6(d)), with a focus on plan approvals, including adoption by the jurisdiction(s). FEMA will work with state officials to ensure plans are reviewed in a timely manner and to prioritize the order of the review of all plans submitted. If FEMA is unable to complete a Local Mitigation Plan review within 45 days of receipt from the state, the FEMA Regional Administrator or his/her designee will either:

> a) Send a signed letter to be received by the state within 10 calendar days after the end of the 45-day review period. The letter will include an explanation of the cause of any delays in the review of the Local Mitigation Plan and a reasonable projection of the date by which the plan review will be completed. If a completed review is sent to the state within 10 calendar days after the end of the 45-day review period, a signed cover letter will indicate the reason for the delay.
>
> or
>
> b) Send a monthly status update to each state listing the status of all plans submitted to FEMA for review. This will include, at a minimum, the status of all plans received and currently under review, a reasonable projection of the date by which the plan review will be completed, and the cause for delays for any plans projected to be reviewed more than 45

days after receipt. This monthly update may also include plans approved, plans nearing expiration, or other status categories as deemed appropriate by FEMA.

If the plan requires revisions, FEMA will contact the state as soon as possible to avoid unnecessary delays in completing the approval process, providing any specific written feedback needed for plan approval.

When a plan review is completed, FEMA will inform the state of the outcome and the current status of the plan. FEMA will prepare and forward the necessary correspondence (Approval, APA or Requires Revisions) to the state. This notification to the state will include a copy of the PRT (please see Section 6.4 for more detail). The review time frame requirements also apply to subsequent plan revisions, if revisions are needed, with the goal to expedite approvals and not create a cycle of revisions.

6.2.2. Plan Revision

6.2.2.1. FEMA

Local mitigation plans that do not meet all of the requirements in 44 CFR Part 201 and this guide are returned with correspondence to the state explaining the required revisions as documented by the PRT.

When a plan is not approved after the first review and requires revisions to meet 44 CFR Part 201 and policy, FEMA will complete a subsequent plan review and approval within 45 days of receipt from the state, whenever possible. FEMA's review of these revised local mitigation plans and its responses in the PRT will consider:

1. Only those elements of the PRT where the previous review(s) noted that revisions were required to meet 44 CFR Part 201 and policy.
2. Information in the plan that was deleted or changed from its previous version, such that the plan no longer meets a previously approved element of this guide.
3. The entire plan, if received more than one year after the required revisions were sent to the state.

6.2.2.2. State

Unless the state and FEMA agree otherwise, the state is responsible for forwarding the PRT to the local jurisdiction(s), including special districts. The local government will coordinate with the state on resubmitting the plan with the necessary revisions, as well as any adoption resolutions. The local community may not send the plan directly to FEMA without prior state coordination and agreement. The local community resubmits the plan to the state, which again is responsible for an initial review

to ensure the revisions have been completed and meet the requirements before forwarding the plan to FEMA.

States that have plan approval delegation under PAS must ensure that all local mitigation plans meet all the statutory, regulatory and policy requirements for approval.

6.3. Communicating the Status

Local mitigation plans are reviewed using the entire Local Mitigation Planning Policy Guide, including the PRT. FEMA will use the appropriate template letter from Appendix C to notify the state of the plan review status: Requires Revisions, Approvable Pending Adoption, or Approved.

At a minimum, FEMA will use the following communication techniques to coordinate with state offices responsible for reviewing local mitigation plans:

1. FEMA will provide a completed PRT, including a description of any required revisions in the Plan Review Checklist and recommendations in the Plan Assessment.
2. FEMA will send copies of all signed correspondence electronically, to reduce response time.

FEMA may also use the following communication techniques to coordinate with state offices responsible for reviewing local mitigation plans:

1. **Phone First**: When revisions are required, state and local officials (when previously agreed upon by FEMA and the state) are encouraged to call FEMA for any clarifications or questions rather than communicating in writing. A discussion between the parties may help clear up any misunderstandings before the jurisdiction responds in writing or makes plan revisions.
2. **Courtesy Reviews**: Local officials may share drafts of their entire plan (or at least the results of the risk assessment) with the state and/or FEMA well in advance of finalizing the plan. Early feedback from the state and FEMA will let the jurisdiction know that it is on the right track, that additional materials are needed, or that major revisions should be made in time to develop and submit an approvable plan by established deadlines.

States may also use the following communication techniques to coordinate with local officials developing local mitigation plans:

1. **Stay on Schedule**: States and local officials should coordinate with each other on procedures and schedules for state support of local mitigation planning efforts, initial state review of local mitigation plans, and FEMA review and approval in time to meet deadlines.
2. **Request Technical Assistance**: States and local officials may request technical assistance from FEMA while they are developing the local mitigation plan. Technical assistance includes, but is not limited to, risk assessment, training and information on the planning process itself. If certain elements are not meeting first-pass approval, FEMA will work with the state to provide training

and technical assistance, as needed, to increase efficiencies in the plan approval process and minimize potential delays.

3. **Joint Reviews**: FEMA and the state may conduct a joint review by phone or in person to discuss the plan, section by section, highlighting the strengths of the community's mitigation plan and noting areas where improvements make the plan more effective at reducing risks to known hazards.
4. **Involve the Locals**: States may choose to include local officials in joint reviews or allow direct contact between FEMA and local officials to reduce review time.
5. **Positive First Contact**: When revisions are required, FEMA may contact the state by phone to discuss revisions and offer an opportunity for changes before issuing "required revisions" correspondence.

FEMA will work with the state counterparts to establish mutually agreeable methods of communication for Local Mitigation Plan reviews whenever they differ from the standard process.

6.4. Mitigation Plan Approval

Each jurisdiction, including special districts, that participated in the planning process and is seeking FEMA approval must adopt the mitigation plan. Adoption by the local governing body is an essential part of the planning process, as set forth in the regulations and requirements for mitigation planning. This is the final step that each jurisdiction must take to complete the mitigation planning process and receive plan approval.

For multi-jurisdictional plans, FEMA encourages the lead jurisdiction to gain buy-in for adoption early in the planning process, using letters of commitment. These letters of commitment are an early display that indicates a jurisdiction will participate fully in the planning process and adopt the plan. A participating jurisdiction that does not adopt the plan will not be considered to have an approved plan and will not be eligible for certain kinds of non-emergency disaster assistance from FEMA.

Each jurisdiction, including special districts, that participated in the planning process and is seeking FEMA approval must adopt the mitigation plan. This is the final step that each jurisdiction must take to complete the mitigation planning process and receive plan approval.

Jurisdictions have two options to get their mitigation plans to final approval and adoption, as explained in the following sub-sections and Figure 1.

6.4.1. All Adoption Resolutions Submitted with Plan

Under this option, a community with a single-jurisdictional plan, or all participating communities that are part of a multi-jurisdictional plan, include documentation of plan adoption when they initially

submit the plan to the state for review. This documentation is usually a resolution by the governing body, but it may include any other method of adoption allowed by local laws.

The state is responsible for performing an initial review of the plan before sending it to FEMA. This includes checking that each jurisdiction seeking approval participated in the planning process and met the requirements. After receiving the draft plan from the state, FEMA conducts its review and will approve the plan if it meets all requirements stated in Section 4 of this guide. The plan approval date begins the five-year approval period and sets the expiration date for the plan. All participating jurisdictions will have the same approval date. The official approval date and the plan's expiration date are both indicated on the signed FEMA approval correspondence.

Under this option, the jurisdiction(s) adopt(s) the plan before submitting it to FEMA. It is important to recognize that the state and/or FEMA may require revisions to the plan that will change the plan's final content. Jurisdictions are encouraged to use flexible adoption resolution language that leaves room for any required revisions that occur after adoption, if local laws invalidate the adopted resolution language used in the plan. If it is not allowable per local laws, jurisdictions may need to re-adopt the plan after revisions are made. Appendix B includes sample adoption language. All jurisdictions must adopt the plan in accordance with local laws and regulations.

6.4.2. Approvable Pending Adoption

Approvable Pending Adoption (APA) status is used when jurisdictions submit the final draft of a local hazard mitigation plan for review prior to formal jurisdictional adoption. The APA status allows FEMA to communicate to the plan participant(s) that the plan is ready for adoption. ***It is important to note that APA is not the same as having an approved plan*.** To reach approval, all participating jurisdictions must adopt the plan in accordance with local regulations.

Under this option, the state and FEMA review the draft local mitigation plan. The state is responsible for checking that each jurisdiction seeking approval participated in the planning process and has met all requirements except adoption. Once this is completed, the state sends the plan to FEMA. FEMA then completes its review. When FEMA determines that the plan as a whole and each participating jurisdiction have met all the requirements except adoption, FEMA will inform the state (e.g., by sending an electronic communication or letter) that the plan is in APA status. The state informs the local governments that the plan is in APA status and that local adoption must be completed for FEMA to approve the plan.

According to 44 CFR § 201.6(a)(4), "Multi-jurisdictional plans may be accepted, as appropriate, as long as each jurisdiction has participated in the process and has officially adopted the plan." For multi-jurisdictional plans, FEMA will grant APA status for the plan as a whole when the plan and each participating jurisdiction have met all of the requirements except adoption (Element F). APA status will not be granted to individual jurisdictions on a piecemeal basis. If some jurisdictions are unable to meet all the requirements, the plan submittal may include notification that those jurisdictions are not participating at that time.

Once FEMA receives documentation of at least one adoption resolution, the status is changed from APA to Approved for the entire plan and for that jurisdiction. This status change establishes the start and expiration dates for the plan approval period. Beyond that, it only means that the jurisdiction that provided proof of adoption is approved; ***each participating jurisdiction must adopt the plan to be approved.***

Participating jurisdictions that adopt the plan more than one year after APA status has been issued must either:

- Validate that their information in the plan remains current with respect to both the risk assessment (no recent hazard events, no changes in development) and their mitigation strategy (no changes necessary); or
- Make the necessary updates before submitting the adoption resolution to FEMA.

The plan approval date begins the five-year approval period and sets the expiration date for the plan. For single and multi-jurisdictional plans, the official plan approval date and plan expiration date are indicated on the official FEMA approval letter. All participating jurisdictions in the multi-jurisdictional plan will have the same expiration date regardless of their own jurisdiction's adoption date. The date indicated on FEMA's approval letter is the official approval date. A jurisdiction with a plan in APA status does not meet the requirement for an approved mitigation plan to apply for and receive assistance.

Figure 1 shows the two paths that multi-jurisdictional plans can follow to achieve approved status: Submission With Adoption Resolution(s) and Submission Without Adoption Resolution(s).

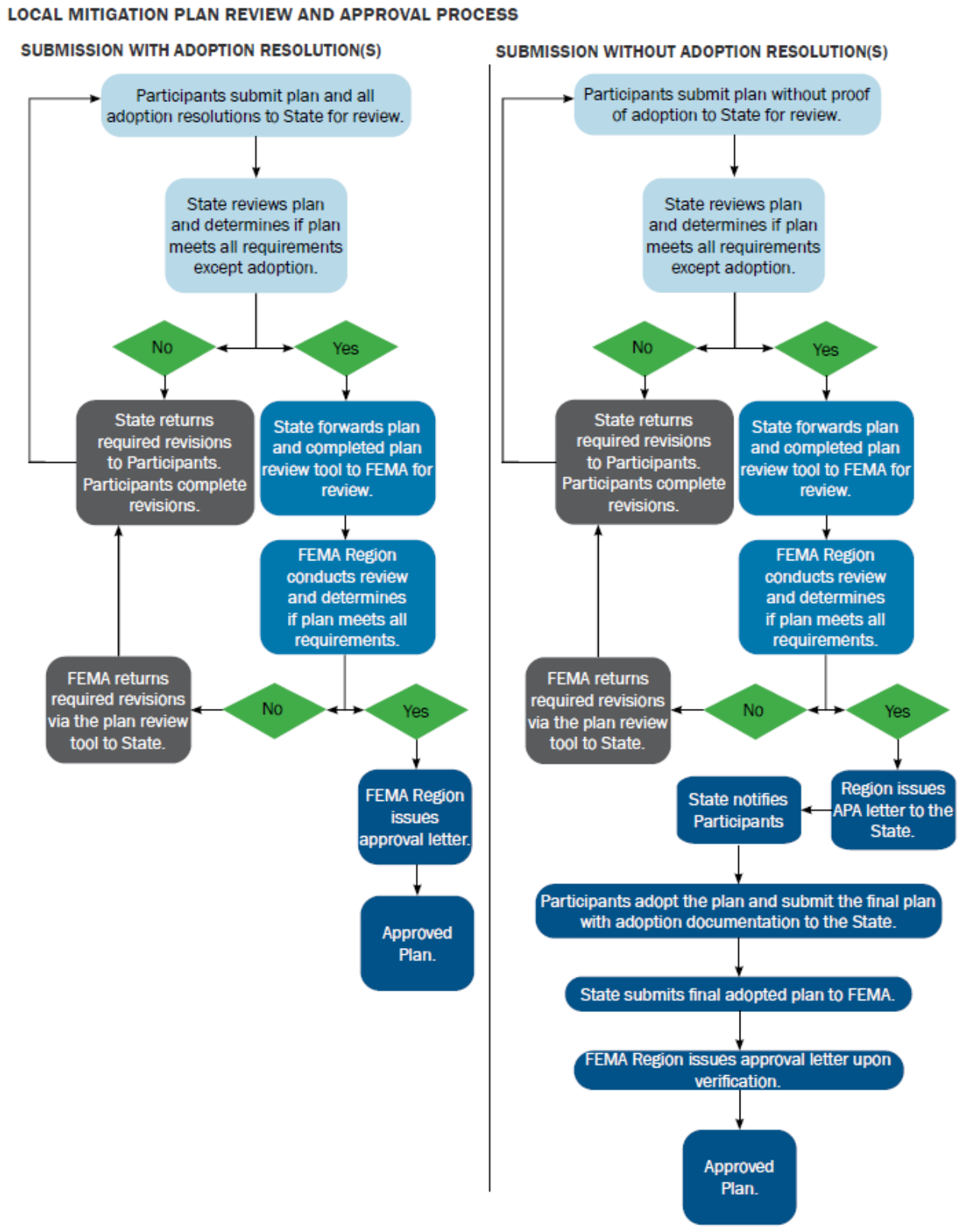


Figure 1: Local Mitigation Plan Review Process

6.4.3. Approved

6.4.3.1. FEMA

Once the FEMA Regional Office receives the plan, including adoptions, and confirms that all elements have been met, FEMA will send the state one of two letters, APA or Approval. Templates for the letters are included in Appendix C; any changes to a template letter must be approved by the FEMA Headquarters National Mitigation Planning Program. The letter will be signed by the Regional Administrator or their designee. This designee may be the Regional Mitigation Division Director, Branch Chief or other designated official. Approval correspondence will identify, at a minimum, the name of the approved plan, approved plan participants, the date of plan approval and the date approval expires. For multi-jurisdictional plans, this information may be included in the PRT or another attachment.

Approval correspondence for multi-jurisdictional plans will clearly state that the same official plan expiration date applies to all participating jurisdictions, regardless of when each one adopts the plan. If the plan is multi-jurisdictional and FEMA does not receive all participating jurisdictions' adoptions at the same time, FEMA will periodically provide the state with an updated jurisdiction status as additional adoptions are received. This may include email correspondence and/or an updated, completed PRT identifying which jurisdictions have adopted the plan and can be designated as having an approved plan.

6.4.3.2. State

Unless the state and FEMA have agreed otherwise, FEMA will send all approval correspondence to the state. The state is responsible for communicating the approval to the local government(s), including special districts. The state should ensure all jurisdictions adopt the mitigation plan, in particular, those local governments interested in applying for certain non-emergency FEMA assistance with an approved mitigation plan requirement.

Appendix A: Local Mitigation Plan Review Tool

Cover Page

The Local Mitigation Plan Review Tool (PRT) demonstrates how the local mitigation plan meets the regulation in 44 CFR § 201.6 and offers states and FEMA Mitigation Planners an opportunity to provide feedback to the local governments, including special districts.

1. The Multi-Jurisdictional Summary Sheet is a worksheet that is used to document how each jurisdiction met the requirements of the plan elements (Planning Process; Risk Assessment; Mitigation Strategy; Plan Maintenance; Plan Update; and Plan Adoption).
2. The Plan Review Checklist summarizes FEMA's evaluation of whether the plan has addressed all requirements.

For greater clarification of the elements in the Plan Review Checklist, please see Section 4 of this guide. Definitions of the terms and phrases used in the PRT can be found in Appendix E of this guide.

Plan Information	
Jurisdiction(s)	Click or tap here to enter text.
Title of Plan	Click or tap here to enter text.
New Plan or Update	Click or tap here to enter text.
Single- or Multi-Jurisdiction	Choose an item.
Date of Plan	Click or tap to enter a date.
Local Point of Contact	
Title	Click or tap here to enter text.
Agency	Click or tap here to enter text.
Address	Click or tap here to enter text.
Phone Number	Click or tap here to enter text.
Email	Click or tap here to enter text.

Additional Point of Contact	
Title	Click or tap here to enter text.
Agency	Click or tap here to enter text.
Address	Click or tap here to enter text.
Phone Number	Click or tap here to enter text.
Email	Click or tap here to enter text.

Review Information	
State Review	
State Reviewer(s) and Title	Click or tap here to enter text.
State Review Date	Click or tap to enter a date.
FEMA Review	
FEMA Reviewer(s) and Title	Click or tap here to enter text.
Date Received in FEMA Region	Click or tap to enter a date.
Plan Not Approved	Click or tap to enter a date.
Plan Approvable Pending Adoption	Click or tap to enter a date.
Plan Approved	Click or tap to enter a date.

Multi-Jurisdictional Summary Sheet

#	Jurisdiction Name	A. Planning Process	B. Risk Assessment	C. Mitigation Strategy	D. Plan Maintenance	E. Plan Update	F. Plan Adoption	G. HHPD Requirements	H. State Requirements
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									

Plan Review Checklist

The Plan Review Checklist is completed by FEMA. States and local governments are encouraged, but not required, to use the PRT as a checklist to ensure all requirements have been met prior to submitting the plan for review and approval. The purpose of the checklist is to identify the location of relevant or applicable content in the plan by element/sub-element and to determine if each requirement has been "met" or "not met." FEMA completes the "required revisions" summary at the bottom of each element to clearly explain the revisions that are required for plan approval. Required revisions must be explained for each plan sub-element that is "not met." Sub-elements in each summary should be referenced using the appropriate numbers (A1, B3, etc.), where applicable. Requirements for each element and sub-element are described in detail in Section 4: Local Plan Requirements of this guide.

Plan updates must include information from the current planning process.

If some elements of the plan do not require an update, due to minimal or no changes between updates, the plan must document the reasons for that.

Multi-jurisdictional elements must cover information unique to all participating jurisdictions.

Element A: Planning Process

Element A Requirements	Location in Plan (section and/or page number)	Met / Not Met
A1. Does the plan document the planning process, including how it was prepared and who was involved in the process for each jurisdiction? (Requirement 44 CFR § 201.6(c)(1))		
A1-a. Does the plan document how the plan was prepared, including the schedule or time frame and activities that made up the plan's development, as well as who was involved?	Click or tap here to enter text.	Choose an item.
A1-b. Does the plan list the jurisdiction(s) participating in the plan that seek approval, and describe how they participated in the planning process?	Click or tap here to enter text.	Choose an item.

Element A Requirements	Location in Plan (section and/or page number)	Met / Not Met
A2. Does the plan document an opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development as well as businesses, academia, and other private and non-profit interests to be involved in the planning process? (Requirement 44 CFR § 201.6(b)(2))		
A2-a. Does the plan identify all stakeholders involved or given an opportunity to be involved in the planning process, and how each stakeholder was presented with this opportunity?	Click or tap here to enter text.	Choose an item.
A3. Does the plan document how the public was involved in the planning process during the drafting stage and prior to plan approval? (Requirement 44 CFR § 201.6(b)(1))		
A3-a. Does the plan document how the public was given the opportunity to be involved in the planning process and how their feedback was included in the plan?	Click or tap here to enter text.	Choose an item.
A4. Does the plan describe the review and incorporation of existing plans, studies, reports, and technical information? (Requirement 44 CFR § 201.6(b)(3))		
A4-a. Does the plan document what existing plans, studies, reports and technical information were reviewed for the development of the plan, as well as how they were incorporated into the document?	Click or tap here to enter text.	Choose an item.

ELEMENT A REQUIRED REVISIONS
Required Revision**:** Click or tap here to enter text.

Element B: Risk Assessment

Element B Requirements	Location in Plan (section and/or page number)	Met / Not Met
B1. Does the plan include a description of the type, location, and extent of all natural hazards that can affect the jurisdiction? Does the plan also include information on previous occurrences of hazard events and on the probability of future hazard events? (Requirement 44 CFR § 201.6(c)(2)(i))		
B1-a. Does the plan describe all natural hazards that can affect the jurisdiction(s) in the planning area, and does it provide the rationale if omitting any natural hazards that are commonly recognized to affect the jurisdiction(s) in the planning area?	Click or tap here to enter text.	Choose an item.
B1-b. Does the plan include information on the location of each identified hazard?	Click or tap here to enter text.	Choose an item.
B1-c. Does the plan describe the extent for each identified hazard?	Click or tap here to enter text.	Choose an item.
B1-d. Does the plan include the history of previous hazard events for each identified hazard?	Click or tap here to enter text.	Choose an item.
B1-e. Does the plan include the probability of future events for each identified hazard, including the type, location and range of anticipated intensities?	Click or tap here to enter text.	Choose an item.
B1-f. For participating jurisdictions in a multi-jurisdictional plan, does the plan describe any hazards that are unique to and/or vary from those affecting the overall planning area?	Click or tap here to enter text.	Choose an item.
B2. Does the plan include a summary of the jurisdiction's vulnerability and the impacts on the community from the identified hazards? Does this summary also address NFIP-insured structures that have been repetitively damaged by floods? (Requirement 44 CFR § 201.6(c)(2)(ii))		
B2-a. Does the plan provide an overall summary of each jurisdiction's vulnerability to the identified hazards?	Click or tap here to enter text.	Choose an item.
B2-b. For each participating jurisdiction, does the plan describe the potential impacts of each of the identified hazards on each participating jurisdiction?	Click or tap here to enter text.	Choose an item.
B2-c. Does the plan address NFIP-insured structures within each jurisdiction that have been repetitively damaged by floods?	Click or tap here to enter text.	Choose an item.

ELEMENT B REQUIRED REVISIONS
Required Revision: Click or tap here to enter text.

Element C: Mitigation Strategy

Element C Requirements	Location in Plan (section and/or page number)	Met / Not Met
C1. Does the plan document each participant's existing authorities, policies, programs and resources and its ability to expand on and improve these existing policies and programs? (Requirement 44 CFR § 201.6(c)(3))		
C1-a. Does the plan describe how the existing capabilities of each participant are available to support the mitigation strategy? Does this include a discussion of the existing building codes and land use and development ordinances or regulations?	Click or tap here to enter text.	Choose an item.
C1-b. Does the plan describe each participant's ability to expand and improve the identified capabilities to achieve mitigation?	Click or tap here to enter text.	Choose an item.
C2. Does the plan address each jurisdiction's participation in the NFIP and continued compliance with NFIP requirements, as appropriate? (Requirement 44 CFR § 201.6(c)(3)(ii))		
C2-a. Does the plan contain a narrative description or a table/list of their participation activities?	Click or tap here to enter text.	Choose an item.
C3. Does the plan include goals to reduce/avoid long-term vulnerabilities to the identified hazards? (Requirement 44 CFR § 201.6(c)(3)(i))		
C3-a. Does the plan include goals to reduce the risk from the hazards identified in the plan?	Click or tap here to enter text.	Choose an item.

Element C Requirements	Location in Plan (section and/or page number)	Met / Not Met
C4. Does the plan identify and analyze a comprehensive range of specific mitigation actions and projects for each jurisdiction being considered to reduce the effects of hazards, with emphasis on new and existing buildings and infrastructure? (Requirement 44 CFR § 201.6(c)(3)(ii))		
C4-a. Does the plan include an analysis of a comprehensive range of actions/projects that each jurisdiction considered to reduce the impacts of hazards identified in the risk assessment?	Click or tap here to enter text.	Choose an item.
C4-b. Does the plan include one or more action(s) per jurisdiction for each of the hazards as identified within the plan's risk assessment?	Click or tap here to enter text.	Choose an item.
C5. Does the plan contain an action plan that describes how the actions identified will be prioritized (including a cost-benefit review), implemented, and administered by each jurisdiction? (Requirement 44 CFR § 201.6(c)(3)(iv)); (Requirement §201.6(c)(3)(iii))		
C5-a. Does the plan describe the criteria used for prioritizing actions?	Click or tap here to enter text.	Choose an item.
C5-b. Does the plan provide the position, office, department or agency responsible for implementing/administrating the identified mitigation actions, as well as potential funding sources and expected time frame?	Click or tap here to enter text.	Choose an item.

ELEMENT C REQUIRED REVISIONS
Required Revision**:** Click or tap here to enter text.

Element D: Plan Maintenance

Element D Requirements	Location in Plan (section and/or page number)	Met / Not Met
D1. Is there discussion of how each community will continue public participation in the plan maintenance process? (Requirement 44 CFR § 201.6(c)(4)(iii))		
D1-a. Does the plan describe how communities will continue to seek future public participation after the plan has been approved?	Click or tap here to enter text.	Choose an item.
D2. Is there a description of the method and schedule for keeping the plan current (monitoring, evaluating and updating the mitigation plan within a five-year cycle)? (Requirement 44 CFR § 201.6(c)(4)(i))		
D2-a. Does the plan describe the process that will be followed to track the progress/status of the mitigation actions identified within the Mitigation Strategy, along with when this process will occur and who will be responsible for the process?	Click or tap here to enter text.	Choose an item.
D2-b. Does the plan describe the process that will be followed to evaluate the plan for effectiveness? This process must identify the criteria that will be used to evaluate the information in the plan, along with when this process will occur and who will be responsible.	Click or tap here to enter text.	Choose an item.
D2-c. Does the plan describe the process that will be followed to update the plan, along with when this process will occur and who will be responsible for the process?	Click or tap here to enter text.	Choose an item.
D3. Does the plan describe a process by which each community will integrate the requirements of the mitigation plan into other planning mechanisms, such as comprehensive or capital improvement plans, when appropriate? (Requirement 44 CFR § 201.6(c)(4)(ii))		
D3-a. Does the plan describe the process the community will follow to integrate the ideas, information and strategy of the mitigation plan into other planning mechanisms?	Click or tap here to enter text.	Choose an item.
D3-b. Does the plan identify the planning mechanisms for each plan participant into which the ideas, information and strategy from the mitigation plan may be integrated?	Click or tap here to enter text.	Choose an item.

Element D Requirements	Location in Plan (section and/or page number)	Met / Not Met
D3-c. For multi-jurisdictional plans, does the plan describe each participant's individual process for integrating information from the mitigation strategy into their identified planning mechanisms?	Click or tap here to enter text.	Choose an item.
ELEMENT D REQUIRED REVISIONS		
Required Revision: Click or tap here to enter text.		

Element E: Plan Update

Element E Requirements	Location in Plan (section and/or page number)	Met / Not Met
E1. Was the plan revised to reflect changes in development? (Requirement 44 CFR § 201.6(d)(3))		
E1-a. Does the plan describe the changes in development that have occurred in hazard-prone areas that have increased or decreased each community's vulnerability since the previous plan was approved?	Click or tap here to enter text.	Choose an item.
E2. Was the plan revised to reflect changes in priorities and progress in local mitigation efforts? (Requirement 44 CFR § 201.6(d)(3))		
E2-a. Does the plan describe how it was revised due to changes in community priorities?	Click or tap here to enter text.	Choose an item.
E2-b. Does the plan include a status update for all mitigation actions identified in the previous mitigation plan?	Click or tap here to enter text.	Choose an item.
E2-c. Does the plan describe how jurisdictions integrated the mitigation plan, when appropriate, into other planning mechanisms?	Click or tap here to enter text.	Choose an item.
ELEMENT E REQUIRED REVISIONS		
Required Revision: Click or tap here to enter text.		

Element F: Plan Adoption

Element F Requirements	Location in Plan (section and/or page number)	Met / Not Met
F1. For single-jurisdictional plans, has the governing body of the jurisdiction formally adopted the plan to be eligible for certain FEMA assistance? (Requirement 44 CFR § 201.6(c)(5))		
F1-a. Does the participant include documentation of adoption?	Click or tap here to enter text.	Choose an item.
F2. For multi-jurisdictional plans, has the governing body of each jurisdiction officially adopted the plan to be eligible for certain FEMA assistance? (Requirement 44 CFR § 201.6(c)(5))		
F2-a. Did each participant adopt the plan and provide documentation of that adoption?	Click or tap here to enter text.	Choose an item.
ELEMENT F REQUIRED REVISIONS		
Required Revision: Click or tap here to enter text.		

Element G: High Hazard Potential Dams (Optional)

HHPD Requirements	Location in Plan (section and/or page number)	Met / Not Met
HHPD1. Did the plan describe the incorporation of existing plans, studies, reports and technical information for HHPDs?		
HHPD1-a. Does the plan describe how the local government worked with local dam owners and/or the state dam safety agency?	Click or tap here to enter text.	Choose an item.
HHPD1-b. Does the plan incorporate information shared by the state and/or local dam owners?	Click or tap here to enter text.	Choose an item.
HHPD2. Did the plan address HHPDs in the risk assessment?		
HHPD2-a. Does the plan describe the risks and vulnerabilities to and from HHPDs?	Click or tap here to enter text.	Choose an item.
HHPD2-b. Does the plan document the limitations and describe how to address deficiencies?	Click or tap here to enter text.	Choose an item.

HHPD Requirements	Location in Plan (section and/or page number)	Met / Not Met
HHPD3. Did the plan include mitigation goals to reduce long-term vulnerabilities from HHPDs?		
HHPD3-a. Does the plan address how to reduce vulnerabilities to and from HHPDs as part of its own goals or with other long-term strategies?	Click or tap here to enter text.	Choose an item.
HHPD3-b. Does the plan link proposed actions to reducing long-term vulnerabilities that are consistent with its goals?	Click or tap here to enter text.	Choose an item.
HHPD4-a. Did the plan include actions that address HHPDs and prioritize mitigation actions to reduce vulnerabilities from HHPDs?		
HHPD4-a. Does the plan describe specific actions to address HHPDs?	Click or tap here to enter text.	Choose an item.
HHPD4-b. Does the plan describe the criteria used to prioritize actions related to HHPDs?	Click or tap here to enter text.	Choose an item.
HHPD4-c. Does the plan identify the position, office, department or agency responsible for implementing and administering the action to mitigate hazards to or from HHPDs?	Click or tap here to enter text.	Choose an item.
HHPD Required Revisions		
Required Revision**:** Click or tap here to enter text.		

Element H: Additional State Requirements (Optional)

Element H Requirements	Location in Plan (section and/or page number)	Met / Not Met
This space is for the State to include additional requirements.		
Click or tap here to enter text.	Click or tap here to enter text.	Choose an item.

Plan Assessment

These comments can be used to help guide your annual/regularly scheduled updates and the next plan update.

Element A. Planning Process

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element B. Risk Assessment

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element C. Mitigation Strategy

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element D. Plan Maintenance

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element E. Plan Update

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element G. HHPD Requirements (Optional)

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element H. Additional State Requirements (Optional)

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Appendix B: Sample Adoption Resolution

(LOCAL GOVERNMENT, INCLUDING SPECIAL DISTRICTS), (STATE)

RESOLUTION NO. _____

A RESOLUTION OF (LOCAL GOVERNMENT) ADOPTING THE (TITLE AND DATE OF MITIGATION PLAN)

WHEREAS the (local governing body) recognizes the threat that natural hazards pose to people and property within (local government); and

WHEREAS the (local government) has prepared a multi-hazard mitigation plan, hereby known as (title and date of mitigation plan) in accordance with federal laws, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended; the National Flood Insurance Act of 1968, as amended; and the National Dam Safety Program Act, as amended; and

WHEREAS (title and date of mitigation plan) identifies mitigation goals and actions to reduce or eliminate long-term risk to people and property in (local government) from the impacts of future hazards and disasters; and

WHEREAS adoption by the (local governing body) demonstrates its commitment to hazard mitigation and achieving the goals outlined in the (title and date of mitigation plan).

NOW THEREFORE, BE IT RESOLVED BY THE (LOCAL GOVERNMENT), (STATE), THAT:

Section 1. In accordance with (local rule for adopting resolutions), the (local governing body) adopts the (title and date of mitigation plan). While content related to (local government) may require revisions to meet the plan approval requirements, changes occurring after adoption will not require (local government) to re-adopt any further iterations of the plan. Subsequent plan updates following the approval period for this plan will require separate adoption resolutions.

ADOPTED by a vote of ____ in favor and ____ against, and ____ abstaining, this _____ day of _____, _____.

By: _____ (print name)

ATTEST: By: _____ (print name)

APPROVED AS TO FORM: By: _____ (print name)

Appendix C: APA and Approval Status Letters

Approvable Pending Adoption Letter Template

[insert date]

[insert name, title]
[insert agency name]
[insert agency address]

Reference: Adoption Required to Finish Local Mitigation Plan Process

Dear [insert name]:

The [insert appropriate name] Branch of FEMA Region [insert number] Mitigation Division has determined the local mitigation plan meets all applicable FEMA mitigation planning requirements[13] except its adoption by: [insert name(s) of local governments, including special districts]

Mitigation plans may include additional content to meet Element H: Additional State Requirements or content the local government included beyond applicable FEMA mitigation planning requirements. Determination that the plan is "Approvable Pending Adoption" does not include the review or approval of content that exceeds these applicable FEMA mitigation planning requirements.

Local governments, including special districts, with a plan status of "Approvable Pending Adoption" are not eligible for FEMA mitigation grant programs with a mitigation plan requirement. The next step in the approval process is to formally adopt the mitigation plan and send a resolution to the state for submission to FEMA. Sample adoption resolutions can be found in Appendix A of the Local Mitigation Planning Policy Guide.

An approved local mitigation plan, including adoption by the local government, is one of the conditions for applying for and/or receiving FEMA mitigation grants from the following programs:

- Hazard Mitigation Grant Program (HMGP)
- HMGP-Post Fire
- Building Resilient Infrastructure and Communities
- Flood Mitigation Assistance
- Safeguarding Tomorrow Revolving Loan Fund

[13] Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended; the National Flood Insurance Act of 1968, as amended; and National Dam Safety Program Act, as amended; 44 CFR Part 201, Mitigation Planning; and Local Mitigation Planning Policy Guide (FP-206-21-0002).

- Rehabilitation of High Hazard Potential Dams Grant Program [Insert, if applicable]

We look forward to receiving the adoption resolution(s) and discussing options for implementing this mitigation plan. If we can help in any way, please contact [insert name] at [insert phone # and email address].

Participating jurisdictions that adopt the plan more than one year after APA status has been issued must either:

- Validate that their information in the plan remains current with respect to both the risk assessment (no recent hazard events, no changes in development) and their mitigation strategy (no changes necessary); or
- Make the necessary updates before submitting the adoption resolution to FEMA.

Sincerely,

[insert name]
[insert title]

Attachment: Local Mitigation Plan Review Tool

Approval Letter Template

[insert date]

[insert name, title]
[insert agency name]
[insert agency address line 1]
[insert agency address line 2]

Reference: Approval of the Local Mitigation Plan

Dear [insert name]:

In accordance with applicable[14] laws, regulations and policy, the [insert appropriate name] Branch of FEMA Region [insert number] Mitigation Division has approved the local mitigation plan for the following jurisdiction(s) [If needed for multi-jurisdictional plans, list the specific jurisdictions that have met the mitigation plan requirements, including adoption].

Mitigation plans may include additional content to meet Element H: Additional State Requirements or content the local government included beyond applicable FEMA mitigation planning requirements. FEMA approval does not include the review or approval of content that exceeds these applicable FEMA mitigation planning requirements.

The approval period for this plan is from [insert date – example: October 5, 2023] through [insert date, less one day - example: October 4, 2028].

[If HHPD and all dam risks are addressed, insert:] In addition, [insert this plan/the following jurisdictions] met the requirements for addressing all dam risks listed in the local mitigation plan. [If needed for multi-jurisdictional plans, list the specific jurisdictions that have met the HHPD requirements.]

An approved local mitigation plan is one of the conditions for applying for and receiving FEMA mitigation grants from the following programs:

- Hazard Mitigation Grant Program (HMGP)
- HMGP Post-Fire
- Building Resilient Infrastructure and Communities
- Flood Mitigation Assistance
- Safeguarding Tomorrow Revolving Loan Fund
- Rehabilitation of High Hazard Potential Dams Grant Program [Insert, if applicable]

[14] Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended; the National Flood Insurance Act of 1968, as amended; and National Dam Safety Program Act, as amended; 44 CFR Part 201, Mitigation Planning; and Local Mitigation Planning Policy Guide (FP-206-21-0002).

Having an approved mitigation plan does not mean that mitigation grant funding will be awarded. Specific application and eligibility requirements for the programs listed above can be found in each FEMA grant program's respective policies and annual Notice of Funding Opportunities, as applicable.

A draft of the next plan update must be submitted before the end of the approval period. Remember to allow sufficient time to secure funding as well as for the update process, including the review and approval process. Please include time for any revisions, if needed, and for your jurisdiction to formally adopt the plan after the review, if not adopted prior to submission. This will enable you to remain eligible to apply for and receive funding from FEMA's mitigation grant programs with a mitigation plan requirement. Local governments, including special districts, with a plan status of "Approvable Pending Adoption" are not eligible for FEMA's non-emergency assistance and mitigation grant programs with a mitigation plan requirement.

We look forward to discussing options for implementing this mitigation plan. If you would like to do so, please contact [insert name] at [insert phone # and email address].

Sincerely,

[insert name]
[insert title]

Attachment: Local Mitigation Plan Review Tool

Appendix D: Amendment and Joining Procedures

A mitigation plan may need to be amended after it is approved by FEMA (or a state that was delegated approval authority under a PAS Agreement) and adopted by the local government(s). Amending an approved and adopted plan does not necessarily result in the need to reevaluate the entire plan against all requirements. FEMA expects local governments to conduct regularly scheduled reviews and amendments to their mitigation plan. This may result in modifications to the risk assessment or adding/removing mitigation actions, especially in preparation for submitting applications to FEMA for assistance and ensuring the project conforms with the mitigation plan. Participants are encouraged to keep the state and FEMA informed, but these amendments do not need to be reviewed and approved by the state and FEMA. If these changes identify new mitigation actions that might be eligible for FEMA assistance programs, then advise FEMA and the state. FEMA will acknowledge and note the receipt of the added action(s), where appropriate, but does not need to formally review or approve the action(s).

In addition, after a multi-jurisdictional mitigation plan has been adopted and approved by FEMA, other jurisdictions may wish to "join" the mitigation plan. Jurisdictions may be added to an existing, approved mitigation plan only if the conditions below are met.

- The jurisdiction asking to be included is within the boundaries of, or adjacent to, the area covered by the multi-jurisdictional mitigation plan.
- The organization responsible for preparing and submitting the multi-jurisdictional mitigation plan to the state and FEMA agrees with adding the requesting jurisdiction(s) to the mitigation plan.
- When the multi-jurisdictional mitigation plan was developed, the risk assessment included an analysis of the natural hazards that have the potential to affect the additional jurisdiction(s).

If all three conditions are not met, the jurisdiction may develop its own mitigation plan. If these conditions can be met, three options exist to add jurisdictions to an approved mitigation plan. For any of these options, each jurisdiction joining a multi-hazard planning process and seeking to receive approval from FEMA for a mitigation plan must satisfy all of the local mitigation plan requirements in 44 CFR § 201.6 and this guide at time of approval.

Option 1 - Participating jurisdiction that did not adopt the plan within one year of the Approved Pending Adoption (APA) date

This option is best suited to local jurisdictions that participated throughout the plan's development, but failed to adopt the plan within one year after the APA date. Participating jurisdictions adopting the plan more than a year after the APA date must either:

- Validate that the information in the plan remains current with respect to both the risk assessment (no recent hazard events, no changes in development) and mitigation strategy (no changes necessary); or
- Make the necessary updates before submitting the adoption resolution to state and FEMA.

However, this late adoption does not affect the plan expiration date. The plan will still expire five years from the date the first adoption was received.

Option 2 – Adding a jurisdiction that did not participate in the original planning process

This option is best suited to a multi-jurisdictional mitigation plan that has been recently approved by FEMA (and thus most of the plan's five-year approval period remains). In this case, the jurisdictions that participated in the multi-jurisdictional planning process are not required to take any action. Plan content specific to any new jurisdiction is included in a new annex or appendix to the existing mitigation plan, and no other changes are made to the previously approved mitigation plan.

The following actions must be taken to add new jurisdictions to an existing multi-jurisdictional mitigation plan and enable them to receive approval as part of the mitigation plan:

1. The requesting jurisdiction(s) must review the multi-jurisdictional hazard analysis and determine if any additional hazards that have not been addressed threaten the jurisdiction(s). If none exist, the jurisdiction(s) must document their review process and state that no additional hazards exist. If the review reveals additional hazards, the jurisdiction(s) must analyze the risks they face associated with those hazards and include this analysis in their written appendix to the multi-jurisdictional mitigation plan. The existing risk assessment cannot be resubmitted without this additional documentation.
2. The requesting jurisdiction(s) must document their agreement with the stated mitigation goals of the multi-jurisdictional mitigation plan. Additional goals specific to the requesting jurisdiction may be added. Each additional jurisdiction must also develop a list of proposed mitigation actions appropriate for that jurisdiction. These can include the common actions outlined in the multi-jurisdictional mitigation plan but must include specific mitigation actions for each profiled hazard for the jurisdiction itself.
3. The requesting jurisdiction(s) must document the involvement of both the general public and the local government in the planning process, in accordance with 44 CFR § 201.6. The level of participation by the additional jurisdiction(s) must be consistent with those in the multi-jurisdictional mitigation plan.
4. The annex or appendix, along with the multi-jurisdictional mitigation plan and correspondence of concurrence from the agency or organization responsible for the mitigation plan, must be submitted to the state for formal review. When the state finds the mitigation plan approvable, it will forward it to FEMA. When FEMA's review finds the mitigation plan “approvable pending adoption,” the new jurisdiction can officially adopt the full mitigation plan and its jurisdiction-

specific annex or appendix and submit the mitigation plan in final form through the state to FEMA for approval.

The mitigation plan expiration date for the added jurisdictions will be the date on which the originally approved multi-jurisdictional mitigation plan expires. This means that the added jurisdictions will have less than the entire five-year plan approval period before they will need to engage in the required update of the full multi-jurisdictional mitigation plan.

Option 3 - Revise and Update Full Plan

This option is best suited to situations in which new jurisdictions are added to the multi-jurisdictional mitigation plan more than one year into the approval period of the mitigation plan. In this case, the organization responsible for the mitigation plan determines that it is an appropriate time to begin the plan update process, and the new jurisdiction(s) can participate in that update with the original jurisdictions.

Appendix E: Acronyms and Definitions

List of Acronyms and Abbreviations

APA	Approvable Pending Adoption
BRIC	Building Resilient Infrastructure and Communities
CFR	Code of Federal Regulations
CRS	Community Rating System
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
FMA	Flood Mitigation Assistance
HHPD	High Hazard Potential Dam
HMA	Hazard Mitigation Assistance
HMGP	Hazard Mitigation Grant Program
NFIP	National Flood Insurance Program
PAS	Program Administration by States
PPD	Presidential Policy Directive
PRT	Plan Review Tool
Risk MAP	Risk Mapping, Assessment and Planning
RL	Repetitive Loss
SHMO	State Hazard Mitigation Officer
SRL	Severe Repetitive Loss
U.S.C.	United States Code

List of Definitions

Analyzing a comprehensive range means considering mitigation alternatives spanning all types of solutions. These may include local plans and regulations, structure and infrastructure projects, natural systems protection, and education and awareness programs. This analysis helps a jurisdiction select actions for implementation, based on each jurisdiction's capabilities, as well as the social, technical and economic feasibility of the action.

Approvable Pending Adoption means that the plan has met the elements in the Local Plan Requirements but has not yet been officially adopted by the participating communities.

Assets are determined by the community and include, but are not limited to: people; structures; systems; natural, historic, and cultural resources; and/or activities that have value to the community.

Changes in development means recent development (for example, construction completed since the last plan was approved, development planned or under consideration by the jurisdiction), or conditions that may affect the risks and vulnerabilities of the jurisdictions (for example, declining populations or projected increases in population, or foreclosures). This can also include changes in local policies, standards, codes, regulations, land use regulations and other conditions

Community Lifelines are the most fundamental services in the community that, when stabilized, enable all other aspects of society to function. The integrated network of assets, services and capabilities that provide community lifeline services are used day to day to support recurring needs. Lifelines enable the continuous operation of critical government and business functions and are essential to human health and safety or economic security, as described in the National Response Framework, 4th Edition.

Community resilience is the ability of a community to prepare for and adapt to anticipated hazards and withstand and recover rapidly from disruptions. Activities such as disaster preparedness (which includes prevention, protection, mitigation, response and recovery), are key steps to resilience.

Discussion means a narrative or other materials that provide context on a section of the plan.

Document means to provide factual evidence for how the participants developed/updated the plan.

Evaluating means assessing the effectiveness of the plan at achieving its stated purpose and goals.

Extent is defined as the range of anticipated intensities of the identified hazards. The information must relate back to each of the plan participants or the planning area, depending on the hazard. Extent is most commonly expressed using various scientific scales.

Goals are broad, long-term policy and vision statements that explain what is to be achieved by implementing the mitigation strategy.

Hazard mitigation means any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards.

Impacts are the consequences or effects of each hazard on the participant's assets identified in the vulnerability assessment. For example, impacts could be described by referencing historical disaster damages with an estimate of potential future losses (such as percentage of damage vs. total exposure).

Incorporate means to reference or include information from other existing sources to form the content of the mitigation plan.

Integrate means to include hazard mitigation principles, vulnerability information and mitigation actions into other existing community planning to leverage activities that have co-benefits, reduce risk and increase resilience.

Involvement means being engaged and actively participating in the development of the plan; providing input and directly providing, affecting or editing plan content as the representative of the participating jurisdiction(s) or organization.

Local government is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribe or authorized tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity (44 CFR § 201.2).

Location is defined as the unique geographic boundaries within the planning area, or assets outside of geographic boundaries that may be affected by the identified hazard. Maps are an efficient way to illustrate location. However, location may be described through plan narratives or other formats.

A **mitigation action** is a measure, project, plan or activity proposed to reduce current and future vulnerabilities described in the risk assessment.

Monitoring means tracking the implementation of the plan over time. For example, monitoring may include a system for tracking the status of the identified hazard mitigation actions.

Natural hazards are a source of harm or difficulty created by a meteorological, environmental or geological event. Natural hazards, such as flooding and earthquakes, impact the built environment, including dams and levees.

An **opportunity to be involved** in the planning process means that these stakeholders are invited to be engaged or are asked to provide information or input to inform the plan's content.

Participant means any local government or entity developing or updating a local mitigation plan.

Participation means being engaged and having the chance to provide input on the plan. It can be defined and met in a variety of ways (such as attendance at meetings, reviewing and commenting on drafts, etc.).

Plan expiration date means the date after which the participating jurisdiction(s) must update the plan and have it reapproved by FEMA. FEMA sets this date at five years after the plan approval date. For multi-jurisdictional plans, this date is the same for all participating jurisdictions. The plan expiration date is stated on the signed FEMA approval correspondence.

Planning mechanisms refers to the governance structures used to manage local land use development and community decision-making, such as budgets, comprehensive plans, capital improvement plans, economic development strategies or other long-range plans.

Probability of future hazard events means the likelihood of the hazard occurring or reoccurring. It may be defined in historical frequencies, statistical probabilities, hazard probability maps and/or general descriptors (e.g., unlikely, likely, highly likely). If general descriptors are used, they must be quantified or defined in the plan. For example, "highly likely" could be defined as "100% chance of occurrence next year" or "one event every year."

Regulatory flood mapping products are intended to be used as the basis for official actions required by the NFIP.

Repetitive loss structure means one covered under an NFIP flood insurance policy that (1) has incurred flood-related damage on two occasions, in which the cost of repair, on average, equaled or exceeded 25% of the value of the structure at the time of each such flood event; and (2) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage. (44 CFR § 77.2(i)).

Risk for the purpose of hazard mitigation planning is the potential for damage or loss created by the interaction of natural hazards with assets, such as buildings, infrastructure or natural and cultural resources.

Severe repetitive loss structure means one that is covered under an NFIP flood insurance policy and has incurred flood-related damage (1) for which four or more separate claims have been made under flood insurance coverage, with the amount of each claim (including building and contents payments) exceeding $5,000 and with the cumulative amount of such claims payments exceeding $20,000; or (2) for which at least two separate flood insurance claims payments (building payments only) have been made, with cumulative amount of such claims exceeding the value of the insured structure. (44 CFR § 77.2(j))

Updating means reviewing and revising the plan at least once every five years.

Vulnerability is a description of which assets, including structures, systems, populations and other assets as defined by the community, within locations identified to be hazard-prone, are at risk from the effects of the identified hazard(s).

Whole community is defined as a focus on enabling the participation in national preparedness activities of a wider range of players from the private and nonprofit sectors, including nongovernmental organizations and the general public, in conjunction with the participation of all levels of government in order to foster better coordination and working relationships.

Appendix F: Code of Federal Regulations

Disclaimer: This appendix presents excerpts from 44 CFR Part 201 for standard and enhanced state mitigation plans. These are excerpts from 44 CFR Part 201 organized here for ease of reference as they align with the policy requirement. The regulations in their entirety can be found in the Electronic Code of Federal Regulations

Element A: Planning Process

This table presents the regulatory citations for local mitigation plans. Note: This is not the full regulatory text.	
Requirement	**CFR Language**
§201.6(b)	An open public involvement process is essential to the development of an effective plan. In order to develop a more comprehensive approach to reducing the effects of natural disasters, the planning process shall include:
§201.6(b)(1)	(1) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval;
§201.6(b)(2)	(2) An opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and non-profit interests to be involved in the planning process; and
§201.6(b)(3)	(3) Review and incorporation, if appropriate, of existing plans, studies, reports, and technical information.
§201.6(c)(1)	The plan shall document the planning process used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved.

Element B: Risk Assessment

This table presents the regulatory citations for local mitigation plans. Note: This is not the full regulatory text.	
Requirement	**CFR Language**
§201.6(c)(2)(i)	The risk assessment shall include a description of the type, location, and extent of all natural hazards that can affect the jurisdiction. The plan shall include information on previous occurrences of hazard events and on the probability of future hazard events.
§201.6(c)(2)(ii)	The risk assessment shall include a description of the jurisdiction's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the community. All plans approved after October 1, 2008 must also address NFIP insured structures that have been repetitively damaged by floods. The plan should describe vulnerability in terms of:
§201.6(c)(2)(ii)(A)	(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;
§201.6(c)(2)(ii)(B)	(B) An estimate of the potential dollar losses to vulnerable structures identified in … this section and a description of the methodology used to prepare the estimate.
§201.6(c)(2)(ii)(C)	(C) Providing a general description of land uses and development trends within the community so that mitigation options can be considered in future land use decisions.
§201.6(c)(2)(iii)	For multi-jurisdictional plans, the risk assessment section must assess each jurisdiction's risks where they vary from the risks facing the entire planning area.

Element C: Mitigation Strategy

This table presents the regulatory citations for local mitigation plans. Note: This is not the full regulatory text.	
Requirement	**CFR Language**
§201.6(c)(3)	The plan shall include a mitigation strategy that provides the jurisdiction's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs, and resources, and its ability to expand on and improve these existing tools.
§201.6(c)(3)(i)	The hazard mitigation strategy shall include a description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.
§201.6(c)(3)(ii)	The hazard mitigation strategy shall include a section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure. All plans approved by FEMA after October 1, 2008, must also address the jurisdiction's participation in the NFIP, and continued compliance with NFIP requirements, as appropriate.
§201.6(c)(3)(iii)	The hazard mitigation strategy shall include an action plan, describing how the action identified in paragraph (c)(3)(ii) of this section will be prioritized, implemented, and administered by the local jurisdiction. Prioritization shall include a special emphasis on the extent to which benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.
§201.6(c)(3)(iv)	For multi-jurisdictional plans, there must be identifiable action items specific to the jurisdiction requesting FEMA approval or credit of the plan.
§201.6(c)(4)(ii)	The plan shall include a plan maintenance process that includes a process by which local governments incorporate the requirements of the mitigation plan into other planning mechanisms such as comprehensive or capital improvement plans, when appropriate.

