

## **REPAIR SERVICES AGREEMENT CITY OF FRESNO AND RH COMMUNITY BUILDERS LP**

This Repair Services Agreement (Agreement) is made as of the \_\_\_\_\_ day of April, 2024 (Effective Date), by and between the City of Fresno (City or Owner), and RHCB Development LP, a Limited Partnership (RHCB). The City of Fresno and RHCB are referred to hereinafter each as a "Party" or collectively as "Parties."

### **RECITALS**

- A. WHEREAS, there is a critical housing-shortage crisis in the City, and the crisis is contributing to the growth in homeless population counts throughout the City; and
- B. WHEREAS, the City has acquired the Travelodge Motel located at 3876 North Blackstone Avenue, Fresno, CA, 93726 (APN 436-260-22) (Property), and the City desires to have the Property repaired and prepared to serve as permanent affordable housing for individuals and youth experiencing or at-risk of homelessness; and
- C. WHEREAS, RHCB has resources, as well as the technical, and financial expertise to among other things, repair projects in order to make them available for affordable housing and homeless services; and
- D. WHEREAS, RHCB has collaborated with the City to successfully complete the repair of two motels to serve as a low-barrier emergency homeless shelters through the California Department of Housing and Community Development (HCD) Homekey 2 Program Funds; and
- E. WHEREAS the City contracts with RHCB and/or their affiliate organizations to provide Property Management and Case Management Services for the homeless individuals housed at the City of Fresno's motels along Parkway Corridor; and
- F. WHEREAS the City and RHCB now desire to enter into this Agreement with the terms, conditions and compensation specified for the repair of the Travelodge Motel for use as permanent affordable housing for individuals and youth experiencing or at-risk of homelessness (the Project).

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and RHCB agree as follows:

### **AGREEMENT**

NOW, THEREFORE, it is mutually agreed as follows:

1. Responsibilities of the Parties. The City's Charter allows it to execute agreements with various third parties, including governmental agencies, to perform public works of improvement. The City desires to engage RHCB to carry out the Project, which shall include the performance of certain public works on behalf of the City, as provided herein. The Parties contemplate that RHCB shall subcontract some, or all, of the public works provided under this Agreement. In doing so, RHCB shall manage and coordinate with its contractors, subcontractors and materialmen to complete the repair and maintenance of the Property. The repair and maintenance design and work shall be subject to City approval, which the City shall not unreasonably withhold, delay, or

condition. The City shall be responsible for payment to RHCB as provided in Section 3 below.

2. Term of Agreement and Conditions Precedent. This Agreement shall be effective as of the Effective Date and shall continue in full force and effect through February 14, 2025, or until the Project is completed, whichever occurs first, subject to any earlier termination in accordance with this Agreement. Project completion will occur when both Parties have reasonably signed off on the Project, following a walk-through by representatives of both Parties.

3. Compensation. RHCB's compensation for performance of all services rendered pursuant to this Agreement shall be with a not-to-exceed upper limit of \$8,371,830, paid in accordance with the Schedule of Fees and Expenses (as defined in the attached Exhibit A).

(a) Following City's initial advance payment of fifty percent (50%) of the expected costs under the Schedule of Fees and Expenses, detailed statements shall be rendered monthly for services performed in the preceding month and will be payable by the City within thirty (30) days of receipt of such statements.

(b) The Parties may agree to modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to RHCB's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each Party. RHCB shall not be entitled to any additional compensation if services are performed prior to a signed written amendment, unless such services are required to mitigate an emergency which requires immediate attention to avoid damage to the Property, public property, public safety, or remedy some other health and safety condition.

4. Termination, Remedies, and Force Majeure.

(a) This Agreement shall terminate without any liability of City to RHCB upon the earlier of: (i) RHCB filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against RHCB which petition is not dismissed within ninety (90) calendar days of the filing of the petition; (ii) sixty (60) calendar days' after RHCB's receipt of written notice from the City for breach of this Agreement by RHCB and which breach is not reasonably cured; (iii) City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) This Agreement shall terminate without any liability of RHCB to City upon the earlier of: (i) City's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third Party against City which petition is not dismissed within ninety (90) calendar days of the filing of the petition; (ii) sixty (60) calendar days after City's receipt of written notice for breach of this Agreement by City and which breach is not cured; or (iii) expiration of this Agreement.

