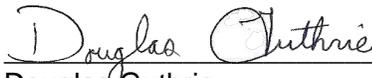


## REPORT OF THE PRESIDENT

December 16, 2021

**RESOLUTION APPROVING THE TENTH AMENDMENT TO THE PROJECT-BASED SECTION 8  
CONTRACT ADMINISTRATION ANNUAL CONTRIBUTIONS CONTRACT & AUTHORIZING  
THE PRESIDENT OF THE LOS ANGELES LOMOD CORPORATION TO EXECUTE THE  
AMENDMENT**



Douglas Guthrie  
President & CEO



Connie Loyola Calumnag  
L.A. LOMOD Director

**Purpose:** The Los Angeles LOMOD Corporation (“L.A. LOMOD”) seeks approval from the Board of Commissioners (“BOC”) of the Housing Authority of the City of Los Angeles (“HACLA”) to execute the tenth amendment to its Annual Contributions Contract (“ACC”) with the U.S. Department of Housing and Urban Development (“HUD”) to continue to perform as the Performance Based Contract Administrator (“PBCA”) for Southern California.

**Issues:** Section 1 of Article V of L.A. LOMOD’s First Amendment to the Amended and Restated Bylaws states, in pertinent part, that:

“[A]pproval of the Board of Commissioners of the Housing Authority of the City of Los Angeles shall be required for the Corporation to execute the Annual Contributions Contracts (“ACC”) with U. S. Department of Housing and Urban Development (“HUD”) for the administration of Section 8 HAP Contracts throughout the entire State of California, and any other state deemed appropriate by the Board of Directors and with the consent of the Board of Commissioners of the Housing Authority [of the City of Los Angeles].”

In March 2003, the HACLA BOC ratified the execution of the ACC between HUD and L.A. LOMOD. In the process of conducting a national solicitation for the PBCA program, HUD has issued nine ACC amendments since 2011 to extend the term of the original ACC and to revise the required tasks.

The term of the tenth ACC amendment will be from February 1, 2022 through January 31, 2023 subject to availability of appropriations. The amendment includes provisions for either early termination or up to four 6-month extensions to allow for the completion of HUD’s rebid.

**Current Request:**

On October 26, 2021, HUD sent the tenth amendment to the ACC which includes the same provisions as in previous amendments:

1. A base rate for Management and Occupancy Reviews (“MOR”) of \$3,400; and

2. A per unit rate compensation of 1.90% of Fair Market Rents (FMR).

**Funding:** The Chief Administrative Officer confirms the following:

*Source of Funds:* L.A. LOMOD receives Section 8 administrative fees under the PBCA ACC for administering Housing Assistance Payments to owners of Section 8 project-based buildings.

*Budget and Program Impact:* The administrative fees received cover all of L.A. LOMOD's expenditures. The proposed FY 2022 budget includes all staffing and expenses necessary to effectively carry out all ACC tasks.

**Attachment:**

1. Resolution
2. Tenth ACC Amendment

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION APPROVING THE TENTH AMENDMENT TO THE PROJECT-BASED SECTION 8 CONTRACT ADMINISTRATION ANNUAL CONTRIBUTIONS CONTRACT & AUTHORIZING THE PRESIDENT OF THE LOS ANGELES LOMOD CORPORATION TO EXECUTE THE AMENDMENT**

**WHEREAS**, in 1973, the Housing Authority of the City of Los Angeles (“HACLA”) created the Los Angeles LOMOD Corporation (“L.A. LOMOD”), a nonprofit corporation, to increase affordable housing in the City of Los Angeles; and

**WHEREAS**, on July 26, 2002 the Board of Directors adopted amendments to L.A. LOMOD’s Articles of Incorporation and Bylaws as requested by the U. S. Department of Housing and Urban Development (“HUD”) in connection with the L.A. LOMOD’s proposal to provide contract administration services for Section 8 Project-based Housing Assistance Payments (“HAP”) Contracts in ten Southern California counties; and

**WHEREAS**, Article V of L.A. LOMOD’s First Amendment to the Amended and Restated Bylaws require approval of the Board of Commissioners of HACLA for L.A. LOMOD to execute the Annual Contributions Contracts (“ACC”); and

**WHEREAS**, in March 2003, the Board of Commissioners of HACLA ratified the execution of the ACC between HUD and L.A. LOMOD; and

**WHEREAS**, subsequent amendments to the ACC were issued by HUD in 2011, 2012, 2014, 2016, 2017, 2018, 2019, and 2020; and

**WHEREAS**, the term of the tenth amendment to the ACC will be from February 1, 2022 to January 31, 2023.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Commissioners hereby approves the Tenth Amendment to the Project-Based Section 8 Contract Administration Annual Contributions Contract (“ACC”) and authorizes the President of L.A. LOMOD to execute the amendment.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately.