Element D: Plan Maintenance

This table presents the regulatory citations for local mitigation plans. Note: This is not the full regulatory text.	
Requirement	**CFR Language**
§201.6(c)(4)(i)	The plan maintenance process shall include a section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan within a five-year cycle.
§201.6(c)(4)(ii)	The plan shall include a process by which local governments incorporate the requirements of the mitigation plan into other planning mechanisms such as comprehensive or capital improvements, when appropriate.
§201.6(c)(4)(iii)	The plan maintenance process shall include a discussion on how the community will continue public participation in the plan maintenance process.

Element E: Plan Update

This table presents the regulatory citations for local mitigation plans. Note: This is not the full regulatory text.	
Requirement	**CFR Language**
§201.6(d)(3)	A local jurisdiction must review and revise its plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit if for approval within five years in order to continue to be eligible for mitigation project grant funding.

Element F: Plan Adoption

This table presents the regulatory citations for local mitigation plans. Note: This is not the full regulatory text.	
Requirement	**CFR Language**
§201.6(c)(5)	The plan shall include documentation that the plan has been formally adopted by the governing body of the jurisdiction requesting approval of the plan (e.g., City Council, County Commissioner, Tribal Council). For multi-jurisdictional plans, each jurisdiction requesting approval of the plan must document that it has been formally adopted.

Appendix G: High Hazard Potential Dams Grant Program Mitigation Plan Requirement

The mitigation planning requirements of the Rehabilitation of High Hazard Potential Dams grants were developed in consultation with the National Dam Safety Review Board, in accordance with the National Dam Safety Act, as amended in December 2020.

This table presents the statutory citations for local mitigation plans. Note: This is not the full statutory text.	
Requirement	**Unites States Code (U.S.C.) Language**
Requirement **33 U.S.C. § 467f–2 (d)(2)(B)**	Beginning not later than two years after the date on which the Administrator publishes criteria for hazard mitigation plans under paragraph (3), demonstrate that the Tribal or local government with jurisdiction over the area in which the dam is located has in place a hazard mitigation plan that includes all dam risks; and complies with the Disaster Mitigation Act of 2000 (Public Law 106–390; 114 Stat. 1552).







Local Mitigation Planning Handbook

June 2025

FEMA

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Introduction

Mitigation planning provides a framework local governments can build on to lessen the impacts of natural disasters. By encouraging whole-community involvement, assessing risk and using a range of resources, local governments can reduce risk to people, economies and natural environments. This Local Mitigation Planning Handbook (Handbook) guides local governments, including special districts, as they develop or update a hazard mitigation plan. The Handbook will:

- Help local governments meet the requirements in the Local Mitigation Planning Policy Guide (the Guide) and Title 44 of the Code of Federal Regulations (CFR) for FEMA approval. An approved, adopted mitigation plan is a gateway to apply for FEMA Hazard Mitigation Assistance (HMA) and High Hazard Potential Dam (HHPD) grant programs.

- Provide useful ideas and approaches that aid communities in reducing vulnerabilities and long-term risk from natural hazards and disasters through planning.

The Handbook is a companion to the Guide. The Guide helps local governments understand the requirements in the CFR. It also assists state and federal officials who provide training and technical assistance to local governments during their review and approval of local plans. The Handbook, on the other hand, gives advice and approaches for developing these plans.

Key Terms

Hazard Mitigation is any sustained action taken to reduce or eliminate long-term risk to life and property from hazards.

Mitigation Planning is a community-driven process to help state, local, tribal and territorial (SLTT) governments plan for hazard risk. By planning for risk and setting a strategy for action, governments can reduce the negative impacts of future disasters.

Community Resilience is the ability of a community to prepare for and adapt to anticipated hazards and withstand and recover rapidly from disruptions. Activities such as disaster preparedness (which includes prevention, protection, mitigation, response and recovery) are key steps to resilience.

Community Lifelines are the most fundamental services in the community that, when stabilized, enable all other aspects of society to function. The integrated network of assets, services and capabilities that make up community lifelines are used day to day to support recurring needs. Lifelines enable the continuous operation of critical government and business functions and are essential to human health and safety or economic security, as described in the National Response Framework, 4th Edition (October 28, 2019).

Handbook Format and Organization

The mitigation planning process is slightly different for each SLTT government. However, no matter the plan type, there are four core steps in completing a hazard mitigation plan or plan update. Within each step there are tasks which, taken together, help to build a hazard mitigation plan.

This handbook is organized around the four steps and nine recommended tasks for developing a local hazard mitigation plan (Figure 1). Some tasks can be completed at the same time. Others depend on completing earlier tasks. Tasks 1 through 3 set up the process and people needed to complete the remaining tasks. They also advise on the best ways to document the planning process. Tasks 4 through 8 explain the specific analyses and decisions that need to be completed and recorded in the plan. Task 9 provides resources for carrying out your plan.



Figure 1: Local Mitigation Planning - Steps and Tasks.

In addition to its narrative, this Handbook uses three kinds of callout boxes to explain core concepts, provide examples, and share resources.

Blue Callout Boxes: Context and Extra Help

Blue callout boxes provide extra information that augments the narrative of each task. These boxes include tips and tricks, spotlights and insights for the reader.

Green Callout Boxes: Policy Connections

Green callout boxes highlight connections between the Handbook and the Guide. Each green box appears at the end of a section related to a specific element of the Guide. For example, Task 3, Create an Outreach Strategy, helps a plan meet Element A1 in the Guide.

Gray boxes: Case Studies

Grey callout boxes present case studies. These case studies provide examples of how an idea or component has been carried out in the real world by local communities.

The Handbook also includes the following annexes:

- Annex A: Resources for Resilience
- Annex B: Worksheets, Samples and Starter Kits
- Annex C: Local Mitigation Plan Review Tool

Mitigation and the Emergency Management Cycle

Hazard mitigation is the cornerstone of emergency management. It is the ongoing effort to lessen the impact that disasters can have on people and property. Without mitigation, the same people, property and community lifelines are affected over and over again.

The emergency management cycle generally has four phases:

- **Preparedness** is when we develop or update activities, programs and systems before an event happens. These activities are often tested (or exercised) in non-emergency situations. This tests their effectiveness. Emergency managers also assess potential risks, hazards and vulnerabilities in this phase.
- **Response** focuses on the immediate and short-term effects of a disaster. It is usually focused on life safety and preventing immediate damage.
- **Recovery** is a long-term phase that looks to return a community to normal, or to a more resilient state, after a disaster.
- **Mitigation** focuses on building (or rebuilding) in ways that reduce the risk more permanently. It is an activity that can occur at any point in the emergency management cycle. For example, communities can undertake mitigation actions before a disaster (the preparedness phase) or while rebuilding after a disaster (the recovery phase).

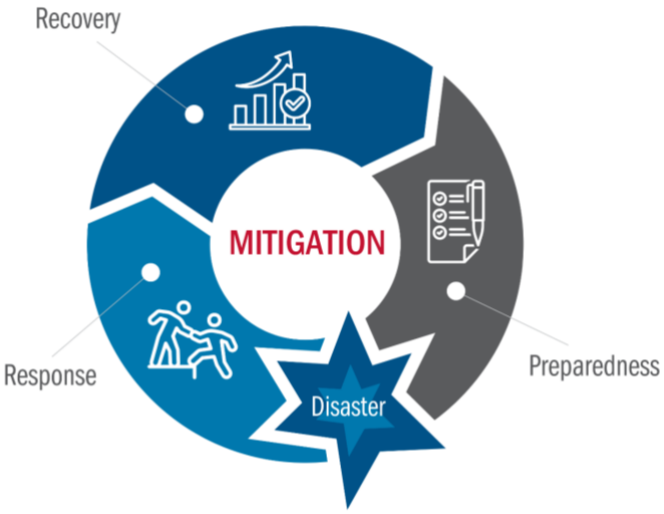


Figure 2: The emergency management cycle.

A core responsibility of local governments is to protect health, safety and public welfare. Investing in mitigation supports this responsibility. According to the National Institute of Building Sciences' Natural Hazard Mitigation Saves 2019 report, every $1 in federal grants invested in mitigation can save up to $6. Mitigation can:

- Protect public safety and prevent loss of life and injury.
- Build resilience to current and future disaster risks.
- Prevent damage to a community's economic, cultural and environmental assets.
- Reduce operational downtime and speed up the recovery of government and business after disasters.
- Reduce the costs of disaster response and recovery, as well as the exposure to risk for first responders.
- Help achieve other community goals, such as protecting infrastructure, preserving open space and boosting economic resilience.

Mitigation Builds Resilience

Disasters can cause loss of life, damage buildings and infrastructure, and have devastating effects on a community's economic, social and environmental well-being. Natural hazard risk information that is accurate, comprehensive, and produced or endorsed by an authoritative source can help decision makers better assess their community's risk.

The mitigation plan provides a ready-made opportunity for communities to account for future hazard risks in their planning. The plan's risk assessment must include the probability of future hazard

events. At its most basic, probability is the likelihood of a hazard happening. The probability description must discuss any hazard characteristics that may change, such as location, extent, duration and/or frequency. The mitigation strategy is a chance to identify, evaluate and carry out actions that will reduce future hazard risks.

Across the United States, communities are working to build resilience to hazards such as extreme heat, drought, flooding and wildfires. The mitigation plan also can and should be integrated with other community resilience activities, like economic development planning and transportation planning.

Mitigation Planning is Risk-Informed Decision Making

Mitigation works best when it is based on a long-term plan that is developed before a disaster. By assessing risk and vulnerability to hazards, mitigation planning identifies long-term local policies and actions that communities can take to increase resilience. Effective planning also weighs input from a wide range of stakeholders and the public. Mitigation planning:

- Encourages community leaders to choose actions to reduce risk that stakeholders and the public will support.
- Focuses resources on the greatest risks and vulnerabilities, including where they are needed the most, i.e. areas and populations disproportionately affected by disasters.
- Builds partnerships with stakeholders. This deepens the pool of data and resources, which can help reduce workloads and achieve shared community objectives.
- Boosts awareness of threats and hazards, including their risks and the community's vulnerability to those risks.
- Aligns risk reduction with other community goals and programs like capital improvements.
- Supports addressing community needs, for example the elderly, the disabled, etc.

Legislative Basis for Mitigation Planning

The primary legislative authority that provides the legal authority for mitigation is derived from the Stafford Act, as amended by the Disaster Mitigation Act of 2000. Section 322 of the Stafford Act specifically addresses mitigation planning. This establishes the requirement that state and local governments prepare hazard mitigation plans as a precondition for receiving FEMA mitigation project grants.

Planning is the Foundation for Mitigation Investments

Local mitigation plans are investment strategies that communities create through the planning process. Plans are used to identify hazards, assess risks and vulnerabilities, and develop strategies. The planning process is community-based and risk-informed. It closely aligns with the principles laid out by the Comprehensive Preparedness Guide 101. The process shows the whole community why it should mitigate. It also helps communities develop actions based on their current and future risks and capabilities.

Guiding Principles

The mitigation plan belongs to the local community. While FEMA has the authority to approve plans so local governments can apply for mitigation project funding, there is no required format for the plans. FEMA reviews what is in the plan, not how it is organized. When developing the mitigation plan, keep the following principles from the Guide in mind.

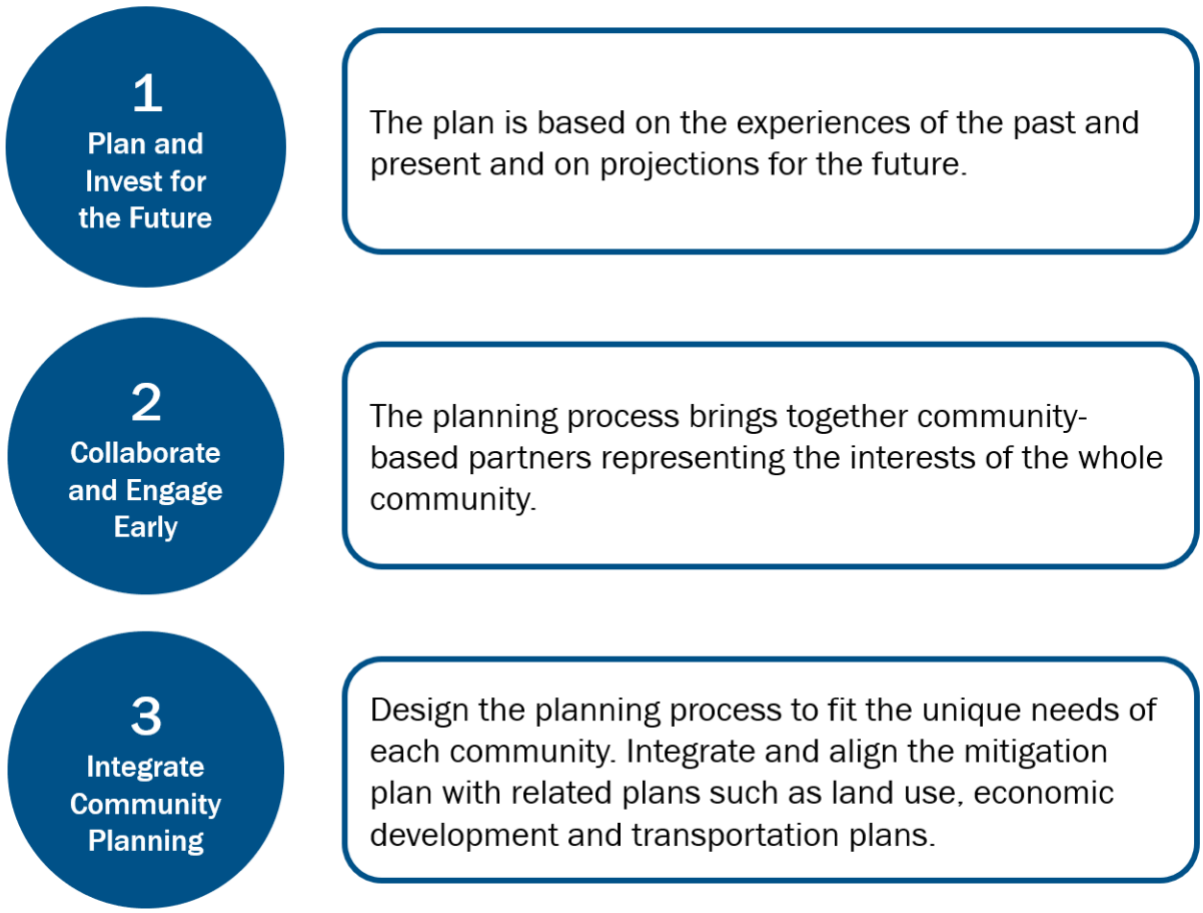


Figure 3: Guiding principles for local mitigation plans.

Task 1. Determine the Planning Area, Process and Resources

1.1. Initial Considerations

1.1.1. New Plan or Plan Update

Once you decide to create a hazard mitigation plan, it's time to set up the planning process. The foundation of all mitigation plans is an open, well-documented planning process with community buy-in. A successful process brings many partners together. They will discuss your community's experience with natural hazards and how to meet your risk reduction needs.

The first question that needs to be answered when developing a mitigation plan is: Are you updating a plan or creating a new one? There are instances where participants in a multi-jurisdictional plan decide to create their own plan, resulting in a "new" plan. Additionally, single jurisdictions may see the value of participating in an existing regional plan that is being updated. All local situations are unique and deciding on the type of plan to develop will depend on the needs of the local community.

1.1.2. Confirm Participant(s) and Planning Area

Plans can be single- or multi-jurisdictional. Multi-jurisdictional plans require all participants to meet certain requirements to adopt. Multi-jurisdictional plans may include local and tribal governments, and special districts.

Communities may choose to develop their own plan or work with other communities. No matter the configuration, all participants must meet the mitigation planning requirements.

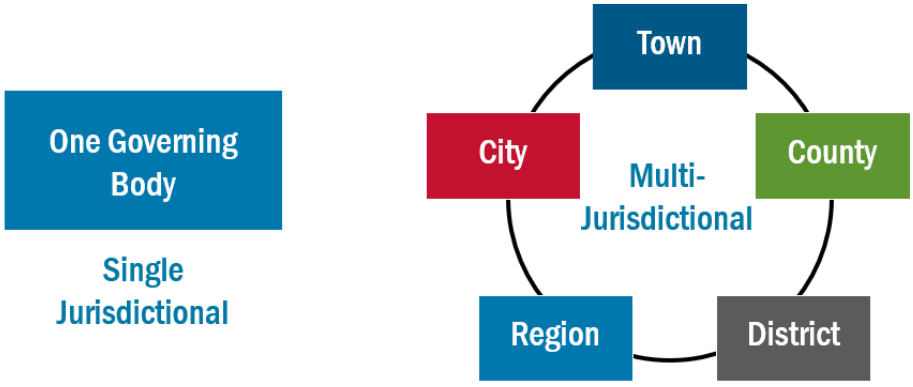


Figure 4: Single-jurisdictional plans have only one governing body. Multi-jurisdictional plans cover many local governments in one plan.

Both single- and multi-jurisdictional plans have benefits and challenges. Single-jurisdiction plans offer independence in how the community will design and conduct its planning process. This type of plan can be suitable for any community, large or small.

Jurisdiction, Community and Participants

The Guide and the Handbook use the terms “jurisdiction,” “community” and “participant” interchangeably. These terms refer to any local government developing or updating a local mitigation plan. 44 CFR § 201.2 defines "local government" as “any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under state law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribe or authorized tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity.”

In some cases, a participant’s service area or footprint may cross political boundaries. Examples of this include a fire protection district or a utility district.

Multi-jurisdictional plans have certain requirements that help to make sure each community goes through its own local planning process, in addition to the overall group effort. The group planning process will be led by the coordinating entity, referred to as the plan owner, and will include representatives from each jurisdiction. The plan owner takes the lead for coordinating across all participants and with the state and FEMA. Each jurisdiction will take the information shared at group meetings, pass the information on, and collect information through their own local planning process. Each participant must assess their unique risk to identified hazards and identify their own capabilities to reduce those risks. Each must develop their own actions to reduce the risks specific to their community.

Table 1: Benefits and Challenges of Multi-Jurisdictional Plans

Benefits of a Multi-Jurisdictional Plan	Challenges of a Multi-Jurisdictional Plan
▪ Improves communication and coordination. ▪ Enables comprehensive and regional mitigation approaches. ▪ Maximizes economies of scale by sharing costs and capabilities. ▪ Avoids duplication of effort. ▪ Provides organizational structure. ▪ Broader chances for participation.	▪ Reduces individual control over the process. ▪ Involves coordination and administration to track multiple independent local governments, especially when it comes time for each local government to adopt the plan. ▪ Requires organizing large amounts of information, including individualized mitigation strategies, into a single document.

If you find that a multi-jurisdictional planning effort is the best option for your community, then decide if it is best to join an existing planning effort or take the lead on initiating a multi-jurisdictional plan. Plan owners for multi-jurisdictional plans typically include counties, rural or metropolitan planning organizations and planning districts. Multi-jurisdictional planning works best when jurisdictions:

- Share boundaries and have economic ties (workplaces and workforce housing, transportation, critical infrastructure, etc.).
- Face similar threats or hazards.
- Work under the same authorities.
- Have similar needs and capabilities.
- Have worked well together in the past.

You will need to partner with neighboring jurisdictions that could be Tribal governments and/or quasi-governmental agencies. These may include special districts that own and operate critical infrastructure or that would like to apply for FEMA mitigation project grants. Special districts have an interest in reducing threats and hazard impacts as many serve customers across multiple jurisdictions. This is especially true if they provide services that are vital to recovery efforts.

Tribal Governments in Multi-Jurisdictional Plans

A federally recognized tribal government may also choose to participate in a multi-jurisdictional plan. However, the Tribe must meet the requirements specified in 44 CFR §201.7, Tribal Mitigation Planning, which are slightly different from the local planning requirements. Tribal and local governments that are not federally recognized must meet the local mitigation planning requirements specified in 44 CFR §201.6.

Indian Tribal government means any federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

The planning area refers to the geographic area the plan covers. Generally, the planning area follows jurisdictional boundaries. These can include cities, townships, counties and planning districts. However, watersheds or other natural features may also define planning areas. Communities may choose this approach when hazards create similar risks across jurisdictional boundaries.

The State Hazard Mitigation Officer (SHMO) or state emergency management agency can help communities determine the appropriate planning area, too. State planning goals and funding

priorities may guide this decision. Keep in mind that the scale of the planning area should be meaningful to participants to form an enduring resilience framework. For example, consider aligning with established regional planning or economic development districts to leverage their planning expertise.

After identifying the planning area and participating jurisdictions, it helps to get a written commitment from all participants. Ask the jurisdictions to sign a Voluntary Participation Agreement (VPA) at the start of the planning process. The VPA should outline requirements for each participating jurisdiction. You can find a sample VPA for a multi-jurisdictional planning team in Annex B.

1.1.3. Review Previous Plan and Scope Update

If you are updating your mitigation plan, read your community's previously approved plan and the Plan Review Tool (PRT). The plan is a baseline for understanding and updating hazards, risks and community profiles. It can help you identify opportunities for improvement. Reading the previously approved plan can also aid in identifying areas that may need more time and resources.

If you have a previously approved plan, FEMA completed Section 2 of the PRT during their review process. It notes plan strengths and identifies opportunities for improvement. Let this guide your priority areas for the plan update. Incorporating FEMA's feedback can help you improve each subsequent version of a plan.

Considerations for Plan Updates

Element E of the Guide lists specific requirements for plan updates. These requirements ask communities to think about how circumstances have changed since their previous plan was adopted. You can use these questions and considerations throughout your plan maintenance cycle. However, they are especially crucial for the formal 5-year update.

1.2. Right-Sizing the Scope of the Planning Process

When developing a plan, it is crucial to make some key decisions about the plan's focus and what it will achieve, given the time and resources available. Not every planning process needs the same level of effort to get to an approved plan. This is called right-sizing the plan. Develop a scope of work (SOW) to outline what your planning process needs to accomplish to get to an approved mitigation plan. An SOW is part of a FEMA mitigation planning grant application, but it can also be useful even if you develop the plan without FEMA funding.

1.2.1. Preliminary Questions

When developing your SOW, use the questions in Table 2 to determine your needs. These questions can help you match the plan development's complexity to the cost and overall level of effort.

Table 2: Preliminary Considerations

Consideration Type	Key Questions
Plan Configuration	▪ Is this a new plan or a plan update? ○ What can be updated simply with information from the last 5 years? What requires significant rewriting? ○ Are there additional data that you need to gather and include? ▪ How many communities will participate and are there sufficient resources for coordination? ▪ How many agencies and partners need to participate to bring resources and ideas to the table? Are there sufficient resources for coordination?
Participant Priorities	▪ What do participants want to address? ○ What hazards are of most concern? ○ What are the problem areas in the community or region?
Overall Timeline	▪ Is there a tight turnaround for having an approved mitigation plan, such as an upcoming grant deadline, or is there some additional time?
Needed Support	▪ Can this be done in-house with existing personnel? ▪ Can a local college or university assist with the planning process or data analysis? ▪ Is the level of expertise needed outside of the community's skillset? ▪ Will you need contractor support?
Cost	▪ How much will the process (plan development or update) cost, considering costs all the way through plan adoption and approval by FEMA? ○ Do you need to apply for funding? ○ What federal and state programs exist that can help pay for the plan's development?

1.2.2. Schedule Considerations

Preparing a mitigation plan takes time. Consider a timeline of at least 18 months for taking a plan from initiation through approval. With an 18-month timeline, it is important to be clear about the overall level of effort up front with all participants. Start with forming an SOW that is right-sized for the needed planning effort and can accommodate all participants. Get signed VPAs from all participating jurisdictions who plan to engage with and adopt the final plan.

It is also important to account for the parts of the process that add time, such as:

- Finding and pursuing funding and/or in-kind support for the planning process and resulting documents.
- Finding and hiring a contractor, if needed, and following all applicable procurement rules and processes.
- State and FEMA review. Budget at least 6 months for this. Your review may not take this long, but it is better to plan for a longer review period to avoid your plan expiring.
- Adoption and FEMA approval. Coordination and correspondence around adoption and approval can also add time to your schedule.

Mitigation plans are approved for a period of 5 years. To keep grant eligibility, the plan must be updated and approved every five years. When scoping a plan update, develop the SOW and pursue funding no later than the third year of the plan's approval period. It can take up to 12 months to secure funding. This means that pursuing funding in the third year will allow plenty of time to get to an approved plan. These general timelines also apply to new plans. Pursue grant funding 3 years before you want to have an approved plan. Remember it may take at least 18 months to develop a plan.

Mitigation plans can be developed in a multitude of ways. Whether funding a contractor to help complete the work, or a commitment of time and resources, there is a cost to mitigation planning. Communities may choose to develop plans themselves, relying on local funds, time, and effort. Other communities may lack the necessary skillsets to develop a plan themselves. In those cases, FEMA HMA programs can provide funding to develop a mitigation plan. Coordinating with the SHMO can help clarify which path might work best for a particular participant.

For more information on scoping considerations, review the Considerations for Local Mitigation Planning Grant Subapplications Job Aid.

1.3. Organizing Resources

After you have determined your planning area, outlined the SOW, and made crucial planning process decisions, it is time to organize your resources to support the planning process. Resources can be your partners, data resources, plans and studies, and technical assistance.

1.3.1. People and Partnerships

The planning process is powered by staff, stakeholders and volunteers from across the private, public and non-governmental sectors. Many partnership options can exist within a planning area. These options can be based on current planning projects, relationships and partnerships. Think about whether your community works with regional organizations, councils of government, or other established multi-jurisdictional partnerships for planning activities.

Creating a mitigation plan does not require formal training in community planning, engineering or science. However, you should include subject matter experts in the planning process. Consider how personnel or contractors can help with:

- Identifying hazards, assessing vulnerabilities, and understanding significant risks.
- Facilitating meetings, involving partners and the public, and decision-making activities.
- Forming an organized and functional plan with maps or other graphics.

You have many options when considering outside help for plan development. You could contract with a regional planning agency, local college or state university. You may also want to reach out to another community that has already finished the planning process for advice. Before getting outside help from any of these sources, consider:

- The SOW, including administration, coordination and engagement.
- The expertise, type and extent of help needed.
- The level of interaction between support services, other members of the planning team, partners and the public.

Private consultants are another resource. They can help you coordinate, manage and carry out the mitigation planning process. Consultants can support facilitation, administration and documentation of the planning process. All information should be provided by and approved by each participant. If your community decides to hire a consultant, consider looking for a professional planning firm. Any support services for the planning process should:

- Recognize the unique demographic, geographic, technical and political considerations of each participating community.
- Show knowledge or experience with land use and community development.
- Know all the policies and regulations that apply to the mitigation plan. This should include federal law, FEMA regulations and policies, state laws and local ordinances.
- Know that community input and public participation are key to any successful mitigation plan.
- Show familiarity with emergency management and multi-hazard mitigation as well as resilience concepts.
- Share past performance information and references

For more information on engaging the right people and partners in the planning process, see Task 2: Build the Planning Team.

1.3.2. Plans, Studies and Data

Plans, studies and data are important inputs for the planning process. The plan must document the current technical information, plans, reports and studies used in the plan. Incorporating these resources makes sure you build off of the latest research and data, which leads to a stronger, more comprehensive mitigation plan. Carefully review related documents and data. If something can help you assess your risks, vulnerabilities and capabilities or set a strategy, include it in the plan.

Policy Connection: Element A4

Does the plan describe the review and incorporation of existing plans, studies, reports and technical information?

1.3.2.1 INCORPORATING OTHER PLANNING MECHANISMS

Hazard mitigation planning, and community planning in general, does not happen in a vacuum. The mitigation plan should support and be supported by other local plans and policies. This can ensure the success of mitigation actions. It can also bolster the effectiveness of other planning mechanisms in working toward resilience. Take the time to gather these plans and policies and see how they may tie in to risk reduction.

Table 3: Planning Mechanisms that Support the Mitigation Plan

Planning Mechanism	What it Supports	What to Look For
Comprehensive, General, or Master Plan	Risk Assessment Capability Assessment	Information on hazards, development trends, goals and policies, land use plans, and other ordinances that support risk reduction
Emergency Operations Plan	Risk Assessment Capability Assessment	Data on hazards or events of concern and vulnerabilities
Economic Development Strategy or Plan	Planning Process Risk Assessment Mitigation Strategy	Existing partners; prioritized economic growth areas, growth industries and their relative risks
Emergency Action Plan (EAP) for Dams	Risk Assessment High-Hazard Potential Dam Requirements	Location and characteristics of dams; inundation maps
Land Use Ordinances	Risk Assessment Capability Assessment	Hazard-specific provisions and overall development rules

Planning Mechanism	What it Supports	What to Look For
Pre-Disaster Recovery Plan	Planning Process Risk Assessment Mitigation Strategy	Information on potential partners; risk reduction plans and strategies

Before you start the planning process, find out if other planning efforts could be aligned or integrated with the mitigation plan. This can save time and money and can also lead to better outcomes for your community. For instance, you could fold mitigation plan development into the community's process for updating their comprehensive plan, economic development plan, or community wildfire protection plan. However, keep in mind that not every planning mechanism can coordinate with your mitigation plan.

Community Rating System (CRS) Alignment

Be sure to identify and document CRS communities (or those that plan to join in the next 5 years) early in the planning process. Many CRS communities rely on their local mitigation plan updates for critical Activity 510 credit. While there are many overlaps between mitigation planning and CRS requirements, there are some differences. Knowing those differences and addressing them from the beginning will allow a community to maximize the CRS credits earned from the mitigation plan. If the mitigation plan does not meet the CRS planning requirements, you will need to develop a separate plan. Refer to FEMA's Mitigation Planning and the Community Rating System Key Topics Bulletin for more information.

More information on aligning the mitigation planning process to CRS credits can be found in the CRS crosswalk.

1.3.2.2 FEMA RISK MAPPING, ASSESSMENT AND PLANNING (RISK MAP) PRODUCTS

The Risk MAP program supports community resilience by providing data, building partnerships, and supporting long-term hazard mitigation planning. FEMA provides flood hazard and risk data products to help guide mitigation actions. These products fall into two categories: regulatory and non-regulatory.

Communities use regulatory products as the basis for official actions required by the NFIP. Traditionally, FEMA flood studies produce regulatory products for a community. These include a Flood Insurance Study (FIS) Report and Flood Insurance Rate Maps (FIRMs) that communities use for floodplain management purposes. The FIRMs are the official community maps that show special flood hazard areas and flood risk premium zones. When the NFIP completes a flood study, the data and maps are assembled into an FIS report. This report has detailed flood elevation data in flood profiles and data tables. These maps and products can be primary sources of flood data for your

local plan. It is key to understand that flood hazards are dynamic and change over time because of development, land use changes, and other variables.

Non-regulatory products go beyond the basic flood hazard information found in the regulatory products. These products provide a more user-friendly analysis of flood risks within a Risk MAP Flood Risk Project. They include:

- **Changes Since Last FIRM.** This shows changes made to the regulatory floodplain and floodway during a map update.
- **Water Surface Elevation Grids.** This dataset allows the user to find flood elevations for the entire floodplain.
- **Flood Depth Grids**. These illustrate the varying flood depths in flood prone areas.
- **Percent Annual Chance Grids**. These display the likelihood that a given location will flood in any single year.

Not every community receives both regulatory and non-regulatory products. The FEMA Map Service Center is the best place to find these materials. Communities should review the products available for their area when beginning or updating a mitigation plan.

1.3.3. Technical Assistance

Some parts of the planning process or plan preparation can benefit from technical assistance. If you need outside technical assistance to help form the plan, think about how to use that aid to build long-term community capabilities. Creating a mitigation plan does not require formal training in community planning, engineering or science. However, subject matter experts should be included in the planning process. Consider how personnel or contractors can help with:

- Identifying hazards, assessing vulnerabilities and understanding significant risks.
- Facilitating meetings, partner and public involvement, and decision-making activities.
- Forming an organized and functional plan with maps or other graphics.

Both states and FEMA provide training and technical assistance to local governments as a part of their mission. The state is responsible for providing training and technical assistance in applying for HMA grants and developing mitigation plans. To better understand what kind of technical assistance may be available to your local community, reach out to your SHMO.

Task 2. Build the Planning Team

2.1. Building the Planning Team

The second key task at the start of the planning process is to bring together a broad planning team. These representatives should come from each participating jurisdiction and partner organization, especially those with data, funding sources or comprehensive local knowledge. As discussed in Task 1, these planning partners have the necessary expertise to inform the plan. Additionally, partner organizations may have the authority to carry out the mitigation strategy developed through the planning process. The planning team is the core group of people responsible for:

- Developing and reviewing drafts of the plan.
- Informing the risk assessment.
- Developing the mitigation goals and strategy.
- Submitting the plan for local adoption by each participant.

Many local agencies have an interest in, and tasks related to, mitigation. The planning process should include these agencies. For example, emergency management and community planning staff in local government have unique knowledge and skills. These skillsets make them potential leaders for the planning process. Local emergency management staff know area-specific threats, hazards, risks, vulnerabilities and past occurrences. They may also have more experience working with state and federal agencies on mitigation projects and activities. Community planning staff are familiar with zoning and subdivision regulations, land use plans, economic development initiatives and resilience plans and projects, and long-term funding and planning mechanisms to carry out mitigation strategies. They may be trained to do public outreach, lead and facilitate meetings and develop a plan.

Community development and emergency management staff can lead the development of a local mitigation plan. Other departments may be able to do the same. When determining leadership, think about who has the time and resources to commit to the whole planning process. It can be helpful to designate a lead jurisdiction who is handling all the coordination for the plan. Each jurisdiction in a multi-jurisdictional plan should have a lead representative to coordinate its planning process, engage partners and conduct public outreach.

2.1.1. Multi-Jurisdictional Planning Team

If you are developing a multi-jurisdictional plan, creating a group planning team structure that allows for coordination and accountability between jurisdictions is key. If using this approach, each jurisdiction should have at least one representative on the planning team. This representative will coordinate and delegate any tasks within their part of the planning area. They should also manage

the inputs and content (including public outreach and engagement) they contribute to the plan. Each participating jurisdiction, including special districts, will need to meet the requirements to be able to adopt the plan. This means being an active participant in the planning process. It also means providing local context and detail, as well as reviewing the draft plan and providing comments.

Not every planning team will be the same. The structure of the planning team depends on the needs of local participants. Think about different types of organizational structures when you form your planning team. This could include a planning committee divided into one steering committee and one separate planning team for each participating jurisdiction. The core planning group can manage the overall plan activities. It can also directly help with the decision-making process.

Some planning teams may have a single point of contact (POC) or representative for each jurisdiction. Others may have more than one. Even if the planning team has more than one representative from a particular jurisdiction, it is a good idea to designate one lead POC for each jurisdiction. This person will report back to their departments, partners and the public on a regular basis. They will also gather feedback and input for the plan from stakeholders.

Requirements for Multi-Jurisdictional Plans

Any jurisdiction or organization may join in the planning process. However, to request FEMA's approval of the plan and thus be eligible for HMA grants, each local jurisdiction must meet all of the requirements of 44 CFR §201.6. In addition to the requirement for participation in the process, each jurisdiction in a multi-jurisdictional plan must show that they have done the following:

- Identified hazards specific to their jurisdiction and addressed specific vulnerabilities (each jurisdiction's risk likely differs from those of the entire multi-jurisdictional planning area).
- Discussed their participation in the NFIP and identified repetitive loss properties.
- Developed mitigation action items that addressed each identified hazard.
- Identified opportunities for integrating the completed plan into other planning mechanisms.
- Addressed changes in development since the last plan and how this affected vulnerability (plan updates only).
- Provided the status of all previous mitigation actions (plan updates only).
- Formally adopted the plan.
- Any participating jurisdiction that develops mitigation actions in the plan must identify what its capabilities are to support the mitigation strategy.

The mitigation plan must clearly list the jurisdictions that participated in the plan and are seeking plan approval. It also helps to include a map of the planning area with jurisdictional boundaries marked.

2.1.2. Identify Planning Team Members

When building the mitigation planning team, start with existing community organizations or committees. For mitigation plan updates, bring together as many members of the team from the last planning process as possible. Add in any new individuals or organizations. A committee that oversees the comprehensive plan or addresses issues related to land use, transportation or public facilities can be a strong foundation for your team.

Adding in a variety of planning team members can create a comprehensive view of how threats and hazards affect:

- Economic development.
- Housing, health and human services.
- Infrastructure.
- Natural and cultural resources.

You can also build on your community's Local Emergency Planning Committee (LEPC). This group deals with hazardous materials safety and may also address other threats and natural hazard issues. In small communities, LEPCs may comprise the same people and organizations that the mitigation planning team needs.

2.1.2.1 REQUIRED STAKEHOLDERS

Stakeholders are individuals or groups that a mitigation action or policy affects. Stakeholders may include businesses, private organizations and residents. Involving them in the planning process helps to gain support for the plan and identify barriers to carrying it out.

It is crucial to distinguish between those who should serve as members of the planning team and other stakeholders. Planning team members work in all stages of the planning process; stakeholders may not. However, they can advise the planning team on a specific topic. They can also give input from varied points of view in the community.

Some stakeholders **must** have the chance to be on the planning team or otherwise involved in the planning process:

- **Local and regional agencies involved in hazard mitigation activities.** Examples include public works, emergency management, local floodplain administration and Geographic Information Systems (GIS) departments.

- **Agencies that have the authority to regulate development.** Examples include zoning, planning, community and economic development departments, building officials, planning, commissions and other elected officials.
- **Neighboring communities.** Examples include adjacent local governments, including special districts and tribes, that are affected by similar hazard events. They also may share a mitigation action or project that crosses jurisdictional boundaries.
- **Businesses, academia and other private interests.** Examples include private utilities, chambers of commerce, dam owners, local or regional educational centers within the jurisdiction, or major employers that sustain community lifelines.
- **Nonprofit organizations, including community-based organizations.** It is key to bring partners to the table who can speak to the unique needs of the community. They can make sure the planning process supports these populations and includes their voices in the plan. These groups may include:
  - Faith-based organizations.
  - Disability services agencies or non-governmental organizations (NGOs).
  - Rural support agencies.
  - Health and human/social services departments.
  - Housing agencies and housing advocacy groups.

An opportunity to be involved in the planning process means that these stakeholders are invited to participate. It could also mean they are asked to share information or input to inform the plan's content. Outreach and engagement efforts should respond to the communities' specific needs. For instance, some community members may lack access to high-speed internet. As such, they may not be able to access websites, social media campaigns, email newsletters or virtual meetings.

Spotlight on High Hazard Potential Dams

The Water Infrastructure Improvements for the Nation Act added the Rehabilitation of High Hazard Potential Dams (HHPD) grant program that includes all dam risks.

To be eligible for HHPD grants, local governments must have:

- Jurisdiction over the area of an eligible dam.
- An approved local mitigation plan that includes all dam risks and complies with the Stafford Act, as amended.

When designing the planning process, localities must engage the state dam safety agency and/or dam owners. These partners will have data to support addressing and reducing risks to and from dams in the planning area. The plan must describe how these partners participated and what data they provided. To be eligible for HHPD funding, bring these partners into the planning process early and engage them often.

The Guide outlines the full HHPD requirements to have an approved local mitigation plan that includes all dam risks. Those elements include the planning process, risk assessment, etc. The full list is in Section 4.7 of the Guide. The HHPD requirements do not need to be addressed in a separate section of the plan. They can be woven into the appropriate section. For multi-jurisdictional plans, consider meeting the requirements for all participating jurisdictions, including special districts.

To meet requirement HHPD1, the local mitigation plan must:

- Describe how the local government coordinated with local dam owners and/or the state dam safety agency.
- Document the information shared by the state and/or local dam owners. Examples may include:
  - Location and size of the population at risk, as well as potential impacts to institutions and critical infrastructure/facilities/lifelines.
  - Inundation maps, EAPs, floodplain management plans and/or data, or summaries provided by dam breach modeling software, such as HEC-RAS, DSS-WISE HCOM, DSS-WISE Lite, FLO-2D, as well as more detailed studies.

2.1.2.2 COMMUNITY LIFELINE STAKEHOLDERS

Stakeholders should also include people who represent community lifelines. Community lifelines are the vital services in a community. When stabilized, they enable all other aspects of society to function. Think about the agencies or companies that represent your community's lifelines and invite them to be a stakeholder for your mitigation plan.

Table 4: Community Lifeline Stakeholder Contributions to the Plan

Lifeline	Example(s)	
Safety and Security	Law enforcement, police stations, site security, fire service, search and rescue, government service (emergency operations centers, government offices, schools, historic/cultural resources), community safety.	▪ Provide first-hand knowledge of past hazard events and response systems. ▪ Connect the mitigation plan to the Threat and Hazard Identification Risk Assessment (THIRA)

Lifeline	Example(s)	
		planning process and vice versa. ▪ Share data on lifeline locations, protection measures and capabilities that support local resilience.
Hazardous Materials	Oil and HAZMAT facilities.	
Food, Hydration, Shelter	Food distribution programs, commercial food supply chain, drinking water utilities, wastewater systems, housing and commercial facilities, animals and agriculture.	▪ Coordinate housing issues to identify risk and vulnerabilities to this sector and lifeline. ▪ Ensure the mitigation strategy directs new and redeveloped housing away from hazard areas and uses the latest building codes to maintain safe housing. ▪ Use the planning process to: ○ Understand high-risk areas and at-risk populations. ○ Increase awareness of potential funding to support housing development and maintaining Food, Water, and Shelter lifelines. ▪ Share data on lifeline locations, protection measures, and capabilities that support local resilience.

Lifeline	Example(s)	
Health and Medical	Medical care, hospitals, pharmacies, home care, public health services, emergency medical services, medical supply chain, fatality management services.	▪ Help the planning team understand underlying stressors. ▪ Help identify actions and projects that reduce risk exposure. ▪ Connect traditional health, medical and social services and mitigation funds. ▪ Integrate mitigation into the disaster recovery process. ▪ Share data on lifeline locations, protection measures, and capabilities that support local resilience.
Energy	Power grid generation, transmission, and distribution systems, fuel processing, storage, pipelines, and distribution.	▪ Identify at-risk infrastructure assets, including transportation, energy, communications, water conveyance and supply chains. ▪ Develop and prioritize mitigation actions for at-risk assets.
Transportation	Highways, roads, bridges, mass transit, railway, aviation, maritime.	
Water Systems	Potable water infrastructure, wastewater management.	▪ Identify at-risk infrastructure assets, including potable water intake, treatment, storage or distribution, and wastewater collection, storage, treatment and discharge. ▪ Integrate mitigation into water quality management processes.

Lifeline	Example(s)	
Communications	Infrastructure (wireless, cable, broadcast, satellite, internet), responder communications, alerts, warnings, and messages, financial banking services, 911 and dispatch.	▪ Integrate resilience into infrastructure investment decisions. ▪ Share data on lifeline locations, protection measures, and capabilities that support local resilience of infrastructure (highways, roads, bridges, mass transit, railway, aviation, maritime). Develop and prioritize mitigation actions for at-risk assets. ▪ Integrate resilience into infrastructure investment decisions. ▪ Share data on lifeline locations, protection measures, and capabilities that support local resilience (cable, broadcast, satellite, internet) ▪ Develop and prioritize mitigation actions for at-risk assets.

2.1.2.3 OTHER STAKEHOLDERS

Each jurisdiction may define other interested stakeholders. These depend on the unique characteristics and resources of the community. The following stakeholders are vital in mitigation planning:

- **Elected officials and planning commission members.** Elected officials are responsible for protecting the health, safety and welfare of their residents. They are often leaders or members of the governing bodies that adopt the plan. The level of support that the elected officials give to the mitigation plan's goals and actions guides the plan's progress and implementation. It also guides the resilience of the community.

- **Business leaders and large employers.** Economic resiliency drives a community's recovery after a disaster. A key part of mitigation planning is identifying the economic assets and drivers whose loss or inability to operate would severely affect the community's ability to recover from a disaster. Involve economic development officials, the local chamber of commerce and business leaders in the planning process. This can encourage them to be partners in future mitigation

work. Teaching them about local risks and vulnerabilities helps this process. Economic sector representatives invited to participate in the plan should include private businesses that sustain community lifelines. These employers could be private utilities, housing and hotel owners, television and radio stations, hospitals, pharmacies and food suppliers.

- **Regional, state and federal agencies.** Public agencies are key resources for data and technical information. These include regional planning agencies, geological surveys, forestry divisions, emergency management offices, dam safety agencies and weather service offices. These groups can work at the regional, state and federal government levels. They are key resources for data and technical information. They may also be able to provide financial assistance. These agencies may have programs that will help you meet your mitigation planning goals.

- **Cultural institutions.** Cultural institutions often have special mitigation needs. These include museums, libraries and theatres. For example, they may be in a historic building or house collections that need special protection from hazards. They also may collect records and historic information on natural disasters in your community. For more information, see Integrating Historic Property and Cultural Resource Considerations into Hazard Mitigation Planning.

- **Colleges and universities.** Like public agencies, academic institutions have key resources to aid planning efforts. These resources may include natural hazards data, GIS mapping and analysis, or research on successful ways to reduce risk. The planning team may be able to work with a local college or university to engage students in the planning process. This may also help to complete research and analysis that the mitigation plan needs. You could partner with the urban planning, geology, emergency management, geography or environmental studies departments. Participating in the mitigation planning process can also help local colleges and universities understand and reduce threat and hazard risks on their campuses.

- **Nonprofit organizations.** These groups often act as advocates for residents. They can be key to public outreach, information sharing and getting support for the plan's mitigation actions. Nonprofit organizations might include:

  - Disaster preparedness and response groups, such as the local Red Cross.
  - Parks, recreation or conservation groups.
  - Historic preservation groups.
  - Faith-based organizations.
  - Parent-teacher groups.
  - Community-based groups, such as a local food bank. Other organizations may include housing, healthcare or social services providers.

- **Neighborhood groups or community leaders**. Many communities have neighborhood and homeowners' associations that are active and engaged in community activities. These groups can share key information about local risks and possible mitigation solutions in specific areas. Both neighborhood groups and community leaders often know the specific needs of their communities. They can also share information via newsletters and meetings.

Many different stakeholders could join in the planning process. Building an outreach strategy can help you find the right contacts and contributions for each stakeholder or group. You may choose which stakeholders you contact directly, and which you include in outreach to the general public. Your choices will depend on your community's needs and the timeline for plan development.

2.1.3. Promote Participation and Buy-In

After you find potential planning team members and stakeholders, it is important to keep them engaged throughout the planning process. Getting team members with competing priorities to invest time and energy in the mitigation planning process can be difficult.

It is crucial to decide what planning team members and partners need to contribute. It is also key to decide how you will invite them to participate. When developing a plan, think about what worked and what didn't during the previous planning process. The following are ways to recruit potential team members:

- After you send an email or letter invitation, follow it up with a phone call. Talk about why their participation is needed. It will also give you a chance to answer any questions they may have.
- Send a formal invitation signed by an elected official or department head. Include a meeting agenda in the invitation. This can help to capture the interest of potential participants. It can also add a measure of structure to the planning process.
- Hold each meeting at a convenient time and place for everyone.
- Provide beverages or food at meetings to boost attendance and attention spans.

The people you invite will want to know what you expect of them. They will also want to know why their presence is important. Table 5 provides examples of how specific stakeholders can support the planning process.

Table 5: Opportunities for Stakeholders to Support the Process

Contributor	How They Can Support the Plan
Community planners	▪ Help the planning team understand: ○ Past, current and future community development trends. ○ The policies or activities that affect development. ○ The relationship between hazards and development. ○ Local outreach, facilitation and consensus building.
Emergency managers	▪ Provide perspective as first responders. They have information on past events and existing preparedness measures. ▪ Connect to the state emergency management agency.
GIS specialists	▪ Analyze and map data to support the planning process. ▪ Explain complex information. This information may include the locations of at-risk assets in threat- or hazard-prone areas. It may also include damage estimates for a specific disaster scenario.
Public works/engineering staff	▪ Help identify current or projected problems for the community's infrastructure that the plan can address. ▪ May be able to outreach with dam owners / operators and provide relevant information.
Elected and executive officials	▪ Build public buy-in for the plan and investing in mitigation. ▪ Explain how the mitigation plan can support other social, economic or environmental goals of the community.
Floodplain administrators	▪ Provide information on your community's flood hazard maps, floodplain ordinance and repetitive loss properties. ▪ Identify actions to continue compliance with the NFIP, maintain or improve CRS scores, and reduce flood losses. ▪ Provide ideas on integrating the mitigation plan with floodplain management plans and policies.
State and federal partners	▪ Provide expertise and data available from programs with complementary missions. ▪ Support identifying and using resources across agencies.
Historic preservation and environmental protection staff	▪ Help identify sensitive areas and areas of historical and cultural significance. ▪ Provide insight into any endangered species or ecological preservation plans.
Finance staff	▪ Identify potential funding sources. ▪ Share expertise identifying, applying for and managing grants.

Contributor	How They Can Support the Plan
Public Information Officer (or other communication staff)	▪ Develop and/or implement your outreach and engagement strategy.
Land use and development partners including the agency or department that regulates building codes	▪ Share future land use and development knowledge to assess vulnerability. ▪ Help the planning team connect development patterns to when and where hazards may occur. ▪ Reduce local risk by directing development away from hazard areas and supporting hazard-resistant building codes.

Spotlight on Coastal Communities

Coastal communities face unique challenges that require specialists or subject matter experts to provide detailed and location-specific information. State coastal management programs can be helpful partners in the planning process for coastal communities. Most administer state funding programs to fill data gaps, support local planning, implement projects, and/or monitor outcomes.

Coastal management programs have technical expertise in, and can provide information that helps with:

- Hazard profiles and vulnerability assessment e.g. previous storm damages, coastal erosion, impacts of coastal flooding on coastal habitat;
- Capability assessment, e.g. current environmental regulations in effect, ongoing and planned initiatives to improve coastal water quality; and
- Mitigation strategy, e.g. regulatory methods that could improve beach and shoreline management, as well as have natural hazard risk reduction benefits.

Examples of state coastal programs who have been effective planning partners to local communities updating their local mitigation plans, by supplying data for risk assessment, or supporting plan integration are:

- **Oregon**: Oregon Coastal Management Program coastal planners have connected local mitigation planners with state tsunami vulnerability data and supported local mapping, the adoption of Tsunami Hazard Overlay Zones, development of Tsunami Evacuation Facility Improvement Plans (TEFIPs), and more. See Planning Assistance available, especially for Tsunami Planning.
- **California**: In partnership with the Governor's Office of Planning and Research and other state and Federal agency partners, the California Coastal Commission has helped develop the Plan Alignment Toolkit, which provides guidance for aligning data, development, and stakeholder engagement processes for the Local Hazard Mitigation Plan, General Plan,

Local Coastal Program Plan, Adaptation Plan/Framework, Community Wildfire Protection Plan, Disaster Recovery Plan/Framework, and Emergency Operations Plan.

Planning efforts can be more successful if the team receives official authority to form the mitigation plan. The planning team could get official recognition in the form of a council resolution or a voluntary participation agreement (VPA). This can:

- Show community support.
- Increase commitment to the process.
- Improve the chances that the mitigation actions listed in the plan will be carried out successfully.

2.1.4. Engage Local Leadership

Local elected officials and staff should provide strong leadership throughout the planning process. Leadership from elected officials with an interest in improving safety and disaster resiliency gives the planning process visibility and supports stakeholder participation.

It is also key to have a strong advocate or local champion for mitigation on the planning team. This champion can help gain the support and participation of local officials and community leaders.

Policy Connection: Element A2

Does the plan document an opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and non-profit interests to be involved in the planning process?

Task 3. Create an Outreach Strategy

An important benefit of the mitigation planning process is that it promotes awareness of risks and elevates the conversation about making a safer, more resilient community. A plan that accurately reflects the community's values and priorities will generate more community support. That support will lead to success in carrying out mitigation actions and projects that reduce risk.

Federal regulations for mitigation plan approval require that stakeholders and the general public are given opportunities to be involved in the plan's development process. Input from community members can strengthen the content and outcomes of the mitigation plan. The plan must also state how public involvement will continue as the plan is carried out during its lifetime.

An outreach strategy identifies what you want to achieve through your outreach efforts. It also identifies who to involve in the process, and how and when to effectively engage the community. Every participating jurisdiction can employ a slightly tailored engagement strategy that suits their community's demographics and needs in addition to the lead jurisdiction's engagement strategy.

Successful Outreach

- Informs and educates about hazards and risks.
- Invites interested parties to share their views and ideas for mitigation.
- Identifies conflicts and incorporates a wide range of views and priorities early in the process.
- Shares data and information that improve the overall quality and accuracy of the plan.
- Ensures transparency and builds trust.
- Maximizes chances to carry out the plan through greater agreement and acceptance.