(c) Immediately upon any termination or expiration of this Agreement, each Party shall (i) immediately stop all work hereunder; (ii) immediately cause any and

all of its subcontractors to cease work; and, (iii) in the case of RHCB, return to City any and all unearned payments and all properties and materials in the possession of RHCB that are owned by City. Subject to the of this Agreement, RHCB shall be paid compensation for services performed prior to the effective date of termination.

(d) Upon any breach of this Agreement by either Party, the other may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement.

(e) Upon a written request from the other Party, the recipient Party shall provide the other with adequate written assurances of future performance if such Party fails to comply with any terms or conditions of this Agreement.

(f) Each Party shall be liable for default unless its nonperformance is caused by an occurrence beyond the reasonable control of that Party and without its fault or negligence such as, acts of God or the public enemy, acts of City or RHCB, as the case may be, in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The nonperforming Party shall notify the other in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the other of the cessation of such occurrence.

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7. Intentionally left blank.
8. Level of Skill; Subcontractors.

(a) RHCB may, at its sole discretion, subcontract any of the services required under this Agreement, in compliance with the terms of this Agreement. RHCB shall require that any general contractor hired by RHCB engage in a lawful competitive process to select all subcontractors. RHCB shall use good faith efforts to hire qualified, licensed, insured, and bonded local contractors that have a local workforce. It is further mutually understood and agreed by and between the parties hereto that inasmuch as RHCB represents to City that RHCB and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said industry necessary to perform the services agreed to be done by it under this Agreement, City relies upon the skill of RHCB and its subcontractors, if any, to do and perform such services in a skillful manner and RHCB agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by City shall not operate as a release of RHCB or any subcontractors from said industry and professional standards.

(b) City reserves the right to hire additional contractors to perform the services required under this Agreement and offset any future payment to RHCB accordingly, so long as such hiring and associated offset is memorialized in an Addendum

executed by the Parties, setting forth the amount of the offset. In the event that the City elects to hire additional contractors to perform the services, City shall not cause RHCB to breach any agreement with any of its contractors or City shall fully reimburse RHCB for any claims made by its subcontractors.

(c) If RHCB subcontracts any or all of the services to be performed under this Agreement where the subcontract is for a total of \$250,000 or greater during any calendar year, RHCB shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate side agreement (Side Agreement) with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no Side Agreement is required, RHCB will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

(d) To the full extent required by applicable federal and state law, each Party and its contractors and agents shall comply with the Davis-Bacon Act, as amended, California Labor Code Section 1720 et seq., and the regulations adopted pursuant thereto (Prevailing Wage Laws), if so required, and shall be solely responsible for carrying out the requirements of such provisions. Each Party shall indemnify, defend and hold the other and its elected and appointed officers, officials, employees, agents, consultants, and contractors harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors, or third party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including, but not limited to the Prevailing Wage Laws, or any act or omission of that Party related to the payment or requirement of payment of prevailing wages.

9. Indemnification. To the furthest extent allowed by law, including California Civil Code section 2782, RHCB shall indemnify, defend and hold harmless CITY and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract. RHCB's obligations as set forth in this section shall apply regardless of whether CITY or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of CITY or any of its officers, officials, employees, agents, or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, RHCB, whenever there is any causal connection between the RHCB's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, RHCB expressly agrees to undertake a duty to defend CITY and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by RH COMMUNITY BUILDERS expressly includes all costs of litigation, attorneys' fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to RHCB as reasonably determined by CITY.