*JE*

APPROVED AS TO FORM:  
JAMES JOHNSON

HOUSING AUTHORITY OF THE  
CITY OF LOS ANGELES

12/3/21

BY: \_\_\_\_\_  
General Counsel

BY: \_\_\_\_\_  
Chairperson

DATE ADOPTED: \_\_\_\_\_

UNITED STATES  
DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT

OFFICE OF MULTIFAMILY HOUSING PROGRAMS  
PROJECT-BASED SECTION 8 CONTRACT ADMINISTRATION  
TENTH AMENDMENT of TERM, INCENTIVE-BASED  
PERFORMANCE STANDARDS TASKS, and FEES to

PERFORMANCE-BASED ANNUAL CONTRIBUTIONS  
CONTRACT,

AS AMENDED BY THE NINTH AMENDMENT

This Tenth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees to the Performance-Based Annual Contributions Contract referenced in Section I. A. immediately below, as amended by the Ninth Amendment (“Tenth Amendment”), provides as follows:

## **I. RECITALS**

- A. The United States of America, acting by and through the Secretary of the Department of Housing and Urban Development (“HUD”), and 42 public housing agencies (“PHAs”), including the PHA identified on the Signature Page of this Tenth Amendment, previously entered into a Performance-Based Annual Contributions Contract (“ACC”) for the administration of project-based section 8 Housing Assistance Payments (“HAP”) contracts and related services with respect to covered section 8 units for the geographic area served by the PHA, as indicated on the Signature Page.<sup>1</sup> The ACCs were entered into pursuant to section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f, on various dates between June 2000 and July 2005 following the award of each ACC.
- B. Section 2 d (2) of the ACC provides for an initial term of 36 calendar months, which commenced on the first day of the month of HUD’s first assignment to the PHA of then existing HAP contracts for covered units.
- C. Consistent with all the terms and conditions of Section 2 of the ACC, HUD elected to renew each of the ACCs for two additional 12-month terms.
- D. Before expiration of the second 12-month renewal term, the Parties entered into one or more amendments to make various changes to the ACC and to extend the ACC term through September 30, 2011.
- E. Before September 30, 2011, the Parties entered into an agreement effective October 1, 2011 captioned “Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“First Amendment”) to provide for a subsequent renewal term of the ACC through March 31, 2012 and for three additional, successive renewal terms of three calendar months each, which HUD was entitled to exercise at HUD’s sole discretion and option. See First Amendment, Section II A. HUD exercised each of the three additional, successive renewal terms, the last of which expired on December 31, 2012. Further, the First Amendment revised various substantive terms of the ACC

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<sup>1</sup> The PHA identified on the Signature Page is sometimes referred to herein as the Performance-Based Contract Administrator (“PBCA”). Collectively, HUD and the PHA are referred to herein as “the Parties.”

as set forth in the remaining provisions of Section II of the First Amendment. See First Amendment, Section II B. and C.

- F. Before December 31, 2012, the Parties entered into an agreement effective January 1, 2013 captioned “Second Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Second Amendment”) to provide for a subsequent renewal term of the ACC through March 31, 2013 and for seven additional, successive renewal terms of three calendar months each, which HUD was entitled to exercise at HUD’s sole discretion and option. See Second Amendment, Section II A. HUD exercised each of the seven successive renewal terms, the last of which ended on December 31, 2014. The Second Amendment did not alter any of the substantive terms of the ACC, as amended by the First Amendment but, for clarity, set forth the changes to the substantive terms made by the First Amendment. See Second Amendment, Section II B. and C.
  
- G. Before December 31, 2014, the Parties entered into an agreement effective January 1, 2015 captioned “Third Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Third Amendment”) to provide for a subsequent renewal term of the ACC through June 30, 2015 and for five additional, successive renewal terms of six calendar months each, which HUD was entitled to exercise at HUD’s sole discretion and option. See Third Amendment, Section II A. The Third Amendment extended the term of the ACC, as amended by the First Amendment, without altering any of the substantive terms.
  
- H. During the term of the Third Amendment, a decision of the United States Court of Appeals for the Federal Circuit became final in which the court concluded that “Performance-Based Annual Contribution Contracts (PBACCs) are procurement contracts” and that, “[w]hen using a procurement contract, an agency must adhere to federal procurement laws, including the Competition in Contracting Act (CICA), 41 U.S.C. § 3301, as well as the Federal Acquisition Regulation (FAR).” U.S. v. CMS Contract Management Services, et al., 745 F.3d 1379, 1381 (Fed. Cir. 2014), cert. denied, 575 U.S. 962 (2015). Thereafter, HUD began preparing a solicitation for the procurement of PBCA services consistent with the court’s decision (“Solicitation”).
  
- I. HUD exercised the first two additional, successive renewal terms provided for in the Third Amendment, the second of which ended on June 30, 2016. Section II A. of the Third Amendment required HUD to give notice by June 1, 2016, in order to elect the third renewal term; by December 1, 2016, in order

to elect the fourth renewal term; and by June 1, 2017, in order to elect the fifth renewal term.