Case Study: Watsonville, California

The City of Watsonville's Planning Committee showed their dedication to public outreach in their Local Hazard Mitigation Plan. Committee meetings were open to the public and participation was highly encouraged. Input from the public was heavily considered in the development of the plan. All promotional and meeting materials are shown in the Local Hazard Mitigation Plan. Interpreters attended each meeting and materials were offered in both English and Spanish. Meetings also offered free parking and refreshments. A public survey gathered

input for the hazard identification and prioritization process. These public engagement activities helped the committee identify hazards, assess risk and vulnerability, record critical facilities, and develop and prioritize mitigation actions.

3.1. Plan for Public Involvement

The public must be given an opportunity to be involved in the planning process. A good public outreach effort does more than just inform the public of the plan's development. It teaches the public and motivates them to act.

Even though members of the public may not be technical experts, they can:

- Identify community assets and problem areas.
- Describe issues of concern.
- Share threat and hazard history.
- Prioritize proposed mitigation alternatives.
- Share ideas for long-term public involvement after plan adoption.

Many mitigation actions will happen on private property. This means that the public should be engaged early to understand community priorities. Public engagement should happen during each step of the planning process.

Step	Role of the Public
At the beginning of the planning process…	Introduce the plan update and identify potential areas of concern that should be included. Ask the public about the biggest issues that they see: ▪ "What keeps you up at night?" ▪ "What hazards concern you the most?" ▪ "How do these hazards affect your home, work or neighborhood?"
Once the risk assessment is complete…	Review progress and provide additional local context to the hazard profiles. Help identify potential actions for the mitigation strategy.
After the final draft of the plan is finished…	Review the plan. The public needs to be given an opportunity for review. The planning team should carefully consider their feedback and make edits to the draft as necessary.

Demographic Data

When creating your public engagement strategy, start by building a profile of your community. The American Community Survey and U.S. Census QuickFacts provide basic demographic data that can help you determine who to include. This profile also provides the basis for who may be impacted by the hazards identified in the risk assessment. It may also factor into the projects you select in the mitigation strategy.

3.2. Community Rating System

If your community participates in FEMA's CRS, you can design the mitigation planning process to maximize CRS credit for floodplain management planning. The CRS rewards communities that go beyond the minimum standards for floodplain management under the NFIP by providing flood insurance premium discounts for policy holders in the community.

The points available through the planning process account for almost one-third of the total allowable points. Communities that want to lower their flood insurance costs and maximize their CRS rating should make sure that the planning process lines up with the CRS criteria as closely as it can. FEMA has two major hazard mitigation planning programs. The first is local multi-hazard mitigation planning associated with the Stafford Act hazard mitigation provisions. The second is floodplain management planning under the CRS. The number of communities with local mitigation plans is growing. So, too, is the number of CRS-participating communities that want to improve their CRS class and increase their flood insurance discount under the NFIP.

Each program helps communities reduce their flood risk. All too often, though, if a community prepares both, they are done separately with different planning products. This does not have to be the case. Communities can coordinate these two processes. This will help the mitigation plan earn the maximum number of points possible.

3.3. Develop the Outreach Strategy

The outreach strategy is the guiding plan for how you will engage participants, stakeholders and the public. Thinking about the outreach strategy early and adjusting it throughout the planning process based on lessons learned positions you for success.

A public relations or public information official (PIO) can be a valuable partner. They help to generate messages, work with the media, and share public information throughout the mitigation planning process. If you have a PIO or other communications staff, invite them to help develop and/or implement your outreach strategy.

Use the following steps to create your outreach strategy.

1. Brainstorm outreach activities and stakeholders.

Hold a brainstorming session with the planning team at the project kickoff meeting. Use this time to identify stakeholders and consider which outreach methods will work best for the planning area. Identify existing meetings and pre-established community events that may have a connection to hazard mitigation. These may help you determine the type of outreach and when it will occur. If you are developing a plan, look at the stakeholders and outreach activities from the previous planning process. Note any needed changes and incorporate them into the outreach strategy.

2. Determine public outreach goals and schedule.

This step helps you document what you what your outreach to do, and when you plan to do it. Consider the following to determine your outreach goals:

- What input do you need from stakeholders?
- What input do you want from the public?
- How can stakeholders and the public contribute to the capability review, risk assessment and mitigation strategy?

As the project kicks off, the planning team may set a schedule of tasks and meetings to complete the new plan or update. Use this schedule to identify key times to inform and seek input from stakeholders and the public. For example, a good time to invite public involvement is after the risk assessment is done and before the planning team starts to form the mitigation strategy. Involving the public at this stage gives you a chance to:

- Educate the public on the risk assessment findings and get their reactions (did this align with their expectations or do those results come as a surprise?).
- Get input on any data inaccuracies.
- Learn their ideas and priorities for mitigation actions.

Using FEMA's Flood Risk Communication Toolkit for Community Officials

Looking for resources on risk communication and outreach? Check out FEMA's Flood Risk Communication Toolkit for Community Officials. While these resources focus on flooding, many of the outreach lessons are transferrable to the mitigation planning process.

- The Message Guide provides useful language on flood risk and resilience for the public, decision makers and community stakeholders.
- A Guide to Supporting Engagement in Rural Communities discusses best practices for outreach in rural communities.
- Designing Effective Public Meetings helps you design high-quality, engaging meetings.
- Communication Plan Guide helps you design and prepare a communication plan.

3. Identify the right outreach methods.

This step answers the question, "What are the best ways to reach out to stakeholders and the public?" Outreach methods should meet the unique needs of a community. For instance, if the planning area has a high number of Spanish speakers, develop outreach materials in Spanish. Use targeted methods to get stakeholder input. The planning needs, schedule and budget may guide these methods, too.

No matter which methods you choose, make sure to use stakeholders' time in a meaningful and productive way. Be clear about where they can help and why their voice matters. Form a plan to gather input and then use it in the planning process. Give chances to review throughout the process. Set meeting dates, outreach methods and other activities early on.

If a disaster event recently affected your community, the public may have a keen interest in hazards and mitigation. Use this interest to engage community members in finding ways to prepare for future events. People may not join a public meeting on hazard mitigation if a hazard event has not recently affected their community. Targeted engagement can help encourage participation among those who may be unlikely to join. The planning team can find out what types of public involvement have worked well in your community before. Reaching out to people is better than asking them to come to you. For example, setting up a booth at a popular community event or getting on the agenda of a scheduled meeting could reach more people than a meeting that only discusses hazard mitigation.

Using a wide range of informational materials and methods can help you reach out to the public during the planning process. These can include news media, social media, fliers, surveys and websites. Think about sharing messages on social media platforms such as Twitter, Facebook or Instagram. Activities that involve the public should be designed to increase public awareness by presenting information (one-way communication). They should also seek input to inform the plan's content (two-way communication).

Table 6 provides examples of how communities have successfully used different types of outreach methods in mitigation planning. This table references information from the International Association of Public Participation.

Table 6: Example Outreach Methods

Outreach Method	Outreach Purpose	Example Supporting Activities
Community Events	Inform	Host a booth at a fair or other event where the community will gather. Use the booth to teach residents about preparing for natural hazards. Share materials on related topics with visitors. Consider games, giveaways or other incentives as ways to engage at the event.
Interviews	Consult	Host a series of structured discussions. They could be telephone or face-to-face interviews with leaders and representatives from each of the county's communities, school districts, and the public. This could help to identify hazards of concern and potential mitigation measures.

Outreach Method	Outreach Purpose	Example Supporting Activities
News Media	Inform	Work with local media outlets, including television, radio and print media partners. They can prepare stories that promote broad public involvement.
Public Meetings	Inform Involve	Through a participating jurisdiction's Corporate Communications and Marketing Office, email newsletters soliciting input on draft plan documents and public meeting attendance. Distribution lists could include government agencies, businesses and civic organizations. Send public meeting details to all city and county employees. Also, post them to the community's online public events calendar. Add them to live tickers that scroll across the bottom of the local government access television channel as well. Share live coverage of public input meetings and let residents share their questions or comments by email.
Presentations to Governing Bodies	Inform	Share the status of the plan with the board of county commissioners or similar governing body. These meetings should be public, and an announcement of the plan agenda item should be included in the announcement of the public meeting.
Questionnaires/ Surveys	Consult	Use a survey to get information from people who could not attend the public meetings. Post the survey to your community's social media account(s). Ask local officials to give out copies of the survey. Have copies available for residents at municipal offices. Those offices can also post an electronic version on their websites. Where applicable, create questionnaires/surveys in multiple languages.
Roundtables/ Forums	Collaborate	Sponsor a public forum to get ideas from residents on how to reduce the risk of natural hazards. This could be the main event for teaching the public. It is also a chance to let the public add to the plan's action items. The resulting ideas may inform the jurisdiction's planning team about risks, strengths, weaknesses and opportunities.
Social Media	Inform/Involve	Make a mitigation plan Facebook page, Twitter account, or Instagram account. The page or account can include small video clips of community leaders talking about the need for mitigation planning. The page or account can also link to your questionnaire/survey. Use the page or account to hold raffles or giveaways. This will help to support participation. For example, you may post that "All those who participate and share feedback through this page or account will be entered into a drawing."

Outreach Method	Outreach Purpose	Example Supporting Activities
Area-Specific Meetings	Involve	Host small, area-specific meetings twice each year. You can hold them at public libraries and other public venues. These meetings give you a chance to share reading materials. They can educate residents on actions they can take to mitigate natural hazards, save lives and prevent property damage. These meetings can also gather input on making the mitigation process more effective.
Website	Involve/Consult	You can use a website to promote the mitigation plan by sharing: ▪ What hazard mitigation planning is. ▪ A list of who is involved in the local planning process. ▪ How the plan update process works. ▪ Information about future stakeholder meetings and chances for public involvement. You can share contact information for questions or comments. Downloads available from the site could include copies of the existing plan, the plan update, public notices, and press releases.

4. Develop clear and consistent messages that align with community values.

Think about the community's values and priorities. Consider how they line up with reducing the impacts of future hazards and disasters. Then, set talking points for discussions with a range of audiences. Form messages that appeal to them. For example, if a gold-medal trout stream or historic downtown is key to a community's identity and economy, frame mitigation messages to highlight these assets and the need for their long-term protection.

5. Evaluate and incorporate feedback from outreach activities.

Gather and assess feedback from outreach activities, then work it into the planning team's decision-making process and the final plan. During the outreach process, clearly explain to stakeholders and the public how the planning team will use their feedback to inform the plan. Set a process for:

- Organizing and assessing the comments received.
- Incorporating comments into the development of the plan itself.
- Recording the comments in the final plan.

Keep in mind that collecting public feedback is not enough; you must use public input to inform the plan. For example, use public workshops to brainstorm mitigation actions and goals.

6. Provide an opportunity for public review of the final draft plan

The public must have an opportunity to review and comment on the final draft plan before it is adopted. There are many ways that you can do this:

- Include the plan as a topic of discussion at an existing meeting.
- Share the plan on a website and promote it across social media accounts.
- Hold a meeting where the public can review the plan.
- Bring the plan to community events where you know people are gathering.

Mitigation plans are usually not small documents. Allow at least 4 weeks for review and comment. Don't forget to include time in the schedule to revise the plan based on the comments. Provide guidance on the type of comments and feedback that you want. For instance, getting the public's take on community assets and how mitigation actions are prioritized in the plan is very useful.

Tell the public when a draft is ready for review. You can do this through a press release in the local newspaper and on the community's website and social media accounts. The press release should explain how the public can share comments. Some jurisdictions have policies regarding the public review of documents before they are adopted, and these should be followed for final comments on the mitigation plan.

Policy Connection: Element A3

Does the plan document how the public was involved in the planning process during the drafting stage and prior to plan approval?

3.4. Plan Ahead for Engaging Meetings

Communities have their own ways of engaging partners: meetings, open houses, conference calls or webinars. However, meetings are the most common way of gathering partners and working through the process. Think of meetings as working sessions to get input, develop content and share ideas. Build in interactive elements to build relationships. Each jurisdiction can decide how many and what kind of meetings it needs. Meetings can follow sections of the plan, like developing the mitigation strategy or the risk assessment. The jurisdiction may also hold a review meeting at the end to summarize the plan and start reviews. Not all meetings are created alike; use this section to pick which mode (in-person, virtual, or hybrid) will work best for your planning process.

In-Person

In-person meetings are what many associate with traditional planning. Participants and stakeholders are given a chance to interact with each other and sometimes the public. It could be a workshop, traditional meeting, or other in-person format to seek direct input.

When choosing an in-person meeting, consider:

- Is the venue large enough to accommodate the expected number of attendees? Does it have facilities, including food and water, if necessary?
- Are you holding the meeting at a time of day when participants can come? Are you holding the meeting in a location where the majority of participants can get to easily?
- Do you know which materials you need to bring, such as computers, projectors, handouts or other displays?
- Do you have a strategy for keeping participants engaged? You can use sticky notes or large posters for interactive discussions and activities, and facilitate small group discussions by table.
- Is the meeting accessible for all attendees? This includes both venues that comply with the Americans with Disabilities Act and other accessibility considerations, like translated materials or an ASL interpreter. Identify these needs early in the planning process.

Virtual

Virtual events make it possible to accommodate people who are limited by time, transportation, finances, health or life circumstances from attending an in-person meeting.

When choosing a virtual meeting, consider:

- Do attendees have access to necessary information? Share materials with attendees in advance via an accessible website.
- Are you keeping your virtual attendees engaged? Use polls, chats and other engagement tools during the presentation to keep participants involved.
- Are you facilitating meaningful discussion during the event? Many webinar platforms include tools for making virtual sessions more collaborative. Breakout rooms allow smaller groups to have a focused discussion.
- Is the virtual event accessible to everyone attending? Consider whether translation, recording, live captioning and transcriptions are needed. Use closed captioning to assist participants with hearing or language processing impairments. Know the applicable laws related to open meetings and recordings.
- Can all interested parties access the event? Consider using options for including those with limited access to technology. Some platforms are easier to install or are available on mobile phones. Incorporate traditional methods of information sharing, such as radio, mail, newsletters, television and newspapers.

Hybrid

Hybrid meetings and events combine both in-person and virtual experiences. Having both in-person and virtual options for attendance increases the potential impact and reach of the event. Hybrid meetings can create unique experiences that accommodate the needs of more people across larger geographies.

When choosing a hybrid meeting, consider:

- Are you giving virtual attendees an opportunity to contribute? Use live polling and audience engagement software tools to make the event interactive and engaging.
- Are microphones placed around the room in a way that allows virtual attendees to hear the in-person discussion? Test and retest the tools you will rely on to connect your virtual audience with in-person attendees. Make sure you have functioning equipment and backup technology.
- Is the meeting accessible for both in-person and virtual attendees? Identify the need for meeting translators, interpreters, closed captioning and other technical support. Have support ready to troubleshoot issues, both online and in the room.
- Do all attendees have access to the presentation materials and handouts? Provide paper handouts for in-person participants and links to downloadable documents for virtual attendees.
- Consider planning an asynchronous hybrid meeting, where the in-person and virtual portions occur at different times. This may allow for easier facilitation and a more streamlined presentation.

3.5. Coordinate Multi-Jurisdictional Outreach

If you are developing a multi-jurisdictional plan, the outreach strategy will help you manage coordination and accountability among all plan participants. For each jurisdiction seeking plan approval, the plan must document how they were involved in the planning process. This must include how they gave stakeholders and the public a chance to be involved.

Each participating jurisdiction will have its own specific stakeholders. Public involvement activities need to reach residents throughout the planning area. Consider where the outreach strategy applies to all participants equally and where you may need to tailor the approach and materials. You may develop one set of outreach materials that each jurisdiction shares with its stakeholders and residents. Another good approach is to develop one presentation or a series of presentations on the plan's progress that anyone can use. Planning team members can give these presentations at a regularly scheduled open meeting of their city council or other governing body. This will help keep elected officials informed about the planning project. It also gives the public a chance to learn more and share comments.

Outreach is key when forming a multi-jurisdictional plan. In addition to planning team meetings, you can get input through municipal workshops and open houses held throughout the planning area.

Open house-style meetings can give the public a way to comment on the plan during the drafting stage. Throughout the planning process, participating jurisdictions should attend workshops, share data and/or maps, and be available to answer questions from the public.

3.6. Bringing It All Together: Describe the Planning Process

Documenting the planning process provides a clear look at who was involved and what happened. It is the record of how you developed your plan. Having this documentation helps you identify lessons learned and apply them to future planning processes. Documenting the planning process provides a blueprint to follow in future planning efforts.

The plan document needs to provide enough information to tell the story of how the community formed the plan. This description is helpful for plan readers, which include local government officials, elected officials, stakeholders and the public. It helps them understand how the community made decisions.

The mitigation plan must document the planning process. This means explaining the "who," "what," "when," "where," and "how" the plan was developed. There are many requirements that dictate how stakeholder and public involvement opportunities are documented during the planning process:

- The plan must describe the planning process. This can be a narrative description, but you can also include other records like copies of materials or sign-in sheets. Depending on how many meetings and engagements you had, this could be a lot of documentation. Summarize it in the plan and include copies in an appendix.

- The plan must list the representatives from each participant (local jurisdiction, special district, or other jurisdiction seeking approval) by agency and title. Names are not required. Protect the personal information of your planning team members, especially if you post your plan online. Explain how they participated. Participation can be met in many ways, including attending meetings, providing data, reviewing and commenting on drafts, and more.

- The plan must document that each of the required stakeholder types was given the opportunity to join in the planning process. Remember, those required stakeholders include local and regional agencies involved in mitigation activities; agencies that have the authority to regulate development; neighboring communities; representatives of businesses, academia and other private organizations; and representatives of nonprofit organizations.

- The plan must document how the public was given the opportunity to be involved in the planning process. It must also state what that participation entailed. Remember, stakeholder participation must occur during the plan's development (prior to submitting it for review). Documentation must also explain how their feedback informed the plan.

While not required, it is helpful to document the planning process. These items may include copies of meeting minutes, agendas, sign-in sheets and newspaper articles. You can include this type of information as an appendix to the plan.

Policy Connection: Element A1

Does the plan document the planning process, including how it was prepared and who was involved in the process for each jurisdiction?

Task 4. Conduct a Risk Assessment

At its core, mitigation planning helps communities develop a strategy to reduce natural hazard risk. To do that, the plan must identify risks, impacts and vulnerabilities. This risk assessment provides the factual basis for activities proposed in the mitigation strategy. The hazards and impacts in the risk assessment should be the hazards and impacts you act on in the mitigation strategy.

Task 4 explains how to conduct a local risk assessment. How you do your risk assessment is up to you, as long as the information meets the requirements and is accurate, current and relevant. The approach you pick may depend on the data, technology and resources that are available. However you assess your risks and vulnerabilities, use both data and local knowledge. Input from the local community and stakeholders can supplement data to show a complete picture of risk, even if it is based on lived experiences.

The process of assessing risks and vulnerabilities can be tied to other planning initiatives. You can use it to set up priorities for preparedness and response, land use planning or other community decision making.

4.1. Defining Risk Assessment

In hazard mitigation planning, risk is the potential for damage or loss when natural hazards interact with people or assets. These assets may be buildings, infrastructure or natural and cultural resources. The way natural hazards interact with a community's people, property and assets can result in a disaster. A risk assessment is a robust, data-driven analysis. It explains what might happen. It also finds where the local jurisdiction is vulnerable to hazards. FEMA encourages localities to include overviews and summaries from their data analysis. The conclusions they draw from these data are more useful than the raw data. You can include raw data in appendices or annexes to support your conclusions. When the planning team finds data gaps or limitations, they should note the issues and add a mitigation action to fix them.

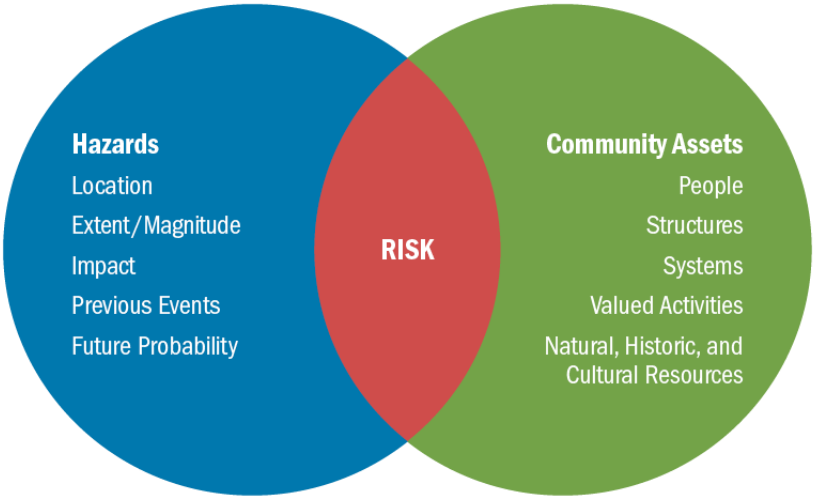


Figure 5: Risk is the relationship, or overlap, between hazards and community assets. The smaller the overlap, the lower the risk.

Your risk assessment identifies the hazards that can affect each participant in the planning area. For each hazard, consider:

- Where it might happen in the planning area (location).
- How minor or severe it may be (extent).
- How often and where it has happened in the past (previous occurrences).
- How likely it is to occur and how it may change (frequency, intensity, etc.) in the future (probability).
- Which assets are at risk from it (vulnerability).
- The effects it will have on assets (impacts).

Key Definitions

Natural hazard: a source of harm or difficulty created by a meteorological, environmental or geological event. Natural hazards, such as flooding and earthquakes, impact the built environment, including dams and levees.

Community assets: the people, structures, facilities and lifelines that have value to the community.

Vulnerability: a description of which assets, including structures, systems, populations and other assets as defined by the community, within locations identified to be hazard prone, are at risk from the effects of the identified hazard(s).

Impacts: the consequences or effects of each hazard on the participant's assets identified in the vulnerability assessment. For example, impacts could be described by referencing historical disaster damage with an estimate of potential future losses (such as percentage of damage vs. total exposure).

Risk: the potential for damage or loss created by the interaction of natural hazards with assets, such as buildings, infrastructure or natural and cultural resources.

4.2. Steps to Conduct a Risk Assessment

The risk assessment process generally has five steps:

1. **Identify hazards**. This step helps you understand what hazards may occur in the planning area.
2. **Describe hazards**. This step helps you know more about the hazards. It looks at where they can happen, how impactful they might be, when they happened before, how often and with what intensity they may occur in the future.
3. **Identify community assets**: This step looks at which assets are most vulnerable to loss during a disaster.
4. **Analyze impacts**. This step describes how each hazard could affect the assets of each community.
5. **Summarize vulnerability**. This step brings all the analysis together. It uses the risk assessment to draw conclusions. From these conclusions, the planning team can develop a strategy to increase the resilience of residents, businesses, the economy and other vital assets.

Multi-Jurisdictional Considerations

Each jurisdiction has unique assets, vulnerabilities and overall risk. A multi-jurisdictional plan needs to identify every hazard (from the whole planning area). Risks may differ across the planning area, so it is important to specify the hazards that affect each jurisdiction. For example, a hillside community may have issues with landslides that are not a threat elsewhere. Communities near the coast may face erosion issues that are not seen inland. Keep in mind that the hazard source does not have to be within your boundaries for it to affect you, like inundation from dam failure.

Each participant must describe how the selected hazards affect its jurisdiction. Some hazards will have similar effects across the area: extreme temperatures, windstorms, winter weather, drought, heavy rain, etc. Some have a smaller location and will vary based on geography. Multi-jurisdictional plans must explain these differences.

In planning for multiple jurisdictions, the risk assessment must address the unique and varied risk information for each participating jurisdiction. This includes the location, extent, past

occurrences, future probability, vulnerability and the potential impacts. This information will be used to develop specific mitigation actions for each jurisdiction.

4.2.1. Identify Hazards

The first step in the risk assessment is to identify the hazards that affect your planning area. This includes assets in other jurisdictions that may affect yours, like an upstream dam or levee. To identify hazards:

- Review your state's hazard mitigation plan. These plans summarize risk statewide. If the state identified that your planning area is at risk, it should probably be in your plan. If the state has identified a hazard for your area, and the planning team decides to exclude it, explain why.
- Look at recent mitigation plans developed for nearby areas.
- Interview your planning team, stakeholders and the public. Ask them which hazards affect the planning area and should be in the mitigation plan.
- Check local sources of information. Look into newspapers. Speak with the chamber of commerce, historical societies, or other groups with records of past events.
- For plan updates, start with the previously identified hazards. If they are no longer relevant, explain why. Add any new hazard events that have happened since the last plan update, including all declared disasters.

Technological Hazards and Human-caused Threats

The planning team may include technological hazards and human-caused threats in the plan. Technological hazards result from accidents or the failure of a system or structure. They may include hazardous materials spills or airplane accidents. Human-caused incidents (threats) are the intentional actions of an adversary. They include a chemical or cyberattack. Communities are welcome to include these hazards in their plan. However, FEMA will not review or require revisions related to these hazards during a plan review.

These events align more with a Threat and Hazard Identification and Risk Assessment (THIRA). Communities can use a THIRA to:

- Expand the existing hazard identification and risk assessment of a local mitigation plan.
- Provide a comprehensive approach to assess risks and impacts associated with all types of threats or hazards.
- Identify a method to assess a broader range of capabilities for prevention, protection, response, recovery and mitigation, as well as any gaps.

Comprehensive Preparedness Guide 201 has more information on the THIRA process and methodology. For information on how to align the THIRA and the mitigation plan, read the Increasing Resilience Using THIRA/SPR and Mitigation Planning job aid.

4.2.2. Describe Hazards

After you know which hazards you want to address, describe them in what is commonly called a hazard profile. The profiles must describe each identified hazard's location, extent, previous occurrences and probability of future events. Plan updates should confirm the profile for any previously identified hazards and add one for new hazards. Plan updates must include any hazard events that have occurred since the last plan was completed.

4.2.2.1 LOCATION

Location is the geographic area within the planning area that is affected by the hazard. When considering location, think about assets outside the planning area that, if damaged, could cause a hazard to happen in your planning area. For example, a dam or levee may be upstream and outside of the planning area. If it fails, it could flood downstream. A fault line in a neighboring county could cause an earthquake that is felt in your planning area. Some locations may also be further defined, such as high wildfire hazard areas versus low wildfire hazard areas. The entire planning area may be uniformly affected by some hazards. If this is the case, your plan must say so.

Maps are one of the best ways to illustrate location for many hazards. You can also describe location in a narrative. If you use a narrative, describe the locations in detail to clarify where the issues are. To describe the location of the hazards in the planning area:

- Review studies, reports and plans related to your identified hazards. State and federal agencies are good sources for this information.
- Use flood-related products that FEMA made for your planning area. Regulatory and non-regulatory products can be found at the Map Service Center. These include FIRMs and other flood risk assessment products. FEMA makes these to support the NFIP and the Risk MAP program.
- Contact colleges or universities. They may have related academic programs or extension services.

4.2.2.2 EXTENT

Extent is the expected range of intensity for each hazard. It answers, "How bad can it get?" Often a scientific scale is used to help define extent. Use a narrative and/or maps to describe extent. And remember, if the extent differs across participants in a multi-jurisdictional plan, explain those variations.

How you describe extent depends on the hazard. Examples include:

- The value on an established scientific scale or measurement system, such as EF2 on the Enhanced Fujita Scale for tornadoes or 5.5 on the Richter Scale for earthquakes.
- Water depth, hail size or wind speed.
- Number of acres or feet lost to wildfire, erosion or landslides.
- Highest and lowest recorded temperatures.
- Other measures of magnitude.

The extent of a hazard is not its potential impact on a community. Extent defines the characteristics of the hazard regardless of the people, property and other assets it affects.

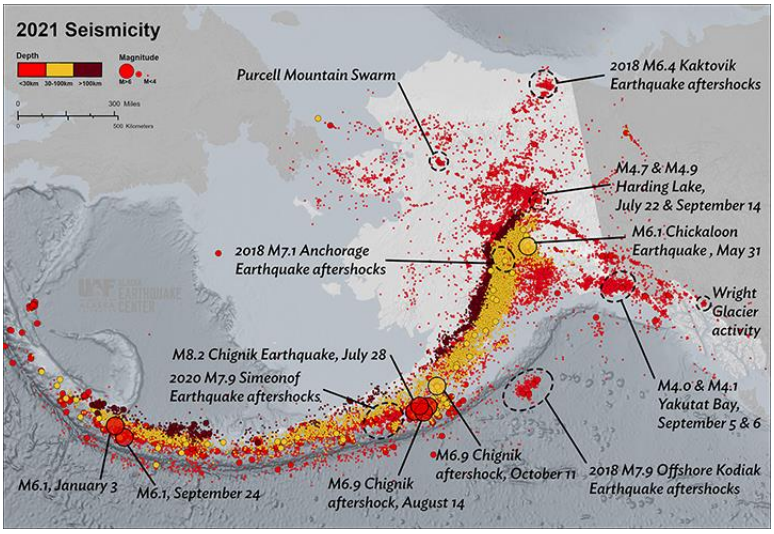


Figure 6: Earthquake locations, dates and magnitudes in Alaska. This map combines the location, extent and previous occurrences in a single image. Source: Alaska Earthquake Center.

4.2.2.3 PREVIOUS OCCURRENCES

The plan must present the history of hazard events. This information helps the planning team understand what has happened. While the past cannot predict the future, it can give an idea of what might happen and what is at risk. At a minimum, plan updates must document any state or federal disaster declarations in the last 5 years.

Previous occurrences are often presented in a table or on a map, but they can also be a narrative. Narratives of significant events, however the planning area defines them, can give the risk assessment more context. They can help participants develop problem statements and identify actions to mitigate the risk. There are many possible data sources to help you describe previous occurrences:

- Download weather-related events from the National Climatic Data Center Storm Events Database.
- Refer to the U.S. Geological Survey (USGS) for previous earthquakes, landslides, wildfires and volcanoes.
- Consult the National Hurricane Center for hurricane event data.
- Contact your SHMO for more data sources and information on state disasters.
- Use the OpenFEMA data to gather disaster declarations.

4.2.2.4 PROBABILITY OF FUTURE EVENTS

The probability of future hazard events describes how likely a hazard is to occur or reoccur. The plan must consider how the future might change the type, location, severity and frequency of hazards. Population changes mean changes in demographic trends, migration and density. How your community uses and develops land can put more or fewer people, businesses and homes in harm's way. These changes can all bring changes in risk and vulnerability. Investments in mitigation will reduce those risks.

The Guide specifies that probability must include the **type**, **location** and **range of anticipated intensities** of each hazard. Ask yourself:

- Are new hazards possible?
- Will hazards affect more communities?
- Will hazards reach places or people they have not before?
- Will hazards we already face become more severe? Less severe? For example, rising temperatures may make extreme heat events longer and more deadly, but may cause milder winters with rain instead of snow storms.

Probability can be described in many ways. Potential approaches include:

- **Using statistical probabilities.** Statistical probabilities often refer to events of a specific size or strength. For example, the likelihood of a flood event of a given size is defined by its chance of occurring each year. A common measurement is the 1%-annual-chance flood. However, this measurement is affected by changes in the watershed and rainfall intensity. It is important that you not simply generate a probability by dividing the number of times an event has occurred by the number of years of record. This simple math will not give you a realistic picture of future probability.
- **Using qualitative or general descriptions or rankings.** This should be used if there are no other available data on future probabilities. If you use this approach, define any general terms. For

example, “highly likely” could be defined as occurring every 1 to 10 years. “Likely” could mean to occur every 10 to 50 years, and “unlikely” could signal intervals of over 50 years. This approach must still explain how future conditions factored into the general descriptions.

You may also want to describe any time-based probabilities, or times of the year when a hazard is more likely. For example, flooding might be more frequent in the spring because of snow melt or in late summer or fall because of hurricane season. Peak tornado season is March through June.

The exact description and method of estimating future probability may vary by hazard, but it must account for future conditions.

4.2.2.5 DISPLAYING HAZARD INFORMATION

When developing or updating a mitigation plan, hazard-specific maps are helpful for showing hazard information, though they are not required. In some cases, a detailed narrative of potential impacts and extents can accurately convey the information you need. If your community or special district is not able to take on some technical processes, use a narrative approach. You can also address this potential gap in capability as a mitigation action later in the plan. If you use a narrative, be sure to convey all the necessary information accurately and at the right level of detail. Think of it as building a verbal map.

Some communities choose to use GIS or other mapping programs to display hazard and risk information. The following figures show some ways to use maps to describe the location, extent, previous occurrences and probability of future events. This applies to various hazards. Note that one map can be used to describe several hazard features. A table or matrix can help summarize the information in the hazard descriptions. It can also help identify the planning area’s most significant hazards.

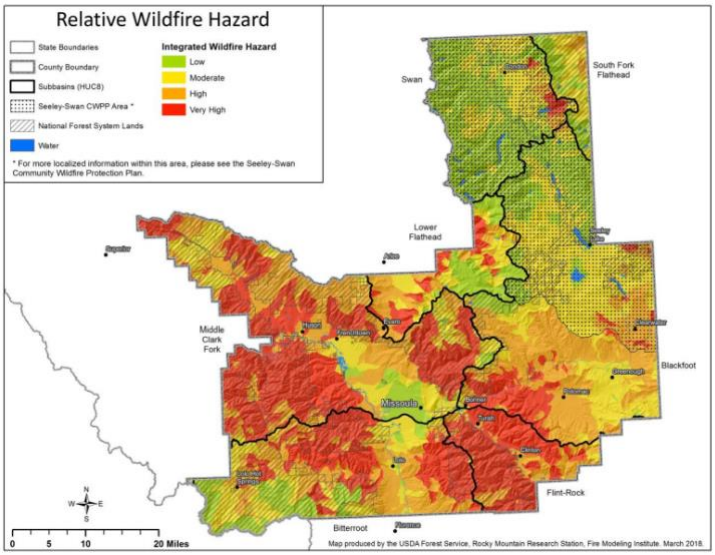


Figure 7: Wildfire hazard location and extent in Missoula County, Montana. Source: Missoula County/Community Assistance Planning for Wildfire Program.

Maps can also show the relationship between people and hazards. For example, you can create maps that show facilities that house dependent populations. Maps can identify venues that host large numbers of people. See Figure 8 for an example of how to map the relationship between hazards and populations.

Case Study: Baltimore, MD

The City of Baltimore's Disaster Preparedness and Planning Project is their hazard mitigation plan. Its risk and vulnerability assessment does a good job of incorporating which groups are at risk to specific hazards. Most important, the plan links the risk to specific mitigation actions.

For example, the plan maps areas of extreme heat (or heat islands). Then, it overlays the heat islands on areas with the most vulnerable populations. In this case, the most vulnerable are people over the age of 65 and those with limited access to a vehicle. The plan explains that people over 65 face increased health risks from heat, and that people with limited access to a vehicle may not be able to get to a cooling center. The city used this analysis to identify activities to reduce the impact of heat events. An example of an exposure analysis-informed action is:

"Community resiliency planning in the Rosemont neighborhoods south of North Avenue and just east of Leaking Park, for example, should take into account the need for outreach and support for seniors in heat events as future mitigation strategies and actions."

This is a great example of how to define populations that are more vulnerable to disasters, connect where they live to hazard areas, and then use the analysis to take mitigation action.

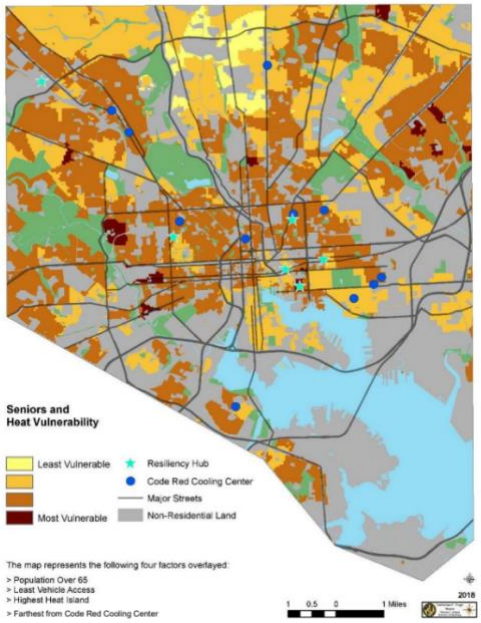


Figure 8: Extreme heat vulnerability for senior residents in Baltimore, MD. Source: Baltimore Disaster Preparedness and Planning Project, 2018.

Case Study: City and County of San Francisco

The City and County of San Francisco's hazard mitigation plan's hazard assessments incorporate different scenarios that will change hazard severity. The scenarios consider future conditions for temperature and precipitation. Scenario planning can lead to more robust mitigation actions. These stronger actions can be used to mitigate more severe hazards across different geographies.

To begin the engagement process, the planning team met with leaders from a group of community-based organizations. The team listened to their advice on the best ways to achieve the plan's goals within the communities they serve. Based on the feedback from this meeting, the planning team organized five thematic workshops with additional leaders of community-based organizations, NGOs, and other groups that serve the San Francisco community, especially vulnerable populations.

Some of the workshop themes were:

- Business/Commercial Properties.
- Housing, Stakeholders and Residential Property Managers/Owners.
- Disability and Functional Needs/Older Adults.
- Children, Youth and Families.

Policy Connection: Element B1

Does the plan include a description of the type, location and extent of all natural hazards that can affect the jurisdiction? Does the plan also include information on previous occurrences of hazard events and on the probability of future hazard events?

4.2.3. Identify Assets

In this next step, each participating jurisdiction identifies its assets at risk to hazards. Assets are defined broadly. They include anything that is important to the character and function of a community. They generally fall into a few categories:

- People.
- Structures, including new and existing buildings.
- Community lifelines and other critical facilities.
- Natural, historic and cultural resources.

- The economy and other activities that have value to the community.

All assets may be affected by hazards, but some are more vulnerable. This may come from their physical characteristics or uses. An asset inventory identifies the vulnerable assets in your community. If your plan is an update, review and update the asset inventory as needed. This ensures it reflects the current conditions.

4.2.3.1 PEOPLE

People are your community's most important asset. Your mitigation plan should assess risks to people and set strategies to protect them. For the purposes of a risk assessment, think about areas of population density and groups with unique vulnerabilities. Use the risk assessment to point out areas where people are less able to prepare, respond and/or recover before, during and after a disaster. At this stage of the risk assessment, you are identifying where people live, work and visit. To do this:

- Note any concentrations of residents and businesses.
- Consider development in areas of projected population growth. Predict areas of vulnerability.
- Identify places that provide health or human/social services that are critical to disaster recovery.

A risk assessment must analyze the vulnerability of the population. The most at-risk members in a community tend to suffer the greatest losses from disasters. Often, they are left out of planning activities. They may have little access to information about what to do before or after a hazard event.

People from these groups may not be able to access the standard resources offered in emergencies. Consider where to locate facilities and support services for them. Think about hospitals, dependent care facilities, oxygen delivery and accessible transportation.

The National Risk Index is a tool that identifies communities most at risk to 18 natural hazards. Other data sources are the U.S. Census, state population estimates, and the U.S. Bureau of Labor Statistics.

A jurisdiction can choose any dataset that adequately represents its communities. It can also create or use a more specific dataset. Work with the rest of the planning team to find partners who adequately represent the community. They can help make sure the data fully reflect ways these populations can mitigate their risks.

4.2.3.2 STRUCTURES

Identifying structures helps you understand what existing buildings and infrastructure may be in harm's way during a hazard event. Areas of future growth and development are also important for

assessing the building environment because the planning area will experience some land use change over the 5 years the plan is approved. When identifying structural assets:

- Identify the types of buildings in the planning area (commercial, industrial, residential, etc.).
- Consider their age, construction type and whether any are critical facilities (see Section 4.2.3.3.). These factors can help you understand structural risk, including whether a building follows a disaster-resistant building code.

Existing Structures

All structures are exposed to some level of risk, where certain buildings or concentrations of buildings are more vulnerable. This can relate to their location, age, construction type, condition or use. Structure information usually comes from the local tax assessor or planning department. Find information on land use, zoning, parcel boundaries and ownership, and types and numbers of structures. In the absence of available local data, a national dataset of building locations is available from the USGS. These data will not be detailed, but will, at a minimum, show the location of buildings in your planning area. You do not need to include a list of every structure in your plan. Summarize the data to help you analyze vulnerabilities and impacts later. Often, this means summarizing the number of structures by type and jurisdiction.

Future Development

The mitigation plan is updated every five years, which does not mean that it's a 5-year strategy. The plan should have a long-term vision to reduce risk, so it is important to think about both the structures that already exist and what might be built in the future. You won't know exactly which buildings will be built in which locations. However, the plan should provide a general description of land uses, identified growth areas, development trends and demographic changes. This positions mitigation options to be considered in future land use decisions. Local comprehensive or master plans may have information on future land use and build-out scenarios.

Identify Future Development

- Identify any areas planned and zoned for future development or annexation.
- Look in local land use, development or comprehensive plans to identify what kinds of development are planned for growth areas. For example, there could be a planned industrial park or a planned residential development. If they don't have that information, estimate or describe the planned development.
- Review plans for new facilities, infrastructure and other capital improvements like stormwater management infrastructure. Use these to support existing and future development.

4.2.3.3 COMMUNITY LIFELINES AND OTHER CRITICAL FACILITIES.

Beyond just buildings, identify the community lifelines and other critical facilities that are critical for life safety and the economy. The operation of these lifelines and facilities during and after a disaster is crucial. Their ability to keep functioning affects both the severity of the impacts and the speed of recovery. When possible, list their construction standards, age and life expectancy or other factors that will increase or decrease their vulnerability.

Community Lifelines

As described in Task 2, community lifelines are the fundamental services in a community. The National Response Framework identifies seven lifelines. When they function, all other aspects of society can function. They are critical for maintaining public health, safety and economic viability.



Figure 9: The community lifelines.

Lifelines were developed to support response planning and operations, but the concept can be applied to the entire emergency management cycle, including mitigation. FEMA supports efforts to protect lifelines and to prevent and mitigate potential impacts to them. It also encourages building back stronger and smarter during recovery. All of these actions drive the overall resilience of your planning area. Work with your local emergency management agency and the state emergency management agency to identify and gather data on community lifelines.

Why are lifelines so important?

A lifeline allows critical government and business functions to continue. It is essential to human health and safety or to economic security.

- Lifelines are the most vital services in the community. When they are stable, they enable all other aspects of society to function.
- FEMA's priority is to quickly stabilize the lifelines after a disaster.
- An integrated network of assets, services and capabilities provide lifeline services. It supports the needs of the community every day.
- When a lifeline is disrupted, decisive intervention is needed to stabilize it.

FEMA's Community Lifelines Implementation Toolkit gives communities information and resources. It can help them understand lifelines and how to coordinate their use. It has basic guidance on how to apply the lifeline concept during an incident response.

Other Critical Facilities

You may want to identify and plan for critical facilities that fall outside of the community lifelines framework. Doing so will reduce the severity of the impacts and accelerate recovery. When possible, note both their structural integrity and content value. What are the effects of interrupting their services? It is a good idea to include a table or series of tables in the plan that describes community assets. Include elements that describe each facility, such as:

- Name.
- Type.
- Location.
- Age.
- Structure type.
- Value.
- Backup Power/Generator Capability.

Critical facilities often work together to serve the community. Think about how they are dependent on each other to see how the identified hazards may impact the facilities. FEMA understands that because these facilities are critical, you may not want to tell everyone where they are located or their potential vulnerabilities. While the mitigation plan is a public document, you can store sensitive information in sections or appendices marked as "For Official Use Only (FOUO)."

Spotlight on High Hazard Potential Dams

To meet requirement HHPD2, the local mitigation plan must:

- Describe the risks and vulnerabilities related to HHPDs, including:
  - Potential cascading impacts of storms, seismic events, landslides, wildfires, etc. on dams that might affect upstream and downstream flooding.
  - Potential significant economic, environmental or social impacts, and multi-jurisdictional impacts from a dam incident.
  - Location and size of populations at risk from HHPDs, as well as potential impacts to institutions and critical infrastructure, facilities or lifelines.
  - Methods and assumptions for risk data and inundation modeling.
- Document the limitations and describe the approach for addressing deficiencies.

Include all dam risks at a scale appropriate to the planning area. Consider the entire inventory of dams that have potential impacts in the planning area, even if they do not have a hazard potential classification or eligibility for HHPD funding.

4.2.3.4 NATURAL, HISTORIC AND CULTURAL RESOURCES

Natural Resources

Environmental and natural resources add to a community's identity and quality of life. They also help the local economy through agriculture, tourism and recreation. They support ecosystem services, such as clean air and water. Conserving the environment may help people mitigate risk. It can also protect sensitive habitats, develop parks and trails, and build the economy.

The natural environment can also protect residents by reducing the impacts of hazards and increasing resiliency. Examples of this include:

- Wetlands and riparian areas absorb floodwater.
- Soil and landscaping are used to manage stormwater.
- Plantings control erosion, reduce runoff and can create shade to protect from extreme heat.

Don't forget to consider natural resources, not just the built environment, as you identify assets.

Historic Resources

Historic resources tell the story of your community. Historic properties may be a (1) site, like a battlefield or shipwreck; (2) building, like a house or barn; (3) structure, like a lighthouse or bridge; (4) an object, like a fountain or monument; or (5) district, which shares a significant identity and continuity among either its sites, buildings, structures, or objects that are united historically, like a business district. In the United States, the National Historic Preservation Act, and its regulations, help the nation identify and manage its historic properties. In addition to the nationally significant historic properties on the National Register of Historic Places, a state or local community may have its own register. Historic properties offer a myriad of social and economic benefits. Your community should work to identify these important resources to protect from natural hazards.

Cultural Resources

The inventory should list assets of the local culture that are unique or cannot be replaced. Museums, geological sites, concert halls, parks and stadiums can qualify. Review state and national historic registries to identify the cultural assets that are significant to the community.

4.2.3.5 THE ECONOMY

After a disaster, economic resiliency is one of the major drivers of a speedy recovery. Each community has specific economic drivers. Considering these as you plan can reduce the impacts of a hazard or disaster on the local economy. Economic assets can have direct or indirect losses. For example, building or inventory damage is a direct loss. Functional downtime and loss of wages are indirect losses. These are losses you can calculate. Know the primary economic sectors in the community. These may include manufacturing, agricultural or service sectors. Major employers and commercial centers are also a factor. Also consider workforce housing and day care needs.

Economy

- Identify the major employers, economic sectors (e.g., agriculture) and commercial centers. What would happen if they were lost or inoperable? Would it have a severe impact on the community? Would their loss affect its ability to recover from a disaster?
- Assess the ways the economic sectors and businesses depend on community infrastructure.

4.2.3.6 ACTIVITIES THAT HAVE VALUE TO THE COMMUNITY

What activities are important to a community? Does it have long-standing traditions, such as a festival or fair? Some areas rely on seasonal industries to sustain them throughout the year. A hazard event that cancels or shortens these can affect a community's livelihood.

Tourism and farming are two examples of seasonal activities. They typically have lulls during the winter months in warmer climates, while tourism may pick up in colder regions. Extended severe weather, happening earlier or later in the season than normal, can severely impact the local economy.

4.2.3.7 UPDATE TO REFLECT CHANGES IN DEVELOPMENT

Plan updates must describe any development that took place since the last plan was approved. The planning team can get this information from planning and building departments. These data can help you evaluate whether the vulnerability has increased, decreased or remained the same. If planned development is in identified hazard areas or is not built to updated building codes, it may increase your community's vulnerability to future hazards and disasters. If development occurred with mitigation in place, vulnerability may have remained the same. Development could also reduce risk. For example, a new fire station could be built to replace one that was not seismically sound or was in a high-hazard area.

The planning team shall also consider other conditions. Changing populations, infrastructure expansion or economic shifts can affect vulnerability. Perhaps no significant changes occurred. Maybe they did not affect the jurisdiction's overall vulnerability. In that case, you can validate the

information in the previous plan. Make sure to account for shifting demographics, and recent or planned development in and/or near the community.

Considerations for Plan Updates: Identify Changes in Development

Knowing how development can increase or impact the vulnerability to identified hazards is an important part of the plan. Some communities choose to remove structures using grant funds. This can permanently reduce their vulnerability. For mitigation planning, it is important to understand the impact of where and how we build.

- Have there been any changes in development that would increase or decrease your risks? These could be new buildings or assets in hazard areas or a new, stronger building code that reduced your risks.
- Are the vulnerabilities described in the last plan still valid? Consider developing problem statements based on current conditions.

Policy Connection: Element E1

A local jurisdiction must review and revise its plan to reflect changes in development. Is there a description of the method and schedule for keeping the plan current (monitoring, evaluating and updating the mitigation plan within a five-year cycle)?

4.2.4. Analyze Impacts

After you identify the hazards and assets, you can analyze the impacts. To do so, you will look at the risks (where hazards overlap with assets), describe asset vulnerabilities, and describe the potential impacts. Impacts may include loss estimates for each hazard. This helps the community see the planning area's greatest risks.

The plan must describe how each profiled hazard can affect the identified assets. The type and severity of impacts reflect both the magnitude of the hazard and the vulnerability of the asset. Impacts are also affected by the community's ability to mitigate, prepare for, respond to and recover from an event. You can describe impacts in many ways. They can be physical (damage), monetary (estimated building or economic losses) or social (disrupted community life). Impacts must include the effects population changes and land use and development changes.

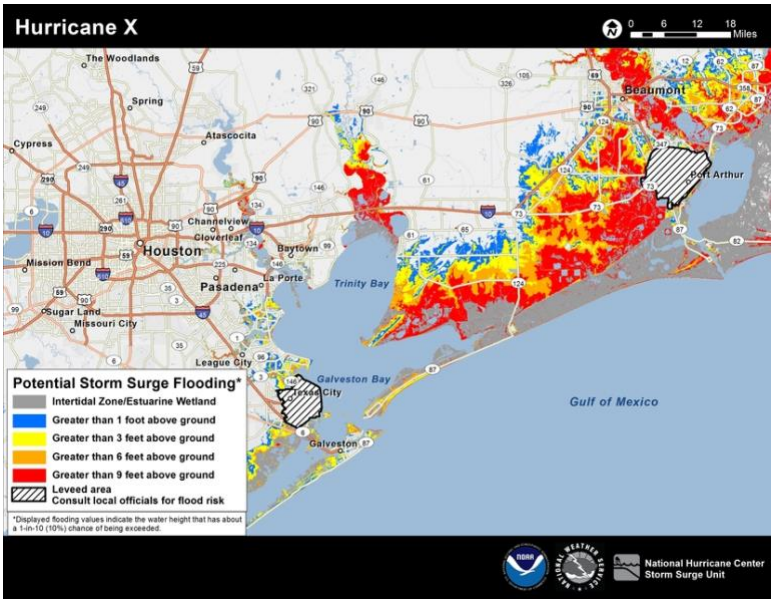


Figure 10: Storm surge inundation zones near Houston, Texas. Source: NOAA.

Not all hazard events create an impact on their own. One event can lead directly to another. These are called cascading hazards. Plans should consider how hazards can cascade. An example of this is the increased flood and landslide risk after wildfires. Or, a dam or levee may fail upstream and cause downstream flooding. Cascading events may begin in a small area. They can intensify and spread to affect larger areas. Evaluate how the natural hazards affect a local community. This is a vital piece of the hazard analysis in a local mitigation plan.

4.2.4.1 METHODS TO ANALYZE IMPACTS

There are three ways to analyze impacts:

1. **Start with the past.** Explain impacts by looking at historic impacts and losses from similar events. Describe what may happen in the future based on these past events. This is called historical analysis.
2. **Overlay assets and hazards.** This is called exposure analysis. It is usually done with maps and GIS software.
3. **Ask yourself "what if?"** This is scenario analysis. It uses hypothetical scenarios to describe impacts. This can be helpful for events that do not have a defined hazard area or do not happen often.

No matter the method, you can describe impacts qualitatively or quantitatively. A qualitative analysis may describe the types of impacts. To do this, gather a team to brainstorm and discuss potential impacts. Include the planning team, subject matter experts, stakeholders and members of the community. A quantitative evaluation assigns values and measures the potential losses to the assets.

Mitigation Plan Updates

A plan update must address how risk has changed since the previous plan was completed. In addition to discussing overall vulnerability, plan updates must describe how development since the last plan affected vulnerability. Pay special attention to changes in demographics, land use development and hazard information. To analyze the current risk and update your problem statements, use this type of information:

- New development in hazard-prone areas.
- Areas affected by recent disasters.
- New data and reports.

The best available data are constantly changing. The local community is the best source for information on community assets and past impacts. Your SHMO and the state mitigation plan are also key resources. They can point out the best available hazard data and risk assessment information.

Historical Analysis

Historical analysis uses data on the impacts and losses of previous hazard events. These help predict the impacts and losses for a similar future event. This can be especially useful for weather-related hazards, such as severe winter storms, hail and drought. These events are frequent, so communities are more likely to know about them. Communities may have data on their impacts and losses. For recent events, don't simply consider what was damaged. Think about what might have been damaged if the event had a greater magnitude. For hazards with no recent events, consider the new development and infrastructure that would be vulnerable.