Upon the tender by CITY to RHCB, RHCB shall be bound and obligated to assume the defense of CITY and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from CITY or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by RHCB that if CITY tenders a defense of a claim on behalf of CITY or any of its officers, officials, employees, agents, or volunteers and RHCB fails, refuses or neglects to assume the defense thereof, CITY and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and RHCB shall be bound and obligated to reimburse CITY and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Agreement. In addition, such obligations remain in force regardless of whether CITY provided approval for, or did not review or object to, any insurance RHCB may have procured in accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by CITY, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If RHCB should subcontract all or any portion of the work to be performed under this Contract, RHCB shall require each subcontractor to Indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

#### 10. Insurance.

(a) Throughout the life of this Agreement, RHCB shall pay for and maintain in full force and effect all insurance as required in Exhibit C, which is incorporated



into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit C shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, RHCB or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to RHCB shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this Section shall in any way relieve RHCB of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by RHCB shall not be deemed to release or diminish the liability of RHCB, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by RHCB. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of RHCB, its principals, officers, agents, employees, or persons under the supervision of RHCB, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of City, RHCB shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

#### 11. Conflict of Interest and Non-Solicitation.

(a) RHCB shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, RHCB shall provide a written certification that, to its

best knowledge, after diligent inquiry, RHCB and its respective subcontractor(s) are in full compliance with all laws and regulations. RHCB shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, RHCB shall immediately notify City of these facts in writing.

(b) In performing the work or services to be provided hereunder, RHCB shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(c) RHCB represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct, or indirect, to solicit, or procure this Agreement or any rights/benefits hereunder.

(d) RHCB and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third Party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, RHCB shall remain responsible for complying with Section (a), above.

(e) If RHCB should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, RHCB shall include the provisions of this Section in each subcontract and require its subcontractors to comply therewith.

(f) This Section shall survive expiration or termination of this Agreement.

12. [Intentionally Omitted.]

13. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.

(b) Records of RHCBs' expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of RHCB pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to City until such action is resolved, or until the end of said time period whichever shall later occur. If RHCB should subcontract all or any portion of the services to be performed under this Agreement, RHCB shall cause each subcontractor to also comply with the requirements of this paragraph. This Section shall survive expiration or termination of this Agreement.

(c) A For any portion of the work or services subcontracted by RHCB, RHCB shall require that subcontractor to provide evidence to RHCB that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

14. Nondiscrimination. To the extent required by controlling federal, state and local law, RHCB shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, RHCB agrees as follows:

(a) RHCB will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) RHCB will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. RHCB shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to RHCB's employment practices including, but not be limited to, the following: 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. RHCB agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) RHCB will, in all solicitations or advertisements for employees placed by or on behalf of RHCB in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) If RHCB should subcontract all or any portion of the services to be performed under this Agreement, RHCB shall cause each subcontractor to also comply with the requirements of this Section.

15. Independent Contractor.

(a) In the furnishing of the services provided for herein, RHCB is acting solely as an independent contractor. Neither RHCB, nor any of its officers, agents, or



employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which RHCBS shall perform its work and functions. However, City shall retain the right to administer this Agreement, to the extent provided for herein, to verify that RHCBS is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between RHCBS and City. RHCBS shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, RHCBS shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, RHCBS and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. RHCBS shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, RHCBS shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding 'or and payment of RHCBS' employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Agreement, RHCBS may be providing services to others unrelated to City or to this Agreement.

16. Notices. Any notice required or intended to be given to either Party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the Party to which notice is to be given at the Party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

17. Binding. Once this Agreement is signed by all Parties, it shall be binding upon, and shall inure to the benefit of, all Parties, and each Parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives. Each Party hereto represents and warrants that the person(s) signing below on such Party's behalf is authorized to do so and to bind such Party to the terms of this Agreement. Each Party represents and warrants to the other Party that it has the authority to enter into this Agreement and to perform all of its obligations under this Agreement.

18. Assignment.

(a) This Agreement is personal to each Party and there shall be no

assignment by either Party of its rights or obligations under this Agreement without the prior written approval of the other. Any attempted assignment shall be null and void unless approved in writing for the City, by the City Manager or designee, or for RHCB, by its CEO or designee.

(b) RHCB hereby agrees not to assign the payment of any monies due to RHCB from City under the terms of this Agreement to any other individual(s), corporation(s), or entity(ies). The City retains the right to pay any and all monies due to RHCB directly to RHCB.

19. Compliance With Law. Each Party shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

20. Waiver. The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

21. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

22. Headings. The Section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

23. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

24. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either Party, but rather by construing the terms in accordance with their generally accepted meaning.

