

**REIMBURSEMENT AGREEMENT
BETWEEN SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE
COUNTY OF MONTEREY AND COMMUNITY HOUSING IMPROVEMENT
SYSTEMS AND PLANNING ASSOCIATION, INC.
FOR
EAST GARRISON PHASE TWO AFFORDABLE HOUSING CONSTRUCTION**

THIS REIMBURSEMENT AGREEMENT, hereinafter, “**AGREEMENT**”, is made and entered by and between the Successor Agency to the Redevelopment Agency of the County of Monterey (“**AGENCY**”) and Community Housing Improvement Systems and Planning Association, Inc., a California nonprofit public benefit corporation, (“**CHISPA**”) with reference to the following facts and circumstances:

RECITALS

A. The Board of Supervisors of the County of Monterey (COUNTY) is the Board of Directors of the AGENCY.

B. The Redevelopment Agency of the County of Monterey (now AGENCY) and East Garrison Partners, LLC entered into the Disposition and Development Agreement for the East Garrison Project, Fort Ord, Monterey County (DDA) dated October 4, 2005 and recorded in the Official Records of Monterey County on May 16, 2006. In 2009, UCP East Garrison, LLC (Master Developer) acquired title to the real property for the East Garrison Project and became the successor-in-interest to East Garrison Partners, LLC under the DDA.

C. The East Garrison Project is a mixed-use residential development project that is the subject of the DDA approved by the former Redevelopment Agency in 2005.

D. The DDA and related East Garrison project approvals call for the construction of 1400 residential units, of which 6% of all units must be affordable to “very low income” persons and families, and 8% must be available to “low income” persons and families, in the form of Rental Affordable Housing for a total of 196 affordable apartment units.

E. On January 16, 2007, the East Garrison Partners, LLC and CHISPA entered into a Memorandum of Agreement, pursuant to Section 4 of Attachment No. 9 of the DDA, in which was designated as the Phase Two Rental Affordable Housing Developer for all of the Phase Two Rental Affordable Housing to be developed as part of the East Garrison project for a total of 65 units of very low and low income affordable housing, excluding one unrestricted manager’s unit (the “Project”).

F. The DDA includes timing “triggers” or milestones by which the affordable housing apartments must be completed in Phase Two of the development based on the collection of tax increment.

G. In 2019, a Completion Guaranty was issued requiring the Master Developer to furnish to the Agency a surety performance bond in the amount of \$17,500,000 as security for the faithful performance of the construction, equipment and completion (with such completion to be evidenced by a certificate of occupancy) and payment for the Phase Two Guaranteed Units and performance of all other obligations of the Master Developer under the Phase Two Inclusionary Housing Agreement by no later than March 31, 2025.

H. Under sections H(b) and I of Attachment 4 to the DDA, the AGENCY pledged to devote its share of the net tax increment produced by the East Garrison Subdivision, up to a maximum amount of \$48,469 per rental affordable housing unit (indexed to the Engineering News Record Building Cost Index for the San Francisco area or “ENR Cost Index”) to “subsidize the costs related to vertical construction (hard costs only, not including, by way of example, site preparation costs, infrastructure costs, permits, fees and exactions)” of very-low and low-income rental housing units in the East Garrison Subdivision. Under the DDA, the Successor Agency’s proposed contribution to CHISPA is \$6,051,106.19 (\$93,093.94 per unit escalated per ENR Cost Index as of November 30, 2021 x 65 units).

I. Total PROJECT costs are estimated to be \$46,523,764. In addition to the \$6,051,106.19 Successor Agency tax increment funding, the project will be financed by Enterprise Community Investments/JP Morgan; Chase Bank; California State Housing and Community Development Joe Serna Farmworker Program; loans from CHISPA, including a deferred developer fee; and a land loan and Central Coast Community Energy (through a sponsor loan from CHISPA).

J. The PROJECT shall be developed as 65 units of very low and low-income affordable housing apartments, plus one unrestricted manager’s unit, for East Garrison Phase Two development.

K. CHISPA and AGENCY have agreed that it is necessary and desirable for CHISPA to coordinate all planning, permitting, and construction activities associated with PROJECT, and for CHISPA to coordinate design and implementation activities associated with the PROJECT located on Project Property.

L. AGENCY and CHISPA propose that CHISPA develop the PROJECT under one or more contracts that CHISPA will manage with one or more consultants to be chosen by CHISPA, and the AGENCY will reimburse CHISPA for said work using tax increment funds held by AGENCY. The building and implementation work subject to reimbursement under this AGREEMENT shall be referred to herein as “**Building Construction**”.

M. CHISPA’s Building Construction subject to reimbursement under this AGREEMENT will take place on Parcels APN 031-169-057-000 and APN 031-169-058-000 for Phase Two of the East Garrison Project.