Use historical analysis to indicate future events when there is no other data available. For example, an event that has occurred 20 times over the past 50 years has a 40-percent annual probability. This data should be used with caution because the type, frequency and magnitude of hazard events does not remain the same as the past. It may not give you a realistic understanding of future probability. If you do not have detailed data for your plan right now, identify where there are gaps in the data and include filling those gaps in the mitigation strategy.

Exposure Analysis

An exposure analysis identifies the existing and future assets in known hazard areas. GIS is often used for this analysis and to make maps to visualize the risk. You can also consider the magnitude of the hazard. You may identify which assets are in areas of high, medium or low wildfire hazard, or in areas of different flood frequencies (1%- or 0.2%-annual-chance flood risk).

An exposure analysis can quantify the number, type and value of structures, community lifelines and other assets in areas of identified hazards. It can identify any assets exposed to multiple hazards.

Exposure analysis can also help you understand areas that may be vulnerable if and when buildings, infrastructure and community lifelines are built in hazard-prone areas.

It can be a challenge to describe the exposure of assets to more than one hazard. Maps are a good tool for this task. A map can show at a glance that an asset is exposed to multiple threats. Figure 11 includes the location of floods, wildfires, dam failures, railroad accidents and a hazardous materials incident. It also points out where development is anticipated (new subdivisions, public facilities and commercial redevelopment). It shows future annexation areas as well.

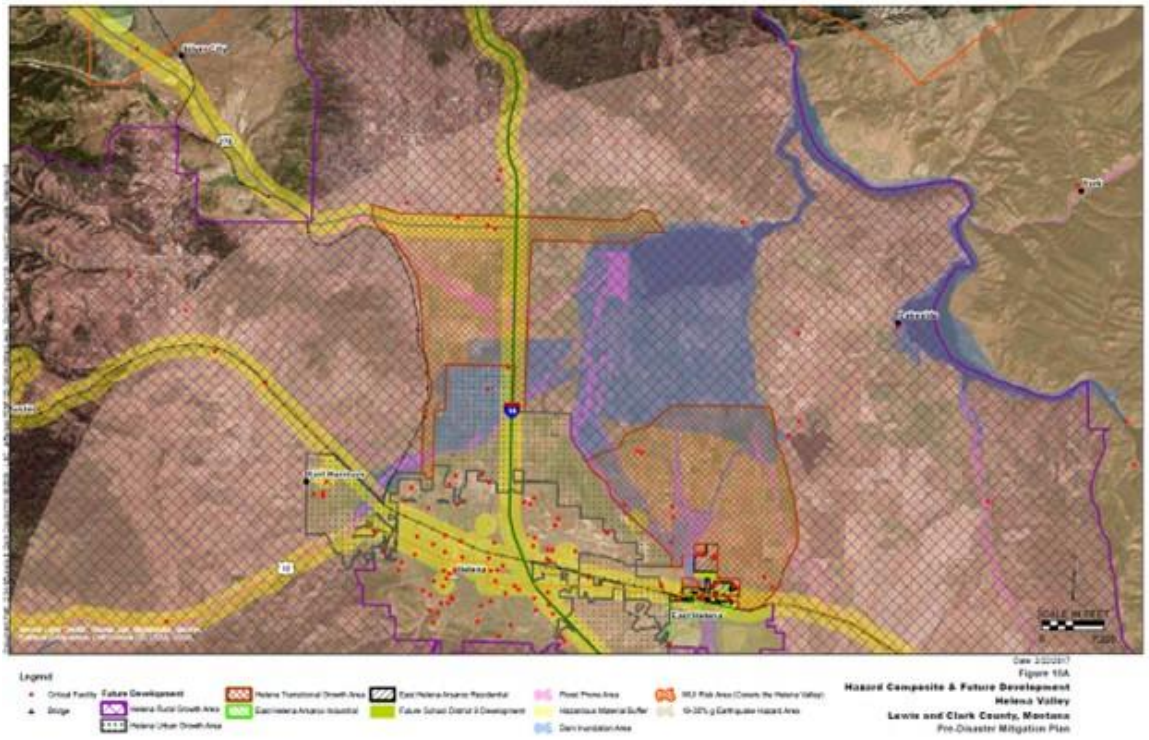


Figure 11: Map showing multiple hazard types in relation to development in Lewis and Clark County, Montana. Source: Lewis and Clark County Planning Department.

Case Study: City of Portland

The City of Portland's 2021 Natural Hazard Mitigation Plan Update is a well-organized plan with many engaging maps, photos and graphics. The risk assessment is especially detailed. Hazard profiles include detailed analyses of community risk. The plan also includes sections for Community Voices, which draws from surveys and programs with local community groups. The information collected from these activities was used to update the plan's mitigation actions and public involvement strategy.

Scenario Analysis

A scenario analysis asks "what if" a certain event occurs. This kind of analysis uses a hypothetical situation to think through potential impacts and losses. A scenario analysis can be done narratively by walking through a scenario with the planning team and documenting what could happen. It can also be done using GIS modeling.

FEMA's Hazus program is one of the most common scenario analysis tools for hazard mitigation. Hazus provides standardized tools and data to estimate risk from earthquakes, floods, hurricanes and tsunamis. Each model uses data on buildings, infrastructure and population together with hazard data and damage functions to model impacts. The impacts Hazus models vary by hazard. For more information on what results Hazus creates and how the software works, review the User and Technical Manuals and the Hazus trainings on FEMA's YouTube channel.

Hazus can be used "out of the box" with no modification. This basic ("Level 1") Hazus analysis produces results based on the national databases in the Hazus software. Level 1 analysis results generally take less time and expertise to generate. You can also check the Hazus Loss Library to see if there is an existing Hazus analysis for your planning area.

Users can modify all Hazus model inputs to include more refined information. Adding local data makes the output more accurate and specific to your planning area. This is called an advanced (Level 2 or 3) analysis. Level 2 and 3 analyses bring in local asset information and more detailed engineering data (see Figure 12).

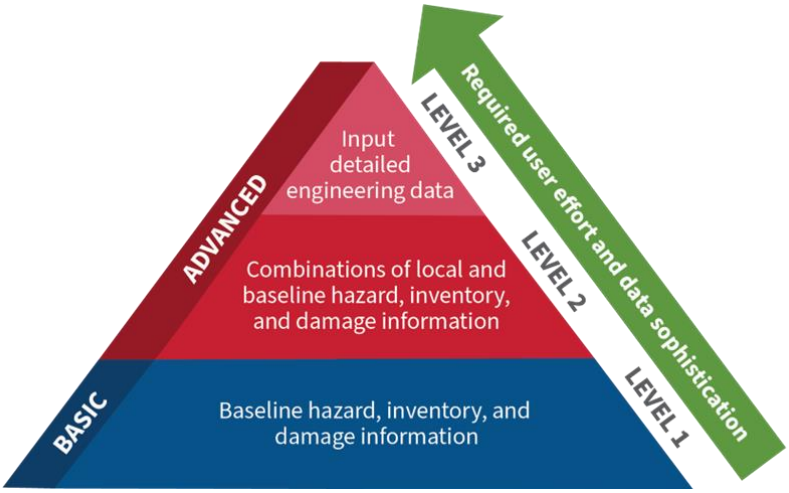


Figure 12: Levels of Hazus Analysis. Source: FEMA.

If you want to refine your analysis but do not know where to start, many professionals can help. Geologists and hydrologists can improve your hazard data. GIS professionals can replace baseline inventories with local asset information. Engineers could improve the baseline building vulnerability parameters and damage functions.

Using FEMA Risk MAP Products in the Risk Assessment

As discussed in Task 1, FEMA's Risk MAP program provides flood hazard and risk data to support planning and risk reduction. **The Guide requires participants whose planning area includes structures covered by the NFIP to use these products to assess flood risk.**

The information in Flood Risk Products (FRPs) and their datasets can enhance hazard mitigation planning activities. This applies especially to the risk and vulnerability assessment portion of the plan. They can also help users develop risk-based mitigation strategies. FRPs can be used to help guide land use and development decisions. They can help you mitigate risks by highlighting the areas of highest risk, areas in need of mitigation, and areas of floodplain change. Communities can use the FEMA Flood Map Service Center to find all the products available to them. It contains all of the effective and past products available for a study area.

So, how do you use these products in the risk assessment?

Regulatory products, including the FIRM and FIS, are the authoritative data on flood risk in a community. You can use the FIRM's GIS data to conduct an exposure analysis of flood risk and identify assets in floodprone areas. The FIS report often has documentation of previous events as well as detailed flood data across the community.

The non-regulatory FRPs strengthen communities' ability to see and explain flood risk. They can also use these data for development and planning. These products work with regulatory products, like FIRMs and FIS reports, to improve how communities:

- See where flooding is likely to occur.
- Make informed decisions about reducing the impacts of flooding.
- Protect lives, houses, businesses and critical facilities from future flood damage.

The non-regulatory products are powerful because they can be combined with local data to support risk-informed decision making. Read Using Flood Risk Products in Hazard Mitigation Plans for more on how to use these products in the mitigation plan.

Regulatory products show where certain NFIP requirements apply (i.e., minimum floodplain management standards and mandatory flood insurance purchase), and these requirements must be informed by the flood hazards of today. Future conditions information is not typically included in FEMA's regulatory products because the information can be conveyed more efficiently and comprehensively in non-regulatory products. Therefore, communities are highly encouraged to use non-regulatory products to understand future conditions.

If your community is in a watershed with an ongoing Risk MAP study, document that in the plan. Different datasets become available at different points in the Risk MAP lifecycle. A recent Risk MAP Discovery Report is another good source of information for a mitigation plan.

If your community has data that is more recent or accurate than what is on the FIRM, note that in the plan. Some communities conduct their own hydrologic and hydraulic (H&H) studies to better understand their risk. If that is the case, the plan should discuss how those data improve or add to the existing Risk MAP products.

Combining Available Data and Methods

Many plans combine methods to analyze impacts. The combination of methods will depend on the hazard. It may also depend on the available time, data, staff and technical resources. For instance, analyzing flood risk could include the following:

- Public assistance costs and insured and uninsured losses.
- Finding the number and value of community assets in flood hazard areas. Noting any specific vulnerability due to physical features or common uses.
- Estimating the physical, economic and social impacts of a 1%-annual-chance flood event, based on a Hazus model.
- Using the current zone maps to describe any future development that may be at risk of flooding.

There are many ways to analyze the data and show the results. But the analysis step should result in a description of the potential impacts of each hazard on the assets of each jurisdiction. You may use factors like annualized losses in a table to illustrate the impacts. Components that affect annual losses could include:

- Location.
- Structural damage.
- Non-structural damage.
- Contents damage.
- Total estimated losses.

These analyses can generate a lot of data. Use tables to summarize the exposed assets. You may want to include the number, type and total value of all assets in hazard areas.

4.2.4.2 INCLUDE REPETITIVE AND SEVERE REPETITIVE LOSS PROPERTIES

The plan must address repetitively flooded, NFIP-insured structures. This includes both repetitive and severe repetitive loss properties. Identify areas of repetitive damage that Public Assistance funding could be used for mitigation in future federally declared disasters.

Table 7: Repetitive and Severe Repetitive Loss Definitions

Type	Definition
Repetitive Loss Properties	A structure covered by an NFIP flood insurance policy that: ▪ Has had flood-related damage on two occasions, with the average cost of repair at or over 25% of the value of the structure at that time; and ▪ When the second flood-related damage took place, the policy had Increased Cost of Compliance coverage.
Severe Repetitive Loss Properties	A structure covered by an NFIP flood insurance policy that has had flood-related damage: ▪ For which four or more separate claims payments for flood-related damage have been made. The amount of each claim (including building and contents payments) exceeded $5,000, and the cumulative amount of the claims payments exceeded $20,000; or ▪ For which at least two flood insurance claims payments (building payments only) have been made, with a cumulative claims total that exceeds the market value of the insured structure.

The Risk Assessment must estimate the numbers and types of these properties. The types are residential, commercial, institutional, etc. Contact your state NFIP coordinator or local floodplain administrator for how to obtain that information.

In addition to repetitive and severe repetitive loss properties, there are other factors of High-Risk Properties. These are properties that are more at risk to flooding. Some of the factors that make these properties good candidates for mitigation include those that:

- Have been substantially damaged,
- Are close to a flood source,
- Receive FEMA Individual Assistance,
- Have shown flood damage through state or local inspection, or
- Are at high risk according to sources like:
    - Elevation certificates,
    - Regulatory products like FISs or FIRMs, or
    - Hydrologic and hydraulic studies.

An example of a High-Risk Property is one where the elevation certificate shows that the lowest floor is below the Base Flood Elevation (BFE). The BFE is established by the FIRM. This means the property is at risk to both the base flood as well more frequent events.

4.2.5. Summarize Vulnerability

Vulnerability is being at risk from the effects of hazards. The term applies to assets such as structures, systems and populations. A community may define other assets in areas known to be hazardous.

The previous steps in the risk assessment create a great deal of information on hazards, vulnerable assets and potential impacts and losses. The planning team shall summarize this information to help the community understand its most significant risks and vulnerabilities. The summary of vulnerabilities then informs the mitigation strategy. It will also help you share the data with elected officials and others in a condensed and accessible format, better allowing them to make informed decisions for the community.

One good approach to summarizing vulnerabilities is to write problem statements. For instance, your analysis of impacts and losses helps you see which critical facilities are in hazard areas. You know which neighborhood had the most flood damage in the past. You know which hazard-prone areas are zoned for future development. Select the information on the issues of greatest concern. The planning team can see the impacts of each hazard. This will help them develop problem statements (see below). They may also identify problems or issues that apply to all hazards.

When you are developing a plan, revise the problem statements to reflect the current risk assessment. You may need to develop new statements. Remove or revise ones that are no longer valid. Perhaps mitigation projects have addressed the risk or conditions have changed.

Here are some example problem statements:

- The sewage treatment plant is in the 100-year floodplain. It has been damaged by past flood events. It serves 10,000 residential and commercial properties.
- The city recently annexed an area in the wildland-urban interface. The land use and building codes do not address wildfire hazard areas. Future development in the wildland-urban interface will increase the vulnerability to wildfires.
- The city is in a seismic hazard area and is subject to severe ground shaking and soil liquefaction. Hazus predicts a 6.0 magnitude event would result in $10.5 million in structural losses and $40 million in non-structural losses. Damage will be greatest to the 100 unreinforced masonry buildings (pre- building code) in the downtown business district.
- The schools are a central focus of the community. They offer opportunities to educate the public about hazards, risk and mitigation. In addition, many school facilities are vulnerable to one or more hazards, including flooding, earthquake, tornado and severe winter storms.

- Within the city, people of color and lower-income families are concentrated in high-density urban areas that receive a disproportionate exposure to extreme heat events.
- Evacuation route signs are only provided in English. The city has a large number of non-English speaking residents who therefore may not be able to access evacuation routes in a disaster.
- The city is in a coastal area that is subject to the potential of coastal inundation that threatens over 250 residential properties.

Policy Connection: Element B2

Does the plan include a summary of the jurisdiction's vulnerability and the impacts on the community from the identified hazards? Does this summary also address NFIP-insured structures that have been repetitively damaged by floods?

4.3. Document the Risk Assessment

The quantity of information produced as part of a risk assessment varies from community to community. This variation depends on the:

- Size of communities.
- Number of participating jurisdictions.
- Number of hazards.
- Available data.
- Technical expertise.
- Other factors.

It is important to document your process for conducting the risk assessment. This is part of the planning process. Some data inputs and outputs are not likely to be needed in the main body of the plan. You may add some of that information in appendices. Some may be integrated and updated in your community's GIS program, record keeping and other systems. In the plan, the information should be focused on communicating the analysis and findings to a non-scientific audience of planners, policy makers and community members. The information discovered as you assess the risks should be directly tied to the mitigation strategy you develop.

Task 5. Review Community Capabilities

5.1. Capability Assessment

Each participant has a unique set of tools available to increase their resilience. These tools are their capabilities. They include the laws, policies, programs, staff, funding and other resources on hand to carry out the plan and increase resilience. Reviewing each participant's capabilities helps the planning team find and evaluate resources they can use to reduce disaster losses now or in the future. This is especially useful for multi-jurisdictional plans where capabilities vary.

The capability assessment is an evaluation, not a report-out. The plan must describe which authorities, policies, programs, funding and resources a participant has to accomplish hazard mitigation. The discussion must include the building codes, land use and development codes, ordinances and regulations key to reducing risk. It must also describe ways each participant can expand on and improve their capabilities. Think about how capabilities help reduce risk. Do they actively support mitigation? Do any support activities that increase risks? Address the opportunities present and be clear about the gaps and challenges.

Connecting Capabilities Throughout the Plan

The capability assessment should relate to the hazards in the risk assessment. Think about the range of resources, including staff and data, that support understanding of those hazards. Capabilities may not be hazard specific, but they should be able to meet the challenges posed by those hazards.

The capability assessment also informs the mitigation strategy. The chosen actions should either match the community's resources or support strengthening or building capacity where resources might not exist. Use the capability assessment to pick mitigation actions that are suited to each participant. For example, a participant with limited funding and no grant writing experience may need additional help from state and federal agencies to carry out a large-scale structural project that will require a grant and a large local match.

Begin by reviewing existing publicly available information that can help you understand capabilities. Each participant's capabilities are unique. It is important to include them in the assessment. You can hold interviews or ask participants to complete Worksheet 4: Capability Assessment. This worksheet points participant agencies, departments and other community partners to available programs, regulations, resources and practices. The worksheet's questions help each participant see how they

can specifically support mitigation. There is a wide range of capabilities. Not every participant will have each one. Participants may also have capabilities they can add to the worksheet.

The capability assessment requires participants to describe how they can expand on and improve capabilities. This task recognizes that the mitigation plan is a long-term strategy to reduce risk. Moving the plan into action takes time and may happen over several planning update cycles. It is important to look ahead at participants' will. Can they improve their capabilities to reduce their risk? For example, it will be difficult for a community to improve their building code if the statewide code does not include disaster-resistant provisions. Participants are not penalized for not having the authority or ability to improve a capability. However, describe those gaps. The gaps may lead to actions in the mitigation strategy.

5.2. Types of Capabilities

There are four key types of mitigation capabilities:

- Planning and regulatory.
- Administrative and technical.
- Financial.
- Education and outreach.

Each type of capability may include laws, regulations, policies, programs, staff or funding. They may go beyond traditional mitigation, too. The planning team may find other capabilities that help make the planning area more resilient.

5.2.1. Planning and Regulatory

Planning and regulatory capabilities are the codes, ordinances, policies, laws, plans and programs that guide growth and development. These capabilities can either support risk reduction or create areas that are more vulnerable to disaster. Common planning capabilities include comprehensive or master plans, housing plans, capital improvement programs, transportation plans, economic development strategies, disaster recovery plans and others. Also evaluate less-common plans if they exist, such as resilience plans, natural resource plans, historic preservation plans, and water efficiency and conservation plans. Local plans have specific actions or policies that support community goals and drive decisions.

This type of capability also includes regulations and related processes. The plan must discuss the existing building codes and land use and development ordinances. Land use and development ordinances include zoning, subdivision, floodplain management, wildfire or steep slope regulations. They also include processes like site plan review. These capabilities regulate where land is developed and how buildings are constructed. Planning and regulatory capabilities include current

plans and regulations. You should also consider a participant's ability to change and improve them as needed.

Building Codes and Mitigation Capabilities

Hazard-resistant building codes reduce loss of life and property. The National Institute of Building Sciences' Natural Hazard Mitigation Saves study found that adopting disaster-resistant building codes saves $11 for each $1 spent on implementation. FEMA's Building Codes Save: A Nationwide Study shows that modern building codes lead to fewer property losses from natural disasters.

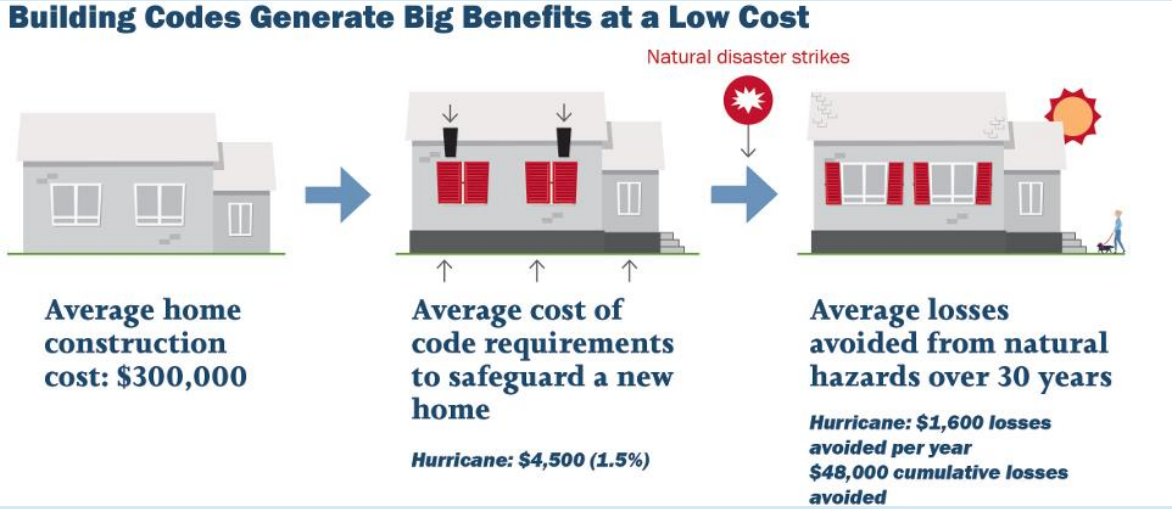


Figure 13: The Building Codes Save study shows how building code adoption and enforcement is a cost-effective way to reduce losses. In this example, a $4,500 investment leads to $48,000 cumulative losses avoided over 30 years.

Several resources support the adoption and enforcement of building codes.

- Nationwide Building Code Adoption Tracking. This FEMA resource notes jurisdictions which have adopted building codes.
- Building Codes Adoption Playbook. This FEMA resource helps states and jurisdictions promote, adopt and enforce up-to-date building codes.
- Inspect to Protect website. This Department of Homeland Security resource shows how well current building codes mitigate hazards.
- The Building Code Effectiveness Grading Schedule assesses community building codes and their enforcement.

Ask the following questions to identify and describe planning and regulatory capabilities:

- What is the legal framework for land use planning in the state and participating communities? (A useful resource for this is the 2022 Survey of State Planning Laws)
- What kinds of plans does each participant have? Which do they use most often?
- Are there any laws or ordinances that mitigate hazards?
- How do participants regulate growth and development?
- How do participants protect community lifelines and other critical facilities, including dams and levees?
- How do planning and development decisions and processes account for and/or increase hazard risk?

Case Study: Planning for Hazards (Colorado)

Land use policies and regulations can be powerful tools to promote smart growth and reduce long-term risk. Land use supports hazard mitigation in a few key ways:

- Preventing development in hazard-prone areas.
- Directing future growth to safer areas.
- Protecting existing development in hazard-prone areas.

Recognizing a need to better understand how land use can support mitigation and resilience, Colorado developed Planning for Hazards. It is a comprehensive guide on how to add hazard mitigation into land use and development plans, codes and standards. This guide is specific to Colorado; not every land use tool works in every community. However, the guide provides great background information on different kinds of planning and regulatory tools that reduce risk. It also includes model code language and advice.



Figure 14: Planning for Hazards describes six categories of planning tools that can reduce risk. It also aligns the tools to 12 different hazards.

5.2.2. Administrative and Technical

Administrative and technical capabilities are the participant's staff, skills and tools. These capabilities can be used for mitigation planning and to carry out specific mitigation actions. They also include the ability to access, coordinate and implement these resources effectively. Think of these as "people-powered" capabilities.

Human resources can include staff and volunteer engineers, planners, emergency managers, GIS analysts, building inspectors, grant writers, floodplain managers and communications specialists. For jurisdictions with limited staff, consider capacity as well as capability. Staff members may have the right skills, but do they have time to support mitigation?

This category can go beyond paid staff. It can include other public and private sector resources. County, regional, quasigovernmental or nongovernmental agencies may be able to support mitigation. Community-based organizations and other grassroots groups can also help. They have deep roots in their communities and may have technical experts or lived experiences that can support mitigation.

Ask the following questions to evaluate these capabilities:

- Which staff are available to help carry out the plan?
- Who will be responsible for implementing mitigation actions?
- Have available staff been trained to support mitigation?
- Are outside technical expertise or resources needed?
- Do government agencies and departments regularly coordinate and problem-solve?
- Are agreements in place between participants or between participants and other organizations that provide regular administrative or technical assistance?
- Do participants work with nongovernmental organizations who also work in mitigation?

5.2.3. Financial

Financial capabilities are the resources to fund mitigation actions. Talking about funding and financial capabilities is important because mitigation actions have different costs. Mitigation actions like outreach programs are lower cost and often use staff time and existing budgets. Other actions, like earthquake retrofits, could require substantial funding from local, state and federal partners.

Consider a wide range of financial capabilities in the assessment, such as:

- Property, sales, income or special purpose taxes.

- General funds.
- Utility service fees.
- Impact fees from new development and redevelopment.
- General obligation or special purpose bonds.
- Federal funding.
- State funding.
- Private or nonprofit grants, loans or funding.
- Any other previously identified potential cash or third-party, in-kind contributions.

For any of these, consider whether the resource has been used in the past. If it has, for what kinds of activities? Could it be used for mitigation? If the funding is local, could it be used for the local match of a federal grant?

One important local government action to get funds into mitigation projects is to describe how capital projects are prioritized among competing priorities. Are projects ranked, and how? How does mitigation fit into the capital improvement plan? Are there any financial policies in place that direct available funds to mitigation projects, or that can be used as non-federal grant match?

Mitigation Resource Guide

FEMA developed and published a document called the Mitigation Resource Guide to identify federal funding, technical assistance and other resources to support hazard mitigation.

The guide identifies different types of resources that local communities can use to advance mitigation actions and increase resilience. These resource types include grants, loans and technical assistance. The guide also prioritizes programs that support the following action types:

- Education and Outreach
- Natural Systems Protection
- Planning and Regulations
- Structure and Infrastructure

The guide identifies specifics to each program such as who is eligible, hazards addressed, restrictions, cost share and a web link to the resource. The guide also briefly describes the resource and identifies a mitigation success story that used the profiled program. Some FEMA

regions have expanded versions of these guides that identify state resources in addition to the federal resources.

5.2.4. Education and Outreach

Education and outreach capabilities are programs and methods that can communicate about and encourage risk reduction. These programs may be run by a participant or a community-based partner. Partners can connect the planning team to education and outreach capabilities.

Education and outreach activities can often be the easiest and most impactful activities for local agencies. They are easy to combine with other efforts. For example, education and outreach can bring mitigation and resilience topics to places where community members are already convened. While they take careful planning, these activities can often be accomplished without outside grant funding or expertise.

Examples of education and outreach capabilities include:

- Fire safety programs.
- Flood, dam and levee safety outreach, including awareness of inundation zones.
- Public-private partnerships around disaster preparedness and recovery.
- Other federal or nongovernmental organization programs like the National Weather Service StormReady® or TsunamiReady® program or the National Fire Protection Association's Firewise USA® program.

Activities and awareness campaigns like the Great Shakeout should also be included. Some communities have their own public information or communications office to handle outreach initiatives.

Ask the following questions to describe education and outreach capabilities:

- What outreach programs do participants use to share important information?
- What venues do participants use for outreach activities? Could they be used to promote risk reduction?
- What new or additional outreach efforts could get the most public participation and support for risk reduction?

Case Study: Boulder County, CO

In its 2022 plan update, Boulder County focused on its public involvement strategy. Of its five overarching goals, one was to "Improve Public Awareness and Preparedness Regarding Hazard Vulnerability and Mitigation." To do this, Boulder County launched a social media campaign to include members of the community that had historically been absent from the hazard mitigation planning process.

While the original outreach and engagement plan featured several in-person public meetings, the Covid-19 pandemic forced the county to shift gears. Their revised strategy was to post updates online via the Office of Emergency Management's website and Facebook page. The county's public survey to gather information about hazard mitigation in the planning area garnered 1,700 views and 334 responses. The survey revealed that 88% of respondents had never participated in hazard mitigation planning before, making this outreach effort a clear success in engaging new community members.

In addition to its social media campaign, Boulder County gave the public many opportunities to comment on the plan over a period of several months rather than holding only one or two public meetings (as is more common).

The county went further to center on meaningful engagement opportunities by aiming to grow participation even more during the maintenance cycle of the 2022-2027 mitigation plan. Their forward-looking engagement strategy considers goals, target audiences, platforms, engagement tactics and evaluation measures for public involvement during plan maintenance.

Policy Connection: Element C1

Does the plan document each participant's existing authorities, policies, programs and resources and its ability to expand on and improve these existing policies and programs?

5.3. National Flood Insurance Program

Communities across the country build their flood management capabilities by participating in the National Flood Insurance Program (NFIP). The NFIP supports flood risk reduction before and after disasters. It helps reduce the socioeconomic impact of floods. The NFIP allows property owners and renters in participating communities to purchase federal flood insurance policies to recover financial losses after a flood. To participate in the NFIP, communities adopt and enforce floodplain management policies to reduce the effects of flooding.

The NFIP is a key capability for plan participants. The local mitigation plan must describe how each community complies with the NFIP. For the most part, NFIP communities are local governments, excluding special districts. The local floodplain administrator is a key resource for understanding

NFIP-related capabilities. If a jurisdiction does not participate in the NFIP, state this in the plan and explain why.

The NFIP touches all four types of capabilities:

- **Planning and regulatory.** Adopting floodplain management regulations and managing development in the floodplain is an NFIP requirement.
- **Administrative and technical.** Each community must designate a floodplain administrator. Other administrative and technical capabilities that support NFIP compliance may relate to permitting, zoning or site plan review.
- **Financial.** Having NFIP policies supports financial capabilities. Having NFIP policies in a community speeds recovery and allows post-disaster funds to be used elsewhere. Joining the NFIP gives communities access to other kinds of pre- and post-disaster funding for mitigation.
- **Education and outreach.** Education and outreach programs and tools through the NFIP may support flood risk communication and mitigation.

In addressing NFIP capabilities, the plan must include information on:

- NFIP participation.
- Adoption of NFIP minimum criteria in local regulations. Participants who have adopted higher standards should explain those standards.
- Adoption of the latest effective FIRM.
- Enforcement of local floodplain regulations to manage development in the floodplain.
- Staff capabilities to implement the NFIP and local floodplain regulations.
- How participating communities use the NFIP to reduce risk after a disaster through substantial damage and substantial improvement provisions.

Communities can decide how to present this information. Communities often include a table with NFIP information and narratives for more context.

Worksheet 5 is a tool to help participants understand their NFIP capabilities. It will also help identify actions to improve the existing program. The plan does not need to include specific actions in the mitigation strategy for NFIP compliance. However, it is a good idea to include such actions to improve community-wide resilience outcomes.

5.3.1. NFIP Participation

Communities apply to join the NFIP program, adopt a resolution of their intent to participate, and adopt and submit a FEMA-approved floodplain management ordinance. They also adopt the FIRM. Communities can participate in the NFIP even if they have no mapped special flood hazard areas or are minimally floodprone.

If a plan participant does not participate in the NFIP, the plan should also state that. Non-participating communities should include why they don't participate, regardless of the reason.

Property owners and renters in nonparticipating communities cannot purchase or renew NFIP flood insurance. These community also faces other sanctions. The use of federal disaster assistance is restricted. Federal grants and loans for acquiring, repairing and constructing buildings in identified flood hazard areas are also limited. The NFIP Floodplain Management Requirements Study Guide and Desk Reference for Local Officials has more information on how the NFIP works.

First describe each participant's NFIP status. This information is in the NFIP Community Status Book. For participating communities, include when the community joined the NFIP. Nonparticipating communities should explain why they do not participate. This may include why the community was suspended and any plans it has to re-enter the NFIP, if appropriate. In addition to basic participation information, the plan may list total flood insurance policies, premiums, coverage amounts and claims history. Include any repetitive loss properties.

Being a participant in the NFIP means a local community has met the program criteria.

Participation in the NFIP is based on an agreement between communities and FEMA. The NFIP has three basic components:

1. **Floodplain mapping.** NFIP participation requires the community to adopt the FIRM to provide the data needed to administer floodplain management programs.
2. **Floodplain management.** The NFIP requires communities to adopt and enforce the minimum federal floodplain management regulations that reduce the effects of flooding on new and improved structures. States and communities may have more restrictive elements in their floodplain ordinances to provide additional safety measures.
3. **Flood insurance.** Community participation in the NFIP enables property owners and renters to purchase insurance to protect against flood losses. In exchange, the community adopts floodplain management regulations that reduce future flood damages.

5.3.2. Adoption of NFIP Standards and Maps

Participating communities must adopt NFIP minimum floodplain management criteria through local regulation. They must also adopt the latest effective FIRM. These are important planning and

regulatory capabilities because they support risk-aware development decisions in and around the floodplain.

The NFIP has national minimum criteria (see 44 CFR §60 Subpart A). Participants must adopt these minimum criteria. Many states require communities to adopt floodplain management regulations that exceed the national minimum. These are called higher standards. Communities can also elect to enforce higher standards to better manage their flood risk. The plan must say whether each participant has adopted the minimum NFIP floodplain management criteria and the latest FIRM. Note the effective FIRM date. The plan should also note if a community participates but has no identified special flood hazard areas. Participants who have adopted higher standards should explain those standards. If applicable, include activities that contributed to the community's class ranking in the CRS.

Did you know?

The NFIP minimum criteria include:

- Elevating new and substantially improved residential structures to the base (1%-annual-chance) flood level.
- Elevating or making watertight (dry floodproofing) new or substantially improved non-residential structures.
- Limiting development in floodways. The floodway is the portion of the floodplain reserved to carry deeper and faster moving water.
- Protecting buildings in coastal areas from the impacts of waves and storm damage.

Higher standards provide a higher level of floodplain management and protection, as the name implies. Here are some examples of higher standards.

- Encouraging new construction to be 1 or more feet above the base flood elevation. This is called freeboard.
- Requiring roadways and other access points in a development project, especially evacuation routes, to be above the base flood elevation.
- Compensating for loss of the floodplain's ability to store water when it is filled in. This is called compensatory storage.
- Protecting critical facilities and community lifelines by prohibiting them in the special flood hazard area.
- Protecting open space beside the floodplain.
- Regulating development in community-identified or projected future flood hazard areas.

5.3.3. Staffing, Enforcement and Continued Compliance in the NFIP

Adopting floodplain management rules is only effective if the rules are followed and enforced. Each NFIP-participating community must describe how they comply with the NFIP requirements. This includes listing the agency or person responsible for implementing the NFIP in the community. This is usually the floodplain manager or administrator. The mitigation plan must do more than state that the community will continue to comply with the NFIP. It is important to explain how they will comply. Consider these questions when describing continued NFIP compliance:

- Who is the floodplain manager? Is this their primary or a secondary role? Does this person have adequate training and capacity for their role?
- Is the FIRM and FIS report in an accessible location? Does the community (or state) promote public access to floodplain information?
- How does the community support map change requests? These could be requests during the Risk MAP process or through Letters of Map Amendment or Revision.
- Does the community collect updated floodplain data or modeling? Is this shared with partners and with FEMA?
- How does the community issue development permits in the special flood hazard area? Who is responsible for permitting?
- How are floodplains regulated in new subdivisions?
- Does the community maintain elevation records? Does it track the number of buildings in the special flood hazard area?
- How does the community enforce its floodplain rules? Does enforcement include monitoring compliance and acting to correct violations?
- How does the community educate the public on floodplain management and the availability of flood insurance, in and out of the floodplain?

The floodplain manager is a key partner in understanding floodplain management enforcement and NFIP compliance. You may want to engage with your state NFIP Coordinator, too. This information may be found in the results of a recent Community Assistance Visit (CAV).

Suspended or withdrawn communities should describe the conditions of their suspension or withdrawal from the program. NFIP participation is a critical piece of the FEMA HMA grant program. Communities that do not participate in the NFIP risk losing access to important pre- and post-disaster grant programs.

Go beyond the minimum with the CRS

The Community Rating System (CRS) is a voluntary incentive program of the NFIP. CRS communities exceed the minimum NFIP requirements to further reduce their flood risk. They do this by addressing the program's three goals:

- Reduce and avoid flood damage to insurable property.
- Strengthen and support the insurance aspects of the NFIP.
- Foster comprehensive floodplain management.

If a community participates in the CRS, note this in the plan. Communities can get CRS activity points for 19 public information and floodplain management activities. In exchange for doing these activities, residents get a discount on their flood insurance premiums. The amount of the discount is based on activity points – more points equals a higher discount.

CRS communities should describe what they've done to achieve the CRS goals. It can also be helpful to describe how they addressed challenges or issues during community assistance and monitoring activities.

One CRS activity is floodplain management planning. This can lead to a standalone plan or can be met with the mitigation plan. For more information on how to coordinate the local mitigation plan and the CRS floodplain management plan, read the Mitigation Planning and the CRS Key Topics Bulletin.

5.3.4. Substantial Damage and Substantial Improvement

The NFIP looks to reduce flood risk after a flood event. It does this through substantial damage/substantial improvement rules. These rules apply when a structure is more than 50% damaged or improved (by cost). The owner must build in a way that complies with current building codes and ordinances. This applies even if the structure was exempt from those rules before the damage or improvement. It also applies to damage from non-flood events like fire or wind. Substantial damage/substantial improvement allows communities to require owners of structures built before they joined the NFIP to comply with current standards. Communities are responsible for making substantial damage/substantial improvement determinations and notifying property owners.

The plan must describe how participants carry out the substantial improvement/substantial damage parts of their floodplain management regulations. This could include describing:

- Which agency or person makes substantial damage/substantial improvement determinations.
- Whether staff are trained to make substantial damage/substantial improvement determinations and if there are enough staff to complete them.
- The process the communities uses to make determinations.

- The community's methods for communicating substantial damage/substantial improvement requirements before and after an event.

For more details, read FEMA 758: Substantial Improvement/Substantial Damage Desk Reference.

Policy Connection: Element C2

Does the plan address each jurisdiction's participation in the NFIP and continued compliance with NFIP requirements, as appropriate?

5.4. Documenting Capabilities

After identifying and evaluating capabilities, document them. The plan must describe each participant's capabilities and how they can support the mitigation strategy. This can be done in a table or narrative. Either way, make sure the plan documents existing capabilities for **each** participant and describes **their** ability to expand and improve capabilities.

Task 6. Develop a Mitigation Strategy

The heart of the mitigation plan is the mitigation strategy. The mitigation strategy is the long-term blueprint for reducing the potential losses identified in the risk assessment. The mitigation strategy describes how the community will accomplish the overall purpose, or mission, of the planning process.

6.1. The Mitigation Strategy: Goals, Actions and Action Plan

The mitigation strategy has three main required components: mitigation goals, mitigation actions and an action plan to carry them out. These items set the framework to identify, prioritize and act to reduce risk.

Mitigation goals describe what the community wants to achieve as a desired future state with the plan, see Figure 15. They are broad, long-term policy and vision statements that explain what the mitigation strategy aims to achieve. They are visions for reducing or avoiding losses from the identified hazards.

- Example goal: Minimize new development in hazard-prone areas, including areas possibly affected by dam and/or levee mis-operation or failures.

Mitigation actions are specific projects and activities that help achieve the goals. They are measures, projects, plans or activities proposed to reduce the current and future vulnerabilities described in the risk assessment.

- Example action: Amend the zoning ordinance to discourage development in wetlands, floodplains and inundation zones.

The **action plan** describes how the mitigation actions will be carried out. The plan tells how the actions will be prioritized, administered and tied into the community's existing planning mechanisms. In a multi-jurisdictional plan, each community must clearly have actions specific to its vulnerabilities.



Figure 15: Mitigation strategy.

6.2. Mitigation Goals

The plan must include hazard mitigation goals the community wants to achieve by carrying out their mitigation plan. Clear goals that are agreed upon by the planning team, elected officials and the public are the basis for prioritizing mitigation actions. Mitigation goals must be consistent with the hazards identified and described in the risk assessment.

Common goals include:

- Minimize loss of life, injury and damage to property, the economy and the environment from natural hazards.
- Build and enhance local mitigation capabilities to ensure the safety and resilience of all community members. Reduce damage to public buildings and ensure continuity of emergency services.
- Maintain the jurisdiction's natural and man-made systems that protect against natural hazards.
- Increase cooperation and coordination among private entities, local agencies, state agencies and federal agencies.
- Protect natural, historic and cultural resources.

Whether you are updating goals or developing new ones, here are some considerations:

- **Risk assessment findings.** Review the findings of the risk assessment, especially the problem statements. Group the problem statements by themes, such as hazards, assets at risk or location. Several problem statements or groups may lead to a single mitigation goal.

- **Outreach findings.** Consider themes that stood out during planning team meetings and outreach activities. For instance, improving education and awareness about hazards may be a common theme.
- **Community goals.** Review existing plans and other policy documents to ensure hazard mitigation goals are consistent with the goals of other community plans, such as the comprehensive plan, and other objectives established by the governing body. Mitigation goals that complement other plans and policies may garner more support.
- **State hazard mitigation goals.** Review the goals included in your state's hazard mitigation plan. It may be strategic to align your plan's goals to the state's plan.

If you are developing a plan, the planning team should review the previous goals and reaffirm or change them based on current conditions and priorities.

Spotlight on HHPDs

To meet requirement HHPD3, the local mitigation plan must:

- Address a reduction in vulnerabilities to and from HHPDs as part of its own goals or with other long-term strategies. The plan does not need to include a goal specific to HHPDs alone.
- Link proposed actions that reduce long-term vulnerabilities consistent with the goals. Include goals to reduce long term vulnerability to HHPDs. Consider the entire inventory of dams that have potential impacts in the planning area, even if they do not have a hazard potential classification or eligibility for HHPD funding.

Policy Connection: Element C3

Does the plan include goals to reduce/avoid long-term vulnerabilities to the identified hazards?

6.3. Mitigation Actions

A mitigation action is a measure, project, plan or activity proposed to reduce or eliminate current and future vulnerabilities described in the risk assessment. Mitigation actions help achieve the plan's mission and goals. The actions to reduce vulnerability to threats and hazards form the core of the plan and are a key outcome of the planning process.

6.3.1. Types of Mitigation Actions

Mitigation actions primarily fall into four categories:

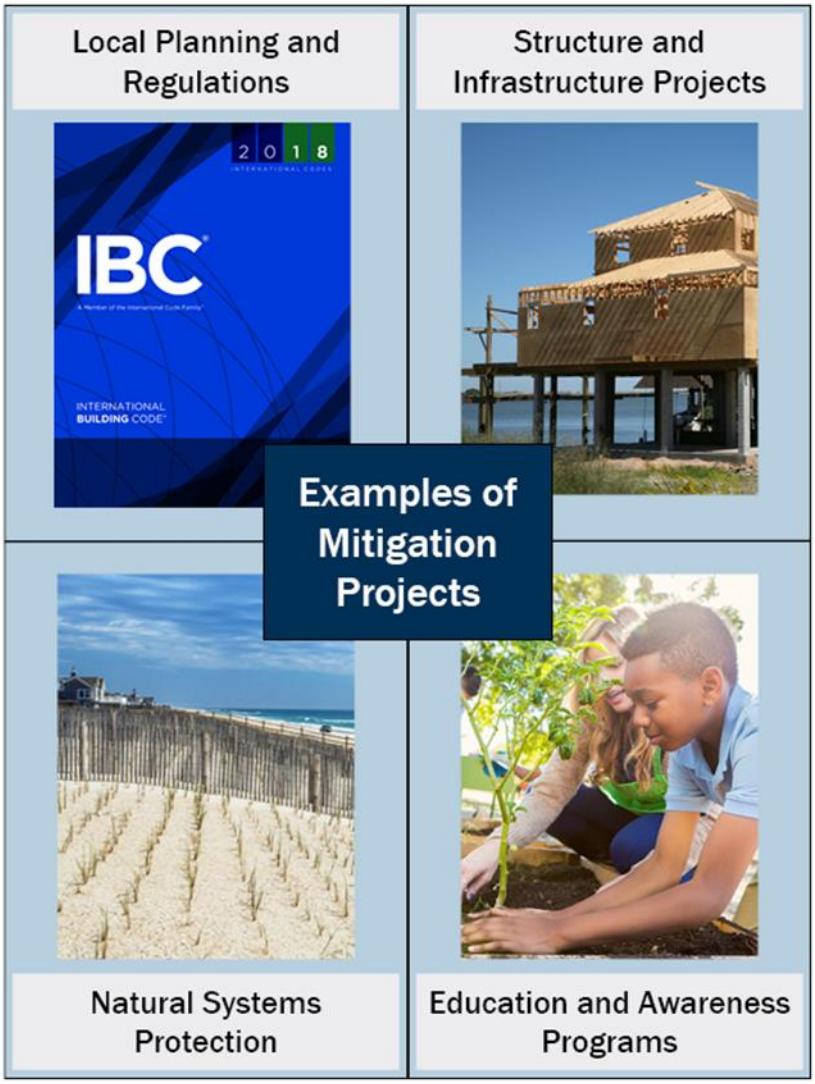


Figure 16: Examples of the four types of mitigation categories

Table 8 describes these types of mitigation actions.

Table 8: Types of Mitigation Actions.

Mitigation Type	Description	Examples
Local Plans and Regulations	These actions include government authorities, policies or codes that	▪ Comprehensive plans ▪ Land use ordinances

Mitigation Type	Description	Examples
	influence the way land and buildings are developed and built.	▪ Subdivision regulations ▪ Development review ▪ Building codes and enforcement ▪ NFIP CRS ▪ Capital improvement programs ▪ Open space preservation ▪ Stormwater management regulations and master plans
Structure and Infrastructure Projects	These actions involve modifying existing structures and infrastructure to protect them from a hazard or remove them from a hazard area. This could apply to public or private structures as well as critical facilities and infrastructure.	▪ Acquisitions and elevations of structures in flood-prone areas ▪ Utility undergrounding ▪ Structural retrofits ▪ Floodwalls and retaining walls ▪ Detention and retention structures ▪ Culverts ▪ Safe rooms
Natural Systems Protection and Nature-based Solutions	This type of action can include green infrastructure and low impact development, nature-based solutions, Engineering with Nature and bioengineering to incorporate natural features or processes into the built environment.	▪ Sediment and erosion control ▪ Stream corridor restoration ▪ Forest management ▪ Conservation easements ▪ Wetland restoration and preservation ▪ Land conservation ▪ Greenways ▪ Rain gardens ▪ Living shorelines
Education and Awareness Programs	These types of actions keep residents informed about potential natural disasters. Many of these types of actions are eligible for funding through the FEMA HMA program.	▪ Radio or television spots ▪ Social media outreach ▪ Websites with maps and information ▪ Real estate disclosure ▪ Presentations to school groups or neighborhood organizations ▪ Mailings to residents in hazard-prone areas

Mitigation Type	Description	Examples
		▪ Outreach materials in languages other than English



Figure 17: From top left to bottom right: living shorelines, stormwater parks, green roofs, tree trenches, land conservation, and green streets are all examples of natural systems protection projects or actions which can improve mitigation and promote community resilience. These ideas and more can be found in FEMA's Nature Based Solutions Guide.

Case Study: City of Philadelphia

The City of Philadelphia demonstrated a comprehensive identification of mitigation actions in their 2022 hazard mitigation plan update. The results of examining their 2017 strategies against their 2022 priorities are mitigation actions that extensively support the city's risk assessment and bridge the transition from planning to implementation.

During the planning process, the city reviewed its mitigation strategy and noted that the actions from their 2017 plan update were mostly focused on post-disaster response. To shift from response to prevention, the city focused on proposing mitigation actions for their 2022

plan that reduced or eliminated long-term risks to hazards. The city held two brainstorming sessions with their steering committee and stakeholders, one focused on infrastructure and the other on nature-based solutions, to come up with mitigation actions. In prioritizing the proposed actions for the plan, the steering committee included scoring criteria for severity of risk that the addressed hazard poses.

The result of this planning process and commitment to make extensive changes as necessary is a comprehensive suite of mitigation actions that support the city's mitigation goals and risk assessment. A total of 73 out of the 331 existing/potential actions from 2017 were removed as a result of the shift from response to mitigation actions. In addition to actions that address multiple hazards, the city includes multiple mitigation actions for a majority of the individual hazards identified in their risk assessment. The city showcases how many actions support each identified hazard and each mitigation goal in a separate table.

Another new addition to their 2022 plan is the Mitigation in Focus prioritization. In ranking their actions for prioritization, the steering committee identified and ranked 10 high-priority actions. They then collected additional information for these actions, including next steps, potential resources and resilience outcomes. The purpose of this is to provide a starting point for the city's mitigation strategy containing 163 total actions as they focus on implementation efforts over the 5 years between plan updates. All of the extra steps taken during their plan update provided the city with an all-inclusive, useful hazard mitigation plan and a clear path to implementation.

6.3.2. Identifying Mitigation Actions

The mitigation planning regulation requires each participant to identify and analyze a comprehensive range of specific mitigation actions and projects to reduce the impacts of the hazards each jurisdiction has identified in the risk assessment. Emphasis is placed on the impacts or vulnerabilities identified in the risk assessment, not the hazards themselves. These impacts and vulnerabilities may be summarized in problem statements. Some hazards may not have many impacts, or the impacts may already be mitigated. In this case, fewer mitigation actions may be identified than for a hazard causing more frequent or severe impacts.

Preparedness and Response Actions

There are many types of emergency management activities, including preparedness, response and mitigation activities. However, to meet the federal requirements, the plan must have mitigation-specific actions. You may include your community's preparedness and response actions in this plan, but keep in mind that preparedness and response actions do not meet the federal requirement to identify mitigation actions. The planning team should know the differences between mitigation and other emergency management activities.

Though funding and support may not be immediately available for every action, including the actions in the plan may lead to future opportunities for implementation. Some actions can be undertaken after a disaster when additional funding and political and public support are available (e.g., acquiring homes in a flood hazard area). If actions are not included in the plan, securing funding may be more difficult once it becomes available.

Spotlight on High Hazard Potential Dams

To meet requirement HHPD4, the local mitigation plan must:

- Describe a range of specific actions, such as:
  - Rehabilitating/removing dams.
  - Adopting and enforcing land use ordinances in inundation zones.
  - Elevating structures in inundation zones.
  - Adding flood protection, such as berms, floodwalls or floodproofing, in inundation zones.
- Describe the criteria used for prioritizing actions related to HHPDs.
- Identify the position, office, department or agency responsible for implementing and administering the action(s) related to mitigating hazards to or from HHPDs.

6.3.2.1 INCORPORATE RISK ASSESSMENT FINDINGS INTO THE MITIGATION STRATEGY

Each step in a plan's development builds upon the others. As such, the risk assessment that was developed informs the actions chosen for the mitigation strategy. The actions included must address their specific vulnerabilities identified in the plan.

The plan's risk assessment identified hazards that could affect the planning area and the participating jurisdictions. Any hazard that is important enough to be profiled in the plan must have at least one mitigation action associated with it. Some plans may sort hazards based on a set of inputs. However, if a participating community, stakeholder or the public wants to include a specific hazard profile, then there must be a mitigation action associated with that hazard

Start by looking at the vulnerabilities listed in the risk assessment. If you have not already developed problem statements that address those vulnerabilities, you may choose to develop problem statements. For each problem statement, consider different mitigation actions to address the identified issue (e.g., structure and infrastructure or education and awareness). Think comprehensively when identifying potential actions. Actions may address more than one hazard and apply to more than one community. For instance, building a storm shelter or safe room can help multiple nearby communities that may not have one themselves. That shelter could also act as a heating or cooling center for extreme temperatures.

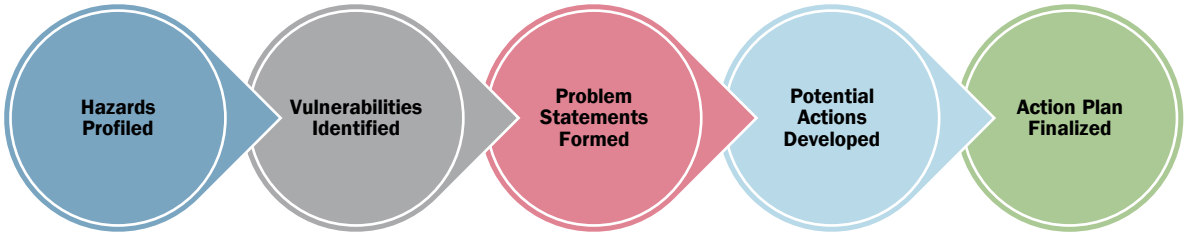


Figure 18: Risk Assessment's Relationship to the Mitigation Strategy

The problem statement in Table 9 shows how a community's wildfire risk can be used to develop potential actions.