25. Attorney's Fees. If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees and legal expenses.

26. Exhibits. Each exhibit and attachment referenced in this Agreement is incorporated by reference into and made a part of this Agreement.

27. Precedence of Documents. Excluding the terms and conditions contained in Exhibit A, in the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, excluding the terms and conditions contained in Exhibit A, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

28. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

29. No Third-Party Beneficiaries. The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

30. Extent of Agreement. Each Party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and RHCB.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

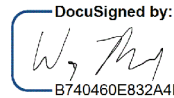
IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

RHCB DEVELOPMENT LP,  
a California limited partnership

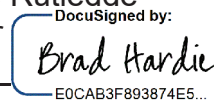
By: \_\_\_\_\_  
Georgeanne A. White  
City Manager

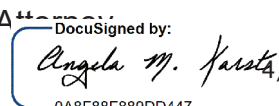
By: WRBH LLC, a California limited liability company

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APPROVED AS TO FORM:  
ANDREW JANZ

Name: Wayne Rutledge  
Title: Manager

DocuSigned by:  
  
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City Attorney  
By:  4/8/2024  
Angela M. Karst  
Senior Deputy City Attorney

Name: Brad J. Hardie  
Title: Manager

ATTEST:  
TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy \_\_\_\_\_ Date \_\_\_\_\_

Addresses:  
CITY OF FRESNO  
Planning & Development Department  
Housing Finance Division  
2600 Fresno Street, Room 3065  
Fresno, CA 93721  
Phone: (559) 621-8500

RHCB LP  
Attention: Brad Hardie  
2550 West Clinton Avenue, Suite 142  
Fresno, CA 93705  
Phone: (559) 492-1373

Attachments:

1. Exhibit A - Term, Scope, and Compensation
2. Exhibit B - Property Description
3. Exhibit C - Insurance Requirements
4. Exhibit D - Conflict of Interest Disclosure Form

## **EXHIBIT A**

### **TERM, SCOPE, AND COMPENSATION**

The acquisition of the Travelodge Motel is part of Project Homekey 3.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Repair Services Agreement. City and RHCB agree as follows:

1) Security Services. At all times during this Agreement, RHCB shall maintain and pay for security personnel when construction crews and/or RHCB staff are not on site.

2) Appointment of Repair Project Manager. RHCB will assign a repair project manager (the Repair Project Manager) to serve as the point of contact with the City to coordinate the planning, permitting, and inspection requirements for the Project. The City will also designate a point of contact for the Project.

3) Project Schedule and Cost Estimate. Within ten (10) calendar days of the execution of this Agreement, the Repair Project Manager will provide the City with a preliminary schedule and cost estimate (the "Schedule of Fees and Expenses") for the Project. It is estimated that the time required from the execution of this agreement to receipt of occupancy permit will be approximately seven (7) months. The Schedule of Fees and Expenses shall identify action items required by the City to meet the Project schedule.

4) Progress Meetings and Reports. The Repair Project Manager shall provide weekly progress reports for the repair work, and the Repair Project Manager shall schedule bi-weekly progress meetings with the City.

5) Retention, Inspection and Audit of Records. The Repair Project Manager agrees to maintain appropriate accounting records for all labor, materials, equipment, supplies, and services for the Project. The Repair Project Manager shall retain all accounting records relating to the Agreement for a period of three (3) years. The City reserves the right to conduct an audit of the accounting records for the Agreement any time during the three-year period.

6) Changed Conditions. The City and RHCB have visually inspected and toured the Travelodge Motel to preliminarily assess the condition of the facility and prepare preliminary cost estimates for the repair.

- a) Despite the best intentions, diligence, and discipline of the City and RHCB, changed conditions may be encountered during the repair work and the changed conditions may require adjustments to the Schedule of Fees and Expenses. RHCB will provide the City with owner-initiated change orders, as applicable.
- b) When changed conditions are encountered for the repairs, the Repair Project Manager will notify the City's point of contact to schedule a meeting to review and discuss options to address the changed condition.
- c) The agreed course of action to address the changed condition shall be prepared in writing by the Repair Project Manager and submitted to the City.