N. CHISPA is in the process of obtaining County’s approval on the design and construction of the PROJECT under this AGREEMENT. CHISPA shall ensure that the work

performed by CHISPA and CHISPA Consultant is consistent with the current PROJECT permits and entitlements.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, CHISPA AND AGENCY AGREE AS FOLLOWS:

1. CHISPA Consultant Contract. CHISPA shall select and contractually engage (in its own capacity or in its capacity as an affiliate of the tax credit limited partnership that will own the Project, the “Limited Partnership”) one or more consultants (hereinafter “**CHISPA Consultant**”) under one or more contracts for the Project in accordance with the terms of the Disposition and Development Agreement. Throughout this AGREEMENT the term “CHISPA Consultant” shall include the singular and the plural, and “contract” shall include the singular and the plural. CHISPA Consultant shall be responsible only to CHISPA and/or the Limited Partnership under said contract. Nothing in this AGREEMENT or in the CHISPA Consultant contract shall impose upon CHISPA Consultant any obligation to AGENCY, nor shall it impose upon AGENCY any obligation to or responsibility for CHISPA Consultant. CHISPA shall provide all needed direction and guidance to CHISPA Consultant. AGENCY shall not provide direction and/or guidance to CHISPA Consultant in respect to the CHISPA Consultant contract, except as requested by CHISPA and as agreed by AGENCY, and in no event shall AGENCY have any liability associated with the CHISPA Consultant, except as otherwise provided in this AGREEMENT.

2. Reimbursement

a. CHISPA Consultant Invoices, Certification & Payment. CHISPA shall require that CHISPA Consultant invoices include a detailed breakdown of each expense, and receipts for all materials and supplies. Upon receipt of CHISPA contractor invoice(s), CHISPA shall review and certify the fees charged by CHISPA Consultants in accordance with the terms of CHISPA Consultant contract (“Certified Invoice”).

i. CHISPA may submit invoices to AGENCY prior to payment to CHISPA Consultant. CHISPA shall pay CHISPA Consultant in accordance with the Certified Invoices and submit proof of payment to AGENCY within 30 days of receiving payment from AGENCY.

ii. AGENCY shall withhold five percent (5%) of the total approved from each invoice until such time that CHISPA provides evidence that all 65 units required by the DDA are certified for occupancy.

b. Maximum Reimbursement Under AGREEMENT. The Maximum Reimbursement which AGENCY will reimburse to CHISPA under this AGREEMENT is \$6,051,106.19.

c. Reimbursement Procedures

i. Invoices under this AGREEMENT shall be submitted not less than monthly, beginning upon execution of CHISPA Consultant contract, and thereafter, not later than the last day of each following month. Invoices shall reference Project name and services and an original hardcopy shall be sent via email to 194-HCD-Finance@co.monterey.ca.us and carbon copied to Stacey Fiess, Project Manager (FiessS@co.monterey.ca.us).

ii. Any questions pertaining to invoices under this Agreement should be directed to HCD Finance at (831)755-4800 or via email to 194-HCDFinance@co.monterey.ca.us.

iii. CHISPA Invoices shall set forth and include:

(1) a copy of each Certified Invoice including amount paid, detailed breakdown of the expenses and receipts for all materials and supplies;

(2) evidence that each such Certified Invoice has been processed and paid by CHISPA, or as described in Section 2.a.;

(3) a progress report detailing the activities accomplished under the CHISPA Consultant contract in that billing period; and

iv. Upon receipt of a CHISPA Invoice, including all required supporting documentation as described above, AGENCY shall verify and certify the invoice and shall promptly submit such AGENCY certified invoice to the County Auditor-Controller for payment. AGENCY, through the County Auditor-Controller, shall pay the amount certified within 60 days of receiving the CHISPA Certified Invoice.

3. Term. This AGREEMENT shall become effective upon latest date of signature hereto and continue until CHISPA has been fully reimbursed pursuant to the terms of this AGREEMENT, unless terminated pursuant to Paragraph 4 of this AGREEMENT.

4. Termination. This AGREEMENT shall terminate upon full reimbursement of CHISPA pursuant to the terms of this AGREEMENT but may be terminated earlier by AGENCY if AGENCY determines that CHISPA has violated this AGREEMENT; examples of a violation include, but are not limited to: (1) funds were not expended for the purposes represented in the invoices submitted to AGENCY for reimbursement, or (2) if CHISPA alters the project to produce fewer 65 units of very-low and low-income units. The parties recognize that the AGENCY is prohibited from expending funds other than as authorized by the California Department of Finance through its oversight of the dissolution of former redevelopment agencies, and as such, AGENCY funds cannot be distributed other than for the purposes stated in this AGREEMENT. Such termination would be preceded by giving 30 days' written notice of intent to terminate and a detailed statement of the basis for the proposed termination. During the 30-day period, CHISPA would be given an opportunity to meet with the AGENCY's representative to review documents and present evidence that it has not violated these terms of

the AGREEMENT or that it is working to diligently cure any such violation. Upon such early termination, AGENCY shall pay CHISPA Invoices for any CHISPA Consultant contract work performed by CHISPA Consultant through the effective date of termination. The obligation of AGENCY to pay amounts due with respect to periods prior to the termination shall survive any termination of this AGREEMENT.