Table 9: Example actions developed using a problem statement

Problem Statement	Potential Actions
In wildland-urban interface areas, two critical facilities (school and county maintenance shop), 200 low-income residents, and $500 million in property value are at risk from wildfires. Development pressure is also increasing.	**Local Planning and Regulations:** Adopt a wildfire mitigation ordinance to limit the use and development of wildfire hazard areas to mitigate risk to life and property.
	Structure and Infrastructure Projects: Retrofit the school and the county maintenance shop with fire-resistant construction materials and create a defensible space around the buildings.
	Natural Systems Protection and Nature-based Solutions: Identify large tracts of vacant land in high-hazard areas. The Department of Parks can acquire the land to develop trails and preserve open space.
	Education and Awareness Programs: Provide low-income renters and property owners with tools and information about how to protect themselves and their property during a wildfire. If necessary, connect them with funding resources to reduce their risk via physical interventions (e.g., fire-proof roofs, clearing brush and vegetation around buildings, clear signage for evacuation routes).

For certain situations, you may not have enough information to recommend a specific mitigation project. In these cases, consider a mitigation action to further study the issue. For example, if your community has 20 at-risk critical facilities identified in the risk assessment, more study may be needed to select which facilities to address first. Your mitigation action could be, "Conduct an assessment of the 20 at-risk critical facilities over the next 3 years to determine which facilities need to be mitigated first and the most appropriate mitigation actions."

Mitigation Ideas

To find effective solutions, innovative ideas and best practices for mitigating risks, consult the following resources:

- **Ask subject matter experts.** Experts on the planning team and among stakeholders can help evaluate actions that provide long-term solutions. For example, if repetitive flood damage occurs in a specific location, but you are unsure if the flooding is caused by undersized culverts, inadequate storm drainage or debris, you could ask an engineer to evaluate the flooding and recommend potential solutions.
- **Collect ideas from stakeholders and the public.** The outreach strategy is a chance to gather ideas and input from the public. Surveys and questionnaires can reveal alternative mitigation actions that community members would prefer. Another good way to get community feedback is to hold public workshops. Consider providing childcare and refreshments to boost attendance. Make sure to advertise the workshops well ahead of time via newspapers, newsletters, social media, radio advertisements and flyers. Hold these workshops in locations that are:
  - Accessible by public transit.
  - Accessible to persons with disabilities (e.g., ADA-compliant facilities).
- **Research existing guides and resources.** Many publications and web-based resources can help you identify mitigation actions. Some states have prepared technical guides to assist local communities. The state hazard mitigation plan describes state funding sources and priorities for mitigation. FEMA's website includes a Mitigation Best Practices Portfolio with mitigation success stories and case studies from communities across the country.
- **Review FEMA HMA-eligible activities.** HMA grant programs provide funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damage. The most recent HMA Program and Policy Guide lists eligible project activities.

6.3.2.2 ANALYZING A COMPREHENSIVE RANGE

The Guide specifies that participants must consider a comprehensive range of actions for the mitigation strategy. Base this analysis on the local participants' needs and abilities. Some plans may choose to use a table format to catalogue the potential actions considered for the plan. Other plans may choose to use a narrative format to explain the process of refining the list of actions to implement. Like much of the rest of the plan's development, the choice belongs to the participants in the planning process. The most important considerations when developing the mitigation strategy may be the process used to choose the actions to carry out from that comprehensive range. That process will vary from community to community.

Comprehensive Range of Actions

A comprehensive range means that communities analyze, or evaluate, different types of mitigation actions. **The plan should focus on each community's capabilities when determining which types of actions to consider.**

This can be done with a narrative, such as:

- If structural projects are too expensive, the plan can say that it will focus on plans and policies or educational and outreach actions.
- If major retrofits to infrastructure are needed, the plan is to focus on those actions.

To support the narrative, the plan can include a full list of actions that were considered. This can then be narrowed down to actions they want to implement.

Remember, your potential mitigation actions need to align with the risk assessment and the capabilities previously identified.

If you find a mitigation action that is not achievable with your current capabilities, this represents a gap. This gap should be identified in the section on how to expand and improve your capabilities. Also, addressing this gap may be a mitigation action in itself.

6.3.2.3 ADDRESS CAPABILITIES

When developing the mitigation strategy, review the capabilities previously identified. The mitigation strategy needs to align with those existing capabilities. For example, if you do not currently have staff trained in GIS, a mitigation action of "use GIS to map all hazards for use in development decisions" does not make sense. The action would need to be adjusted to address that gap in existing capabilities. The mitigation strategy also looks at the ability to expand on and improve existing tools. As illustrated above, gaps in capabilities can be addressed with mitigation actions. The ability to enhance capabilities through new mitigation actions can also be noted. For instance, can gaps in design or enforcement of existing regulations be addressed through additional personnel or a policy change? Could an existing education program be improved to cover the most significant hazards and better target non-English speakers? Are additional studies, reports or plans needed to understand risk?

Communities participating in the NFIP can look at ways to boost their floodplain management program. They could mitigate high-risk properties and improve standards beyond the minimum NFIP requirements.

Communities can also consider how updates to current growth plans and regulations (e.g., comprehensive plans, zoning and subdivisions ordinances, building codes, and capital improvement programs) impact community safety. For instance, development review procedures may be revised to add a hazard assessment. The types of questions that the community can ask include:

- Will population growth and future land use plans put more people in hazardous areas?
- Will current redevelopment policies increase the population and property vulnerable to hazards?
- Will planned infrastructure extensions encourage unsafe development by giving access to hazardous areas?

6.3.2.4 CAPABILITIES VS. MITIGATION ACTIONS

Keep in mind how capabilities and mitigation actions differ. Once implemented, mitigation actions can become a capability. Participants should create mitigation actions that build on and improve their capabilities. These actions should increase an existing capability or add a new one. Existing, routine capabilities the participants already have are not mitigation actions. This includes ongoing maintenance programs that are already started and on schedule.

For example, standing up a new program to clear debris from a culvert is a mitigation action. It reduces flooding by creating a clear channel for water to flow through. Once this program is up and running, it becomes a tool in the participant's toolbox – in other words, it becomes a capability. Maintaining existing capabilities does not reduce current and future vulnerabilities in the planning area.

Policy Connection: Element C4

Does the plan identify and analyze a comprehensive range of specific mitigation actions and projects for each jurisdiction being considered to reduce the effects of hazards, with emphasis on new and existing buildings and infrastructure?

6.4. Prioritize Mitigation Actions

Not every identified action needs to be included in the final action plan. There may be many reasons to not include an action. Some projects may not be technically feasible, lack political viability or funding, or face other constraints. However, by documenting them in the plan you leave the door open for future use.

The planning team will assess and prioritize the best mitigation actions for the community to carry out.

6.4.1. Cost-Benefit Review

The one criterion that must be part of the evaluation and prioritization process is a benefit-cost review. The planning team must weigh the benefits of a mitigation action against the cost. A full benefit- cost analysis, such as the FEMA BCA Module, is not required. A planning-level assessment of

whether the costs are reasonable compared to the probable benefits will suffice. Cost estimates can be based on experience and judgment. They do not have to be exact.

Benefits include losses avoided, such as the number and value of structures and infrastructure protected by the action. Protecting people from injury and loss of life is another benefit. Qualitative benefits, such as quality of life and saving ecosystem function, can also be included in the review.

6.4.2. Criteria for Analysis

Cost-benefit is only one aspect of analyzing actions. As a planning team, think about the other criteria you will use to analyze the mitigation actions. Suggested criteria and sample questions to evaluate each action alternative include:

- **Life and Safety**
  - What impact will the project have on businesses, residences, and properties in the planning area?
  - Will the project proactively reduce natural hazard risk?
- **Administrative/Technical Assistance**
  - Is there sufficient staff to implement the project?
  - Is training required for the staff to implement the project?
  - Is there political support for the project?
  - Does the community have the legal authority to do the project
- **Project Cost and Economic Factors**
  - What is the cost of the project?
  - Does the community have the funds for the project on the whole or the local match?
- **Support for Community Objectives**
  - Does the action advance other objectives or plans, like the capital improvement, economic development, environmental quality, or open space preservation?

6.4.3. Action Prioritization

After careful review, the planning team will have a list of actions that are acceptable and practical for addressing the problems identified in the risk assessment. The planning team can prioritize which actions to begin by assessing the importance of each item relative to the plan's goals and the risks

and capabilities. Actions could be prioritized by ranking them as high, medium or low importance. The plan must clearly define each of these terms. Actions may also be prioritized by start date or other methods. Prioritization may change over time as community characteristics, risks and available resources shift. The evaluation and prioritization process helps the planning team weigh the pros and cons of different actions. However, the decision-making process is not necessarily straightforward; it is highly specific to each jurisdiction. The example that follows describes one way to identify and prioritize mitigation actions. Your process should match the size, number and capabilities of the communities involved. Each participant may have different priorities for implementing actions. Annex B includes a worksheet that could be used to facilitate the evaluation and prioritization process (see Worksheet 7: Mitigation Action Selection). The following steps can help you identify and prioritize actions:

Form groups of planning team members and/or stakeholders to identify actions to address a set of problem statements from the risk assessment. These could be grouped by hazard or action type.

a. Ask the planning team to pick the criteria and process for evaluating and prioritizing the actions.
b. Present mitigation action alternatives and criteria to the public, elected officials and other stakeholders for feedback and acceptance.
c. Develop a worksheet and/or conduct a facilitated process to evaluate the alternatives based on the identified criteria and plan goals.
d. Ask the planning team to vote on or rank their highest priority actions for implementation.

Balancing Mitigation with Private Property Rights

While evaluating and prioritizing mitigation actions, and particularly regulatory activities, it is important to consider any potential impact to the rights or interests of private property owners.

Generally, states give local governments the authority to enact regulations designed to protect the public health, safety and welfare. While many places have regulations to mitigate natural disasters, these powers are not without limitation and may need to strike a balance with private property rights. If a mitigation action raises any such concerns, you should consult with legal counsel.

Policy Connection: Element C5

Does the plan contain an action plan that describes how the actions identified will be prioritized (including a cost-benefit review), implemented, and administered by each jurisdiction?

6.5. Create an Action Plan for Implementation

A common failure of some mitigation plans is that they are never put into action. An action plan lays the groundwork for implementation by describing how the mitigation plan will be incorporated into existing planning mechanisms. The action plan also describes how each jurisdiction will prioritize, carry out and administer mitigation actions.

6.5.1. Integrate Into Existing Plans and Procedures

For local governments to reduce their risks in the long term, the information from the mitigation plan should be integrated across operations. “Integrate” means to include hazard mitigation principles, risk information and mitigation actions into other community plans. When activities are connected they create co-benefits, reduce risk and increase resilience. The planning process forms partnerships. Sustained action makes the community safer from disasters. Many other local plans, such as comprehensive, stormwater management and economic development, present ways to address hazard mitigation through multiple community goals. Mitigation plans must describe how the community will integrate the data, analysis, mitigation goals and actions into other planning mechanisms.

First, the plan must identify planning mechanisms where hazard mitigation information and actions may be incorporated. In this context, planning mechanisms mean governance structures used to manage local land use development and community decision making. The review of community capabilities identifies this information. Multi-jurisdictional plans must describe how each participant will integrate the plan into their local planning mechanisms.

In some cases, a community may choose to integrate and align their hazard mitigation plan within the comprehensive planning process. “Hazard Mitigation: Integrating Best Practices into Planning” provides technical advice and examples of communities that have successfully integrated mitigation into their comprehensive and other planning processes. Some existing processes may not allow for integration due to timing, budgets or other constraints. For example, a community may determine that the goals and actions of the hazard mitigation plan will be considered in the next 5-year capital improvements planning process, which may be updated annually.

Here are a few ways to use the mitigation plan to support risk-informed community planning.

Integrate Plan Goals with Other Community Objectives

Local governments can include the overall goals for risk reduction and safety into the objectives and policies of other plans. Goals for disaster resiliency can also complement local programs. Mitigation actions can be incorporated into the capital improvement plan, local comprehensive plan or annual budget prioritization process. This can help mitigation projects get funding despite competing local priorities. The following policy examples can be added to a local comprehensive plan. They can be carried out through zoning and building codes, capital improvement programs, and permitting processes:

- Adopt the latest hazard-resistant building code. FEMA has a resource on Building Codes Strategy available online.
- Protect life and property in high-hazard areas by limiting new development.
- Limit the extension of public infrastructure in high-hazard areas.
- Reduce the vulnerability of future development in high-hazard areas by reviewing development regulations.

Use the Risk Assessment to Inform Plans and Policies

The risk assessment provides data, analysis and maps that can be integrated into other plans, including the THIRA, to inform policies and decision making. For instance, the risk assessment can support other community planning and economic development efforts. Incorporating hazard information and mapping into land use plans, zoning and subdivision codes, and the development review process can steer growth and redevelopment away from high-risk locations. This information can also be used to design and site future public facilities to areas with lower exposure to hazards.

Implement Mitigation Actions through Existing Mechanisms

Where possible, the local government should implement the identified mitigation actions through existing plans and policies that already have support from the community and policy makers. For instance, a Community Wildfire Protection Plan identifies a community's priorities for wildfire fuel reduction projects. A capital improvements program outlines a jurisdiction's spending plan for capital projects that support existing and future developments, such as roads, water and sewer systems. Include mitigation projects in the capital improvements plan, such as strengthening at-risk critical facilities or acquiring open space in known hazard areas. Other tools for carrying out mitigation actions could include staff work plans, permitting procedures, job descriptions and training.

Think Mitigation Pre- and Post-Disaster

Some communities have recovery or post-disaster redevelopment plans that identify the operations and strategies the community will take post-disaster. These plans help communities recover more effectively and become more resilient in future disasters. Mitigation actions to reduce long-term risk, such as effective building code adoption and enforcement, are applied in both pre-disaster mitigation planning and post-disaster recovery. Effective recovery planning builds on existing community goals and plans. It also incorporates the mitigation strategy into long- term recovery and reinvestment decisions.

FEMA has several resources that help local governments decide how and where to integrate the mitigation plan with other planning mechanisms. They include:

- Integrating Hazard Mitigation Into Local Planning: Case Studies and Tools for Community Officials
- Plan Integration: Linking Local Planning Efforts

- Comprehensive Economic Development Strategy and Hazard Mitigation Plan Alignment Guide
- Mitigation Planning and the Community Rating System Key Topics Bulletin

Element D3

Does the plan describe a process by which each community will integrate the requirements of the mitigation plan into other planning mechanisms, such as comprehensive or capital improvement plans, when appropriate?

6.6. Implement Mitigation Actions

The action plan identifies how specific mitigation actions will be implemented. This information includes who oversees actions, what funding and other resources are available or may be pursued, when the actions will be completed, and how they are prioritized. The capability assessment can help determine the agencies responsible for certain community functions and available funding.

6.6.1. Assign a Responsible Agency

The planning team needs to determine which department or agency will lead each action. At a minimum, this means assigning a specific agency, department or position to each action. It should not be the jurisdiction as a whole. If coordinating with other agencies will be necessary, this is a good time for them to weigh in on the steps and timeframes necessary to carry out the actions.

For multi-jurisdictional actions, the plan must identify the specific agency, department or position that will be responsible for carrying out actions for each jurisdiction.

6.6.2. Identify Potential Resources

Resources include funding, technical assistance and materials. The plan must identify applicable potential funding sources. These funding sources should go beyond generic terms such as “federal,” “state,” or “local.” The identified funding sources must be relevant to carrying out the associated actions. Sources of local funding may include the general operating budget, capital improvement budgets, staff time, impact fees, special assessment districts and more. Your SHMO and FEMA regional partners can help you identify potential state and federal resources. The planning team should also consider private-sector funding and partnerships, as well as resources from academic institutions. Remember these are potential funding sources. The funding you actually use could be different than what is initially identified in the plan. Think of this as the jumping off point. The more specific you are with funding sources, the easier it will be to look into them. Beyond identifying potential resources, describing the internal processes used to prioritize funds to specific projects will help prepare the projects to move forward.

Funding Outside the Box

Participants should think creatively when it comes to funding mitigation. Think about in-kind resources, grants and loans, and local revenue-generating mechanisms. Be sure to consider not only FEMA programs, but other federal, state, local and philanthropic resources.

Just because a funding source isn't specifically for hazard mitigation or resilience does not mean it can't be used that way. Review all funding applications thoroughly and connect with the funder to see if there is flexibility to support potential mitigation projects.

See FEMA's Mitigation Resource Guide for funding resources to consider.

6.6.3. Estimate the Timeframe

The planning team and responsible agencies must develop a timeframe for completing each mitigation action. Funding cycles can affect when you start an action. The timeframe can detail when the action begins, interim steps and when it should be fully implemented. This does not mean start and end dates, but rather how long the project will take once initiated. General terms like "short-term," "medium-term," and "long-term" must be defined. "Ongoing" is acceptable when used appropriately (e.g., for multi-phased projects). If a project will be ongoing once implemented (e.g., a vegetation management program that has no end date), list the timeframe for the project to be implemented. Then you can note that once implemented, the project will be ongoing.

Plans should have a range of targets for actions, including short-term, medium-term and long-term actions. These targets align with planning mechanisms. For example:

- Short: hazard mitigation planning period, capital improvements, jurisdictions budget cycle.
- Medium: structural projects, planning and regulation, education and outreach, natural systems protection, comprehensive plan.
- Long: comprehensive plan, economic development plan, transportation plan, lifetime of infrastructure assets.

While it is acceptable to include actions that will not be completed within 5 years, the focus of the mitigation strategy should be on the high-priority actions that a jurisdiction wants to carry out within the next 5 years. If an action will span multiple years before completion, consider breaking the action down into phases, sub-actions or more feasible projects for the community.

Other implementation items to consider describing in the action plan are goals addressed, partner agencies, steps for implementation and estimated budget. Partner agencies could include:

- Non-profit organizations.
- Faith-based groups.

- Housing authorities and advocacy groups that work with unhoused populations, renters and low-income homeowners.
- Environmental groups and watershed stewardship organizations.

Although it is not required, estimating the cost of an action will help the planning team target the most appropriate resources. The team can also begin to budget for a local match, which many grants require.

An action implementation worksheet can be a good approach for formatting the information collected for each action and how it will be carried out. An example is provided in Worksheet 8: Mitigation Action Implementation. The planning team may decide to assign the responsible agency for each action first. Each agency can then complete the action implementation worksheet with information on how the action will be done. If appropriate, the community can also begin developing project SOWs, schedules and budgets, particularly where federal funding applications are anticipated. FEMA's approval of the plan does not mean funding identified in the plan is also approved, or equate to an approved application for federal assistance.

6.6.4. Communicate the Mitigation Action Plan

Consider how to present the final mitigation action plan in a format that community members and officials can easily use. The mitigation strategy, or action plan, is the heart of the plan and the primary tool to get funding, assign priorities, guide decisions, and track progress in future plan updates. A matrix can be a good way to summarize information on the recommended actions. You also may consider including this information along with the mission and goals as an executive summary at the front of your plan. This allows users to quickly see how the community wants to reduce risk and strengthen disaster resilience. The matrix may include column headings such as:

- Action ID and Goals.
- Hazards Addressed.
- Description.
- Prioritization (High, Medium, Low).
- Timeframe (required).
- Responsible and Coordinating Bureaus and Agencies (required).
- Potential Funding Sources and/or Agencies (required).
- Benefits.
- Costs.

- Technical Feasibility.

Element C5

Does the plan contain an action plan that describes how the actions identified will be prioritized (including a cost-benefit review), implemented, and administered by each jurisdiction?

6.7. Update the Mitigation Strategy

One of the most important steps in developing your plan is to refine the community's mitigation strategy, particularly in light of experiences gained from implementing the previous plan. To continue representing the jurisdiction's overall strategy for reducing hazard risk, the updated local mitigation plan must reflect current conditions and progress made in mitigation efforts. The 5-year plan update allows each jurisdiction to assess its previous goals and actions, evaluate the progress of the action plan, and adjust actions to address current realities. The mitigation strategy should also be reviewed after a disaster to see if the recommended actions are still appropriate.

6.7.1. Describe Changes in Priorities

An updated plan must describe if and how any priorities changed since the previous plan. Your community's mitigation priorities may change over time for many reasons. Addressing these changes allows you to redirect actions to reflect current conditions, including financial and political realities, or changes in conditions or priorities following disaster events. Also, now that the community has implemented some actions, you can apply lessons learned about what worked and what didn't.

New actions should be identified based on the updated risk and capability assessments. Prioritize new actions and any actions carried forward from the previous plan. Factors that may lead to changes in priorities include:

- Altered conditions due to disaster events and recovery priorities.
- Changing local resources, community needs and capabilities.
- New state or federal policies and funding resources.
- New hazard impacts identified in the updated risk assessment.
- Changes in development patterns that could influence the effects of hazards.
- New partners that have come to the table.
- A different method of prioritizing actions compared to the previous plan.

Changes in a community's priorities do not always directly relate to how a plan prioritizes mitigation actions. For example, a change in priorities could include:

- New or modified plan goals compared to the previous plan.
- New hazards or removal of hazards that are no longer profiled in the updated risk assessment.
- The removal of mitigation actions from the plan update after a change in political or community support, changes in hazard exposure, or a lack of financial ability to execute the action.

If no priorities have changed, plan updates should validate the information in the previously approved plan.

6.7.2. Evaluate Progress in Implementation

Plan updates must reflect progress in local mitigation efforts. While goals may not change significantly over 5 years, completing mitigation actions and integrating the plan into existing planning processes shows progress in risk reduction.

Completion of Mitigation Actions

The plan must describe the status of all mitigation actions identified in the previous plan. The plan should list whether they have been completed or not. For actions that have not been completed, the plan must either describe why the action is no longer relevant or indicate that it is included in the updated action plan.

The planning team will ask the local agencies and departments responsible for each action in the previous plan to give a status update. For instance, agencies could provide information about the following:

- If the action was completed, did it have the intended results? Did it achieve the goals outlined in the plan? What factors led to success?
- If the action was not completed, what were the barriers? Was there a lack of political support, funding, staff availability or another obstacle? Should the action be included in the updated mitigation strategy?
- When actions are completed, consider highlighting some key projects. This is a great opportunity to illustrate how the community is reducing risk.

Previous Integration of Hazard Mitigation Into Planning Mechanisms

An updated plan must explain how the jurisdiction(s) incorporated the previous mitigation plan, when appropriate, into other planning mechanisms over the last 5 years. This demonstrates progress in local mitigation efforts. As plans and mechanisms are developed and updated within each participating jurisdiction, the plan's information should be integrated into those external documents.

The plan update must then highlight the planning mechanisms where the previous plan was integrated, and what information was integrated.

Policy Connection: Element E2

Was the plan revised to reflect changes in priorities and progress in local mitigation efforts?

The following recipe card presents ways to showcase the integration that occurred over the past 5 years in a jurisdiction's plan update. Each of the previous plan's participants must note the planning mechanisms that were developed or updated based on the previous plan's information. They must also identify which of the planning mechanisms integrated hazard mitigation elements and what those elements were.

Recipe for Discussing Integration of the Previous Hazard Mitigation Plan

You'll need:

- A collection of the jurisdiction's planning documents and mechanisms.
- A review of the developed or updated planning mechanisms.
- To identify where hazard mitigation was integrated.

Step 1: By reviewing the community's planning documents and mechanisms, first identify which were developed or updated since the previous hazard mitigation plan was adopted.

Step 2: Review the applicable planning mechanisms and note where hazard mitigation elements were integrated.

Step 3: In the plan update, discuss your findings. Include the plans, documents and any other planning mechanisms updated since the previous plan was adopted. Discuss how hazard mitigation was integrated. The discussion could include:

- The integration of the hazards the community is vulnerable to.
- The data and analysis presented in the risk assessment.
- The goals of the mitigation plan.
- Potential projects or actions to carry out in the future.

If the previous plan was not integrated into any of the participants' planning mechanisms, the update must state this and explain why. An example could be that no planning mechanisms were developed or updated after development of the last plan.

Task 7. Keeping the Plan Current

7.1. Plan Maintenance Overview

The mitigation plan is a living document that guides actions. As conditions change, new details become available, or actions progress over time, the plan will need to change to stay up to date. This is called plan maintenance. Key components of this process include:

- **Monitoring:** Tracking implementation of the plan over time.
- **Evaluating:** Assessing how well the plan meets its stated purpose and goals.
- **Updating:** Reviewing and revising the plan at least once every 5 years.

During the planning process, there is a lot of interaction among planning team members and other community partners. These interactions create a drive for action. After the plan is finished, that energy can fade. You worked hard to build and foster relationships with both internal and external planning partners; don't let those efforts go to waste! Plan maintenance keeps the plan relevant and up to date. It is also a helpful way to keep community partners and the public engaged, involved and motivated to reduce risk. You should keep engaging with planning team members, partners and the public as you celebrate successes, carry out mitigation actions, and prepare for the next plan update. Sustained maintenance keeps mitigation goals and actions moving forward. It also keeps key stakeholders and partners in the loop. Carrying out a plan maintenance process can:

- Keep up momentum through continued engagement and accountability in the plan's progress.
- Build mitigation into the daily job responsibilities and department roles of community officials and staff.
- Account for changing conditions such as new development, changes in hazard frequency, intensity and types (such as ice and freezing rain instead of snow), or recent disasters.
- Build on the successes of recent mitigation activities.
- Secure funding to implement, develop and update the plan.

Plan maintenance requires an explanation of who will carry out each step, as well as when and how each step will occur. The plan must include the title of the individual, or the name of the department or agency, responsible for the maintenance effort.

7.2. Monitoring

Plan monitoring means tracking how the plan is carried out over time. This includes any progress made on goals, actions, plan integration and public involvement. The plan must identify who will carry out monitoring activities, how these activities will happen, and how often. The plan may define each of these based on what works best for the community.

Regular monitoring can include reports or other deliverables, as well as expectations for maintenance meetings. The coordinator for plan maintenance is often the same person or agency that led the plan's development. Each agency assigned to a mitigation action is responsible for tracking and reporting on each of their actions.

Monitoring meetings do not need to focus only on the mitigation plan. To get the most out of the maintenance process, discuss the plan regularly in existing meetings or processes. This might include regular town halls or when your community uses other plans, such as its comprehensive, budget or recovery plans. This makes monitoring a part of the administrative function of your community.

Why do we monitor the plan? The simple answer is that resilience and risk reduction are ongoing commitments. The mitigation plan is a long-term strategy to reduce disaster losses. Monitoring encourages participants to own their mitigation efforts. It also gives participants a consistent touchpoint for reporting progress and keeps risk reduction top-of-mind.

The most basic monitoring effort asks:

- Are the vulnerabilities in the plan are still accurate?
- Do the mitigation goals and actions still apply to the hazards profiled?
- Are mitigation actions progressing?

Considerations during Plan Maintenance

During your plan maintenance process, it will be time to put your plan into action. Look to your mitigation strategy for which projects you want to implement. Here are some considerations for when you want to implement actions:

- Document how alternative projects were considered and describes the decision-making process for the chosen activity type.
- Discuss what the risks the action will solve and what the benefits will be for the community.
- How does the project solve the problem by itself? Is it one part of a larger solution?

- For high priority actions, develop a scope of work that includes milestones and expected timeframes. This can set up the project early so that it can be quickly implemented.
- As grants become available, review their requirements to make sure the plan aligns with them. This will help maximize funding sources. These may not always be FEMA grants.

Tracking progress on mitigation actions reduces the amount of work it takes to update actions at the 5-year update. Keeping track of actions as they go forward over time is easier than checking the progress of all the mitigation activities completed over a 5-year period during the update.

More advanced monitoring:

- Looks at all aspects of the plan. Taking a holistic view of monitoring makes sure that each section of the plan is up to date and that progress is being made.
- Documents any changes made. This maintains a consistent record of progress made on mitigation activities and can inform the next plan update.
- Highlights success stories. These stories show how valuable mitigation, planning and the resulting risk reduction are to the whole community.

A good, consistent monitoring process can lead to a list of items to update in the next plan. This kind of list can inform the SOW for the next plan update. It can also be a checklist for update priorities. Routine monitoring is key to keeping participants invested in the plan.

Annex B includes an example worksheet for reporting progress on a mitigation action.

Questions to Consider

- How are the scheduled meetings to discuss the plan going? Are there any successes to celebrate? Are there any challenges that warrant revisions to the plan?
- Has there been any progress on the actions?
- How has the public been involved?
- Is there more that needs to be done?
- Has there been turnover in agencies that oversee mitigation actions? Do new team members know what they need to do? Is there an opportunity to re-socialize the plan?

7.2.1. Evaluating

Evaluating means looking at how well the plan is meeting its goals. This goes a step beyond monitoring; it asks if the plan is serving its intended purpose. It lets the planning team see if any

changes need to be made. For instance, if a goal is to boost public awareness of hazards and risk, conduct a survey once a year to gauge how local residents' perception of risk is changing. This can help show if the actions in the plan are working as intended. The information you collect in this step will be the basis for the plan update.

The planning team can create a list of metrics to measure the progress of actions. Do this in coordination with all local jurisdictions that adopted the plan. Share progress updates on the plan; ask them to do the same. This lends accountability for the maintenance process. Communities are ultimately responsible for determining the success of their planning effort. This may mean evaluating whether identified actions reduced risk, whether the goals and purpose of the plan were accurate, and what stage of implementation each action is in.

The plan evaluation process can establish baseline risk and resiliency metrics to track risk and vulnerability reduction. The plan could then use the baseline data to show cumulative benefits of past (and future) mitigation actions (for plan updates). Over time, the plan can document decisions that increase long-term risk (outside of the five-year planning window), and document losses avoided from natural hazards that occurred since the plan was updated and addresses what losses occurred that the plan did not cover.

The planning team may develop a schedule for both regular meetings and specific deliverables. To make the best use of funding opportunities, schedule the meetings to line up with an existing process. This can include the community budget cycle or FEMA's annual grant cycle. If reports or other deliverables are needed, figure out their frequency and reporting requirements.

There is no set timeline for evaluation. A plan can be evaluated at any point in its lifecycle. This may be on a longer cycle than plan monitoring since results can take time to become clear. Many communities convene the planning team once a year to evaluate the plan's strength and to prepare a progress report for their governing bodies.

It is highly encouraged to carry out a more detailed review of the plan after disasters. These events often reveal vulnerabilities that may not be in the plan. These may also change the priorities of some actions. If major changes to the plan are needed, think about updating the plan earlier than required.

Case Study: Franklin County, Pennsylvania

Franklin County, Pennsylvania, faces many hurdles in mitigation planning. The planning area includes both rural and urban communities, as well as both agricultural and mountainous terrain. The county also lacks resources. This makes it crucial to build and keep up strong relationships with planning partners and community members.

To address these challenges, Franklin County planners invited both community representatives and non-traditional partners to take part in creating the multi-jurisdictional hazard mitigation plan.

Beyond just informing the plan's development, involving a broad group of stakeholders helps to carry out mitigation actions. It creates buy-in and support for mitigation projects.

Each participating community conducted its own risk assessment. This grounded the plan in local knowledge. The participating jurisdictions also reached out to FEMA Region 3 and the Pennsylvania Emergency Management Agency to help. They provided tools and guidance throughout the planning process. The combination of local know-how, state guidance and federal technical assistance addressed the unique circumstances and mitigation needs of each community, as well as the county.

After the plan was finished, Franklin County incorporated the information into other community plans, including:

- The Franklin County Emergency Operations Plan.
- The Franklin County Department of Emergency Services Strategic Plan.
- Municipal Emergency Operations Plans.
- School District Emergency Operations Plans.

This plan integration process streamlines planning efforts. It reduces duplication of efforts and aligns planning priorities and actions. It also improves interagency communication.

Questions to Consider

- Where are you in terms of reaching your mitigation goals?
- Are the goals and objectives of the plan still relevant?
- Has the level of risk or impacts changed since the last update?
- What is the status of your previous mitigation plan? When does the plan expire? Did your jurisdiction adopt the plan?
- Are there enough resources (funds, people or programs) to carry out the plan?
- What outcomes can you reference to show progress? Were any of them different from what you expected?

7.2.2. Updating

Updating means reviewing and revising the plan at least once every 5 years. Keep in mind that the plan expires 5 years after it was approved. During the update process you must follow the whole planning process:

- Convene a planning team and complete stakeholder and public outreach.
- Identify new plans, studies, reports and technical information that pertain to your community's vulnerabilities.

- Validate or update your hazard list.
- Update hazard profiles to include events that occurred since the last plan.
- Validate or update community capabilities.
- Validate or update community assets.
- Update the risk assessment based on the above.
- Update the mitigation strategy based on the new risk assessment.
- Address changes in development and changes in priorities.
- Document and describe the plan update process.

Maintaining the plan annually can make this process easier. If minor updates have occurred throughout the plan's lifecycle, when it comes time to formally adopt the updated plan, you can validate information as needed with fewer major changes. The current plan must explain how the update will take place and who will lead the update process.

Bear in mind that the plan expires 5 years after it was adopted. Leave enough time to complete the update before the current plan expires. It may help to include a schedule of activities that gives you enough time to obtain grant funding, if needed, and to complete the planning process.

The plan can also include procedures to update the plan following a disaster event or that concur with the creation of a recovery or post-disaster redevelopment plan. Your community's vulnerabilities and mitigation priorities often change following a disaster. Public awareness tends to increase, and the demand and support for mitigation often increases following a disaster. You may choose to use these moments to factor mitigation into recovery. This can include rebuilding in ways to improve safety and avoid similar losses in the future. You should also collect data on the hazard and its impacts for future plan updates. If you want to develop a recovery plan prior to a disaster, aligning the recovery and mitigation planning efforts will unite your messaging about building resilience.

Think about the following questions:

- How has the planning area changed since the last update, including assets?
- What worked well for the planning process last time?
- What might need to change?
- Are there other stakeholders or members of the public you can engage?
- What new data would be most helpful to inform the plan update?
- Have there been any recent major disaster events?

Table 10: Example Plan Maintenance Schedule

Plan Maintenance Step	When	How	Who
Monitoring	Twice per year.	Get status updates on mitigation actions, compile progress reports and identify mid-course corrections.	Emergency Management Director
Evaluating	Once a year or after a disaster event.	Use a standard form to review how the plan has been carried out so far and record lessons learned.	Emergency Management Director, Lead Jurisdiction Planning Department Manager
Updating	Every 5 years, or after a disaster event.	Review the plan and update it as necessary. This may mean hiring a contractor to perform a more in-depth update process.	Emergency Management Director, Lead Jurisdiction Planning Department Manager

Policy Connection: Element D2

Is there a description of the method and schedule for keeping the plan current (monitoring, evaluating and updating the mitigation plan within a five-year cycle)?

7.3. Continue Public Involvement

Keeping the plan current also means continuing to give the public ways to be involved in the plan and how it is carried out. The plan must describe how you will continue to seek public participation after the plan has been approved.

There are many ways to keep the public involved. Public meetings are a great way to engage residents. Think about if there are any groups in your community that do not normally take part in the public process. If you find that they are not being engaged, you may need to think about how to best reach them. There may be other departments, nonprofits or agencies that already interact with them. These groups can help you reach out to sectors of the public you can't normally reach. Social media can be another strong tool. Think about using occasional posts and polls to ask the public about risks.

Linking your planning efforts can help the public know what mitigation is and why it is vital. Look for existing meetings that the community often attends. This awareness will help the public and leaders use the mitigation plan in other community initiatives. Regular plan upkeep will keep planning efforts current.

Think about how your community members give feedback on public processes. Use these ways to talk about mitigation and get feedback on areas of concern. Examples of outreach methods include:

- Presentations on the plan's progress.
- Annual questionnaires or surveys. Consider innovative ways of distributing these surveys, such as by:
    - Setting up a booth at a large public event like a farmers market, holiday parade or festival.
    - Sending out surveys with utility bills.
- Public meetings.
- Social media.
- Interactive websites.

Document any public involvement that does occur. This can be added to the next version of your plan.

Case Study: Virginia Coastal Resilience Master Plan Interactive Website

The Virginia Department of Conservation and Recreation developed an interactive website to complement the Coastal Resilience Master Plan. The website features an interactive map viewer where users can see how coastal flooding might affect their neighborhood. This helps to keep residents and planners aware of future coastal flood hazard exposure so they can make informed decisions about mitigation actions.

Beyond showing the future geographic extent of coastal flooding, the website goes a step further. It offers a visualization of where future coastal flood exposure is expected to affect the Commonwealth's populations and assets. This can help community-level planners prioritize mitigation actions where they are most needed.

The website also features a detailed overview of current and proposed resilience and mitigation actions throughout the Commonwealth's coastal areas. It shows users where the proposed projects are located. It also provides details about how much each project is anticipated to cost, potential funding sources, which flood hazards the actions address, and more.

This website was created as a state-level resource and features data at the local and regional level. Local mitigation planning teams can use a similar resource available in their state.

Policy Connection: Element D1

Is there discussion of how each community will continue public participation in the plan maintenance process?

Task 8. Review and Adopt the Plan

8.1. Review of the Plan

8.1.1. Local Plan Review

When you have completed a final draft of the plan, sharing it for public feedback is the next step. It may also be a good idea to publish individual sections of the plan, as completed, and hold listening sessions to get input and feedback. Breaking the plan into manageable chunks will make it easier for the public to understand and provide feedback. This can also help to get real-time feedback, rather than waiting for the entire plan to be completed. The planning team can ask stakeholders and the public to review and submit comments for the team's final consideration. If asked to do so, the state and FEMA can also provide feedback to make the review and approval process faster, with fewer required revisions at the end of the planning process.

A good approach provides the public with enough time to comment and explains how comments will be used. Your approach should also make sure the public knows how the plan will impact their community. Let your partners and the public know about this chance to comment early in the process. The public comment period needs to happen before you send the plan to the state and FEMA for official approval.

You may also directly inform certain stakeholders of the comment period through an email or letter. This is a good way to give neighboring jurisdictions outside of the planning area an opportunity to review the mitigation plan. Keep in mind that neighboring jurisdictions should be involved throughout the planning process, rather than just being given a chance to comment at the end of the plan's development. Summarizing the types of comments received and how they were incorporated acknowledges their usefulness and encourages future input.

Before sending the plan to the SHMO, the planning team should make sure it meets all the requirements stated in the Guide. FEMA uses the Plan Review Tool to ensure plans meet these requirements. Review the regulation checklist in the Local Mitigation Plan Review Tool and fill in the sections or page numbers to show where your plan meets each required element. This can be a final internal review before submitting it to the state. Annex C provides a copy of the Local Mitigation Plan Review Tool.

You Have a Mitigation Plan. Now What?

- Have all members of the planning team reviewed the final plan?
- Have community partners and stakeholders reviewed the final plan?
- Have you given the public an opportunity to review and comment?

- Have accountability measures been identified to implement the plan?
- Have you vetted and included comments from stakeholders and the public?
- Can your jurisdiction adopt the plan now or begin planning to adopt to expedite approval?

8.1.2. State Review

Once the planning team is sure the plan meets the required elements and includes all supporting documentation, send the plan to your SHMO or State Mitigation Planner. Include all supporting documentation related to the planning process and other components of the plan. Incomplete plan submittals can delay plan approval. The state will review the plan and work with you on any revisions required for approval. Don't forget to provide information on how you can be reached for any questions.

8.1.3. FEMA Plan Review

Once the state is satisfied that the plan meets the requirements, the SHMO will send the plan to the FEMA Regional Office for review and approval, unless the state has been given local plan approval authority. FEMA will conduct its review within 45 days, if possible. FEMA will then give the state a completed Local Mitigation Plan Review Tool. The FEMA Regional Office and the state may contact you if revisions are needed to meet the federal regulation and policy requirements. If revisions are required, you may request a technical assistance call with FEMA to talk through the required revisions. Once the plan meets the regulations, FEMA will notify the SHMO that the plan is approvable pending adoption (APA) and will send you a letter (hard copy and email) notifying you the plan's status is now APA. If the community has already adopted the mitigation plan, FEMA will consider it approved. Figure 19 shows the plan review and approval process, and how to adopt the plan prior to state and FEMA review.

8.2. Plan Adoption

Adoption by each participating local governing body shows their commitment to carrying out the mitigation strategy. Responsible agencies can also begin to carry out their actions. The final plan is not approved until each participant, including each special district, adopts it. You must provide FEMA documentation of formal adoption by the governing body of the jurisdiction(s) requesting approval before your plan can be approved. Annex B includes an example of a local adoption resolution. Adoption is not just required; it's critical to success. Plan adoption:

- Requires the buy-in of elected officials.
- Sets roles and responsibilities for carrying out the plan.
- Is one of the eligibility requirements for FEMA's HMA and HHPD grant funding.

Policy Connection: Element F1

For single-jurisdictional plans, has the governing body of the jurisdiction formally adopted the plan to be eligible for certain FEMA assistance?

8.2.1. Multi-Jurisdictional Adoption Considerations

For a multi-jurisdictional plan, each jurisdiction seeking plan approval must adopt the plan. Typically, the jurisdiction leading the effort adopts the plan first. However, adoption can occur in any order. The governing bodies are typically the Town Board, City Council, County Commissioners and/or Board of Selectmen. Participating Special Districts must also adopt as part of the approval process. Plan adoption usually happens through a formal resolution. However, council minutes, consent agendas or other forms of adoption are acceptable if allowed by local law.

It is a good idea to get buy-in from each plan participant early in the planning process. Getting letters of commitment is one method that, if used early in the process, can support multi-jurisdictional adoption.

Policy Connection: Element F2

For multi-jurisdictional plans, has the governing body of each jurisdiction officially adopted the plan to be eligible for certain FEMA assistance?

Note on Non-Participating Communities

Communities that did not participate in the planning process cannot adopt the plan. All communities that adopt the plan need to have actively participated in the planning process. That is why it is so crucial that all communities be a part of the planning process and give meaningful input.

Communities that did not participate in the initial planning process can use the adopted plan to develop a process to opt-in later. Those who do join later must meet certain requirements:

- They must be within the boundaries of, or adjacent to, the planning area.
- If the state and FEMA agree to add the new jurisdictions, those jurisdictions must prepare and submit the plan to the state and FEMA.
- The revised risk assessment must include an analysis of natural hazards that could affect the added jurisdictions.

8.2.2. All Adoption Resolutions Submitted with Plan

The Guide gives two paths to adoption. The first is that plans can be submitted with adoption resolutions from all participants. In this path, participants adopt the plan once it's been drafted in accordance with the most up-to-date FEMA planning policies, but prior to state and FEMA review. This path has fewer steps and less back-and-forth correspondence. Participants can continue the planning process's momentum to adopt the plan and finish the process while it is top of mind. They could even use a public review period to collect adoptions prior to submitting the plan for review. Once the state and FEMA review the plan and find no required revisions, the plan is complete and the participants can begin the mitigation actions.

The potential risk of this path is that the state and FEMA could return the plan with required revisions. This means the document the participants adopted may differ from the final approved plan. To reduce this risk, use flexible language in the adoption document and let participants know about any changes to the final plan. Flexible language can allow the approved plan to vary slightly from the adopted version. Keeping participants informed of changes can help them gauge if they are comfortable with them.

For instance, participants may be okay with minor changes to the document, such as including a new hazard extent chart or more disaster declarations. They may not feel they need to re-adopt the plan if edits are small. However, if participants are responsible for many new actions, or a hazard profile is added, they may want to re-adopt the plan because it is further from the original.

To take this path, the plan has to be a complete document. Participants should not adopt the plan prior to participating in the process and reviewing the full plan. Adopting participants must have:

- Participated in the process.
- Contributed their local knowledge.
- Identified their risks and vulnerabilities.
- Identified their capabilities and ways to expand them.
- Identified mitigation actions that address those risks and vulnerabilities.

8.2.3. Approvable Pending Adoption

The second path is APA. In this path, the state and FEMA review a complete draft of the plan. Once FEMA determines all requirements have been met, the status of the plan will be changed to APA. This status indicates FEMA will approve the plan as soon as it receives the adoption documentation from the participants. FEMA notifies participants using the APA process that the plan is APA and then all participants adopt the plan.

If you choose to use the APA process, take steps to adopt the plan as soon as possible and submit the documentation to the state and FEMA for approval. Additional steps will be required of jurisdictions adopting after 1 year of FEMA's APA notification.

The plan is not considered approved until at least one of the participating jurisdictions has sent in the adoption documentation. In a multi-jurisdictional plan, each participating jurisdiction must adopt in order to get "approved" status. Approval status is tracked by plan and jurisdiction. Jurisdictions with a plan status of "Approvable Pending Adoption" do not have an approved plan status and are not eligible for any FEMA assistance that requires a mitigation plan.

The benefit of this path is that the participants can be sure they are adopting the final plan. The downside is that there is a break in the timeline from when the final draft plan is completed and when adoption is requested. This break may lead to a loss of momentum in the local planning process. It is important to note that APA status is *not* the same as having an approved plan. Participants still need to adopt the plan as quickly as possible to finish the process and get the benefits of having an approved plan.

Governing bodies have different meeting schedules and procedures for adopting plans and other documents. It is important to coordinate the adoptions of all jurisdictions as soon as the plan receives APA status. If possible, coordinate the adoptions and submit documentation to the state at the same time. Participating jurisdictions need to adopt the plan quickly after the plan is granted APA status to be eligible for certain kinds of FEMA non-emergency disaster assistance.

Adoption Outside of 1 Year

After 1 year, participants that did not adopt the plan must validate that the plan's content is still correct and applies to them prior to approval.

If the plan content is no longer accurate, participants need to revise the plan and add any new information prior to approval. Once the jurisdiction either confirms the plan is still correct or makes revisions, the state and FEMA will review the documentation for accuracy and approval.

Participants should ask questions like:

- Have there been any recent disasters or severe events?
- Have there been changes in development?
- Have there been any demographic shifts or population changes?
- Have our vulnerabilities to the identified hazards changed?
- Are our capabilities still the same? Have we grown or lost any capabilities?
- Are the actions still appropriate to our community?
- Are the goals still applicable to our community?

Table 11: Considerations for Adoption Paths

All Adoption Resolutions Submitted with Plan	Approvable Pending Adoption
Required Revisions ▪ There may still be revisions necessary before the plan can be adopted. Significant revisions could mean having to re-adopt the plan.	Required Revisions ▪ The plan is approvable at the time of adoption.
Timing ▪ Coordinating adoption among participants can be easier because the planning process is still fresh. ▪ There is no potential lapse in timing because all adoptions are complete before submittal.	Timing ▪ Coordinating adoption among participants can take longer because the planning process may not be as recent. ▪ Participants adopting after 1 year need to complete additional steps to receive approval.

8.3. Plan Approval

Once it receives the record of adoption from the state, FEMA will issue an official approval letter. The letter states which jurisdictions have adopted the plan and are now eligible for FEMA's HMA programs. FEMA will send a final Local Mitigation Plan Review Tool with the approval letter. This provides feedback on the strengths of the plan and opportunities for future improvements.

The plan is approved for 5 years. The approval letter will include the expiration date. The plan expiration date does not change when other participating jurisdictions adopt the plan. It is important to coordinate the adoption process so all participants are covered by the plan for the full 5 years. Plan updates follow the same adoption process as a new plan.

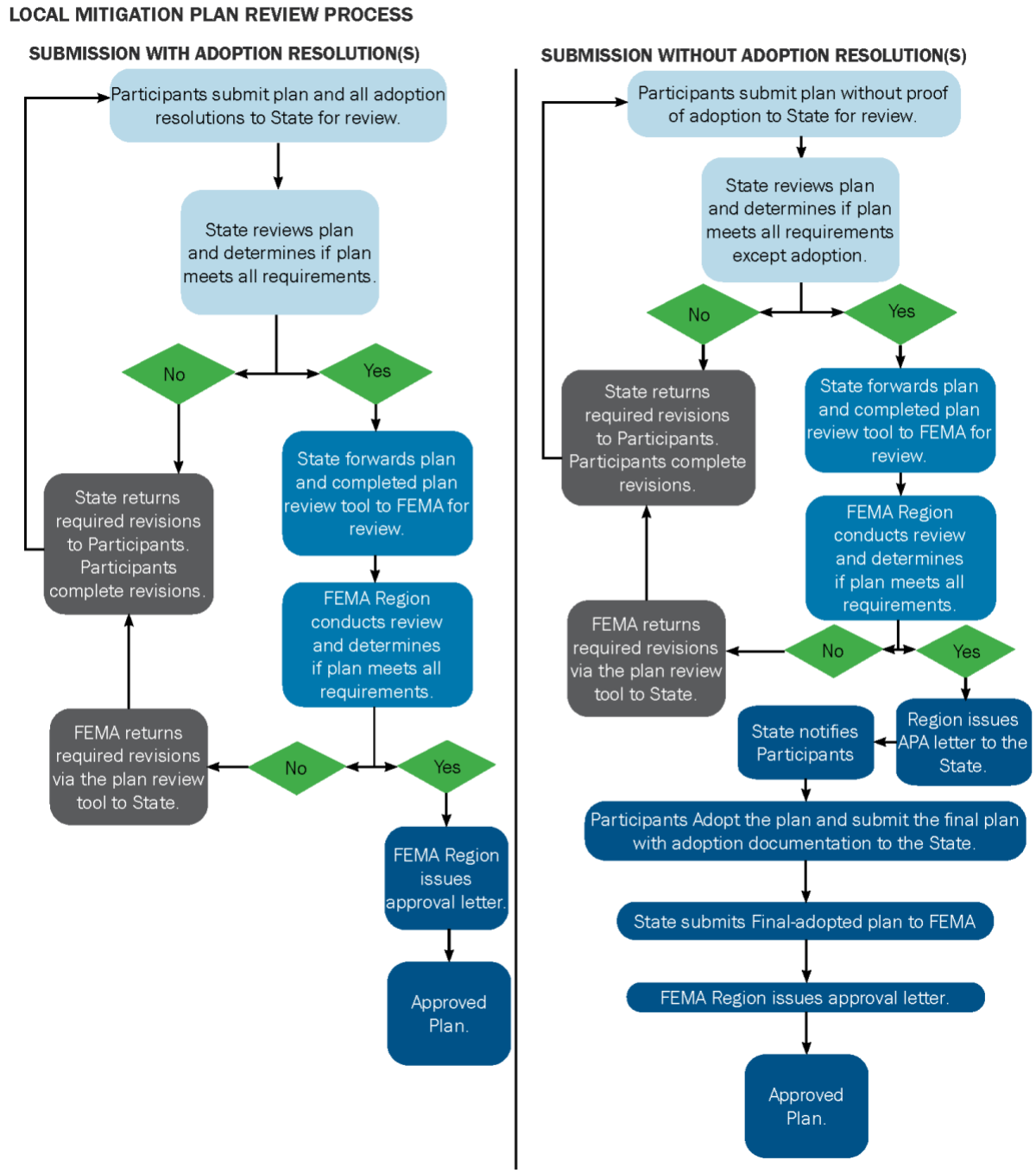


Figure 19: Paths to Local Plan Approval.

8.4. Additional Considerations

Additional considerations related to the plan review and approval process include:

- **Communicate with your SHMO early and often**. Discuss with your SHMO whether it would be appropriate to share drafts or portions of the plan prior to a formal review to ensure the plan is complete.

- **Keep stakeholders informed**. The existing relationships you have with stakeholders, elected officials and government agencies are important assets during the adoption process. To promote adoption of the plan, brief community decision makers on the progress of the planning team's efforts. When presenting the final draft for adoption, invite the planning team to the meeting. Ask supporting agencies to voice their support of the plan.

- **Allow enough time**. Build time into your planning process to meet state and FEMA procedures for review. Developing a scope and schedule for the planning process may involve a long timeframe for review, approval and adoption. Your local governing body may meet only once a month and may require agenda items to be submitted well ahead of time. FEMA gets 45 days to review the plan and require revisions.

- **Make sure that your plan meets any additiona**l state requirements. States may have regulations or requirements beyond what FEMA mandates. Make sure to keep these in mind to avoid any delays. State requirements and the presence of additional requirements vary state by state. These are noted in Element H of the Local Mitigation Plan Review Tool.

8.5. Celebrate Success

Now that the plan is adopted and approved, the work is just beginning. But first, it's time to celebrate! It is a good idea to publicly announce the adoption and approval of the plan. This can raise community awareness of hazard mitigation efforts and reiterate why they are important. Consider getting the word out using multiple methods, such as:

- Post a message on social media platforms about the plan's approval and what that means for the community.

- Propose a congratulatory resolution or achievement award for the planning team (or specific individuals) for their successful work and commitment to making the community safer.

- Post a notice on the community's website with a brief overview of the plan and a link to the final documents.

- Issue a press release on plan adoption and approval to local media outlets.

- Distribute notices of approval to stakeholders.

- Announce the first project(s) to be started.

These and similar steps are easy to complete and are inexpensive. They will keep the plan at the forefront of people's minds, helping to build momentum as you move into implementation.