- d) Under no circumstances shall the Repair Project Manager authorize additional work or extend the project schedule without the consent of the City, unless such additional work is required to mitigate an emergency which requires immediate attention to avoid damage to the Property, public property, public safety, or remedy some other health and safety condition.

7) Service Contracts. The Repair Project Manager is authorized to procure contractors using a competitive selection process to provide building trade, equipment, materials, supplies, and other services required to repair the Travelodge Motel to serve as permanent affordable housing. The Repair Project Manager is also authorized to utilize any existing trade services contracts for which RHCB has completed appropriate procurement.

- e) Warranties for Workmanship and Materials. All service contracts shall include a 12-month warranty for workmanship and materials provided for the repairs as appropriate. Any exceptions shall be approved by the City in writing.

- f) Reserved.

8) Property and Liability Insurance. The City shall maintain, at its cost, property, and liability insurance for the Property and Project during the term of this Agreement.

**EXHIBIT B**  
**Property Description**

LEGAL DESCRIPTION

The land described herein is situated in the State of California, County of Fresno, City of Fresno, described as follows:

Parcel B of Parcel Map No. 74-18, recorded April 30, 1974, in Book 12, Page 70 of Parcel Maps, records of said County.

Together with an Easement for Motel Sign located within the Westerly 12 feet of Parcel "A" of Parcel Map No. 74-18, Recorded April 30, 1974, in Book 12, Page 70 of Parcel Maps, Fresno County Records. Excepting however from said easement the right and option to relocate said sign to any other location within the West 12 feet of said land.

APN: 436-260-22

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**  
**Service Agreement between City of Fresno (City)**  
**and RHC LP (Service Provider)**  
**Repair of Travelodge for Permanent Affordable Housing**

**MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

**MINIMUM LIMITS OF INSURANCE**

RHCB shall procure and maintain for the duration of the contract insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**
  - (i) \$2,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$2,000,000 per occurrence for personal and advertising injury;
  - (iii) \$4,000,000 aggregate for products and completed operations; and,
  - (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY**  
\$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building, or renovation of, or addition to, an existing building.)

5. CONTRACTORS' POLLUTION LEGAL LIABILITY with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence; and,
- (ii) \$2,000,000 general aggregate per annual policy period.

(a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by RHCB pursuant to the Agreement.

#### UMBRELLA OR EXCESS INSURANCE

In the event RHCB purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

#### DEDUCTIBLES AND SELF-INSURED RETENTIONS

RHCB shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and RHCB shall also be responsible for payment of any self-insured retentions.

#### OTHER INSURANCE PROVISIONS/ENDORSEMENTS

(i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. RHCB is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, RHCB shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, RHCB

shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than seven (7) calendar days following to the expiration date of the expiring policy.

(ii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.

(iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured for all ongoing and completed operations. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the RHCBs' insurance shall be primary to and require no contribution from the City. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.

(v) If RHCB maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by RHCB.

(vi) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

(vii) All policies of insurance shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

(viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.

#### PROVIDING OF DOCUMENTS

RHCB shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, RHCB shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of RHCB shall also be required to provide all documents noted herein.

#### SUBCONTRACTORS

If **RHCB** subcontracts any or all of the services to be performed under this Agreement, **RHCB** shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, **RHCB** will be solely responsible for ensuring that its subcontractors maintain insurance



coverage at levels no less than those required by applicable law and is customary in the relevant industry.

**EXHIBIT D**  
**DISCLOSURE OF CONFLICT OF INTEREST**  
**Repair of Travelodge for Permanent Affordable Housing**

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☐ Additional page(s) attached.

DocuSigned by:

  
 Signature

4/8/2024

Date

wayne rutledge

Name

RH Community Builders LP

Company

3040 N Fresno St.

Address

Fresno CA 93791

City, State, Zip

<b>Summary report:</b> <b>Litera Compare for Word 11.2.0.54 Document comparison done on</b> <b>3/18/2024 2:55:51 PM</b>	
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<b>Intelligent Table Comparison:</b> Active	
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