5. Entire Agreement. This AGREEMENT and its attachments constitute the entire agreement between the CHISPA and AGENCY respecting the matters set forth herein. AGENCY and CHISPA each represent that neither has relied on any promise, inducement, representation, or other statement made in connection with this AGREEMENT that is not expressly contained herein.

6. Negotiated Agreement. It is agreed and understood by CHISPA and AGENCY that this AGREEMENT has been arrived at through negotiations and that neither is deemed the party which prepared this AGREEMENT within the meaning of Civil Code Section 1654.

7. Assignment. Neither AGENCY nor CHISPA shall have the right to assign its respective rights and obligations hereunder without the written consent of the other party. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. Amendment. This AGREEMENT may be amended, modified or supplemented only in writing and signed by both AGENCY and CHISPA.

9. Contracting Officer. The contracting officer of COUNTY, and the only entity authorized by law to make or amend this AGREEMENT on behalf of COUNTY, is the Board of Supervisors of the County of Monterey.

10. Waiver. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this AGREEMENT shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in any other instance or a waiver of any other condition or breach of any other term.

11. Governing Law. This AGREEMENT shall be governed by, construed, interpreted and applied in accordance with the laws of the State of California.

12. Construction. The language in all parts of this AGREEMENT shall be construed, in all cases, according to its fair meaning. The parties acknowledge that each party has reviewed and revised this AGREEMENT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this AGREEMENT.

13. Conflict with CHISPA Consultant Contract. CHISPA shall make best efforts to ensure that its CHISPA Consultant contract for the Building Construction subject to reimbursement under this AGREEMENT is consistent with the terms of this AGREEMENT. In the event of a conflict between the provisions of this AGREEMENT and said CHISPA Consultant contract, the provisions of this AGREEMENT shall govern.

14. Relationship of Parties. The parties agree that this AGREEMENT establishes only a reimbursement arrangement between the parties, and that, notwithstanding any terms to the contrary, the parties are not partners or joint venturers.

15. Indemnification. AGENCY and CHISPA agree that each will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party hereto or the results thereof. Each party ("Indemnifying Party") to this AGREEMENT shall indemnify, defend, and hold harmless the other party, its officers, agents, and employees ("Indemnified Party"), from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Indemnifying Party's approval of this AGREEMENT or performance pursuant to this AGREEMENT, but only to the extent such claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) are caused by or result from the negligent or intentional acts or omissions of the Indemnifying Party, its officers, employees, and agents. "Performance pursuant to this AGREEMENT" includes action or inaction of either the Indemnifying Party or the action or inaction of the Indemnifying Party's officers, employees, agents, contractors, and subcontractors. In the event of a claim or litigation brought against a party or the parties by a third party challenging the approval of this AGREEMENT, the parties agree to cooperate in the defense of said claim or litigation.

16. Notices. Notice required under this AGREEMENT shall be delivered personally or by first class, postage pre-paid mail addressed as follows:

TO AGENCY: Erik V. Lundquist, AICP, Director
Housing and Community Development
County of Monterey
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

TO CHISPA: Andrew T. Simer, CFO
Community Housing Improvement Systems and
Planning Association, Inc.
295 Main Street
Salinas, CA 93901

17. Authority. Any individual executing this AGREEMENT on behalf of the AGENCY or CHISPA represents and warrants hereby that he or she has the requisite authority to enter into this AGREEMENT on behalf of such party and bind the party to the terms and conditions of this AGREEMENT.

18. Counterparts. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

19. Severability. If any provision of this AGREEMENT is deemed by a court of competent jurisdiction to be unenforceable under applicable law, the remaining provisions shall in no way be affected and shall remain in full force.

IN WITNESS WHEREOF, CHISPA and AGENCY have executed this AGREEMENT to be effective on the latest date written below.

COUNTY OF MONTEREY

Community Housing Improvement Systems and Planning Association, Inc. (CHISPA)*
a California nonprofit public benefit corporation

By: DocuSigned by:
Nicholas E. Chiulos
910D1286C7A93746...
Nicholas E. Chiulos
Assistant County Administrative Officer

By: DocuSigned by:
Andrew T. Simer
Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)

Date: 1/31/2022 | 2:02 PM PST

Its: Andrew T. Simer, CFO
(Print Name and Title)

Date: 1/14/2022 | 4:01 PM PST

Approved as to Form
Office of the County Counsel
Leslie J. Girard, County Counsel

By: DocuSigned by:
Kristi Markey
C21D52A9D63044C...
Kristi Markey
Deputy County Counsel

Date: 1/14/2022 | 4:19 PM PST

Approved as to Fiscal Provisions

By: DocuSigned by:
Gary Giboney
D3834BFEC1D...
Gary Giboney
Chief Deputy Auditor-Controller

Date: 1/14/2022 | 4:41 PM PST

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel

By: _____
Danielle P. Mancuso
Risk Manager

Date: _____

*INSTRUCTIONS: For non-profit corporations, the full legal name of the corporation shall be set forth above together with the signature of a specified officer per California Corporations Code Section 313. If a Limited Liability Corporation (LLC), The full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.