Case Study: City of Redondo Beach, CA

The City of Redondo Beach's Local Hazard Mitigation Plan includes an Implementation Workbook that will streamline the process of maintaining their plan. This workbook contains worksheets relevant to multiple plan update scenarios. They give instructions and advice for applying for grant funding, integrating the hazard mitigation plan into other municipal plans, and other implementation activities. These worksheets will aid the city in tracking progress made throughout the lifecycle of the plan. They will also provide guidance when it comes time to update the plan.

Task 9. Create a Safe and Resilient Community

Congratulations! Your plan is approved. Now, let's put it to work.

This Handbook has, thus far, helped you develop an approved local hazard mitigation plan. Now that you're done, what comes next?

Think about your mitigation plan as the blueprint for your community's resilience. The same way you wouldn't build a house without detailed plans, your resilience journey will be more successful when you start from the long-term strategy in the mitigation plan and build from there. Task 9 explores what you can do to create a safe and resilient community rooted in your mitigation plan.

There are major benefits to building your community's resilience to short-term shocks and persistent stressors. In a disaster, a resilient community is likely to suffer fewer casualties; see less damage to homes, businesses, assets and property; and have lower recovery time and costs. Investment in resiliency efforts can improve public health, boost income and employment and attract businesses, residents and visitors which directly affect the health of a community.

9.1. What Is Resilience?

The Guide defines community resilience as:

> "The ability of a community to prepare for and adapt to anticipated hazards and withstand and recover rapidly from disruptions. Activities such as disaster preparedness (which includes prevention, protection, mitigation, response and recovery) are key steps to resilience."

Within this broad definition, there are steps that can help you build community resilience. We'll discuss these steps, themes and ways to carry them out below.

9.2. Role of Local Officials in Resilience

Communities face any number of natural hazards based on where they are and how they were developed. The local emergency manager often leads the response to and recovery from disasters resulting from natural hazard events. However, local municipal officials also play a key role in local resilience.

Municipal officials make important decisions before, during and after disasters. Plans and policies will directly inform how a community is able to mitigate, prepare, respond and recover. Local leadership are responsible for making sure these capabilities, plans and policies are put in place, exercised and maintained. They also keep plans and policies current, relevant and reflective of the

community. Our local officials are advocates for long-range planning, collaborative community engagement, education and information sharing, and responsible fiscal management. This will ensure resilience initiatives get the resources they need.

After a disaster, local officials may work with the private sector and other government organizations to assess gaps and assign scarce resources. By working with emergency managers, municipal officials can better know the community's needs and make informed decisions.

9.2.1. Leveraging Your Partnerships

Partnerships are key to reaching your resilience goals. These goals are often complex, cross-cutting and integrated. They will benefit from expertise within your organization, community leaders, neighboring and regional jurisdictions, visitors, workers and residents. Strong ties with strategic partners across all sectors of your community can improve coordination and reduce risk.

Focus on solidifying ties with leaders in your organization and community. You likely engaged many of these stakeholders as you developed your hazard mitigation plan. You may have worked with elected officials, economic developers and mapping and finance experts. In your community, you may have worked with school officials, faith leaders, activists, nonprofit groups and other key connectors. This is your core group of resilience champions. Think about whether groups that were not involved in hazard mitigation planning (e.g., transportation planners, local businesses) can add to your resiliency efforts.

Create a Resilience Committee

One way to formalize resilience partnerships is to create a resilience committee or task force. Members could be appointed by the local governing body. These members would come from a range of disciplines (emergency management, community planning, health and social services, housing, transportation, economic development, etc.). Target your outreach efforts to include all viewpoints.

As an advisory committee, members should be a core part of planning and carrying out resilience. The committee may strengthen the community's resiliency and emergency preparedness process. It may engage stakeholders, give residents the tools to act during an emergency, or spark dialogue between critical facilities and the community. It may also play a key role in long-range planning, grant development or other projects that move resiliency efforts forward.

9.2.2. Involve the Whole Community

Developing and keeping up community relationships means conducting strategic outreach. Whole-community involvement throughout the planning cycle benefits everyone. It improves the planning process, the plan itself and how you carry out mitigation actions. Data analysis and mitigation

planning are both key components of a strong mitigation plan. Still, do not overlook the value that comes from a community's lived experiences. Locals may know a place that floods often but isn't shown on the flood risk maps. Neighbors may have their own ways to communicate hazard risk to friends and family if there is no early warning system. Community social networks are often a lifeline. You should use them to ensure you factor those residents, groups and areas most at risk of hazard exposure into the process. While there is no "one-size-fits-all" plan, one that reflects the whole community it serves will succeed in the long term.

Involving local partners can also boost a community's interest in, and buy-in for, the mitigation plan. The process can open new communication channels among the planning team, other departments, and local leaders that will build mutual trust and strong ties. When all members of a community have a voice in the process and a way to communicate their challenges, local leaders can better target assistance to those who need it most.

To ensure that all members of the community have access to current information and resources, communicate early and often throughout the planning process. You can do this by:

- Creating and using a network of nonprofits and community-based organizations for contact lists.
- Sending out regularly scheduled updates on the mitigation planning progress. You can use both new and established newsletters and listservs.
- Working with local news outlets to give periodic interviews or write about mitigation planning updates.
- Holding regular public meetings about mitigation and community-based resilience. You can make these more accessible by providing translators or ASL interpreters, as well as offering a virtual or hybrid option. Refer to section 4 of FEMA's State Mitigation Planning Key Topics Bulletins: Planning Process document for more information on planning for virtual or hybrid meetings.
- Ensuring all public mitigation planning documents and schedules are accessible to a wide audience. You can publish them online and promote their release through social media. For those without internet access, consider distributing hard copies of planning documents during public meetings or posting them in publicly accessible locations.

9.2.3. Plan Holistically

9.2.3.1 INVEST IN A LONG-RANGE PLAN

A long-range plan, commonly referred to as a comprehensive plan, is meant to serve as a community blueprint for the next 20 to 25 years. The local governing board decides whether to use a long-range plan. Some states mandate this type of plan, while others let the jurisdiction choose. To ensure the plan reflects the community it serves, the governing board should establish a steering committee. It should include residents and representatives to bring a local perspective to the process.

Long-range plans assess your community's existing conditions. They set goals and objectives. They also outline key action items that are supported by a strong vision statement. Engaging the community is a key part of any long-range plan. Residents and businesses contribute to defining a vision for the future of their community. Participatory visioning creates ways to define the community's values, challenges and opportunities. You can do this through targeted outreach and trust-building activities, such as focus groups, design charrettes and open houses. Outreach may require the planning team to go directly into the community. Meeting residents where they are will likely lead to strategies that are both actionable and achievable. This will help reach your community's resiliency goals.

You should also think about how your community might change over time. Find data on external changes, like economic trends. Think about how your community can reach its goals in light of these future changes. Your policies and projects can guide development away from at-risk areas and toward safer areas and methods of construction.

Long-range plans give a baseline assessment of your entire jurisdiction (village, town, city, county, etc.) The plan lays out your community's existing conditions, vision, goals and policies for future growth and development. It should serve as an organizing framework for other targeted plans and studies, including the mitigation plan. It can also be a framework for local land use regulations established through the local zoning and subdivision law. Aligning your plans will be the next step in your community's resilience process.

9.2.3.2 ALIGN YOUR EFFORTS

Your community's long-range vision should inform policies and regulations. Land development codes – such as floodplain development and subdivision regulations – align with your expected future risks. Current minimum code requirements may not be enough to withstand more frequent and severe weather events.

During the hazard mitigation planning process, your community needs to think about other plans and policies. It must also describe how elements of the mitigation plan will inform other planning mechanisms. You may have included a state-level mitigation plan or code; coastal zone management plan; regional strategic plan; or local land use, adaptation or economic development plan. When thinking about how to integrate your plans to support resilience, start building on your understanding of links between planning documents.

As you update your community planning documents, continue to unify goals and align efforts. This is also a chance to strengthen ties with partners across your organization. Your plan is more likely to succeed when you coordinate with partners, value their viewpoints, and put their expertise to use.

Specific projects also offer chances for coordination. Often, resilience and hazard mitigation projects offer co-benefits that are valuable to your partners. Your partners may also introduce new ideas, connect you with key stakeholders, or combine funding to reach complementary goals.

Resources for Holistic Planning

- Plan Integration: Linking Local Planning Efforts
- Integrating Hazard Mitigation Into Local Planning: Case Studies and Tools for Community Officials
- Building Resilience Through Plan Integration
- Increasing Resilience Using THIRA/SPR and Mitigation Planning
- State Mitigation Planning Key Topics Bulletins

9.2.3.3 PRIORITIZE AND PLAN FOR RESILIENCE

Some communities focus on resilience through a dedicated resilience plan. For example, Larimer County, Colorado, and Chicago, Illinois, have this type of plan. These plans document community vision, goals and projects or activities that advance resilience. They also refer and align to previous plans and ongoing initiatives.

Larimer County and Chicago followed different processes to develop their plans. Larimer County started by creating a local steering committee to direct the planning process and carry it out. Its members came from local, state and federal governments; community-led coalitions; nonprofit organizations; and businesses. The committee held two problem-solving workshops with officials from local, state and federal governments, as well as nonprofit organizations. In the first, attendees outlined the community's context and developed a vision, goals and specific strategies for resilience. In the second, they reviewed potential shocks and stresses as well as challenges and opportunities for resilience. The committee used this feedback to draft its resiliency framework.

Chicago created a new, permanent, city-level position for a chief resilience officer (CRO). The CRO led a two-phase process to develop the resilience strategy. Phase 1 involved research, surveys and workshops to learn Chicago's strengths, threats and key challenges. This work also highlighted existing efforts to improve resilience. In Phase 2, the CRO built a steering committee. This involved the public, private, nonprofit and philanthropic sectors. The committee helped to pinpoint the root causes of resilience challenges and potential solutions. The resilience plan, goals and actions grew out of this work.

Other communities integrate resilience as a core value of other plans, including mitigation plans and long-range plans. The Charlottesville, Virginia comprehensive plan update (2021) includes resilience as a core goal to address environmental and natural hazard challenges. While Charlottesville was updating its long-range plan, the city was also developing an affordable housing plan and zoning update. Working on all of these plans at the same time led to integration and alignment.

However you choose to focus on resilience, make sure that you have defined goals and clear metrics to track progress. A measurement framework will help you to identify challenges early. It can also help you highlight successes along the way.

9.3. Assess Your Capacity

Your local capacity and obligations shape your resilience opportunities. Having an accurate grasp of your current capacity will help you to set realistic goals. If needed, an organizational assessment can help build a common understanding of your processes, structure and strengths. This tool may deepen how well you know your organization's direction and goals.

When you define your capacity to build resilience, think about the following:

- Staff. Is there an adequate number of staff members to complete the plan? If so, how much time can staff make for plan development, execution, monitoring and updates?
- Skills. The resilience measures your community takes may depend on whether you have access to mapping support, community relations, engineering or other skillsets.
- Budget. Can you secure and manage funding for planning or carrying out your resilience measures?
- Partnerships. Are there chances for you to work with your organization, within your community, and with neighboring communities or regional bodies?

9.4. Prepare for Future Opportunities

Resources to fund resilience projects can open up unexpectedly; it pays to be ready.

In the weeks and months after a disaster, many communities have a unique window of opportunity. Public support and political will to update policies and invest in mitigation are often stronger. Federal funding for mitigation may also become available. Mitigation and recovery plans that stress resilience can help the community build back in ways that protect people and property against future disasters. Use this time to reassess and carry out actions for a more resilient future.

To take advantage of unexpected or time-limited funding, invest in project preparation. The time spent planning, scoping and permitting these projects before disasters happen can lead to quicker funding deployment and use. Funds may be set aside for grant matching. Planning projects outside of a disaster cycle can help ensure that they align with and advance community goals to mitigate harm and build resilience.

Deepening ties with state officials is beneficial. The people who apply for and allocate federal grant funds know the criteria state and federal officials use when awarding competitive funds. These ties can increase your access to funding.

9.5. What Does Implementation Look Like?

Several resources can support you as you carry out the plan. They include funding in the form of grants and loans, technical assistance and in-kind contributions. Some projects may require a combination of your local resources, state and federal assistance, and nongovernmental support. Refer to Annex A: Resources for Resilience for a list of some resources.

9.5.1. Identify Projects

Once you have established a resilience vision and goals for your community, it's time to put the plan into action. Your projects should grow out of ongoing efforts and any new goals. Think about the mitigation actions you've included in your mitigation plan. Many of these will also build whole-community resilience; think about focusing on these actions.

After defining a set of resilience projects, you can look for resources and start to define timelines. As in the mitigation plan, make sure that all projects have a designated agency or point of contact that will carry them out. Lay out how your projects connect to your resilience goals. This will help you to describe and measure how projects advance your goals and vision. A formal measurement plan will also support the periodic review of active and planned projects. Such reviews should take place on an annual basis. Use these reviews to check whether projects are aligning with their goals, identify challenges and successes, and think about whether to add new projects or priorities.

9.5.2. Develop and Leverage Momentum

As you plan the projects that will support the resilience plan, think about starting with a couple of affordable, visible and simple projects. As you complete these, they will show a "win" for the community. They will promote more resilience buy-in. Completed projects also show a commitment to resilience goals. This may increase the availability of future funding.

Many grant and loan sources require a cost effectiveness calculation. This may be a challenge for resilience or mitigation projects that are meant to withstand future disasters. It may be hard to justify higher costs for benefits that may not be seen for several years. Often, you can address this by factoring in and documenting short-term benefits.

For example, the main goal of a living shoreline project may be to protect properties against storm surge from projected sea levels in 2040. However, as soon as the project is done, it may boost tourism, create habitats for wildlife, and provide air and water filtration.

Individual funding sources may not always provide enough project resources. Sometimes, your community may not have the funds to meet a local match percentage. In these cases, you might be able to combine multiple funding sources. For instance, some communities use funds from the Department of Housing and Urban Development's Community Development Block Grant program to meet cost-share requirements for FEMA HMA grant funds.

Annex A. Resources for Resilience

1. Local Resources

First, find out if any initiatives and activities can be done using existing operations and budgets. For example, small infrastructure projects such as stormwater drainage improvements can likely be factored into your community's capital improvements program. Other projects may require a specific line-item request as part of the routine planning and budgeting cycle. They might also require more creative public financing methods, such as special purpose assessments, impact fees or tax increment financing.

Some actions may use a combination of funding sources with other local departments, such as those that can lead to multiple benefits for the community. For example, multiple agencies may work on and fund the acquisition of flood-prone properties to be maintained as a public park.

2. State Resources

State government funding for mitigation varies from state to state. HMA funds may be available following a federal disaster declaration, as described below; some states use their own general funds for grant matching. Reach out to your SHMO to learn about available funding opportunities in your state. Other state agencies, such as your state forestry department, geological survey and water resources agency, may also offer programs that fund projects for specific hazards.

Get to know your SHMO. They are in charge of organizing, developing and carrying out the state's hazard mitigation program. They also review plans and projects submitted for approval by local communities. Your SHMO regularly coordinates with other state agencies; FEMA and other federal agencies; local governments; and other public and private organizations. They monitor the completion of approved projects. They provide technical assistance and grant funding for approved activities and expenses. Your SHMO coordinates most FEMA funding to support mitigation plans and project execution.

3. Federal Resources

3.1. FEMA Mitigation Grant Programs

HMA Grant Programs

FEMA's HMA grant programs provide funds for pre- and post-disaster mitigation. These programs reduce the risk of loss of life and property due to natural hazards. Here are brief descriptions of the HMA grant programs:

- Flood Mitigation Assistance. This program provides funding for projects that reduce or eliminate the risk of repetitive flood damage to buildings insured by the NFIP.
- Flood Mitigation Assistance Swift Current. This program provides funding to mitigate buildings insured through the NFIP after a major disaster declaration following a flood-related disaster event to reduce risk against future flood damage.
- Hazard Mitigation Grant Program. This program provides funding to state, local, tribal and territorial governments so they can develop hazard mitigation plans and rebuild in a way that reduces, or mitigates, future disaster losses in their communities. This grant funding is available after a presidentially declared disaster.
- Hazard Mitigation Grant Program Post-Fire. This program provides assistance to help communities implement hazard mitigation measures after wildfire disasters.
- Safeguarding Tomorrow Revolving Loan Fund. This program is authorized under Section 205 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide capitalization grants to states, eligible federally recognized tribes, territories and the District of Columbia to establish revolving loan funds that provide hazard mitigation assistance for local governments to reduce risks from natural hazards.
- The Rehabilitation of High Hazard Potential Dams (HHPD) grant program provides technical, planning, design, and construction assistance in the form of grants for rehabilitation of eligible high hazard potential dams.

Hazard Mitigation Funding Under Public Assistance, Section 406

Section 406 of the Stafford Act, 42 U.S.C. 5172, gives FEMA the power to fund cost-effective mitigation measures under the Public Assistance (PA) program while repairing disaster-damaged public facilities. This usually becomes apparent during the immediate repair phase after a disaster event. Your community must be aware and involved in the development of PA projects in close coordination with state and FEMA counterparts. This will help pinpoint possible mitigation opportunities under the PA program.

Earthquake Grants

The FEMA National Earthquake Hazards Reduction Program Earthquake State Assistance Program was created to boost earthquake risk reduction at the local level. Mitigation activities funded through this program include:

- Developing seismic mitigation plans.
- Conducting seismic safety inspections of critical structures and lifelines.
- Updating building codes, zoning codes and ordinances to enhance seismic safety.

- Increasing earthquake awareness and education.

You can learn more about funding local earthquake risk reduction activities. Reach out to your SHMO or State Earthquake Program contact.

Emergency Management Performance Grants Program

The Emergency Management Performance Grants Program gives grants to states to assist SLTT governments prepare for threats and hazards. The grants focus on planning, operations, equipment acquisitions, training, exercises and construction and renovation in enhancing all-hazards emergency management capabilities. Your state emergency management agency is the only entity that can apply to FEMA for this program on behalf of state and local emergency management agencies. So, your first point of coordination should be through your local emergency management office.

3.2. Technical Assistance

FEMA offers many types of technical assistance. Technical assistance may take the form of information resources; publications; training; templates, models and samples; networking; or onsite workshops. As you develop your plan and assess your local capabilities, you will get a sense of what technical assistance might help the most.

National Earthquake Technical Assistance Program

The National Earthquake Technical Assistance Program is designed to help state, tribal and local governments get the knowledge and tools they need to plan and carry out earthquake mitigation strategies. FEMA provides these types of assistance through the program:

- Training. Courses and associated materials, available for the classroom or independent study, related to a number of seismic risk reduction activities and stakeholders.
- Technical assistance. Technical advice and shared expertise that help recipients design, develop and carry out earthquake mitigation projects.
- Tools development. Help in creating job aids and other tools to carry out earthquake mitigation efforts.
- Special project support. Depending on available program funding, support for demonstration projects or other mitigation initiatives.

Risk MAP

FEMA's Risk Mapping, Assessment and Planning (Risk MAP) program helps communities pinpoint, assess and reduce flood risk. Through Risk MAP, FEMA gives communities flood risk data and information to enhance local mitigation plans, improve community outreach, and increase local resilience to floods. The products and guidance provided by Risk MAP can be used to help carry out your local plan.

Building Science

FEMA's Building Science provides technical services and mitigation guidance to create disaster-resilient communities. The branch offers NFIP technical support for public and private sector stakeholders, the National Earthquake Hazards Reduction Program, the National Windstorm Impact Reduction Program, and outreach strategies for communicating Building Science issues.

Dam Safety Collaborative Technical Assistance

FEMA is offering a Collaborative Technical Assistance (CTA) series to help communities at risk of dam-related flooding to better understand their risk landscape and the potential consequences of dam-related emergencies. The CTA will include planning for emergencies related to operational discharges or dam-related infrastructure failure.

4. Best Practices

Best Practices Portfolio

FEMA's Mitigation Best Practices consists of stories, ideas, activities and projects that show how others have worked to reduce or prevent damage from disasters. These best practices come from individuals and communities. They describe measures they have taken to reduce the loss of life and property from disasters. The portfolio provides ideas about reducing losses. It also encourages others to assess their own risk and think about mitigation as a long-term way to reduce it. There are mitigation planning success stories on plan implementation, plan integration, outreach and engagement.

Annex B. Worksheets, Samples and Starter Kits

Background

What is in this annex?

You can use the materials in this annex to guide the planning process. These are recommended and are designed to help create a strong plan and meet the requirements laid out in the policy.

There are three types of guidance in this annex:

Worksheets: You can use these forms during the planning process to collect information from participating jurisdictions, community partners or other stakeholders.

Samples: These can be a starting point or template for certain activities of the planning process (e.g. survey).

Starter Kits: These are handouts that explain special topics that can be helpful for the planning process (e.g. hiring a consultant).

All of these are optional and can be edited to suit the needs of your community.

Planning Process

Worksheet 1: Identifying and Engaging the Planning Team

Use this worksheet to identify partner organizations to invite to be on the planning team. Some organizations do not need to be involved in every decision of the planning process but are stakeholders that require outreach and involvement during the planning process.

Planning Team – The core group responsible for making decisions, guiding the planning process, and agreeing upon the final contents of the plan. These are often leaders from the local communities that will adopt the plan (mayors, town administrators, county commissioners, etc.). Every community that wants to formally adopt the plan must participate in the process!

Stakeholders – Individuals or groups that affect or can be affected by a mitigation action or policy. The plan needs to document how each of the following were at least given the opportunity to participate. These kinds of stakeholders must be invited:

- Local and regional agencies involved in hazard mitigation activities.
    - Public works, emergency management, local floodplain administration and Geographic Information Systems (GIS) departments.
- Agencies with authority to regulate development.
    - Zoning, planning, community and economic development departments; building officials; planning commissions; or other elected officials.
- Neighboring communities.
    - Adjacent local governments, including special districts. These may include those that are affected by similar hazard events or may share a mitigation action or project that crosses boundaries. Neighboring communities may be partners in hazard mitigation and response activities. They may be where critical assets, such as dams, are located.
- Representatives of businesses, academia and other private organizations.
    - Private utilities or major employers that sustain community lifelines.
- Representatives of nonprofit organizations.
    - Community-based organizations, housing authorities, healthcare organizations or social service agencies.

Use the checkboxes in the table below to identify which methods are best for each type of participant and stakeholder. Consider your unique situation. No two communities are exactly alike. Identify what works best for you and your partners.

Contact method	Participating jurisdiction	Local and regional agencies involved in hazard mitigation activities	Agencies that have the authority to regulate development	Neighboring communities	Representatives of businesses, academia, and other private organizations	General public
Email	☐	☐	☐	☐	☐	☐
Phone call	☐	☐	☐	☐	☐	☐
Flyers/ newsletters	☐	☐	☐	☐	☐	☐
Website	☐	☐	☐	☐	☐	☐
Existing regular meetings	☐	☐	☐	☐	☐	☐
Surveys	☐	☐	☐	☐	☐	☐
Social media	☐	☐	☐	☐	☐	☐
Local newspaper	☐	☐	☐	☐	☐	☐
Other (describe)	☐	☐	☐	☐	☐	☐

What are your expectations for plan participant involvement for each phase of the plan update?

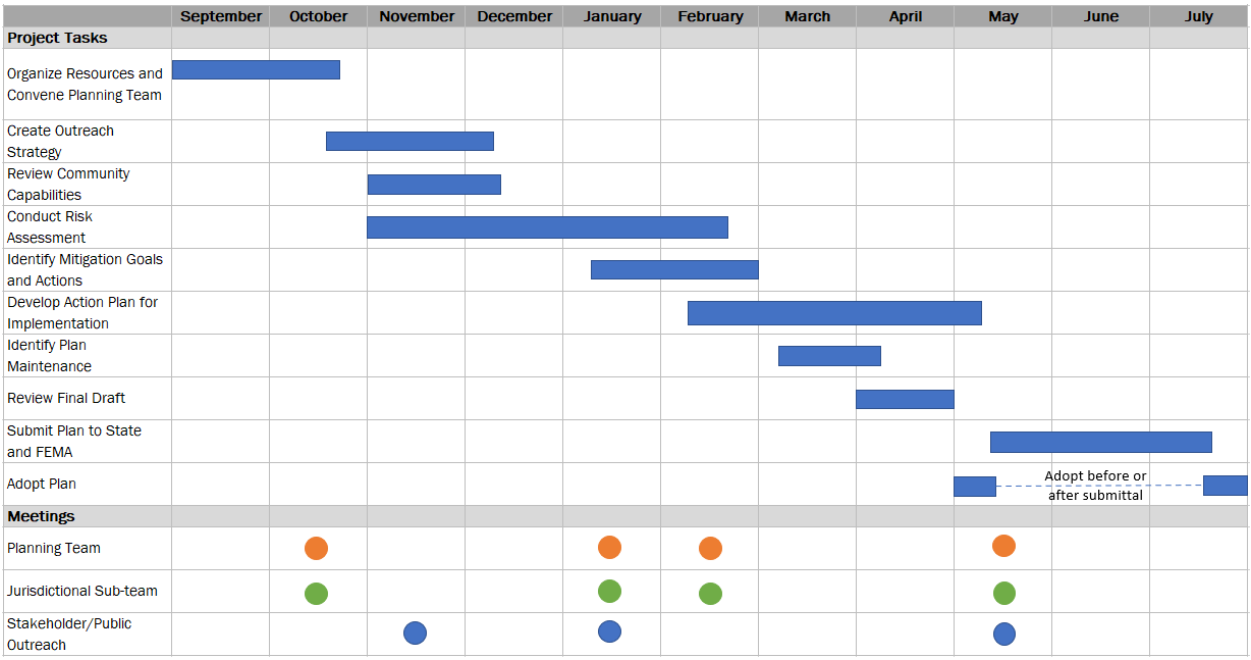
How can plan participants support the planning process?

Are there upcoming meetings or events you can use to engage plan participants?

Sample Planning Process Schedule

Use the table below as an example schedule of key planning tasks. Your timeline may differ. This is just a suggestion of how to organize your time and resources.

Table 1. Sample Schedule of Tasks



Sample Voluntary Participation Agreement

PURPOSE

A Voluntary Participation Agreement (VPA) is hereby executed between the participating jurisdictions in the [Insert Title of Plan]. "Participating jurisdictions" in this VPA are:

- [insert Lead Community name]
- [insert Community A name]
- [insert Community B name]

The purpose of this VPA is to establish commitment from and a cooperative working relationship between all Participating Jurisdictions in the development and implementation of the [Insert Title of Plan]. In addition, the intent of this VPA is to ensure that the multi-jurisdictional hazard mitigation plan is developed in accordance with Title 44 of the Federal Code of Regulations Part 201.6; that the planning process is conducted in an open manner involving community stakeholders; that it is consistent with each participating jurisdiction's policies, programs, and authorities; and that it is an accurate reflection of the community's values.

This VPA sets out the responsibilities of all parties. The VPA identifies the work to be performed by each participating jurisdiction. Planning tasks, schedules, and finished products are identified in the Work Program and Schedule. The plan created as a result of this VPA will be presented to the governing body (Planning Commission, City Council and/or Board of Commissioners, etc.) of each participating jurisdiction for adoption.

BACKGROUND

Mitigation plans form the foundation for a community's long-term strategy to reduce disaster losses. They help break the cycle of disaster damage, reconstruction, and repeated damage. The Participating Jurisdictions in a mitigation planning process benefit by:

- Identifying cost-effective actions for risk reduction.
- Directing resources to the greatest risks and vulnerabilities.
- Building partnerships by involving people, organizations and businesses.
- Increasing education and awareness of hazards and risk.
- Aligning risk reduction with other community objectives.
- Providing eligibility to receive federal hazard mitigation grant funding.

The [insert Lead Community name] has received a grant from the Federal Emergency Management Agency (FEMA) to prepare a multi-jurisdictional hazard mitigation plan in accordance with Title 44 of the Federal Code of Regulations Part 201.6.

PLANNING TEAM RESPONSIBILITIES

[Insert Lead Community name] will act as the Lead Community. They will assign a Chairperson of the Planning Team for the [Insert Title of Plan]. The Participating Jurisdictions authorize the Lead Community to manage and facilitate the planning process in accordance with the Work Program and Schedule.

The Participating Jurisdictions understand that representatives must engage in the following planning process. This is more fully described in the Local Mitigation Planning Handbook. It includes, but is not limited to:

- Develop the Work Program and Schedule with the Planning Team.
- Organize and attend regular meetings of the Planning Team.
- Help the Planning Team develop and conduct an outreach strategy to involve other planning team members, stakeholders, and the public, as appropriate to represent their Jurisdiction.
- Identify community resources available to support the planning effort. This includes meeting spaces, facilitators and media outlets.
- Provide data and feedback to develop the risk assessment and mitigation strategy. This includes a specific mitigation action plan for their Jurisdiction.
- Submit the draft plan to their Jurisdiction for review.
- Work with the Planning Team to incorporate all their Jurisdiction's comments into the draft plan.
- Submit the draft plan to their respective governing body for consideration and adoption.
- After adoption, coordinate a process to monitor, evaluate and work toward plan implementation.

PLANNING TEAM

The following points of contact and alternatives are authorized on behalf of the governing bodies to participate as members of the Planning Team for the [Insert Title of Plan]:

[Insert Points of Contact for the Lead Jurisdiction and for each Participating Jurisdiction, and any alternative Points of Contact, including, at a minimum:]

- Name
- Title
- Office/Agency
- Name of Participating Jurisdiction
- Address
- Phone number
- Email address

VPA IMPLEMENTATION

This VPA will be in effect from the date of signature by all parties, and will remain in effect through the duration of the planning process. It and will terminate after adoption of the final FEMA-approved mitigation plan by all participating jurisdictions, or 5 years after FEMA approval, whichever is earlier. It may be terminated prior to that time for any Participating Jurisdiction by giving 60 days written notice. This VPA is to be implemented through the attached Work Program and Schedule, and any addendums that describe specific activities, programs and projects, and if necessary, funding by separate instrument.

[Insert signature block for each Participating Jurisdiction, or attach resolutions]

Signature: _____

Name of Authorized Government Official

Title (City Manager, Mayor, County Emergency Management Director, etc.)

Name of Lead Jurisdiction

Office/Agency

Date: _____

Signature: _____

Name of Authorized Government Official

Title (City Manager, Mayor, County Emergency Management Director, etc.)

Name of Jurisdiction A

Office/Agency

Date: _____

Attachments

Plan Work Program and Schedule

Sample Public Opinion Survey

Your household has been randomly selected to participate in this survey on public perceptions and opinions about natural hazards in your county. In addition, we would like information about the methods and techniques you prefer for reducing the risks and losses associated with these hazards. The questionnaire should be completed by an adult, preferably the head of household. The information you provide will be used to help improve public/private coordination, mitigation, and risk reduction efforts in your county. The survey should take less than 30 minutes to complete.

This is a public opinion survey. The results will inform local natural hazard mitigation planning. Your returned, completed survey indicates your willingness to take part in the study. Participation in this study is voluntary and anonymous. None of the information you provide will be attributed to you directly.

NATURAL HAZARD INFORMATION

First, we would like to know about your experiences with natural hazards.

1. During the past 5 years, in the county you currently reside in, have you or someone in your household directly experienced a natural disaster? This could be an earthquake, severe windstorm, flood, wildfire, or other type of natural disaster.

   ☐ Yes

   ☐ No

2. How concerned are you about the following natural disasters affecting your county? (Check the corresponding box for each hazard)

Natural Disaster	Very Concerned	Somewhat Concerned	Neutral	Not Very Concerned	Not Concerned
Drought	☐	☐	☐	☐	☐
Dust Storm	☐	☐	☐	☐	☐
Earthquake	☐	☐	☐	☐	☐
Flood	☐	☐	☐	☐	☐
Landslide/Debris Flow	☐	☐	☐	☐	☐
Wildfire	☐	☐	☐	☐	☐
Volcanic Eruption	☐	☐	☐	☐	☐
Windstorm	☐	☐	☐	☐	☐
Severe Winter Storm	☐	☐	☐	☐	☐

Natural Disaster	Very Concerned	Somewhat Concerned	Neutral	Not Very Concerned	Not Concerned
Extreme Heat	□	□	□	□	□
Other: _____	□	□	□	□	□

3. Whom would you most trust to provide you with information about how to make your household and home safer from natural disasters? (Please check up to three)

- ☐ News media
- ☐ Government agency
- ☐ Insurance agent or company
- ☐ Utility company
- ☐ University or research institution
- ☐ Neighbor/friend/family member
- ☐ Elected official
- ☐ American Red Cross
- ☐ Other non-profit organization
- ☐ Social media (e.g., Facebook)
- ☐ Not sure
- ☐ Other: _____

4. Prior to receiving this survey, were you aware of your county's hazard mitigation plan?

- ☐ Yes
- ☐ No

COMMUNITY VULNERABILITIES AND HAZARD MITIGATION STRATEGIES

To assess community risk, we need to understand which community assets may be vulnerable to natural hazards in the region. Vulnerable assets are those community features, characteristics or resources that may be impacted by natural hazards (e.g., populations with functional needs, economic components, environmental resources, etc.). The next set of questions will focus on

vulnerable assets in your community. It will also cover your preferred strategies to mitigate risk to those assets.

5. Community assets are features, characteristics or resources that either make a community unique or allow the community to function. For the following categories, what do you see as vulnerable in your community? Write a short description for each.

   - **Human** (Loss of life and/or injuries)
   - **Economic** (Business closures and/or job losses)
   - **Infrastructure** (Damage or loss of bridges, utilities, schools, etc.)
   - **Cultural/Historic** (Damage or loss of libraries, museums, fairgrounds, etc.)
   - **Environmental** (Damage or loss of forests, rangeland, waterways, etc.)
   - **Governance** (Ability to maintain order and/or provide public amenities and services)

6. Next we would like to know what specific types of community assets are most important to you. (Check the corresponding box for each asset)

Community Assets	Very Important	Somewhat Important	Neutral	Not Very Important	Not Important
Elder-care facilities	□	□	□	□	□
Schools (K-12)	□	□	□	□	□
Hospitals	□	□	□	□	□
Major bridges	□	□	□	□	□
Fire/police stations	□	□	□	□	□

Community Assets	Very Important	Somewhat Important	Neutral	Not Very Important	Not Important
Museums/historic buildings	□	□	□	□	□
Major employers	□	□	□	□	□
Small businesses	□	□	□	□	□
College/university	□	□	□	□	□
City Hall/courthouse	□	□	□	□	□
Parks	□	□	□	□	□
Other: _____	□	□	□	□	□
Other: _____	□	□	□	□	□
Other: _____	□	□	□	□	□
Other: _____	□	□	□	□	□
Other: _____	□	□	□	□	□

7. Many activities can reduce your community's risk from natural hazards. These activities can be both regulatory and non-regulatory.

Please check the box that best matches your opinion of the following strategies to reduce risk and loss associated with natural disasters.

Community- wide Strategies	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Not Sure
I support implementing government rules to reduce risk	□	□	□	□	□	□
I support a non-governmental approach to reducing risk	□	□	□	□	□	□
I support a mix of both governmental and non-governmental approaches to reducing risk	□	□	□	□	□	□
I support policies to prohibit development in areas subject to natural hazards	□	□	□	□	□	□

Community- wide Strategies	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Not Sure
I support the use of tax dollars (federal and/or local) to compensate landowners for not developing in areas subject to natural hazards	□	□	□	□	□	□
I support the use of local tax dollars to reduce risks and losses from natural disasters	□	□	□	□	□	□
I support protecting historical and cultural structures	□	□	□	□	□	□
I would be willing to make my home more disaster-resistant	□	□	□	□	□	□
I support steps to safeguard the local economy following a disaster event	□	□	□	□	□	□
I support improving the disaster preparedness of local schools	□	□	□	□	□	□
I support a local inventory of at-risk buildings and infrastructure	□	□	□	□	□	□
I support the disclosure of natural hazard risks during real estate transactions	□	□	□	□	□	□

8. Natural hazards can have a significant impact on a community. Planning for these events can help lessen the impacts. The following statements will help determine residents' priorities in planning for natural hazards in your county.

Please tell us how important each one is to you.

Statements	Very Important	Somewhat Important	Neutral	Not Very Important	Not Important
Protecting private property	□	□	□	□	□
Protecting critical facilities (e.g., transportation networks, hospitals, fire stations)	□	□	□	□	□
Preventing development in hazard areas	□	□	□	□	□

Statements	Very Important	Somewhat Important	Neutral	Not Very Important	Not Important
Enhancing the function of natural features (e.g., streams, wetlands)	□	□	□	□	□
Protecting historical and cultural landmarks	□	□	□	□	□
Protecting and reducing damage to utilities	□	□	□	□	□
Strengthening emergency services (e.g., police, fire ambulance)	□	□	□	□	□
Disclosing natural hazard risks during real estate transactions	□	□	□	□	□
Promoting cooperation among public agencies, citizens, non-profit organizations and businesses	□	□	□	□	□

GENERAL HOUSEHOLD INFORMATION

Finally, we would appreciate any information you are willing to share with us about your household. This information will remain confidential and is for survey comparison purposes only.

9. Zip code (optional): _____

10. County: _____

11. How long have you lived in the state?

☐ Less than 1 year

☐ 1-5 years

☐ 6-9 years

☐ 10-19 years

☐ 20 or more years

- Do you own or rent your home?

☐ Own

☐ Rent

- Do you own/rent a:

☐ Single-family home

- ☐ Duplex
- ☐ Apartment (3-4 units in structure)
- ☐ Apartment (5 or more units in structure)
- ☐ Condominium/townhouse
- ☐ Manufactured home
- ☐ Other: _____

Sample Plan Organization

1. Cover Page
    a. Title (*City or Town Local Hazard Mitigation Plan*)
2. Jurisdiction Information
    a. Name(s) of Participating Jurisdiction(s)
    b. New Plan or Update?
    c. Previous FEMA Approval Date(s)
    d. Version (with submittal dates)
    e. Funding Assistance (optional)
3. Table of Contents
4. Executive Summary [Optional]
5. Adoption Documentation
6. Background [Optional]
    a. Introduction to Hazard Mitigation and the Plan/Plan Update
        i. Community Planning Area
    b. Location Information and Geography
    c. Demographics
    d. Housing
    e. Land Use and Infrastructure
    f. Community Development and Development Trends
    g. Historic, Natural/Environmental and Cultural Resources
    h. Commerce, Industry, Academia
    i. National Flood Insurance Program (NFIP) Participation and Community Rating System (CRS) participation, if applicable
7. Planning Process
    a. Purpose, Overview and Background
    b. Building Support: Community Involvement, Roles and Responsibilities
        i. The Planning Team, Consultant (if applicable) and Local Leadership
        ii. Multi-Jurisdictional Participation
        iii. Stakeholders
        iv. Public
    c. Understanding the Community's Risks
        i. Gather Resources

ii. Review and Incorporation of Information

iii. Stakeholder and Public Input

iv. Developing/Updating the Risk Assessment

d. Developing and Updating the Mitigation Strategy

i. Identification and Review of Goals, Actions, Priorities, Changes, Progress

ii. Review and Incorporation of Stakeholder and Public Exchange

e. Bringing the Plan to Life: Implementation and Maintenance

i. Method, Responsibilities and Schedule

1. Plan [Update] Review, Adoption, and Approval
2. Monitoring
3. Evaluation (additional documents in appendices)
4. Updates

ii. Continued Public Involvement (also see Appendix – Outreach Strategy)

8. Risk Assessment

a. Defining Risk and Methodology

b. Significant events since the last plan update (major disasters, major developments, conditions effecting risk in the community)

c. Hazards

i. a. Hazard Identification

1. Hazards Excluded From Risk Assessment (with explanation)
2. Hazard Profiles (each applicable hazard)

a. Description

b. Location

c. Extent (magnitude)

d. Previous Occurrence, Disasters

e. Probability of Future Events

d. Vulnerability for Each Hazard

i. a. Community Assets

1. People
2. Economy
3. Built Environment

a. Existing structures

b. Infrastructure

c. Critical Facilities/Community Lifelines
d. Historic and Cultural Resources
e. Future Development

4. Natural Environment
    a. Water Resources, Watershed
    b. Protected Natural Areas
    c. Other

e. Risk Analysis and Assessment Matrix
    i. Methodology
        1. Exposure Analysis
        2. Historical Analysis
            a. Repetitive and Severe Repetitive Loss Properties
        3. Scenario Analysis (if applicable)
        4. Changes in Development Analysis (for plan update)
    ii. Vulnerability Summary (for each hazard)
        1. Identified Risk in the Community
        2. Jurisdictional Vulnerability - Narrative Summary, Matrix or Annexes

9. Capability Assessment
    a. Purpose – Capabilities for Both Existing and Future Risk
    b. Types and Evaluation of Capabilities. This can be outlined by program areas, or recommended by authorities, policies, programs, resources, community support/leadership, and the ability to expand/improve.
        i. Local Government and Program Areas. Highlight applicability of local authorities, staffing, funding, and planning tools or mechanisms for hazard mitigation. This includes but is not limited to:
            1. Form of Government (town council, selectboard, planning board, home rule, MPO, etc.)
            2. Planning, Building, Housing - Community Development
            3. Transportation, Public Works, Utilities
            4. Floodplain Management/Stormwater, Open Space, Land Conservation, Local Forestry
            5. Emergency Management
            6. Economic (Re-)Development
            7. Health

8. GIS (including database, modeling abilities of HAZUS, SLOSH, and planning scenarios)
9. Dam Safety

ii. National Flood Insurance Program, CRS

iii. Partnerships and Other Community Affiliations, Programs, Resources

c. Integration With Existing Plans and Local Processes (other planning mechanisms)

i. Accomplishments

ii. Opportunities and Process for Integration

1. Community Planning Mechanisms or Activities (e.g. next comprehensive plan update)
2. Method and Timeline

d. Capability Needs/Challenges - Summary

10. Mitigation Strategy

a. Goals (as well as vision and objectives, if available)

b. Development and Update of Strategy and Actions – Methodology

i. Identifying Types of Mitigation Actions (identify preparedness separately or consider in appendix)

1. Existing and New Actions
2. Actions Addressing Existing and Future Development
3. NFIP-related actions
4. Future Risk

ii. Analysis of Actions – Narrative or Table (describing even those actions not selected to move forward)

iii. Prioritization

1. Qualitative or quantitative prioritization method describing benefits and costs

c. For Plan Updates: Previous Actions: Meeting Targets and Progress

d. Action Plan

i. Actions Using Risk Assessment Matrix by Vulnerable Area

1. Descriptions
2. Action Type
3. Pre or Post Disaster
4. Priority Level (low, medium, high)
5. Change in Priority (for plan update)

6. Lead Organization
7. Supporting Organization(s)
8. Timeframe
9. Financing Options
10. Cost Estimate
11. Benefit

11. Moving Towards a Safe and Resilient Community
    a. Evaluation: Progress and Challenges (for plan update)
        i. Involvement, Capabilities, Meeting Goals and Targets
        ii. Changes in Development – Impacts to Risk
        iii. New Disasters – Changes in Risk
    b. Changes in Priorities (for plan update)
    c. Success Stories and Best Practices (optional)
12. References
13. Jurisdictional Annexes
14. Appendices
    a. Assessing Risk: Maps and Other Information
    b. Building Support: Planning Process Additional Documentation
        i. Outreach Strategy and Materials
        ii. Meeting Summaries, Notes, Sign-In Sheets
        iii. Invites, Public Meeting Announcements, Web/Ad Postings
        iv. Surveys, Questionnaires, Evaluations, etc.
    c. Capability Assessment (additional documentation, if needed)
    d. Emergency/Preparedness Strategy Actions (optional)
    e. Final Local Mitigation Plan Review Tool from Approved Plan
    f. Glossary

Considering a Consultant to Support Local Mitigation Planning Starter Kit

This fact sheet is for plan owners who are considering hiring a consultant to support the local mitigation planning process and the compilation of a mitigation plan. The planning process requires active participation and leadership from the community(ies) involved. Outside help can support the whole process or just certain phases and tasks. You do not need formal training to lead this process. However, hiring a consultant may help meet FEMA requirements and create a stronger plan. Consider support if:

- You want specific expertise. This could be from experts or specialists in community planning, engineering, public outreach and engagement, or Geographic Information Systems (GIS).
- You need help identifying hazards, risks, and vulnerabilities, or if you need help estimating potential losses.
- You want a third party to facilitate discussions about mitigation goals, actions and priorities.
- There are capacity issues within your community(ies) to lead or help with the process.

Planning consultants work under contract to give professional and technical support. They can come from private consulting firms, academic institutions, nonprofit organizations or regional planning agencies. Before you hire a consultant, you should assess their qualifications, expertise and their approach to the project as outlined in their proposal. The table below highlights the main tasks of developing a mitigation plan. It discusses which tasks can be delegated for outside assistance. It also shows which tasks the plan owner should still take ownership and responsibility for.

Examples of Consultant and Plan Owner Roles

Tasks	Contractor Role	Plan Owner Role
Planning Process, Meetings/Workshops	**Minimal Assistance** - Help the community start its planning process. Identify key meetings and decisions that need to occur. Create a timeline and schedule for the completion of all tasks. **Significant Assistance** - Help start the planning process. Create materials for the various meetings and workshops. Lead the meetings and workshops. Prepare notes as required.	Determine key government, stakeholder and community members to be on the Planning Team. Explain the purpose of the plan/update process to the Planning Team. Make decisions about the number and location of meetings and workshops. Help coordinate meetings and attendance. Review and approve all meeting materials.

Examples of Consultant and Plan Owner Roles		
Public Outreach and Participation	**Minimal Assistance:** Help the jurisdiction develop a public outreach strategy. **Significant Assistance:** Help develop the public outreach strategy and help with implementation of the strategy (attend meetings, coordinate media, etc., help respond to public comments/questions).	Determine if the nature and number of meetings or other outreach methods are adequate to engage the public. Attend meetings and lead portions of the meetings. Address any needs for more targeted outreach to specific community members. Coordinate media and respond to public comments and questions.
Hazard Assessment	**Minimal Assistance:** Run a hazard assessment with data provided by the community. GIS and Hazus software are example tools for such an assessment. **Significant Assistance:** Help determine necessary data inputs and collect them. Run the hazard analysis. Present the results of the analysis to participants.	Determine the critical facilities, community lifelines, or other community assets to include in the assessment. Check that the assessment methodology uses appropriate parameters (e.g. timeframe, geographic boundaries, etc.) Ensure that the results of the assessment are in line with the community's experiences (e.g. most vulnerable assets have previously been damaged during hazard events).
Compilation of the Plan	**Minimal Assistance:** Supply an outline or table of contents of the required sections in a plan. **Significant Assistance:** Collect all the information from the meetings, workshops, etc., and compile the hazard mitigation plan.	Check that the compiled elements of the plan meet the requirements in the Local Mitigation Planning Policy Guide.

Examples of Consultant and Plan Owner Roles		
Multi-Jurisdictional Plan Coordination	**Minimal Assistance:** Provide guidance on how a multi-jurisdictional plan is different from a single-jurisdiction plan. Advise on the best approaches for multi-jurisdictional planning and supply helpful resources as needed. **Significant Assistance:** Help the participating jurisdictions complete all parts of the plan that are specific to their communities. Fold these pieces into the plan so that all participants are eligible for plan approval and adoption.	Work directly with all participants to make sure they understand and meet all planning requirements. Make sure that all participating jurisdictions have a voice in the plan's coordination and development.
Submit the Plan for State and FEMA Review and Approval	**Minimal Assistance:** Provide suggestions on how to respond to state and FEMA comments. **Significant Assistance:** Help the community with any required revisions that may come from the state and FEMA.	Understand the review comments from the state and FEMA and ask the consultant to address. Lead the adoption process so that the plan is approved by all participating jurisdictions.

EVALUATE THE CONSULTANT'S QUALIFICATIONS AND EXPERTISE

Many communities hire consultants to help coordinate and facilitate the planning process. Consultants can also compile the entire hazard mitigation plan for state and FEMA approval. If your community decides to hire one, think about which phases you want help with. Then use these factors to assess a consultant's background and expertise.

General: Regardless of the level of support you seek, look for a planning consultant that:

- Knows the current federal and state requirements for local hazard mitigation planning. This includes the updated policies in the Local Mitigation Planning Policy Guide.
- Knows the applicable regulations, laws and guidance, and understands how to apply them to a hazard mitigation plan. For example, they must know the requirements of the Disaster Mitigation Act of 2000; state, tribal and local regulations; and the NFIP requirements.
- Understands that each community has unique demographic, geographic and political conditions. Be sure to think about the differences between hiring a consultant that is local versus one that is outside the region or even the state.
- Has attended FEMA Mitigation Planning training.

- Is prepared to give references. This should include names and phone numbers for past clients.
- Can show hazard mitigation plans that were approved on first submission.
- Can show approved plans that are considered models or best examples.
- Can successfully use technical tools, research, media, graphics and communication in their work.

Planning Process: If you need support with the planning process, look for a consultant that:

- Understands that community input and participation are key to a strong hazard mitigation plan.
- For plan updates, knows how to build on the existing hazard mitigation plan rather than starting from scratch.
- Has experience with different forms of community engagement and outreach. They should show they can do successful public outreach.

Risk Assessment: If you need support with the risk assessment, look for a consultant that:

- Knows how to create community-specific risk assessments that help identify key vulnerabilities and mitigation needs.
- Knows how to find and use the latest FEMA Risk Mapping, Assessment and Planning data and other flood risk products.
- Can help communities assess changes in development, hazards and vulnerability since the last plan update.
- Can help communities think about the effects of future conditions.

Mitigation Strategy: If you need support with mitigation strategy, look for a consultant that:

- Is familiar with emergency management and multi-hazard mitigation concepts.
- Has proven experience developing successful and creative strategies that connect to the Risk Assessment.
- Understands long-term risk reduction. They should use strategies based in community development, land management, resiliency and smart growth practices.
- Knows how mitigation, preparedness, response and recovery are different. You can address all four, but the focus of the hazard mitigation plan is mitigation.
- Knows the financial resources a community could access for funding projects.

- Knows how long-term risk reduction connects to community development, land management, resiliency and smart growth practices.
- Understands the connection between the hazard mitigation plan and other planning mechanisms in the community.
- Knows the overlaps between hazard mitigation plans and the CRS and Community Wildfire Protection Plans. The consultant should address the requirements for multiple programs in one plan.

Maintenance and Update: If you need support with plan maintenance and updates, look for a consultant that:

- Can support a community with project execution and progress through a successful strategy.
- Knows the requirements for a plan update as opposed to an initial plan.
- Understands the updates made in the Local Mitigation Planning Policy Guide. They should also know how to apply these to hazard mitigation plans.
- Clearly states they will support you through the FEMA review process. A contract is complete when the plan has received the FEMA status of "Approvable Pending Adoption" or "Approved."

Consultants do not own the planning process! They facilitate it.

They do not make the decisions for the plan's contents, process, risk findings, strategies or priorities. They help communities make decisions. Consultants do not have ownership of the plan; it is not proprietary.

EVALUATE THE CONSULTANT'S PROPOSAL

If your community wants to hire a private consultant, you may need to do a Request for Proposals (RFP). Procurement laws and rules vary from state to state and even from community to community. However, going through an RFP process is recommended for most cases. As you develop the RFP and assess submissions, think about the following.

- **Scope of Work (SOW)**: When hiring a consultant, you should give them a detailed SOW. Here is some advice for writing your SOW.
  - Talk to the State Hazard Mitigation Officer about the requirements for a FEMA-approved hazard mitigation plan. For example, the hazard profiles may not need detailed databases of prior events or complex geospatial analyses of location and extent. These analyses might cost more than the community has to invest. Some states may have sample scopes of work

or lists of deliverables. These can be reviewed when developing the actual SOW for the planning area.

- Decide what professional skills or services the community staff can provide before asking for proposals. You should engage those who know your community(ies) best first, depending on their capacity. For example, if your community has a public outreach officer, they could make the public outreach strategy for your hazard mitigation plan. If your community has GIS capabilities, you may not need outside assistance for geospatial data analysis and mapping.

- Build in allowances for changes if the draft plan does not match your community's vision. It is the community's plan, not the consultant's.

- Schedule:

  - Compare the consultant's proposed timeline with the community's desired schedule, staff availability, and for plan updates when the current plan expires.

  - The schedule should include multiple opportunities to review and comment on draft portions of the plan. There should be enough time for revisions. Be clear about how much time is needed for reviews.

  - The timeline and budget must have plenty of state and FEMA review time. The planning team also needs enough time to make any required or recommended revisions, if applicable, following these reviews. FEMA recommends expecting an 18 month timeline from project kickoff through review and adoption. This may not apply to every community. But if your community does not have set expectations, this can be a starting point.

- Deliverables:

  - The consultant's final deliverable must be a hazard mitigation plan that has received the FEMA status of "Approvable Pending Adoption" or "Approved." The consultant should be available to help with the plan review and approval process. They should also help in the local adoption process.

  - Be sure to include in the contract that the jurisdiction will review drafts of the plan during development. The final plan should not be the first time people see the written document.

  - Include in your contract that the consultant will share digital copies of the plan any time during development. They must also share copies of the finished plan. The digital copy must be editable. The contract should also state the number of printed and/or bound copies of the final plan that the consultant will share.

  - If the consultant is doing mapping or a risk assessment, the contract should note that you will get editable versions of these as well. These could be GIS files or a spreadsheet that holds the results of an exposure analysis.

- Make sure the final plan meets all scoped requirements. For example, if your SOW specified a Level 2 Hazus analysis then make sure that the consultant provided that deliverable unless the project scope was amended. If your plan was funded by a FEMA Hazard Mitigation Assistance grant, scope revisions are often complex. This is why scope development for grant funding is so important.
- Ask for quality work over quantity. While consultants may have standard templates that they use, remember that this is your community's plan. Each community has unique circumstances, and those should be reflected in both the plan's development and in the final plan itself. Ask the consultant to develop a planning process that aligns with your community's needs rather than using a one-size-fits-all approach.

- **Multi-Jurisdictional Plan Scopes:** Multi-jurisdictional plans will need more coordination among communities. The schedule needs to account for different jurisdictions' timeframes and meeting schedules.
  - When a county/parish/township includes a federally recognized tribe in its planning area, the tribe can take part in the multi-jurisdictional plan. The tribe can also complete a plan on its own. If the tribe chooses to take part, the plan must include the provisions for 44 CFR §201.7 for the tribal jurisdiction. Complete all provisions for both local and tribal plan regulations at the same time. This way, the plan has only one review cycle with FEMA.
- **References**: References are a key part of hiring any consultant. Here are a few items to consider when asking for references.
  - Ask the consultant to provide references for their most recent work.
  - Contact the references. Ask what the working relationship was with the consultant, and if there were any lessons learned from the process.
- **Cost**: The cost to develop or update the plan is an important component of the SOW. Here are some items to consider:
  - Will you use grant funding for part of the process? If so, how will you meet the local match? Will it be through local funds, or in-kind services?
  - If using grant funds, ensure that the plan and the process meets all the criteria that were included in the grant application.
  - Ensure that the consultant provides specific breakdowns of their cost. They should provide updates throughout the process. This will help ensure the project remains on schedule.
  - Make sure that the cost includes addressing any required revisions from the state and/or FEMA. The contract should specify that the end product will be a FEMA-approved and locally adopted plan.

- Consider if the planning process will include bringing all the communities together for larger meetings, or if the contractor will need to reach out to them individually.
- If the contractor is expected to facilitate the adoption of the plans with local communities, be sure to specify that in the SOW.

Be the local champion for your plan!

While consultants can play a key role in developing a mitigation plan, remember that you and your planning team should be championing the process. You and the planning team should determine how to engage planning partners and the public, who understand local risks and can create local solutions. Successful plans are those that reflect the community and have buy-in. Review the plan often. Make sure that the plan talks about issues that are important to the local community(ies).

Local Hazard Mitigation Plan Press Release Starter Kit

INTRODUCTION

An adopted hazard mitigation plan is a demonstration of a community's commitment to safeguarding residents, visitors, homes, and businesses. After the adoption of a local hazard mitigation plan, it is important to celebrate the hard work and successes of planning. Sharing planning successes through press releases and social media can expand awareness of mitigation planning efforts. It can also support ongoing risk communications. This document provides an overview and examples of how to announce the adoption of a hazard mitigation plan. Examples use a fictional city called "Somewhere".

WHAT IS A PRESS RELEASE?

A press release is a written communication providing short, specific information on an event - in this case, the adoption of a mitigation plan. These communications are sent to news outlets to provide awareness and to be published based on news cycles and interest. Press releases are an easy way to inform the public of a mitigation plan's adoption, update or drafting.

HOW TO SEND A PRESS RELEASE

Identify your local news outlets.

- If you are not already familiar with your local newspapers, start there. Search online for your city's name. Go to the "News" section of your search engine to find news outlets that cover your area. If the newspaper is available online, read through to find relevant sections and journalists who regularly cover topics like local government or emergencies.

Be sure to follow each outlet's guidelines for submission.

- Different newspapers and magazines have different requirements. You are more likely to be published the closer you stay to these guidelines.

Send your release to local outlets – individually and with the correct names.

- When sending a press release, focus your distribution on those outlets that cover information such as disasters, emergencies and local government. Send out each email individually and address the journalist by their name, if possible. If you are unable to identify a direct contact for this type of content, it's best to reach out to the following contacts:
    - Daily newspaper in your community: Contact the City Editor or the editor in charge of the section that relates to your content.
    - Weekly newspaper: Editor.
    - Magazine: Editor or Managing Editor.

- Radio stations: News Director.

If you are emailing the press release, put the release in the body of the email and attach a copy.

- For ease of reading, many journalists prefer having the information directly in the body of the email. However, if you have any images or additional information, that should be included in an attachment. This keeps the message as short and direct as possible.

Follow up with a phone call.

- Contact each journalist you emailed the press release to. Ensure that they have all the information they need and that the story receives attention.

Press Release Tips

- Include the jurisdiction's name, date the plan was adopted, what governing body adopted it, and the name of the plan.
- Provide an example from the risk assessment of an impacted area, and a mitigation measure included in the mitigation strategies.
- Paste a link to the plan's location.

EXAMPLE PRESS RELEASE FOR A LOCAL HAZARD MITIGATION PLAN

Somewhere Adopts Plan, Commits to Reduce Effects of Disasters

January 6, 20XX

SOMEWHERE – On January 1, 20XX, Somewhere's City Council moved to adopt the Somewhere City Hazard Mitigation Plan. This adoption demonstrates the city's continued commitment to reducing the damage from natural hazards, like earthquakes and flooding.

Hazard mitigation plans help residents and officials of Somewhere understand what hazards affect the community, where those hazards have the greatest impact, and what steps the community can take to lessen hazards' impacts. For example, in the case of Somewhere, there is a high risk for flash flooding along King Lane and Ninth Street. The plan suggests adding additional storm water drains to help the streets handle the heavy rainfall in the spring and summer months. Each of the hazards mentioned in the plan has actions identified that can reduce their impacts on the community.

To see what hazards affect where you live, visit [LINK TO NATIONAL RISK INDEX] and search for your address. Then visit [LINK TO CITY PLAN] to read about what mitigation strategies are in place to reduce your risk.

SOCIAL MEDIA

Understanding who is on different social media platforms and how to leverage features commonly used on each outlet is important to promoting messaging. Below is a breakdown of three major social media platforms, including their audiences and example posts. Highlighted sections in examples show where to change the sample text if you use the posts verbatim.

To learn more about using social media in emergency management, refer to the IS-42.A: Social Media in Emergency Management course available for free from FEMA's Emergency Management Institute.

LinkedIn

Audience and Use

LinkedIn users are typically current professionals, job seekers and individuals interested in networking in a certain career field. Posts on LinkedIn should be focused on this professional subset. They should have messaging tailored to local governments, community planners, zoning officials and emergency managers. Encouraging stakeholders involved in the plan's production to repost the announcement will provide additional traction and visibility.

Example LinkedIn Post

Today Somewhere's City Council moved to adopt the Somewhere Hazard Mitigation Plan, committing to reduce the effects of disasters through long-term actions that reduce impacts to people and property. Do you know if your home or business is in the path of danger in a storm or flood? Visit [LINK TO PLAN] to find out – then read what Somewhere is doing about it!

Twitter

Audience and Use

Twitter posts gain more traction with relevant trending hashtags attached to the post. While the creation of a custom hashtag allows you to find all related posts, also including a trending hashtag will increase the visibility of a post. Twitter provides its own analysis directly on its site of trending topics and tags, but additional external services are also available.

Example Twitter Post

Emergency managers and city planners teamed up to take on reducing Somewhere's risk from disasters. [LINK TO PRESS RELEASE] #planning #local

Facebook

Audience

The average Facebook user is between 25 and 34 years old. Posts should focus on this demographic. Posts with images or videos have higher views and clicks, suggesting that successful posts should include a relevant, interesting image. Bringing the message down to the individual level instead of addressing the community aspect also increases the likelihood of post interaction. Average education is nearly evenly distributed between high school, some college, and college level. With this demographic diversity, posts should be more general than tailored for a variety of education levels and interests.

Example Facebook Post

Know your risk, know your plan! Somewhere has an updated plan showing how disasters can affect where you live – and what actions both the government and property owners can take to reduce future damages. Read more here: [LINK TO WEBSITE WITH PLAN]

ADDITIONAL RESOURCES

FEMA Mitigation Planning Program**:** This page introduces hazard mitigation planning and describes its benefits. The intended audience is state, tribal, and local officials and members of the public interested in hazard mitigation planning.

IS-42.A: Social Media in Emergency Management: By the end of this course, participants will be able to:

- Explain why social media is important for emergency management.
- Describe the major functions and features of common social media sites currently used in emergency management.
- Describe the opportunities and challenges of using social media applications during the five phases of emergency management.
- Describe better practices for using social media applications during the five phases of emergency management
- Describe the process for building the capabilities and to sustain the use of social media in an emergency management organization (state, local, tribal, territorial).

FEMA Social Media: This page has links to FEMA's different social media accounts and activities.

Local Hazard Mitigation Plan and Community Rating System Crosswalk Starter Kit

This handout summarizes the similarities between local hazard mitigation plan elements and the CRS steps and highlights key differences that are commonly overlooked.

(See FEMA's Mitigation Planning and the Community Rating System Key Topics Bulletin for more detailed information).

FEMA has two major hazard mitigation planning programs: local multi-hazard mitigation planning, and floodplain management planning under the Community Rating System (CRS). In most cases, doing a thorough job of including the protection of natural floodplain functions and floodplain species assessments in mitigation planning will often lead to more credit under Activity 510 of the CRS (specifically Element 512.a - Floodplain Management Planning[1]). As of May 2018, 99% of CRS communities also have a local hazard mitigation plan. However, the vast majority of CRS communities have not been able to maximize credits under Activity 510 (see Table 1). This handout is meant to help communities integrate mitigation planning and CRS planning. This will help them to produce more effective local flood mitigation actions and meet the criteria of both FEMA programs more efficiently.

Table 1. CRS Points Available per Step

CRS Planning Step	Maximum CRS Points	Average Points Earned
1. Organize to prepare the plan	15	10
2. Involve the public	120	34
3. Coordinate	35	10
4. Assess the hazard	35	25
5. Assess the problem	52	29
6. Set goals	2	2
7. Review possible activities	35	20
8. Draft an action plan	60	42
9. Adopt the plan	2	2
10. Implement, evaluate and revise	26	5
Point Total	382	171

[1] Table 1 illustrates the CRS Element 512.a points available, and the typical points earned by a local hazard mitigation plan.

There are many similarities between mitigation planning and CRS planning. Mitigation planners should be aware of some special criteria for the CRS credits. This handout is to help those preparing a local hazard mitigation plan who wish to include elements that will also earn CRS credits. This handout takes each local hazard mitigation plan element and:

- Provides the corresponding CRS step.
- Summarizes the CRS step.
- Calls out prerequisites and key differences between CRS and local hazard mitigation plan review criteria.
- Explains how to maximize CRS points.
- Highlights commonly missed elements (in callout boxes throughout this fact sheet).

There is one overarching difference between local hazard mitigation plan and CRS requirements: local hazard mitigation plan elements are either met or not met, whereas CRS steps are points based. Many CRS steps have minimum criteria, but a community earns more points for additional activities[2]. While CRS requirements are points-based, the planning process must at least address all 10 CRS steps of Activity 510. Skipping one of the CRS steps could result in no CRS credit or credits capped at 50 points[3].

CRS Step[4]	Local Hazard Mitigation Planning Element[5]	Crosswalk Details
Step 1. Organize to prepare the plan	**A1.** Document the planning process	*Prerequisites:* ▪ The CRS requires a Floodplain Management Plan (FMP) committee. *Key Differences:* ▪ The FMP committee can be the local hazard mitigation planning committee. It can also be a separate FMP committee that focuses on flooding. ▪ The FMP committee must meet at least five times (at key steps in the planning process - Steps 4, 5, 6, 7 and 8). **Commonly Missed CRS Elements:** A typical local hazard mitigation plan planning committee is different from an FMP committee. CRS requirements are more specific; you cannot go back and "fix" this at the end.

[2] The maximum CRS credit points that a plan may earn is 762 points; Element 512.a – Floodplain Management Planning includes 382 of the total potential points.

[3] If one CRS step is missing from a FEMA-approved hazard mitigation plan, the plan may receive CRS credit, but it is limited to 50 points. If two CRS steps are missing, no CRS credit will be given.

[4] The 10 CRS steps are detailed in Activity 510, Section 512.a, Floodplain Management Planning (FMP) at https://crsresources.org/manual/.

[5] Planning elements are per the Local Mitigation Planning Policy Guide and its Plan Review Tool.

CRS Step[4]	Local Hazard Mitigation Planning Element[5]	Crosswalk Details
		▪ For multi-jurisdictional plans, each community that wants to earn CRS points must have two staff representatives on the FMP committee. ▪ At least half of the representatives must attend all meetings of the FMP committee. *Maximize Points[6]:* ▪ Involve staff from multiple departments; include the community departments that implement or have expertise in activities of the plan. One point is given for each office represented; full credit is given for staff representing all six categories of CRS flood mitigation activities (see Table 2 below). ▪ Formally establish the planning process through the community's governing body.
Step 2. Involve the public	**A3.** Public involvement during the planning process	*Prerequisites:* ▪ The CRS requires a Public Planning Committee. This can also be the local hazard mitigation plan stakeholder group. **Commonly Missed:** CRS's definition of stakeholder/public involvement is more structured than what the local mitigation plan guidance describes. *Key Differences:* ▪ A local hazard mitigation plan requires the opportunity for stakeholders to participate; CRS requires active stakeholder/public participation. *Maximize Points:* ▪ Full credit is given if at least half the committee members are from outside the local government. ▪ Hold at least one public information meeting in the affected area(s) within the first 2 months of the planning process. This is separate from the planning committee meetings. ▪ Hold at least one public meeting at least 2 weeks before submitting the plan. Use the meeting to get input on the recommended plan. – Five points are given for each additional public information activity that explains the planning process and encourages input.

[6] Table 1 illustrates the CRS Element 512.a points available, and the typical points earned by a local hazard mitigation plan.

CRS Step[4]	Local Hazard Mitigation Planning Element[5]	Crosswalk Details
Step 3 (a). Review existing studies, reports and technical information	**A4. Review and incorporation of existing plans, studies, reports and technical information**	*Prerequisites:* ▪ Step 3(a) is basically the same as sub-element A4: – Review existing studies, reports and technical information. Review the community's needs, goals and plans for the area.
Step 3 (b). Coordinate with agencies and organizations	**A2. An opportunity for neighboring communities and local and regional agencies to be involved**	*Key Differences:* ▪ Step 3(b) is similar to sub-element A2, but it requires more than providing a chance to get involved. *Maximize Points:* Work with agencies and organizations outside the community's governmental structure to get their hazard data and ask for their input and participation in the process. **Commonly Missed:** Aside from contacting the various agencies and organizations outside the community's government structure, planning staff must document the contacts made and their responses.
Step 4. Assess the hazard	**B1. Hazard profile**	*Prerequisites:* ▪ The flood hazard assessment must include the sources, frequencies, extent and causes of flooding. Flood hazard areas that require assessment include: – The Special Flood Hazard Area shown on the Flood Insurance Rate Map (FIRM). – All repetitive loss areas if the community is a Category B or C (CRS communities should have already prepared repetitive loss area maps). – Areas not mapped on the FIRM that have flooded in the past (flood insurance claims can help with this). – Other surface flooding identified in other studies. *Key Differences:* ▪ Most local hazard mitigation plans meet the minimum requirement. Giving more details is an opportunity to get more points. *Maximize Points:* ▪ Include the following: discussion of less frequent flooding; areas likely to flood and potentially become worse in the future; and areas of past flooding and other natural hazards.

CRS Step[4]	Local Hazard Mitigation Planning Element[5]	Crosswalk Details
Step 5. Assess the problem	**B2. Hazard impact, vulnerability, and NFIP assessment**	*Prerequisites:* ▪ A summary of the jurisdiction's vulnerability to each hazard and the impact (the base criteria are basically the same as those for sub-element B2). ▪ Repetitive Loss (RL) communities must: – Include their RL areas. – Describe the causes of repetitive flooding. – Send an annual mailer with information on ways to protect properties from repetitive flooding. *Key Differences:* ▪ Most local hazard mitigation plans meet the minimum requirement. Giving more detail is a way to get more points. *Maximize Points:* ▪ Provide further details beyond the overall summary: – The impact of all flood-related hazards on various community attributes (including flood warning and evacuation systems; public health; critical facilities and infrastructure; local economy; and buildings). – Historical damage to buildings. – The area's natural floodplain functions. – Future development and redevelopment. – Future flooding conditions. For a multi-jurisdictional plan, you must describe each item for each community.
Step 6. Set goals	**C3. Mitigation goals**	*Prerequisites:* ▪ This is basically the same as sub-element C3: set mitigation goals. Goals can be broad, but must address all flood-related problems in Step 5.

CRS Step[4]	Local Hazard Mitigation Planning Element[5]	Crosswalk Details
Step 7. Review possible activities	**C1.** Capability assessment **C2.** NFIP participation and compliance **C4.** Mitigation strategy	*Prerequisites:* ▪ Review and consider preventive activities. ▪ The plan needs to discuss what was examined and why certain actions were recommended. *Key Differences:* ▪ When describing your mitigation strategy, you MUST describe the actions you considered, the actions you chose, and your reasoning for deciding why each activity was appropriate or not for the community and its flood problems. ▪ Mitigation planning and the CRS have lists of six types of mitigation actions/activities. These lists differ. *Maximize Points:* ▪ Review whether the community's floodplain management regulatory standards are sufficient for current and future conditions, as discussed under CRS Steps 4 and 5. ▪ Review if activities protect natural and beneficial floodplain functions. More points are given for reviewing multiple categories of flood mitigation measures. Full credit is given if you identify and discuss measures from all six flood mitigation categories **Commonly Missed:** Missing CRS Step 7 is the most common reason that FEMA-approved mitigation plans are capped at 50 CRS points. Many hazard mitigation plans omit this discussion. The planning staff may have done such a review, but for CRS credit, the plan document must describe the review. Omitting the review pieces of your process results in no credit for CRS Step 7.

CRS Step[4]	Local Hazard Mitigation Planning Element[5]	Crosswalk Details
Step 8. Draft an action plan	**C5.** Mitigation prioritization	*Prerequisites:* ▪ There must be an action item for each goal listed in CRS Step 6. ▪ Actions must be prioritized. **Commonly Missed:** Mitigation actions need to be tied to goals. Every goal needs at least one action associated to it. *Key Differences:* ▪ CRS steps are more specific than the local hazard mitigation plan requirements. *Maximize Points:* ▪ Full credit is given for an action plan with actions in five of the six flood mitigation categories. ▪ More credit is offered for including policies and procedures for post-disaster redevelopment and mitigation in the action plan, as well as for action items that mitigate the effects of other natural hazards.
Step 9. Adopt the plan	**F1.** Plan adoption **F2.** Multi-jurisdictional plans – plan adoption by each participant	*Prerequisites:* ▪ Adoption must be in the form of a resolution or other formal document. It must be voted on by the community's governing body. – A multi-jurisdictional plan must be adopted by the governing body of each community seeking CRS or multi-hazard mitigation plan credit points. *Key Differences:* ▪ Most local hazard mitigation plans are adopted via formal documentation. Other forms of adoption are allowed for local hazard mitigation plans. *Maximize Points:* Communities are encouraged to send the draft plan to their Insurance Services Office, Inc. (ISO)/CRS specialist for a technical review and preliminary scoring. They should also send it to the state emergency management agency and FEMA for a courtesy review.

CRS Step[4]	Local Hazard Mitigation Planning Element[5]	Crosswalk Details
Step 10. Implement, evaluate, and revise	**D1.** Continued public participation **D2.** Plan monitoring, evaluation, and update **D3.** Integration of the local hazard mitigation plan	*Prerequisites:* ▪ The plan must describe how, when and by whom the plan will be monitored, evaluated and revised. **Commonly Missed:** The plan must include proof that evaluation occurred each year. ▪ Progress toward plan implementation must be evaluated at least every year. – The procedures for doing this must be explained in the plan document. The evaluation report must be made available to the media and the public. – An evaluation report must be prepared and distributed to the governing body, the media and the public. It must be submitted to the ISO with the community's recertification package. ▪ The plan must be updated every 5 years. ▪ The community must submit a copy of its plan update at least every 5 years. *Key Differences:* ▪ A local hazard mitigation plan requires you to discuss the evaluation process; the CRS requires proof that evaluation occurs each year. *Maximize Points:* ▪ To encourage continued public involvement, more points are given for having the evaluation report prepared by the CRS Step 2(a) planning committee. ▪ Once the plan is adopted, more points are given for more frequent committee meetings during the year. These meetings are to review progress and recommend revisions. ▪ Multi-hazard mitigation plans must include a process for how the community will integrate the requirements of the plan in other community plans. These other plans can include capital improvement, zoning ordinance, and the general/comprehensive plan.

Note that specific requirements for other CRS steps dovetail with those of Element E (Plan Update) and sub-elements E1 and E2. **Adequately addressing CRS Steps 4, 5, 6, 7 and 8 will meet the requirements of E1 and E2.** The connections with the plan update requirements are described below:

CRS Step	Local Hazard Mitigation Planning Element	Crosswalk Details
Step 4. Assess the hazard **Step 5. Assess the problem**	**E1. Changes in development**	*Prerequisites: None* ▪ With a plan update, hazard and problem assessments must be reviewed and brought up to date. They must account for: – Completed mitigation projects. – Increased development in the floodplain or watershed.
Step 6. Set goals **Step 7. Review possible activities** **Step 8. Draft an action plan**	**E2. Mitigation strategy progress and changes in priorities**	*Prerequisites: None* ▪ With a plan update, the original plan's goals must be reviewed to determine if they are still appropriate (given the revisions to Steps 4 and 5). ▪ With a plan update, each activity recommended by the previous plan must be discussed, along with the status of implementation. ▪ With a plan update, the action plan must be revised to account for projects that have been completed, dropped or changed. It must also account for changes in the hazard and problem assessments.

Table 2. Categories of Mitigation Actions

Types of Mitigation Planning Actions	CRS Categories of Flood Mitigation Activities
▪ Local plans and regulations	1. Preventive measures (e.g., codes)
▪ Structure and infrastructure projects	2. Property protection (e.g., elevation)
▪ Natural systems protection	3. Natural resource protection
▪ *Not included**	4. Emergency services
▪ Structure and infrastructure projects	5. Structural flood control projects
▪ Education and awareness programs	6. Public information
**FEMA mitigation planning guidance calls for actions that "reduce or eliminate long-term risk to people and property from hazards and their impacts." As such, programs like flood warning and response and other emergency operations are not included.*	

Risk Assessment

Worksheet 2: Hazard Identification

Use this worksheet to identify which hazards can affect your community. Not all hazards apply to the planning area. For the ones that do, describe how they have been an issue in the past, or if they are a future concern.

Instructions: Describe where there may be recurring problems that you would like to see addressed.

Hazard	Is this a hazard for your community? Yes/No	If yes, briefly describe how. Think about specific locations or recurring issues that you know of in your community.
Avalanche		
Dam Failure		
Drought		
Earthquake		
Erosion		
Expansive Soils		
Extreme Cold		
Extreme Heat		
Flood		
Hail		
Hurricane		
Landslide		
Lightning		
Severe Wind		
Severe Winter Weather		
Storm Surge		
Subsidence		
Tornado		

Hazard	Is this a hazard for your community? Yes/No	If yes, briefly describe how. Think about specific locations or recurring issues that you know of in your community.
Tsunami		
Wildfire		
Are there additional hazards that you would like to include? Add them here.		

Worksheet 3: Identifying Vulnerable Assets

Look back at the Hazard Identification Worksheet where you described issues that you have with the identified hazards. We are now going to look at specific community assets that can be affected by the identified hazards.

Instructions: For the hazards that affect your community, identify two to three examples of assets that can be affected by the identified hazards.

Vulnerable Assets	**What makes this group/asset vulnerable during hazards? Have there ever been issues with recovery after an event?**
People (Residents, workers, visiting populations, seniors, individuals with disabilities, etc.)	
Structures (Community centers, historic places, planned capital improvement)	
Economic Assets (Major employers, primary economic sectors, key infrastructure like telecommunications networks)	

Vulnerable Assets	**What makes this group/asset vulnerable during hazards? Have there ever been issues with recovery after an event?**
Natural, Historic and Cultural Resources (Areas of conservation, beaches, parks, critical habitats)	
Critical Facilities and Infrastructure (Hospitals, law enforcement, water, power)	
Community Activities (Major local events such as festivals or economic events like farming or fishing)	

Vulnerable Assets	What makes this group/asset vulnerable during hazards? Have there ever been issues with recovery after an event?
Are there other assets that you can think to include?	

Risk Assessment Starter Kit

The risk assessment is the most data-heavy part of the mitigation plan. It can be hard to find all the information you need. This starter kit provides some basic resources to help you find data to start building your risk assessment.

PREVIOUS HAZARD EVENTS

NOAA National Centers for Environmental Information Storm Events Database

This database contains records for weather-related hazards. You can search through it by state and county. Click on individual events to view a short narrative that you can use to supplement hazard profiles. Note that records are more complete after 1996.

Federal Disaster Declarations for States and Counties

This page contains an interactive tool. You can use it to explore historic federal disaster declarations by state, county, hazard, and year. An easy-to-use graphic lets you filter by state, county, and hazard type. You can also download the full dataset. Please contact your SHMO for specific disaster declarations in your state.

IDENTIFYING COMMUNITY VULNERABILITY

Hazus

Hazus provides tools and data to help you estimate risk from earthquakes, floods, tsunamis, and hurricanes. Hazus models combine expertise from many disciplines to create actionable risk information. Risk assessment resources from the Hazus program are always freely available and transparently developed. Hazus requires an ArcGIS license to use.

Hazus Loss Library

This is a database for natural hazard risk information. Here, you can search for a historic event, planning scenario, or location like a state, county, or jurisdiction. Then, you can view previously performed analyses and downloadable products.

U.S. Census QuickFacts

The U.S. Census provides basic information about each community. You can use this information to find the populations that are most at risk.

WildfireRisk.org

This free site has interactive maps, charts, and resources. These tools help communities learn their risks to wildfires.

National Inventory of Dams

This database contains information for more than 91,000 dams. It has more than 70 data fields for each dam. This includes the dam's location, size, purpose, type, last inspection, and regulatory facts. More data are available for some dams. This could be a general description of the dam, a summary of known issues, and planned actions to address those issues. Maps that show possible flooding near dams, also called flood inundation maps, are available for some dams. These maps show where water may go if a dam-related issue occurs. They can also help people who live and work near dams take protective actions.

REPETITIVE LOSS INFORMATION

Flood Insurance Data and Analytics

Data on repetitive loss properties are available from local floodplain administrators and the state floodplain coordinator. If data are not available, the plan can include an ***estimate*** of the numbers and types of repetitive loss properties. Repetitive loss information is Privacy Act protected. As such, plans should never include individual names, addresses and claim information. However, plans can include aggregated figures (e.g., the total number of repetitive loss properties by jurisdiction).

HAZARD EXTENT (MAGNITUDE) SCALES

Below are some scales for common hazards. This is not a full list of all hazards or possible extents. There are other ways to address extent in your plan.

Hazard	Sub-category	Resource	Description
Dam Failure	-	National Dam Safety Program hazard classifications	This hazard potential classification system for dams is clear, concise, and adaptable to any agency's current system. It lists three classification levels – low, significant, and high – in order of increasing adverse incremental consequences.
Drought	-	U.S. Drought Monitor Scale	The drought scale is much like those that rate hurricanes and tornadoes. The "D-scale" speaks to how unusual a drought episode is.
		Palmer Drought Severity Index	The Palmer Drought Severity Index is a measure of relative dryness or wetness that affects water sensitive economies. It provides data in graphical and tabular formats for the contiguous United States.

Hazard	Sub-category	Resource	Description
		Standardized Precipitation Index	This index characterizes drought on a range of timescales that relate to soil moisture, groundwater, and reservoir storage. It can be compared across regions.
Earthquake	-	Modified Mercalli Intensity Scale	This scale has many levels to indicate a range of effects. These range from slight shaking to catastrophic destruction. It does not have a mathematical basis. It is a subjective ranking based on observed effects.
		Shakemap	These maps provide near-real-time visual data of ground motion and shaking intensity after significant earthquakes.
Extreme Temperatures	Extreme Cold	Wind Chill Index	This index uses science and computer modeling to provide a clear and accurate formula for calculating the dangers from winter winds and freezing temperatures.
	Extreme Heat	Heat Index	This index measures how hot it feels when relative humidity is factored in with the actual air temperature.
Flood	-	100-year floodplain definition and location	FEMA produces these flood maps. They are available on the Map Service Center (MSC). They are the official public source for flood hazard information that supports the National Flood Insurance Program. The MSC hosts official flood maps and a range of other flood hazard products.
Hurricane	-	Saffir-Simpson Hurricane Wind Scale	This scale uses a 1 to 5 rating based on a hurricane's sustained wind speed. It also estimates potential property damage.
Landslide	-	Landslide incidence	This map inventories landslides and confidence levels in the United States.
Radon	-	Picocuries Per Liter pCi/L	This website describes how radiation from radon is measured using picocuries per liter of air (pCi/L). A pCi is a measure of the rate of radioactive decay of radon.
Severe Weather	Hail	Hailstone size	This scale shows an object-to-size conversion for hail to use in measurement and communication.

Hazard	Sub-category	Resource	Description
	High Winds	Beaufort Wind Scale	This scale is an empirical measure. It relates wind speed to observed conditions at sea or on land.
	Lightning	Annualized Frequency	Annualized frequency is the expected frequency or probability of a hazard occurrence per year.
	Rain	Rainfall per duration	These interactive maps provide precipitation frequency estimates and related information.
Tornadoes	-	Enhanced Fujita Scale	This scale shows the intensity of tornadoes based on the damage they cause.
Volcanoes	-	Volcanic Explosivity Index (VEI)	The Volcanic Explosivity Index (VEI) describes the size of explosive volcanic eruptions based on magnitude and intensity.
Wildfire	-	Estimated acres burned	This classifies wildfires based on the number of acres burned.
Winter Storm	Ice Storm	Sperry-Piltz Ice Accumulation Index	This index predicts the projected footprint, total ice buildup, and potential damage from ice storms.
	Nor'easters	Regional Snowfall Index	This scale ranks snowstorms on a scale from 1 to 5. This is based on the size of the storm, the amount of snowfall, and how these factors may affect populations.
	Snow	Snowfall per duration	This tool estimates snowfall in the recent past by combining several datasets into a single analysis.

HISTORICAL RISK RESOURCES

National Risk Index (NRI)

The National Risk Index (NRI) is a dataset and online tool that identifies communities most at risk for 18 natural hazards. The NRI visualizes risk metrics, includes data on expected annual losses, and incorporates community resilience data. It covers geographies ranging from counties to census tracts.

Wildfire Risk to Communities

This tool, developed by the U.S. Department of Agriculture and the U.S. Forest Service, is a free, easy-to-use website with interactive maps, charts, and resources to help communities understand, explore, and reduce wildfire risk.

GEOSPATIAL GENERAL DATA AND TOOLS

FEMA Resilience Analysis & Planning Tool (RAPT)

The Resilience Analysis and Planning Tool (RAPT) developed by FEMA and Argonne National Lab is a free GIS web mapping tool that allows federal, state, local, tribal, and territorial emergency managers, and other community leaders to examine the interplay of people, infrastructure, and hazards – including real-time weather forecasts, historic disasters and estimated annualized frequency of hazard risk.

ArcGIS Living Atlas of the World

This online Geographic Information Systems (GIS) platform provides free, open-source tools and datasets. These tools and data resources can be used to create spatial visualizations of data and can also be used to perform data analysis.

Mitigation Strategy

Worksheet 4: Capability Assessment

Local mitigation capabilities are existing authorities, policies, programs, and resources that reduce hazard impacts or could help to carry out hazard mitigation activities. Use this worksheet to list which capabilities your community already has and how they can be built on. No community will have all of these capabilities. You may work with partners or stakeholders who can supplement your local programs and staff.

In the tables below, note which capabilities apply. Consider some of the prompts to describe a little bit about each capability.

PLANNING AND REGULATORY

Planning and regulatory capabilities are the plans, policies, codes, and ordinances that prevent and reduce the impacts of hazards.

Capability Type	In Place	Notes
Plans	**Yes/No**	**Does the plan address hazards? Can the plan be used to implement mitigation actions? When was it last updated?**
Capital Improvements Plan		
Community Wildfire Protection Plan		
Comprehensive/Master Plan		
Continuity of Operations Plan		
Economic Development Plan		
Land Use Plan		
Local Emergency Operations Plan		
Stormwater Management Plan		
Transportation Plan		
Other (describe)		

Capability Type	In Place	Notes
Land Use Planning and Ordinances	**Yes/No**	**Is the ordinance an effective measure for reducing hazard impacts? Is it adequately administered and enforced?**
Acquisition of land for open space and public recreation use		
Building code		
Flood insurance rate maps		
Floodplain ordinance		
Substantial Damage Plan		
Natural hazard specific ordinance (stormwater, steep slope, wildfire)		
Subdivision ordinance		
Zoning ordinance		
Other		
How can these capabilities be expanded and improved to reduce risk?		

ADMINISTRATIVE AND TECHNICAL

Administrative and technical capabilities include staff and their skills. They also include tools that can help you carry out mitigation actions. If you do not have local staff, consider how state and regional partners can help.

Capability Type	In Place	Notes
Administrative	**Yes/No**	**Is staffing adequate to enforce regulations?** **Is staff trained on hazards and mitigation?** **Is coordination between agencies and staff effective?**
Chief Building Official		

Capability Type	In Place	Notes
Civil Engineer		
Community Planner		
Emergency Manager		
Floodplain Administrator		
GIS Coordinator		
Planning Commission		
Other		
Technical	**Yes/No**	**Has capability been used to assess/mitigate risk in the past?**
Grant writing		
Hazard data and information		
GIS analysis		
Mutual aid agreements		
Other		
How can these capabilities be expanded and improved to reduce risk?		

FINANCIAL

Note whether your jurisdiction has access to or is eligible to use the following funding resources for hazard mitigation.

Capability Type	In Place	Notes
Funding Resource	**Yes/No**	**Has the funding resource been used in past and for what type of activities? Could it be used to fund future mitigation actions?**
Capital improvements project funding		

Capability Type	In Place	Notes
Community Development Block Grant		
Federal funding programs (non-FEMA)		
Fees for water, sewer, gas, or electric services		
Impact fees for new development		
State funding programs		
Stormwater utility fee		
Other		
How can these capabilities be expanded and improved to reduce risk?		

EDUCATION AND OUTREACH

Identify education and outreach programs and methods already in place that could be used to carry out mitigation activities and communicate information about hazards.

Capability Type	In Place	Notes
Program/Organization	Yes/No	How widespread are each of these in your community?
Community newsletters		
Hazard awareness campaigns (such as Firewise, Storm Ready, Severe Weather Awareness Week, school programs, public events)		
Local news		
Social media		
Other		

Capability Type	In Place	Notes
How can these capabilities be expanded and improved to reduce risk?		

Worksheet 5: National Flood Insurance Program (NFIP)

Use this worksheet to collect information on your community's participation in and continued compliance with the NFIP. Also, note areas for improvement that could be potential mitigation actions. State the source of information if different from the one included.

NFIP Topic	Source of Information	Comments
Staff Resources		
Who is responsible for floodplain management in your community? Do they serve any roles other than Community Floodplain Administrator (FPA)?		
Is the Community FPA or NFIP Coordinator a Certified Floodplain Manager?	Community FPA	
Is floodplain management an auxiliary function?	Community FPA	
Explain NFIP administration services (e.g., permit review, GIS, inspections, engineering capability).	Community FPA	
What are the barriers to running an effective NFIP program in the community, if any?	Community FPA	
Insurance Summary		
How many NFIP policies are in the community? What is the total premium and coverage?	State NFIP Coordinator or FEMA NFIP Specialist	
How many claims have been paid out in the community? What is the total amount of paid claims? How many of the claims were for substantial damage?	FEMA NFIP or Insurance Specialist	
How many structures (residential and non-residential) are exposed to flood risk within the community?	Community FPA	
Are there any repetitive or severe repetitive loss structures in the community?		

NFIP Topic	Source of Information	Comments
Describe any areas of flood risk with limited NFIP policy coverage.	Community FPA and FEMA Insurance Specialist	
How does the community teach property owners or other stakeholders about the importance flood insurance?		
What digital sources (like the FEMA Map Service Center, National Flood Hazard Layer) or non-regulatory tools does the community use?		
Compliance History		
Is the community currently suspended from the NFIP?	State NFIP Coordinator, FEMA NFIP Specialist, community records	
Are there any outstanding compliance issues? (i.e., current violations)?		
How does the community identify substantially damaged/improved structures? What is the process to make sure these structures are brought into compliance?		
When was the most recent Community Assistance Visit (CAV or Community Assistance Contact (CAC)?		
Is a CAV or CAC scheduled or needed?		
Regulation		
When did the community enter the NFIP?	Community Status Book	
Are the FIRMs digital or paper?	Community FPA	
How does the community enforce local floodplain regulations and monitor compliance?		

NFIP Topic	Source of Information	Comments
Do floodplain development regulations meet or exceed FEMA or state minimum requirements? If so, in what ways?	Community FPA	
How are Letters of Map Change (LOMCs) tracked and compiled?		
Explain the permitting process.	Community FPA, State, FEMA NFIP Flood Insurance Manual Community FPA, FEMA CRS Coordinator, ISO representative CRS manual	
Community Rating System (CRS)		
Does the community participate in CRS? If so, what is the community's CRS Class Ranking?	Community FPA, State, FEMA NFIP	
What categories and activities provide CRS points, and how can the class be improved?	Flood Insurance Manual	
Does the plan include CRS planning requirements?	Community FPA, FEMA CRS Coordinator, ISO representative, CRS manual	

NEXT STEPS

If you were unsure or answered "no" to any of these questions, consider short- and long-term action items to address them. If you need help identifying trainings or other resources, contact your State Hazard Mitigation Officer or State NFIP Coordinator.

RESOURCE LIST

FEMA Substantial Damage Estimator Tool

National Flood Hazard Layer

FEMA Flood Map Service Center

Worksheet 6: Hazard Information Integration

OVERVIEW

Making sure that your local hazard mitigation plan aligns with other existing plans is vital. Such alignment can help you make sure policies and programs do not conflict. It can also help you make sure policies and programs complement and support each other. This can serve to create a more hazard-resistant and resilient community.

STEP 1: IDENTIFY RELEVANT PLANS AND POTENTIAL PARTNER AGENCIES

First, find out what local plans already exist and who is responsible for those plans. You can do so by searching online or visiting your local government's or local planning commission's website. You could also consult colleagues from other local agencies. As you do this, it is a good idea to log each plan in a matrix, as shown below.

Table 1. Example matrix of local plans and partners.

Example Plan	Example Agency Responsible
Comprehensive Plan	City Planning Commission
Transportation Plan	Transportation Planning Authority
Stormwater Master Plan	Water Department
Emergency Response and Recovery Plan	Office of Emergency Management
Subdivision Regulations	Zoning Board, City Planning Commission
Zoning Ordinances	Zoning Board, City Planning Commission

STEP 2: IDENTIFY GAPS AND OVERLAPS

The next step is to look at each plan and check if the proposed policies or actions align or conflict with those in the local hazard mitigation plan. To do this, you can expand upon the matrix you have already developed. Add columns that identify:

- Specific questions about actions or policies that relate to those in the local hazard mitigation plan.
- Whether those actions or policies conflict with or complement those in the local hazard mitigation plan. These represent either gaps in, or overlaps with, the local hazard mitigation plan.

See the table below for an example of this expanded matrix.

Table 2. Example matrix of plans, agencies, and questions to ask.

Example Plan	Example Agency/Agencies Responsible	Question	Y/N	Gap or Overlap?
Comprehensive Plan	City Planning Commission	Does the future land-use map clearly identify natural hazard areas?		
		Do the land use policies discourage development or redevelopment within natural hazard areas?		
		Does the plan leave enough space for expected future growth in areas outside natural hazard areas?		
Transportation Plan	Transportation Planning Authority	Does the transportation plan limit access to hazard areas?		
		Is transportation policy used to guide growth to safe locations?		
		Are movement systems designed to function under disaster conditions (e.g., evacuation)?		
		Does the transportation plan promote compact, mixed-use development near transit hubs and away from high hazard areas?		
Zoning Ordinances	Zoning Board, City Planning Commission	Does the zoning ordinance conform to the comprehensive plan in terms of discouraging development or redevelopment within natural hazard areas?		
		Does the ordinance contain natural hazard overlay zones that set conditions for land use within such zones?		
		Does the ordinance prohibit development within, or filling of, wetlands, floodways, and floodplains?		
		Is a zoning code in place to encourage resilient development through density bonuses for projects outside of natural hazard areas?		

Example Plan	Example Agency/Agencies Responsible	Question	Y/N	Gap or Overlap?
		Do rezoning procedures recognize natural hazard areas as limits on zoning changes that allow greater intensity or density of use?		
		If applicable, is there a wildland-urban interface development code in place to prohibit or limit development in high wildfire risk areas?		
Overlay Districts	Zoning Board, City Planning Commission	Is a Conservation Overlay Zoning District in place to help protect environmentally sensitive areas?		
		Is a Coastal Flood Resilience Overlay District in place to encourage development away from coastlines and floodplains?		
		Are there Hazard Overlay Zones in place to identify natural hazard risk areas and assign appropriate zoning ordinances to mitigate or adapt to those hazards?		
Subdivision Regulations	Zoning Board, City Planning Commission	Do the subdivision regulations restrict the subdivision of land within or next to natural hazard areas?		
		Do the regulations provide for conservation subdivisions or cluster subdivisions to conserve environmental resources?		
		Do the regulations allow density transfers where hazard areas exist?		
Stormwater Master Plan	Water Department	Does the stormwater master plan promote the use of porous building materials through incentive programs?		
		Does the stormwater master plan include green stormwater infrastructure in impaired watersheds?		
		Does the stormwater master plan include stormwater management best practices in areas that flooding affects the most?		

Example Plan	Example Agency/Agencies Responsible	Question	Y/N	Gap or Overlap?
		Does the placement of stormwater management projects reflect community priorities?		
Resilience Plan	Office of Resilience and Adaptation	Does the plan identify high wildfire risk areas, storm surge inundation zones, or other areas at high risk of natural disaster impacts?		
		Does the plan develop actions to recover from natural hazard events? Do those actions align with those the local hazard mitigation plan identifies?		
Local Environmental Plan	Environmental Planning Authority	Does the plan identify and map environmental systems that protect development from hazards?		
		Do environmental policies maintain and restore protective ecosystems?		
		Do environmental policies encourage development outside of protective ecosystems?		
Public Health and Safety Plan	Office of Public Health and Safety	Do the goals and policies of the comprehensive plan relate to those of the local hazard mitigation plan?		
		Do the plan's growth and development policies clearly address safety?		
		Does the monitoring and implementation section of the plan cover safe growth objectives?		
Parks and Recreation Plan	Office of Parks and Recreation	Does the plan prioritize open green spaces? Are such spaces planned in areas with high impervious surface coverage?		
		Does the plan keep in mind the need for tree cover to mitigate the urban heat island effect? Are tree cover expansion projects planned in high-heat areas?		
Capital Improvements Plan	Office of Capital Programs	Does the capital improvement program limit spending on projects that would encourage development in areas vulnerable to natural hazards?		

Example Plan	Example Agency/Agencies Responsible	Question	Y/N	Gap or Overlap?
		Do infrastructure policies limit extension of existing facilities and services that would encourage development in areas vulnerable to natural hazards?		
		Does the capital improvement program provide funding for hazard mitigation projects identified in the FEMA Mitigation Plan?		
Building Codes	Division of Zoning and Planning	Does the building code have provisions to strengthen or elevate construction to withstand hazard forces?		
		Are there building codes in place that meet or exceed those outlined in the National Flood Insurance Program's guidelines for safe building practices?		
		Do existing building codes include development standards for withstanding storm surge, wind damage, earthquakes, or other relevant natural hazards?		
Economic Development Plan	Economic Development Authority	Do economic development or redevelopment strategies include provisions for mitigating natural hazards?		
Emergency Action Plan	Office of Emergency Management	Is there an adopted evacuation and shelter plan to deal with emergencies from natural hazards?		
		Are evacuation routes located outside of floodplains or liquefaction zones?		
		Are there emergency communication systems in place? Are those systems deployed in areas with the highest potential hazard exposure?		
Integrated Watershed Management Plan	Local Watershed Authority or Water Department	Does the plan include policies that restrict development that would increase downstream flooding?		
		Does the plan include policies that restrict development that would increase sedimentation or erosion?		

STEP 3: IDENTIFY ACTIONS TO ADDRESS GAPS AND LEVERAGE OVERLAPS

You have identified other local plans, the agencies responsible for those plans, and specific elements of those plans that conflict with or complement those developed in the local hazard mitigation plan. Now, you are ready to develop actions to address gaps or leverage points of commonality. To do this, work with agencies responsible for other relevant plans throughout the planning cycle. This helps to make sure that the local hazard mitigation plan and other local plans align appropriately. Methods for aligning plans could include:

- Hold regular meetings with other local agencies to talk about potential areas for alignment or improvement.
- Invite other local agencies to be part of your hazard mitigation planning team. This will let them stay up to date with actions and strategies that you develop. It can also help them develop actions that align with those of the local hazard mitigation plan.
- Send regular email updates to other local agencies to keep them up to date with your planning process and proposed actions, strategies, and projects.
- Send a copy of the first draft of the local hazard mitigation plan to other planning agencies to review early and often in the planning process.

ADDITIONAL RESOURCES

There are many resources for learning about local plan integration and alignment. The following list can help you to form a local hazard mitigation plan that supports other local plans and planning mechanisms, and vice versa.

- Building Resilience Through Plan Integration
- Capability and Capacity Building Actions – Local Planning and Regulations
- IMD Planning Tool Overview
- Safe Growth Audits
- Survey of State Land Use Laws and Natural Hazards Laws

Worksheet 7: Mitigation Action Selection

It is crucial to look at all types of actions when developing your plan. Some will move forward, and others will not. Use this worksheet to capture all your ideas. Even if you do not select an action for implementation, it is still important to document. This way, it is still in the plan and can be referenced later, if needed.

Below are some categories you can use to analyze each action. This will help you determine if you want to select it to carry out. If you do, you can use the Mitigation Action Implementation Worksheet to provide more details about the action.

Life and Safety

- What impact will the project have on businesses, residences, and properties in the planning area?
- Will the project proactively reduce natural hazard risk?

Administrative/Technical Assistance

- Is there sufficient staff to implement the project?
- Is training required for the staff to implement the project?
- Is there political support for the project?
- Does the community have the legal authority to do the project?

Project Cost and Economic Factors

- What is the cost of the project?
- Does the community have the funds for the project on the whole or the local match?

Support for Community Objectives

- Does the action advance other objectives or plans, like the capital improvement, economic development, environmental quality, or open space preservation?

Action	**Analysis** (Describe overall feasibility based on general benefits, costs, and any other criteria)	**Selected for Implementation?** (Yes/No)
Local Plans and Regulations (Government authorities, policies, or codes that influence the way land and buildings are developed and maintained)		
EXAMPLE: Hazard County will update its building codes to account for stronger winds.	*Updating the building codes is low-cost and very effective. It may be politically sensitive.*	*Yes*

Action	**Analysis** (Describe overall feasibility based on general benefits, costs, and any other criteria)	**Selected for Implementation?** (Yes/No)
Structure and Infrastructure Projects (Projects that modify existing infrastructure to remove it from a hazard area or construct new structures to reduce impacts of hazards)		
EXAMPLE: Hazard County will construct a storm shelter at the fairgrounds.	*There is no storm shelter in the county. It is expensive, but the public and county commission want and need it.*	*Yes*
Natural Systems Protection (Actions that minimize damage and losses by preserving or restoring the functions of natural systems)		
EXAMPLE: Hazard County will restore the wetland near the river to help with flooding.	*Restoring the wetlands near the river will help with flooding and restore natural habitats. This is a lengthy process and will need several phases to complete.*	*Yes*
Education and Awareness Programs (Sustained programs to educate the public and decision makers about hazard risks and community mitigation programs)		
EXAMPLE: Hazard County will add a section to the monthly newsletter on seasonal hazards.	*The monthly newsletter already exists and reaches much of the population. It is easy to produce. It does not reach those without internet access, though.*	*Yes*

Worksheet 8: Mitigation Action Implementation

This worksheet will help you identify all the components you need to successfully carry out your mitigation actions. You can do this by looking at previous worksheets that were used in the planning process.

Describing the Action	
Action description Be as specific as you can with what you want to accomplish. Include potential locations where applicable.	
Assessing the Risk	
Risk(s) addressed Describe how the action connects to the risk assessment.	
Implementing the Action	
Cost estimate This can be a rough number. You do not need a quote.	
Potential funding sources Example: FEMA Hazard Mitigation Grant Program (HMGP), local budget for match.	
Responsible party Who from the planning team is responsible for carrying out the action?	
Partner agencies (optional) Can any stakeholders help to carry out the action?	

Describing the Action	
Estimated timeline for completion Consider adding specific start and end dates, as applicable. **Short Term** For example, the period for hazard mitigation planning, capital improvements, or jurisdictions budget cycles. **Medium Term** For example, the period for structural projects, regulation, education and outreach, natural systems protections, or comprehensive plans. **Long Term** For example, the period for comprehensive plans, economic development plans, transportation plans or the lifetime of infrastructure assets.	
Prioritizing the Action (Use only one of the options below. Planning teams should decide which one to use and decide on criteria.)	
Qualitative: This option has you describe the costs, benefits, and how each action fits in with other (for example, high, medium, or low). **Quantitative:** Choose criteria to rank your hazard and assign them a rank (such as +1 or -1).	
Integrating and Aligning the Action	
Integration opportunity Could this action support other local plans or planning mechanisms? Refer to the Hazard Information Integration Worksheet to fill out this section.	

Describing the Action	
Integration status Has this action been worked into any other local plans or planning mechanisms? Refer to the Hazard Information Integration Worksheet to fill out this section.	
Aligning with the state plan Does the action align with any goals or objectives outlined in the state hazard mitigation plan?	

Keeping the Plan Current

Worksheet 9: Action Monitoring Form

Use this form to help identify the status of each action in the plan. This can help you find out if you need other resources to complete it. Completed actions also give you a chance to celebrate the plan's success.

Table 1. Example of Action or Project Evaluation Matrix

Progress Report Period	
Describe the action or project.	
Who is responsible for the action?	
Project status:	☐ Complete ☐ In progress, anticipated completion date: _____ ☐ Not started ☐ Canceled
Has there been any progress with this project so far?	
Are there any obstacles or challenges with this action so far?	
What steps do you need to take to complete this project?	
Other comments:	

Worksheet 10: Plan Update Evaluation Form

For this form, think about the plan as a whole. Think about what has gone well for each part and where it can improve. The plan evaluation process offers a chance to look at the planning process as a whole.

PLANNING PROCESS

Participants

Should new jurisdictions be invited to participate in future plan updates?

How have communities and agencies helped to carry out mitigation actions?

Could anything from the initial planning process be done more efficiently?

Have there been any changes in public support or priorities about hazard mitigation?

Is there anything else you would like to consider?

Public Involvement

Has the public been actively involved in the plan's implementation? How can public participation improve?

Have there been any ongoing public outreach activities for the plan?

Is there anything else you would like to consider?

RISK ASSESSMENT

Hazard History

Have there been any recent disaster events? If so, how did they affect your community?

Should the list of hazards addressed in the plan be updated? If so, which hazards should be added or removed?

Have there been any new issues with hazards in a certain area of your community?

Is there anything else you would like to consider?

New Data

Are any new data sources available (e.g., studies, reports, maps, etc.)?

Do any new critical facilities or infrastructure need to be added to the asset lists?

Have any changes in development trends occurred that could create additional risks?

Does any new development *reduce* risk?

Is there anything else you would like to consider?

MITIGATION STRATEGY

Capabilities

Have jurisdictions adopted new policies, plans, regulations, or reports that could support the plan?

Are there different or new education and outreach programs and resources available for mitigation activities?

Has NFIP participation changed in the participating jurisdictions?

Is there anything else you would like to consider?

Actions

Is the mitigation strategy being carried out as expected? Were the cost and timeline estimates accurate?

Are there new projects to consider?

Should existing mitigation actions be revised or removed from the plan?

Are there new funding sources to consider?

Have parts of the plan been worked into other planning mechanisms?

What challenges were there, and how can those be overcome over time?

Is there anything else you would like to consider?

Plan Adoption

Sample Adoption Resolution

(LOCAL GOVERNMENT, INCLUDING SPECIAL DISTRICTS), (STATE)

RESOLUTION NO. _____.

A RESOLUTION OF (LOCAL GOVERNMENT) ADOPTING THE (TITLE AND DATE OF MITIGATION PLAN).

WHEREAS the (local governing body) recognizes the threat that natural hazards pose to people and property within (local government); and

WHEREAS the (local government) has prepared a multi-hazard mitigation plan, hereby known as (title and date of mitigation plan) in accordance with federal laws, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended; the National Flood Insurance Act of 1968, as amended; and the National Dam Safety Program Act, as amended; and

WHEREAS (title and date of mitigation plan) identifies mitigation goals and actions to reduce or eliminate long-term risk to people and property in (local government) from the impacts of future hazards and disasters; and

WHEREAS adoption by the (local governing body) demonstrates its commitment to hazard mitigation and achieving the goals outlined in the (title and date of mitigation plan).

NOW THEREFORE, BE IT RESOLVED BY THE (LOCAL GOVERNMENT), (STATE), THAT:

Section 1. In accordance with (local rule for adopting resolutions), the (local governing body) adopts the (title and date of mitigation plan). While content related to (local government) may require revisions to meet the plan approval requirements, changes occurring after adoption will not require (local government) to re-adopt any further iterations of the plan. Subsequent plan updates following the approval period for this plan will require separate adoption resolutions.

ADOPTED by a vote of ____ in favor and ____ against, and ____ abstaining, this _____ day of _____, _____.

By: _____ (print name)

ATTEST: By: _____ (print name)

APPROVED AS TO FORM: By: _____ (print name)

Annex C. Local Mitigation Plan Review Tool

Cover Page

The Local Mitigation Plan Review Tool (PRT) demonstrates how the local mitigation plan meets the regulation in 44 CFR § 201.6 and offers states and FEMA Mitigation Planners an opportunity to provide feedback to the local governments, including special districts.

1. The Multi-Jurisdictional Summary Sheet is a worksheet that is used to document how each jurisdiction met the requirements of the plan elements (Planning Process; Risk Assessment; Mitigation Strategy; Plan Maintenance; Plan Update; and Plan Adoption).
2. The Plan Review Checklist summarizes FEMA's evaluation of whether the plan has addressed all requirements.

For greater clarification of the elements in the Plan Review Checklist, please see Section 4 of the Local Mitigation Planning Policy Guide. Definitions of the terms and phrases used in the PRT can be found in Appendix E of the guide.

Plan Information	
Jurisdiction(s)	Click or tap here to enter text.
Title of Plan	Click or tap here to enter text.
New Plan or Update	Click or tap here to enter text.
Single- or Multi-Jurisdiction	Choose an item.
Date of Plan	Click or tap to enter a date.
Local Point of Contact	
Title	Click or tap here to enter text.
Agency	Click or tap here to enter text.
Address	Click or tap here to enter text.
Phone Number	Click or tap here to enter text.
Email	Click or tap here to enter text.

Additional Point of Contact	
Title	Click or tap here to enter text.
Agency	Click or tap here to enter text.
Address	Click or tap here to enter text.
Phone Number	Click or tap here to enter text.
Email	Click or tap here to enter text.

Review Information	
State Review	
State Reviewer(s) and Title	Click or tap here to enter text.
State Review Date	Click or tap to enter a date.
FEMA Review	
FEMA Reviewer(s) and Title	Click or tap here to enter text.
Date Received in FEMA Region	Click or tap to enter a date.
Plan Not Approved	Click or tap to enter a date.
Plan Approvable Pending Adoption	Click or tap to enter a date.
Plan Approved	Click or tap to enter a date.

Multi-Jurisdictional Summary Sheet

In the boxes for each element, mark if the element is met (Y) or not met (N).

#	Jurisdiction Name	A. Planning Process	B. Risk Assessment	C. Mitigation Strategy	D. Plan Maintenance	E. Plan Update	F. Plan Adoption	G. HHPD Requirements	H. State Requirements
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									

Plan Review Checklist

The Plan Review Checklist is completed by FEMA. States and local governments are encouraged, but not required, to use the PRT as a checklist to ensure all requirements have been met prior to submitting the plan for review and approval. The purpose of the checklist is to identify the location of relevant or applicable content in the plan by element/sub-element and to determine if each requirement has been "met" or "not met." FEMA completes the "required revisions" summary at the bottom of each element to clearly explain the revisions that are required for plan approval. Required revisions must be explained for each plan sub-element that is "not met." Sub-elements in each summary should be referenced using the appropriate numbers (A1, B3, etc.), where applicable. Requirements for each element and sub-element are described in detail in Section 4: Local Plan Requirements of this guide.

Plan updates must include information from the current planning process.

If some elements of the plan do not require an update, due to minimal or no changes between updates, the plan must document the reasons for that.

Multi-jurisdictional elements must cover information unique to all participating jurisdictions.

Element A: Planning Process

Element A Requirements	Location in Plan (section and/or page number)	Met / Not Met
A1. Does the plan document the planning process, including how it was prepared and who was involved in the process for each jurisdiction? (Requirement 44 CFR § 201.6(c)(1))		
A1-a. Does the plan document how the plan was prepared, including the schedule or time frame and activities that made up the plan's development, as well as who was involved?	Click or tap here to enter text.	Choose a
A1-b. Does the plan list the jurisdiction(s) participating in the plan that seek approval, and describe how they participated in the planning process?	Click or tap here to enter text.	Choose a
A2. Does the plan document an opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development as well as businesses, academia, and other private and non-profit interests to be involved in the planning process? (Requirement 44 CFR § 201.6(b)(2))		
A2-a. Does the plan identify all stakeholders involved or given an opportunity to be involved in the planning process, and how each stakeholder was presented with this opportunity?	Click or tap here to enter text.	Choose a

Element A Requirements	Location in Plan (section and/or page number)	Met / Not Met
A3. Does the plan document how the public was involved in the planning process during the drafting stage and prior to plan approval? (Requirement 44 CFR § 201.6(b)(1))		
A3-a. Does the plan document how the public was given the opportunity to be involved in the planning process and how their feedback was included in the plan?	Click or tap here to enter text.	Choose a
A4. Does the plan describe the review and incorporation of existing plans, studies, reports, and technical information? (Requirement 44 CFR § 201.6(b)(3))		
A4-a. Does the plan document what existing plans, studies, reports and technical information were reviewed for the development of the plan, as well as how they were incorporated into the document?	Click or tap here to enter text.	Choose a
ELEMENT A REQUIRED REVISIONS		
Required Revision**:** Click or tap here to enter text.		

Element B: Risk Assessment

Element B Requirements	Location in Plan (section and/or page number)	Met / Not Met
B1. Does the plan include a description of the type, location, and extent of all natural hazards that can affect the jurisdiction? Does the plan also include information on previous occurrences of hazard events and on the probability of future hazard events? (Requirement 44 CFR § 201.6(c)(2)(i))		
B1-a. Does the plan describe all natural hazards that can affect the jurisdiction(s) in the planning area, and does it provide the rationale if omitting any natural hazards that are commonly recognized to affect the jurisdiction(s) in the planning area?	Click or tap here to enter text.	Choose
B1-b. Does the plan include information on the location of each identified hazard?	Click or tap here to enter text.	Choose
B1-c. Does the plan describe the extent for each identified hazard?	Click or tap here to enter text.	Choose

Element B Requirements	Location in Plan (section and/or page number)	Met / Not Met
B1-d. Does the plan include the history of previous hazard events for each identified hazard?	Click or tap here to enter text.	Choose a
B1-e. Does the plan include the probability of future events for each identified hazard, including the type, location and range of anticipated intensities?	Click or tap here to enter text.	Choose a
B1-f. For participating jurisdictions in a multi-jurisdictional plan, does the plan describe any hazards that are unique to and/or vary from those affecting the overall planning area?	Click or tap here to enter text.	Choose a
B2. Does the plan include a summary of the jurisdiction's vulnerability and the impacts on the community from the identified hazards? Does this summary also address NFIP-insured structures that have been repetitively damaged by floods? (Requirement 44 CFR § 201.6(c)(2)(ii))		
B2-a. Does the plan provide an overall summary of each jurisdiction's vulnerability to the identified hazards?	Click or tap here to enter text.	Choose a
B2-b. For each participating jurisdiction, does the plan describe the potential impacts of each of the identified hazards on each participating jurisdiction?	Click or tap here to enter text.	Choose a
B2-c. Does the plan address NFIP-insured structures within each jurisdiction that have been repetitively damaged by floods?	Click or tap here to enter text.	Choose a

ELEMENT B REQUIRED REVISIONS
Required Revision: Click or tap here to enter text.

Element C: Mitigation Strategy

Element C Requirements	Location in Plan (section and/or page number)	Met / Not Met
C1. Does the plan document each participant's existing authorities, policies, programs and resources and its ability to expand on and improve these existing policies and programs? (Requirement 44 CFR § 201.6(c)(3))		
C1-a. Does the plan describe how the existing capabilities of each participant are available to support the mitigation strategy? Does this include a discussion of the existing building codes and land use and development ordinances or regulations?	Click or tap here to enter text.	Choose a
C1-b. Does the plan describe each participant's ability to expand and improve the identified capabilities to achieve mitigation?	Click or tap here to enter text.	Choose a
C2. Does the plan address each jurisdiction's participation in the NFIP and continued compliance with NFIP requirements, as appropriate? (Requirement 44 CFR § 201.6(c)(3)(ii))		
C2-a. Does the plan contain a narrative description or a table/list of their participation activities?	Click or tap here to enter text.	Choose a
C3. Does the plan include goals to reduce/avoid long-term vulnerabilities to the identified hazards? (Requirement 44 CFR § 201.6(c)(3)(i))		
C3-a. Does the plan include goals to reduce the risk from the hazards identified in the plan?	Click or tap here to enter text.	Choose a
C4. Does the plan identify and analyze a comprehensive range of specific mitigation actions and projects for each jurisdiction being considered to reduce the effects of hazards, with emphasis on new and existing buildings and infrastructure? (Requirement 44 CFR § 201.6(c)(3)(ii))		
C4-a. Does the plan include an analysis of a comprehensive range of actions/projects that each jurisdiction considered to reduce the impacts of hazards identified in the risk assessment?	Click or tap here to enter text.	Choose a
C4-b. Does the plan include one or more action(s) per jurisdiction for each of the hazards as identified within the plan's risk assessment?	Click or tap here to enter text.	Choose a

Element C Requirements	Location in Plan (section and/or page number)	Met / Not Met
C5. Does the plan contain an action plan that describes how the actions identified will be prioritized (including a cost-benefit review), implemented, and administered by each jurisdiction? (Requirement 44 CFR § 201.6(c)(3)(iv)); (Requirement §201.6(c)(3)(iii))		
C5-a. Does the plan describe the criteria used for prioritizing actions?	Click or tap here to enter text.	Choose a
C5-b. Does the plan provide the position, office, department or agency responsible for implementing/administrating the identified mitigation actions, as well as potential funding sources and expected time frame?	Click or tap here to enter text.	Choose a
ELEMENT C REQUIRED REVISIONS		
Required Revision: Click or tap here to enter text.		

Element D: Plan Maintenance

Element D Requirements	Location in Plan (section and/or page number)	Met / Not Met
D1. Is there discussion of how each community will continue public participation in the plan maintenance process? (Requirement 44 CFR § 201.6(c)(4)(iii))		
D1-a. Does the plan describe how communities will continue to seek future public participation after the plan has been approved?	Click or tap here to enter text.	Choose a
D2. Is there a description of the method and schedule for keeping the plan current (monitoring, evaluating and updating the mitigation plan within a five-year cycle)? (Requirement 44 CFR § 201.6(c)(4)(i))		
D2-a. Does the plan describe the process that will be followed to track the progress/status of the mitigation actions identified within the Mitigation Strategy, along with when this process will occur and who will be responsible for the process?	Click or tap here to enter text.	Choose a

Element D Requirements	Location in Plan (section and/or page number)	Met / Not Met
D2-b. Does the plan describe the process that will be followed to evaluate the plan for effectiveness? This process must identify the criteria that will be used to evaluate the information in the plan, along with when this process will occur and who will be responsible.	Click or tap here to enter text.	Choose a
D2-c. Does the plan describe the process that will be followed to update the plan, along with when this process will occur and who will be responsible for the process?	Click or tap here to enter text.	Choose a
D3. Does the plan describe a process by which each community will integrate the requirements of the mitigation plan into other planning mechanisms, such as comprehensive or capital improvement plans, when appropriate? (Requirement 44 CFR § 201.6(c)(4)(ii))		
D3-a. Does the plan describe the process the community will follow to integrate the ideas, information and strategy of the mitigation plan into other planning mechanisms?	Click or tap here to enter text.	Choose a
D3-b. Does the plan identify the planning mechanisms for each plan participant into which the ideas, information and strategy from the mitigation plan may be integrated?	Click or tap here to enter text.	Choose a
D3-c. For multi-jurisdictional plans, does the plan describe each participant's individual process for integrating information from the mitigation strategy into their identified planning mechanisms?	Click or tap here to enter text.	Choose a
ELEMENT D REQUIRED REVISIONS		
Required Revision**:** Click or tap here to enter text.		

Element E: Plan Update

Element E Requirements	Location in Plan (section and/or page number)	Met / Not Met
E1. Was the plan revised to reflect changes in development? (Requirement 44 CFR § 201.6(d)(3))		
E1-a. Does the plan describe the changes in development that have occurred in hazard-prone areas that have increased or decreased each community's vulnerability since the previous plan was approved?	Click or tap here to enter text.	Choose a

Element E Requirements	Location in Plan (section and/or page number)	Met / Not Met
E2. Was the plan revised to reflect changes in priorities and progress in local mitigation efforts? (Requirement 44 CFR § 201.6(d)(3))		
E2-a. Does the plan describe how it was revised due to changes in community priorities?	Click or tap here to enter text.	Choose
E2-b. Does the plan include a status update for all mitigation actions identified in the previous mitigation plan?	Click or tap here to enter text.	Choose
E2-c. Does the plan describe how jurisdictions integrated the mitigation plan, when appropriate, into other planning mechanisms?	Click or tap here to enter text.	Choose
ELEMENT E REQUIRED REVISIONS		
Required Revision: Click or tap here to enter text.		

Element F: Plan Adoption

Element F Requirements	Location in Plan (section and/or page number)	Met / Not Met
F1. For single-jurisdictional plans, has the governing body of the jurisdiction formally adopted the plan to be eligible for certain FEMA assistance? (Requirement 44 CFR § 201.6(c)(5))		
F1-a. Does the participant include documentation of adoption?	Click or tap here to enter text.	Choose
F2. For multi-jurisdictional plans, has the governing body of each jurisdiction officially adopted the plan to be eligible for certain FEMA assistance? (Requirement 44 CFR § 201.6(c)(5))		
F2-a. Did each participant adopt the plan and provide documentation of that adoption?	Click or tap here to enter text.	Choose
ELEMENT F REQUIRED REVISIONS		
Required Revision: Click or tap here to enter text.		

Element G: High Hazard Potential Dams (Optional)

HHPD Requirements	Location in Plan (section and/or page number)	Met / Not Met
HHPD1. Did the plan describe the incorporation of existing plans, studies, reports and technical information for HHPDs?		
HHPD1-a. Does the plan describe how the local government worked with local dam owners and/or the state dam safety agency?	Click or tap here to enter text.	Choose a
HHPD1-b. Does the plan incorporate information shared by the state and/or local dam owners?	Click or tap here to enter text.	Choose a
HHPD2. Did the plan address HHPDs in the risk assessment?		
HHPD2-a. Does the plan describe the risks and vulnerabilities to and from HHPDs?	Click or tap here to enter text.	Choose a
HHPD2-b. Does the plan document the limitations and describe how to address deficiencies?	Click or tap here to enter text.	Choose a
HHPD3. Did the plan include mitigation goals to reduce long-term vulnerabilities from HHPDs?		
HHPD3-a. Does the plan address how to reduce vulnerabilities to and from HHPDs as part of its own goals or with other long-term strategies?	Click or tap here to enter text.	Choose a
HHPD3-b. Does the plan link proposed actions to reducing long-term vulnerabilities that are consistent with its goals?	Click or tap here to enter text.	Choose a
HHPD4. Did the plan include actions that address HHPDs and prioritize mitigation actions to reduce vulnerabilities from HHPDs?		
HHPD4-a. Does the plan describe specific actions to address HHPDs?	Click or tap here to enter text.	Choose a
HHPD4-b. Does the plan describe the criteria used to prioritize actions related to HHPDs?	Click or tap here to enter text.	Choose a
HHPD4-c. Does the plan identify the position, office, department or agency responsible for implementing and administering the action to mitigate hazards to or from HHPDs?	Click or tap here to enter text.	Choose a

HHPD Required Revisions
Required Revision: Click or tap here to enter text.

Element H: Additional State Requirements (Optional)

Element H Requirements	Location in Plan (section and/or page number)	Met / Not Met
This space is for the State to include additional requirements.		
Click or tap here to enter text.	Click or tap here to enter text.	Choose a

Plan Assessment

These comments can be used to help guide your annual/regularly scheduled updates and the next plan update.

Element A. Planning Process

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element B. Risk Assessment

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element C. Mitigation Strategy

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element D. Plan Maintenance

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element E. Plan Update

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element G. HHPD Requirements (Optional)

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

Element H. Additional State Requirements (Optional)

Strengths

- [insert comments]

Opportunities for Improvement

- [insert comments]

RECEIVED
2026 FEB -6 AM 10: 13
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

MEMORANDUM

To: Clerk of the Board

From: Chair Chaffee, District Four Office

Doug Chaffee

Date: February 6, 2026

S30D

RE: Supplemental Item for February 10th, 2025, Board of Supervisors Meeting

Chair Chaffee requests that a supplemental item for the February 10th, 2025, Board of Supervisors meeting be added to:

Approve the sponsorship of the following nonprofit entities from the Fourth District events funds:

- Orange County Labor Federation, AFL-CIO - $500.00

Recommended Actions:

1. Approve the addition or revisions of events to the FY 2025-2026 County Event Calendar, as set forth in Attachment A, and per Government Code Section 26227, find that the events therein will serve a public purpose of the County of Orange and will meet the social needs of the population of the County, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education, and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons; that County staff and resources may be used in furtherance of such events; and that County staff may solicit donations of funds and services for such events.

2. Authorize Auditor-Controller to make related payments.

County Event Calendar
FY 25-26 Events

Date	Department	Event	Awards to Nonprofits and Community Organizations	Not to Exceed Amount	Location	Organizer	Other County Participants
TBD	BOS-4	2026 Dr. Martin Luther King, Jr. Labor Breakfast	Orange County Labor Federation, AFL-CIO	$ 500	Buena Park	Various	TBD

Glossary of Acronyms

BOS-1	Board of Supervisors District 1
BOS-2	Board of Supervisors District 2
BOS-3	Board of Supervisors District 3
BOS-4	Board of Supervisors District 4
BOS-5	Board of Supervisors District 5
TBA	To Be Announced
TBD	To Be Determined
N/A	Not Applicable

RECEIVED
2026 FEB -6 AM 11:22
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

MEMORANDUM

To: Chairman Chaffee, Fourth District

From: Supervisor Vicente Sarmiento, Second District

Date: February 6, 2026

S30E

RE: Add Supplemental Item for February 10, 2026, Board of Supervisors Meeting

Please add this as a supplemental item for the February 10, 2026, Board of Supervisors meeting:

Approve the sponsorship of the following nonprofit entities from the Second District events funds:

- OC Grantmakers - $2,000
- Sabil USA - $2,500
- Suavecito Foundation $1,000
- CAP OC -$1,000
- IAFF Local 3631 - $1,000

Recommended Actions:

1. Approve the addition or revisions of events to the FY 2025-26 County Event Calendar, as set forth in Attachment A, and per Government Code Section 26227, find that the events therein will serve a public purpose of the County of Orange and will meet the social needs of the population of the County, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education, and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons; that County staff and resources may be used in furtherance of such events; and that County staff may solicit donations of funds and services for such events.

2. Authorize Auditor-Controller to make related payments.

County Event Calendar
FY 25-26 Events

Date	Department	Event	Awards to Nonprofits and Community Organizations	Not to Exceed Amount	Location	Organizer	Other County Participants
February 2026	BOS-2	OC Funders Summit	OC Grantmakers	$2,000	Irvine	N/A	N/A
February 2026	BOS-2	Ramadan Iftar	Sabil USA	$2,500	Newport Beach	N/A	N/A
February 2026	BOS-2	Youth Leadership Summit	Suavecito Foundation	$1,000	Santa Ana	N/A	N/A
February 2026	BOS-2	Office Equipment	CAPOC	$1,000.00	Santa Ana	N/A	N/A
February 2026	BOS-2	Annual Charity Golf Tournament	IAFF Local 3631	$1,000.00	Tustin	N/A	N/A

Glossary of Acronyms

BOS-1	Board of Supervisors District 1
BOS-2	Board of Supervisors District 2
BOS-3	Board of Supervisors District 3
BOS-4	Board of Supervisors District 4
BOS-5	Board of Supervisors District 5
TBA	To Be Announced
TBD	To Be Determined
N/A	Not Applicable

Agenda Item
Clerk's Use Only S30F

SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

RECEIVED
2026 FEB -6 AM 11:32
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

MEETING DATE:	02/10/2026
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	All Districts
SUBMITTING AGENCY/DEPARTMENT:	Clerk of the Board
DEPARTMENT HEAD REVIEW:	Valerie Sanchez AW PS *Department Head Signature*
DEPARTMENT CONTACT PERSON(S):	Robin Stieler (714) 834-2206 Valerie Sanchez (714) 834-2206

SUBJECT: 2026 Chair Appointments

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
N/A	N/A	Discussion
		3 Votes Board Majority

RECOMMENDED ACTION(S)

1. Approve 2026 Chair Appointments of Board members to various boards, commissions and committees.
2. Adopt Resolution appointing member to the Orange County Fire Authority (OCFA)
3. Approve appointment of Standby Officers for the Board of Supervisors and County Executive Officer pursuant to County's Continuity of Government Plan and Resolution 24-062
4. Adopt Fair Political Practices Commission (FPPC) Form 806 – Agency Report of Public Official Appointments and authorize Clerk of the Board to post publicly and update as required.

SUMMARY:

Approval of the 2026 Chair Appointments, adoption of the OCFA resolution, and the appointment of Standby Officers will ensure continuity of government and continued Board of Supervisors representation on various decision-making bodies; and adoption of FPPC form 806 will fulfill related FPPC regulations.

BACKGROUND INFORMATION:

Each year the Chair of the Board of Supervisors submits proposed appointments of Supervisors and other public officials to the full board for approval to appoint representatives to various decision-making bodies. OCFA requires a resolution of the appointing body for newly appointed representatives.

The Fair Political Practices Commission (FPPC) Regulation 18702.5 requires the Board to adopt California Form 806 – Agency Report of Public Official appointments and to post on the County's website and to update as needed.

The County's Continuity of Government Plan and adopted Resolution No. 24-062 requires each District Office to annually identify (3) individuals meeting the criteria to hold that office should the Supervisor become incapacitated during an emergency, to serve during the interim period before an appointment is made or an election is held. Resolution No. 24-062 further requires the identification of (3) individuals to serve as Standby Officers for the County Executive Officer should the incumbent be similarly incapacitated during a proclaimed emergency, to serve during the interim period before an appointment is made.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

ATTACHMENT(S):

Attachment A – 2026 Proposed Chair Appointments
Attachment B – OCFA Resolution
Attachment C – FPPC Form 806
Attachment D – FPPC Regulation 18702.5
Attachment E – Appointment of Standby Officers
Attachment F – Resolution 24-062

2026 CHAIR APPOINTMENTS
(Term of appointments are 1/1/26 - 12/31/26 unless otherwise noted)

COMMITTEE NAME	POSITION/COMMENTS	2025 CURRENT APPOINTMENTS	2026 PROPOSED APPOINTMENTS
California State Association of Counties (CSAC) (Quarterly meetings; day/time varies)	Regular Member Alternate Member	Chaffee Sarmiento	Chaffee Sarmiento
CalOptima (Monthly; first Thursday of the month at 2:00 P.M.)	Regular Member Regular Member Alternate Member	Sarmiento Chaffee Nguyen	Sarmiento Nguyen Chaffee
Children & Families Commission of Orange County (First 5 Orange County) (Bi-monthly as needed; first Wednesday at 9:00 A.M.)	Regular Member Alternate Member Nominations for Category 1 (Education) appointments* Nominations for Category 2 (Health) appointments* *The chair appoints 2 Supervisors to these slots as defined by Ord. Sec. 1-2-335 after the Regular Member is determined. These two appointments are not members of the commission, their sole duty is to make nominations to the BOS in April of each year for the annual rotating appointments.	Sarmiento Foley *TBD *TBD	Sarmiento Foley *TBD *TBD
Coastal Greenbelt Authority (Bi-monthly; second Wednesday at 3:00 P.M.)	Regular Member (May be a BOS Member or other County official)	Foley	Foley
Commission to Address Homelessness (Bi-monthly; third Wednesday at 1:00 P.M.)	Regular Member (2/10/26 - 2/9/28) Regular Member (1/28/25 - 1/27/27)** **Existing term expires in 2027	Sarmiento Nguyen	Sarmiento Nguyen
Law Library Board of Trustees (Monthly; third Tuesday at 12:15 P.M.)	Regular Member #1 (May be BOS member or OC resident) Regular Member #2 (Must be a member of California State Bar)	Sherry L. Leyson Sarmiento	Sherry L. Leyson Sarmiento

2026 CHAIR APPOINTMENTS
(Term of appointments are 1/1/26 - 12/31/26 unless otherwise noted)

COMMITTEE NAME	POSITION/COMMENTS	2025 CURRENT APPOINTMENTS	2026 PROPOSED APPOINTMENTS
Local Agency Formation Commission (LAFCO) (Monthly; second Wednesday at 8:15 A.M.)	Regular Member (7/1/26 - 6/30/30) Regular Member (1/24/23 - 6/30/27)** Alternate Member (7/1/23 - 6/30/27)** **Existing terms expire 6/30/27	Wagner Vacant Vacant	Wagner Vacant Vacant
National Association of Counties (NACO) (Biennially; March and July)	Regular Member Alternate Member	Chaffee Sarmiento	Foley Sarmiento
Newport Bay Watershed Executive Committee (Central (Newport Bay) Watershed Management Area) (Biennially; March and September)	Regular Member Alternate Member	Foley Vacant	Foley Vacant
OC Public Libraries Advisory Board (Three times per year)	Regular Member Regular Member (Members represent library branches located in unincorporated areas)	Foley Sarmiento	Foley Sarmiento
One Water, One Watershed (As needed)	Regular Member (3/2/25 - 3/1/29)* *Existing four-year term	Sarmiento	Sarmiento
Orange County Audit Oversight Committee (Quarterly Meetings; day/time varies) Note: The Audit Oversight Committee sits and holds meetings simultaneously as the Orange County Investment Oversight Committee	Regular Member (BOS Chair) Regular Member (BOS Vice Chair)	Chaffee Foley	Chaffee Foley
Orange County Behavioral Health Advisory Board (Monthly; Second Weds. 10:00 A.M.; Fourth Weds. at 10:00 A.M.)	Regular Member	Sarmiento	Sarmiento

2026 CHAIR APPOINTMENTS
(Term of appointments are 1/1/26 - 12/31/26 unless otherwise noted)

COMMITTEE NAME	POSITION/COMMENTS	2025 CURRENT APPOINTMENTS	2026 PROPOSED APPOINTMENTS
Orange County Community Corrections Partnership (OCCCP) (Quarterly; fourth Thursday at 2:00 P.M.)	Regular Member Alternate Member	Chaffee Foley	Chaffee Foley
Orange County Criminal Justice Coordinating Council (OCCJCC) (Monthly; Third Friday at 9:00 A.M.)	Regular Member (OCCJCC Chair) Regular Member (OCCJCC Vice Chair) (Note: Per bylaw amendment approved 12/17/24, Item 30, these appointments will serve as the Chair and Vice Chair of the OCCJCC)	Chaffee Wagner	Chaffee Wagner
Orange County Council of Governments (OCCOG) (Monthly; Fourth Thursday at 10:30 A.M.)	County At-Large Representative SCAG - County Representative* *Per OCCOG bylaws, the SCAG Regional Councilmember is automatically a member of the OCCOG Board of Directors provided the appointee is a Supervisor for the County of Orange and the County is a dues paying member of OCCOG in good standing	New Appointments for 2026	Wagner
Orange County Emergency Management Council (Quarterly; Second Wednesday/1:30 P.M.)	Regular Member Alternate Member #1 Alternate Member #2 Alternate Member #3 Alternate Member #4	Chaffee Sarmiento Nguyen Wagner Foley	Chaffee Foley Nguyen Sarmiento Wagner
Orange County Fire Authority (OCFA) (Monthly; fourth Thursday at 6:00 P.M.)	Regular Member Regular Member (Note: If these appointments change, a resolution for OCFA will be included with the ASR)	Wagner Nguyen	Wagner Foley

2026 CHAIR APPOINTMENTS
(Term of appointments are 1/1/26 - 12/31/26 unless otherwise noted)

COMMITTEE NAME	POSITION/COMMENTS	2025 CURRENT APPOINTMENTS	2026 PROPOSED APPOINTMENTS
2026 Orange County Hall of Fame Ad Hoc Committee	Regular Member Regular Member	Wagner Nguyen	Wagner Nguyen
Orange County Housing Finance Trust (OCHFT) (Bi-Monthly; Third Wednesday at 10:00 A.M.)	Regular Member (2/6/26 - 2/5/28) Regular Member (1/28/25 - 1/27/27) Countywide Elected Official (2/6/26 - 2/5/28) Countywide Elected Official (2/6/26 - 2/5/28)	Sarmiento Foley Andrew Hamilton Shari Freidenrich	Sarmiento Foley Andrew Hamilton Shari Freidenrich
Orange County Juvenile Justice Coordinating Council (OCJJCC) (Quarterly, fourth Thursday at 3:30 P.M.)	Regular Member (2/10/26 - 2/9/28) Alternate Member	Foley Wagner	Sarmiento Foley
Orange County Local Remote Access Network (RAN) (As needed)	Regular Member Alternate Member (May be a BOS Member or staff representative)	Sarmiento Wagner	Wagner Sarmiento
Orange County Mosquito and Vector Control District (Monthly; third Thursday at 3:00 P.M.)	Regular Member (1/7/25 - 1/4/27)* (May be BOS member or Designee) *Term ends first Monday in January 2027	CEO Designee Lisa Fernandez	CEO Designee Lisa Fernandez
Orange County Operational Area Executive Board (Quarterly; Second Wednesday/1:30 P.M.)	Regular Member Alternate Member	Chaffee Sarmiento	Chaffee Sarmiento
Orange County Parks Foundation Annual; third Friday in July at 10:00 A.M.)	County Director (May be a BOS Member or other)	Chaffee	Chaffee
Orange County Sanitation District (Monthly; fourth Wednesday at 6:00 P.M.)	Director - BOS Representative Alternate Director - BOS Representative	Chaffee Nguyen	Chaffee Nguyen

2026 CHAIR APPOINTMENTS
(Term of appointments are 1/1/26 - 12/31/26 unless otherwise noted)

COMMITTEE NAME	POSITION/COMMENTS	2025 CURRENT APPOINTMENTS	2026 PROPOSED APPOINTMENTS
Orange County Transportation Authority (OCTA) (Bi-monthly; second and fourth Monday at 9:00 A.M.)	Regular Member (1st District BOS Member) Regular Member (2nd District BOS Member) Regular Member (3rd District BOS Member) Regular Member (4th District BOS Member) Regular Member (5th District BOS Member)	Nguyen Sarmiento Wagner Chaffee Foley	Nguyen Sarmiento Wagner Chaffee Foley
Santa Ana River Flood Control Protection Agency (Seven per year; days vary; 4:00 P.M.)	BOS Representative OC Flood Control District Representative Alternate BOS Representative (May be BOS or staff designee) Alternate OCFCD Representative (May be BOS or staff designee)	Sarmiento Foley Wagner James Tyler	Sarmiento Foley Wagner James Tyler
South Coast Air Quality Management District (SCAQMD) (Monthly; first Friday at 9:00 A.M.)	Regular Member	Nguyen	Nguyen
South Orange County Watershed Management Area Executive Committee (Three times per year)	Regular Member Alternate Member	Foley Nguyen	Foley Nguyen
Southern California Association of Governments (SCAG) - General Assembly and Regional Council General Assembly meets annually in May Regional Council meets monthly (first Thursday at 12:15 P.M.) *Per OC Council of Governments (OCCOG) bylaws, the SCAG Regional Councilmember is automatically a member of the OCCOG Board of Directors provided the appointee is a Supervisor for the County of Orange and the County is a dues paying member of OCCOG in good standing	General Assembly and Regional Councilmember* Alternate Representative (to General Assembly only) Note: The alternate is for the General Assembly only; per SCAG bylaws the Regional Council does not allow alternates or votes by proxy. Term on the General Assembly is indefinite provided member and alternate remain elected officials of the appointing body. Term on the Regional Council is for two years, however there is no term limit in the bylaws, so the official representative may be reappointed provided they remain an elected official of the appointing body. Historically, Orange County has treated this as an annual appointment by the Chairman of the BOS and as such appointments may change on an annual basis	Wagner Foley	Wagner Foley

2026 CHAIR APPOINTMENTS
(Term of appointments are 1/1/26 - 12/31/26 unless otherwise noted)

COMMITTEE NAME	POSITION/COMMENTS	2025 CURRENT APPOINTMENTS	2026 PROPOSED APPOINTMENTS
Southern California Home Financing Authority (SCHFA) (4-5 times per year)	Regular Member (BOS Chair) CEO or Designee Member	Chaffee Michelle Aguirre	Chaffee Michelle Aguirre
Southern California Water Coalition Board of Trustees (SCWC)	County Supervisor Member* *A County Supervisor can serve on the SCWC Board provided the County remains a member in good standing of the SCWC.	Sarmiento	Sarmiento
Transportation Corridor Agency - Foothill/Eastern (Monthly; second Thursday at 9:30 A.M.)	Regular Member (3rd District BOS Member) Regular Member (4th District BOS Member) Regular Member (5th District BOS Member)	Wagner Chaffee Foley	Wagner Chaffee Foley
Transportation Corridor Agency - San Joaquin Hills (Monthly; second Thursday at 9:30 A.M.)	Regular Member (3rd District BOS Member) Regular Member (5th District BOS Member)	Wagner Foley	Wagner Foley
Urban Counties Caucus (Monthly; first Wednesday at 4:00 P.M.)	Regular Member Alternate Member	Chaffee Sarmiento	Chaffee Foley

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ORANGE, CALIFORNIA, DESIGNATING AND APPOINTING ITS REPRESENTATIVE TO THE ORANGE COUNTY FIRE AUTHORITY'S BOARD OF DIRECTORS

WHEREAS, the County, as a "member" of the Orange County Fire Authority Joint Powers Authority (JPA) is entitled to appoint representative directors ("Director") to the Orange County Fire Authority's Board of Directors, and

WHEREAS, each member agency, by resolution of its governing body, shall designate and appoint one representative to act as its Director on the Authority Board of Directors, except the County whose Board of Supervisors shall appoint two representatives to act as its Directors, and

WHEREAS, each Director shall be a current elected member of the governing body, and

WHEREAS, each Director shall hold office until the selection of a successor by the appointing body, and

WHEREAS, each Director is to serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole discretion of that appointing body, and

WHEREAS, any vacancy shall be filled in the same manner as the original appointment of a Director.

NOW, THEREFORE the Orange County Board of Supervisors does hereby resolve as follows:

SECTION 1. The County hereby designates and appoints Supervisor Katrina Foley as a Director to the Orange County Fire Authority Board of Directors.

SECTION 2. The County hereby directs the County Clerk of the Board to transmit a copy of the executed resolution to the Clerk of the Authority of the Orange County Fire Authority prior to their next regularly scheduled board meeting.

SECTION 3. This Resolution shall take effect immediately upon its adoption by the County and the County Clerk of the Board shall attest to and certify the vote adopting this Resolution.

PASSED, APPROVED, AND ADOPTED this 10th day of February, 2026.

_____
Supervisor Doug Chaffee, Fourth District
Chair, Orange County Board of Supervisors

Agency Report of:
Public Official Appointments

A Public Document

1. Agency Name

County of Orange

Division, Department, or Region *(If Applicable)*

Board of Supervisors

Designated Agency Contact *(Name, Title)*

Robin Stieler, Clerk of the Board

Area Code/Phone Number: (714) 834-2206

E-mail: Robin.Stieler@ocgov.com

California Form **806**

For Official Use Only

Date Posted: _____ *(Month, Day, Year)*

2. Appointments

Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
First 5 Orange County (Children & Families Commission)	Name: Sarmiento, Vicente *(Last, First)* Alternate, if any: Foley, Katrina *(Last, First)*	2/10/26 *Appt Date* 1 Year *Length of Term*	Per Meeting: $ 100.00 Estimated Annual: ☐ $0-$1,000 ☐ $2,001-$3,000 ■ $1,001-$2,000 ☐ _____ *Other*
Local Agency Formation Commission (LAFCO)	Name: Wagner, Donald *(Last, First)* Alternate, if any: _____ *(Last, First)*	1/23/24 *Appt Date* 4 Years *Length of Term*	Per Meeting: $ 100.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ *Other*
Local Agency Formation Commission (LAFCO)	Name: Vacant *(Last, First)* Alternate, if any: _____ *(Last, First)*	___/___/___ *Appt Date* _____ *Length of Term*	Per Meeting: $ _____ Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ *Other*
Orange County Behavioral Health Advisory Board	Name: Sarmiento, Vicente *(Last, First)* Alternate, if any: _____ *(Last, First)*	2/10/26 *Appt Date* 1 Year *Length of Term*	Per Meeting: $ 20.00 Estimated Annual: ■ $0-$1,000 ☐ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ *Other*

3. Verification

I have read and understand FPPC Regulation 18702.5. I have verified that the appointment and information identified above is true to the best of my information and belief.

_____	Robin Stieler	Clerk of the Board	_____
Signature of Agency Head or Designee	*Print Name*	*Title*	*(Month, Day, Year)*

Comment: _____

Print Clear

Agency Report of: Public Official Appointments Continuation Sheet

California Form **806**
A Public Document

1. Agency Name
County of Orange

Date Posted: _____ (Month, Day, Year)

2. Appointments

Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
Orange County Fire Authority	Name: Wagner, Donald (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 100.00 Estimated Annual: ☐ $0-$1,000 ☐ $2,001-$3,000 ☐ $1,001-$2,000 ■ $3,600 (Other)
Orange County Fire Authority	Name: Foley, Katrina (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 100.00 Estimated Annual: ☐ $0-$1,000 ☐ $2,001-$3,000 ☐ $1,001-$2,000 ■ 3,600 (Other)
Orange County Sanitation District	Name: Chaffee, Doug (Last, First) Alternate, if any: Nguyen, Janet (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 212.50 Estimated Annual: ☐ $0-$1,000 ☐ $2,001-$3,000 ☐ $1,001-$2,000 ■ $5,100 (Other)
Orange County Transportation Authority	Name: Nguyen, Janet (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 100.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ (Other)
Orange County Transportation Authority	Name: Sarmiento, Vicente (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 100.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ (Other)
Orange County Transportation Authority	Name: Wagner, Donald (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 100.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ (Other)

Print Clear

Agency Report of: Public Official Appointments Continuation Sheet

California Form **806**
A Public Document

1. Agency Name
County of Orange

Date Posted: _____ (Month, Day, Year)

2. Appointments

Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
Orange County Transportation Authority	Name: Chaffee, Doug (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 100.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ Other
Orange County Transportation Authority	Name: Foley, Katrina (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 100.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ Other
South Coast Air Quality Management District	Name: Nguyen, Janet (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 200.00 Estimated Annual: ☐ $0-$1,000 ☐ $2,001-$3,000 ☐ $1,001-$2,000 ■ 4200.00 Other
Southern California Association of Governments	Name: Wagner, Donald (Last, First) Alternate, if any: Foley, Katrina (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 150.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ Other
Transportation Corridor Agency - Foothill/Eastern	Name: Wagner, Donald (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 120.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ Other
Transportation Corridor Agency - Foothill/Eastern	Name: Chaffee, Doug (Last, First) Alternate, if any: _____ (Last, First)	2/10/26 (Appt Date) 1 Year (Length of Term)	Per Meeting: $ 120.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ _____ Other

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Agency Report of:
Public Official Appointments
Continuation Sheet

California Form **806**
A Public Document

1. Agency Name
County of Orange

Date Posted: 1/23/2024 (Month, Day, Year)

2. Appointments

Agency Boards and Commissions	Name of Appointed Person	Appt Date and Length of Term	Per Meeting/Annual Salary/Stipend
Transportation Corridor Agency - Foothill/Eastern	Name: Foley, Katrina (Last, First) Alternate, if any: (Last, First)	Appt Date: 2/10/26 Length of Term: 1 Year	Per Meeting: $ 120.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ Other
Transportation Corridor Agency - San Joaquin Hills	Name: Wagner, Donald (Last, First) Alternate, if any: (Last, First)	Appt Date: 2/10/26 Length of Term: 1 Year	Per Meeting: $ 120.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ Other
Transportation Corridor Agency - San Joaquin Hills	Name: Foley, Katrina (Last, First) Alternate, if any: (Last, First)	Appt Date: 2/10/26 Length of Term: 1 Year	Per Meeting: $ 120.00 Estimated Annual: ☐ $0-$1,000 ■ $2,001-$3,000 ☐ $1,001-$2,000 ☐ Other
	Name: (Last, First) Alternate, if any: (Last, First)	Appt Date: /// Length of Term:	Per Meeting: $ Estimated Annual: ☐ $0-$1,000 ☐ $2,001-$3,000 ☐ $1,001-$2,000 ☐ Other
	Name: (Last, First) Alternate, if any: (Last, First)	Appt Date: /// Length of Term:	Per Meeting: $ Estimated Annual: ☐ $0-$1,000 ☐ $2,001-$3,000 ☐ $1,001-$2,000 ☐ Other
	Name: (Last, First) Alternate, if any: (Last, First)	Appt Date: /// Length of Term:	Per Meeting: $ Estimated Annual: ☐ $0-$1,000 ☐ $2,001-$3,000 ☐ $1,001-$2,000 ☐ Other

Print Clear

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18702.5. Materiality Standard: Financial Interest in a Personal Financial Effect.

(a) A personal financial effect means the financial effect of a governmental decision on the personal finances of a public official or his or her immediate family. The financial effect is material if the official or the official's immediate family member will receive a measurable financial benefit or loss from the decision.

(b) Notwithstanding subdivision (a), a personal financial effect does not include:

(1) Any establishment of or change to benefits provided under an employment or retirement policy for employees or retirees if the financial effect of the decision applies equally to all employees in the same bargaining unit or other representative group.

(2) Payment of any travel expenses, to the extent allowed by law, incurred while attending meetings as an authorized representative of an agency.

(3) Stipends received for attendance at meetings of any group or body created by law or formed by the official's agency for a special purpose, so long as the selecting body posts on its website a form provided by the Commission that includes: a list of each appointed position eligible for a stipend, the amount of the stipend for each position, the name of the public official who has been appointed to the position, the name of the public official, if any, who has been appointed as an alternate, and the term of the position.

(4) The use of any government property, such as automobiles or other modes of transportation, mobile communication devices, or other agency provided equipment for carrying out the official duties of a position, including any nominal, incidental, negligible, or inconsequential personal use while on duty.

(5) Any personal reward received by the official when using a personal charge card or membership rewards program, so long as the reward is no different from the reward offered to the public and is limited to charges made solely for the official's approved travel expenses.

(6) A decision to fill a position on the body of which the official is a member.

(c) If the governmental decision affects a business entity or real property in which the official has a financial interest, this regulation does not apply and materiality is determined under Regulation 18702.1 or 18702.2.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5, 87102.6, 87102.8 and 87103, Government Code.

HISTORY

1. New section filed 6-10-2003; operative 6-10-2003 (Register 2003, No. 24). For prior history, see Register 98, No. 48.

2. Amendment of subsection (b)(1)(A) filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).

3. Change without regulatory effect renumbering former section 18702.5 to section 18704.5 and renumbering former section 18705.5 to section 18702.5, including amendment of subsection (c), filed 4-27-2015. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 18).

2026 Appointment of Standby Officers

First District - Supervisor Janet Nguyen

Standby Officer No. 1	Thomas Bonikowski
Standby Officer No. 2	Patricia Bates
Standby Officer No. 3	Charles Hahn

Second District - Supervisor Vicente Sarmiento

Standby Officer No. 1	Yasie Goebel
Standby Officer No. 2	Manny Escamilla
Standby Officer No. 3	Robert Villegas

Third District - Supervisor Don Wagner

Standby Officer No. 1	Tara Campbell
Standby Officer No. 2	Scott Voigts
Standby Officer No. 3	Al Murray

Fourth District - Supervisor Doug Chaffee (Chair)

Standby Officer No. 1	Al Jabbar
Standby Officer No. 2	Paulette Chaffee
Standby Officer No. 3	Jesus Gaona Perez

Fifth District - Supervisor Katrina Foley (Vice Chair)

Standby Officer No. 1	Nicholas Anas
Standby Officer No. 2	Alyssa Napuri
Standby Officer No. 3	Stephanie Oddo

County Executive Officer

Standby Officer No. 1	Chief Operating Officer
Standby Officer No. 2	Chief Financial Officer
Standby Officer No. 3	Chief Information Officer

RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

June 4, 2024

WHEREAS, California enacted Government Code Section 8635-8644 in recognition that the preservation of local government in the event of enemy attack, or in the event of a state of emergency or a local emergency is a matter of statewide concern.

WHEREAS, to provide for the continuance of the legislative and executive departments of the political subdivision during a state of war emergency or a state of emergency or a local emergency, the County Board of Supervisors has the power to appoint the following standby officers:

- Three for each member of the governing body.
- Three for the chief executive, if they are not a member of the governing body.

WHEREAS, on an annual basis the Chairperson of the Board of Supervisors submits proposed appointments of Supervisors and other public officials to the full Board for approval to appoint representatives to various decision-making bodies.

WHEREAS, that Board action addresses publicly posting appointments and the requirements of the Fair Political Practices Commission Regulations.

NOW, THEREFORE, IT IS HEREBY RESOLVED:

That, upon assuming office and annually thereafter, each District Office will identify in writing three (3) individuals meeting the criteria to hold that office (excepting residency requirements) that, should the Supervisor become incapacitated during an emergency, will serve as Standby Officers for the appointing Supervisor during the interim period before an appointment is made or an election is held;

That, the Board of Supervisors will identify in writing three (3) individuals to serve as Standby Officers for the County Executive Officer position should the incumbent become

incapacitated during a proclaimed emergency for the interim period before an appointment is made;

That such designations will be submitted in writing to the Chair of the Board of Supervisors for inclusion as an attachment to the Annual Chairperson Appointment of Board Members;

That, upon approval by the full Board of Supervisors, written notice will be provided to the County Executive Officer, Clerk of the Board, County Counsel, Auditor-Controller, and County Emergency Management Manager; and

That, in the event that Standby Officers are called into active public service under this Resolution and Continuity of Government Plan, each Standby Officer will complete all oaths, financial disclosures, ethics training, and emergency management training as required for elected Supervisors and the County Executive Officer.

The foregoing was passed and adopted by the following vote of the Orange County Board of Supervisors, on June 04, 2024, to wit:

AYES:	Supervisors:	KATRINA FOLEY, DOUG CHAFFEE, ANDREW DO VICENTE SARMIENTO, DONALD P. WAGNER
NOES:	Supervisor(s):	
EXCUSED:	Supervisor(s):	
ABSTAINED:	Supervisor(s):	

CHAIRMAN

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I, ROBIN STIELER, Clerk of the Board of Orange County, California, hereby certify that a copy of this document has been delivered to the Chairman of the Board and that the above and foregoing Resolution was duly and regularly adopted by the Orange County Board of Supervisors

IN WITNESS WHEREOF, I have hereto set my hand and seal.

ROBIN STIELER
Clerk of the Board
County of Orange, State of California

Resolution No: 24-062

Agenda Date: 06/04/2024

Item No: 14

I certify that the foregoing is a true and correct copy of the Resolution adopted by the Board of Supervisors, Orange County, State of California

Robin Stieler, Clerk of the Board of Supervisors

By: _____
Deputy

RECEIVED
2026 FEB -3 PM 4:27
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE
400 West Civic Center Drive, Suite 202
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.oc.gov

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS-5
February 10, 2026

MEMORANDUM

February 3, 2026

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session on Tuesday, February 10, 2026, to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

> "CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION Pursuant to Government Code Section 54956.9(d)(1).
> Name of Case: *Orange County Power Authority v. County of Orange,* Orange County Superior Court Case No. 30-2026-01542269-CU-BC-WJC.
>
> RECOMMENDED ACTION: Conduct Closed Session."

Thank you.

LJP:vl

cc: Members of the Board of Supervisors
Michelle Aguirre, CEO

RECEIVED
2026 FEB -3 PM 4:27
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE
400 West Civic Center Drive, Suite 202
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.oc.gov

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 6
February 10, 2026

MEMORANDUM

February 3, 2026

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session on Tuesday, February 10, 2026, to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

> "CONFERENCE WITH LEGAL COUNSEL --
> EXISTING LITIGATION Pursuant to Government Code Section 54956.9(d)(1).
> Name of Case: *Susan Smith and David Whiting v. County of Orange, et al.*, United States District Court Case No. 8:23-cv-02426-DOC-KES.
>
> RECOMMENDED ACTION: Conduct Closed Session."

Thank you.

Leon Page

LJP:vl

cc: Members of the Board of Supervisors
Michelle Aguirre, CEO

RECEIVED
2026 FEB -5 AM 9:32
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE
400 West Civic Center Drive, Suite 202
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.oc.gov

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 7
February 10, 2026

MEMORANDUM

February 5, 2026

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session on Tuesday, February 10, 2026, to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

> "CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION Pursuant to Government Code Section 54956.9(d)(1).
> Name of Case: *Mitchell Carr v. County of Orange, et al.*, Orange County Superior Court Case No. 30-2018-00970749-CU-PO-CJC.
>
> RECOMMENDED ACTION: Conduct Closed Session."

Thank you.

Leon Page

LJP:vl

cc: Members of the Board of Supervisors
Michelle Aguirre, CEO

RECEIVED
2026 FEB -5 AM 9:32
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE
400 West Civic Center Drive, Suite 202
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.oc.gov

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 8
February 10, 2026

MEMORANDUM

February 5, 2026

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session on Tuesday, February 10, 2026, to discuss with the Board the status of existing litigation, pursuant to Government Code section 54956.9(d)(1).

Accordingly, please prepare the Agenda Item to read:

> "CONFERENCE WITH LEGAL COUNSEL --
> EXISTING LITIGATION Pursuant to Government Code Section 54956.9(d)(1).
> Name of Case: *Maria Dolores Sebold v. County of Orange et al.*, Orange County Superior Court Case No. 30-2023-01336257-CU-PA-CJC.
>
> RECOMMENDED ACTION: Conduct Closed Session."

Thank you.

Leon Page

LJP:vl

cc: Members of the Board of Supervisors
Michelle Aguirre, CEO

RECEIVED
2026 FEB -5 AM 9:32
CLERK OF THE BOARD
COUNTY OF ORANGE
BOARD OF SUPERVISORS

OFFICE OF THE COUNTY COUNSEL
COUNTY OF ORANGE
400 West Civic Center Drive, Suite 202
Santa Ana, California 92701
Direct No.: (714) 834-3303
E-Mail: leon.page@coco.oc.gov

LEON J. PAGE
COUNTY COUNSEL

Agenda Item No. SCS- 9
February 10, 2026

MEMORANDUM

February 5, 2026

TO: Robin Stieler, Clerk of the Board of Supervisors

FROM: Leon J. Page, County Counsel

SUBJECT: Request for Supplemental Closed Session

I am requesting a supplemental closed session to be held on Tuesday, February 10, 2026, for the Board to consider anticipated litigation pursuant to Government Code section 54956.9(d)(2).

Accordingly, please prepare the Agenda Item to read:

> "CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION – Pursuant to Government Code Section 54956.9(d)(2).
> Number of Cases: One Case.
>
> RECOMMENDED ACTION: Conduct Closed Session."

Thank you.

Leon Page

LJP:vl

cc: Members of the Board of Supervisors
Michelle Aguirre, CEO