- J. Prior to June 1, 2016, the Parties entered into an agreement effective May 1, 2016 captioned “HUD’s Election of All Remaining Renewal Terms under the Third Amendment -and- Fourth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Fourth Amendment”). Consistent with the applicable notice requirements in Section II A. of the Third Amendment, HUD gave notice in Section II of the Fourth Amendment of its election of the third, fourth, and fifth successive renewal terms under the Third Amendment, thus extending the term of the ACC, as amended under Section III of the Fourth Amendment, through December 31, 2017, subject to the availability of sufficient appropriations, with an option for HUD to terminate the ACC before then by giving PHAs at least 120 days’ written notice.
- K. Section III of the Fourth Amendment contained provisions that amended the substantive terms of the original ACC (e.g., by reinstating Incentive-Based Performance Standard (“IBPS”) Task #1 (“Management & occupancy reviews”) and prescribing a method for calculating the amount by which HUD will compensate PHAs for performing IBPS #1).
- L. Before December 31, 2017, the Parties entered into an agreement effective January 1, 2018 captioned “Fifth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Fifth Amendment”), which extended the term of the ACC, as amended by the Fourth Amendment, through December 31, 2018 (see Fifth Amendment, Section II.A.), and amended the ACC by requiring the PHA to comply with all section 8 program regulations and other administrative requirements, as they may be amended from time to time, including those governing or related to Management and Occupancy Reviews (“MORs”), notwithstanding any conflict between such regulations and/or other administrative requirements and the provisions of the ACC (see Fifth Amendment, Section II.B.).
- M. Before December 31, 2018, the Parties entered into an agreement effective January 1, 2019 captioned “Sixth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Sixth Amendment”), which extended the term of the ACC, as amended by the Fifth Amendment, through June 30, 2019 (see Sixth Amendment, Section II.A.1.), subject to the availability of sufficient appropriations. Section II. further provided for an initial obligation of funds by HUD under the ACC, as amended, and permitted HUD to obligate funds for the remaining portions of the six (6)-month extension term on an incremental basis.

- N. Before June 30, 2019, the Parties entered into an agreement effective July 1, 2019 captioned “Seventh Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Seventh Amendment”), which extended the term of the ACC, as amended by the Sixth Amendment, through September 30, 2019 (see Seventh Amendment, Section II.A.1.), subject to the availability of sufficient appropriations. Section II. further provided for an initial obligation of funds by HUD under the ACC, as amended, and permitted HUD to obligate funds for the remaining portions of the three (3)-month extension term on an incremental basis.
- O. In a report accompanying the Departments of Transportation, and Housing and Urban Development, and Related Agencies Appropriations Bill for 2019, the House Committee on Appropriations expressed concerns about the relationship between the fees that PBCAs earn and the cost of performance and directed HUD “to . . . re-negotiate the current [PBCA] contracts to achieve savings while ensuring all important tasks are included.” H.R. Rep. 115-750, at 92 (June 12, 2018). Likewise, the Conference Committee for the Omnibus Fiscal Year 2019 Appropriations Act contained language encouraging HUD “to work with . . . [PBCAs] to identify cost savings while ensuring continuation of all necessary tasks.” H.R. Rep. 116-9, at 923 (Feb. 13, 2019).
- P. Before September 30, 2019, the Parties entered into an agreement effective October 1, 2019 captioned “Eighth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Eighth Amendment”), which extended the term of the ACC, as previously amended by the Seventh Amendment and as further amended by the Eighth Amendment, through January 31, 2021 with the option by HUD to further extend it for up to two additional and successive terms of six (6) calendar months each, subject to the availability of sufficient appropriations and other conditions, as stated in the Eighth Amendment.<sup>2</sup>

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<sup>2</sup> During the term of the Eighth Amendment, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. 116-136 (approved March 27, 2020), Division B—Emergency Appropriations for Coronavirus Health Response and Agency Operations, Title XII of which provides for an additional amount of \$1,000,000,000 under the heading “Housing Programs – Project-Based Rental Assistance” “to prevent, prepare for, and respond to coronavirus, including to provide additional funds to maintain normal operations and take other necessary actions during the period that the program is impacted by coronavirus, for assistance to owners or sponsors of properties receiving project-based assistance pursuant to section 8 of the United States Housing Act of 1937” (“Supplemental Appropriation”).

- Q. The Parties subsequently entered into an agreement effective July 20, 2020, captioned “Ninth Amendment of Term, Incentive-Based Performance Standards Tasks, and Fees” (“Ninth Amendment”), which further amended the ACC, as amended by the Eighth Amendment, to task the PHA with processing requests for funds under the Supplemental Appropriation from owners of Section 8 properties for permissible expenditures in accordance with the Supplemental Appropriation and with HUD regulations and other requirements.
- R. Consistent with the applicable notice requirements in Section II A. of the Eighth Amendment, HUD gave notice on or around November 3, 2020, of its election of the two additional and successive terms of six (6) calendar months each, thus extending the term of the ACC through January 31, 2022, subject to the availability of sufficient appropriations.
- S. Unless otherwise stated, each reference to the ACC in the remaining portions of this Tenth Amendment is to the original ACC, as amended by the Ninth Amendment.

**II. AMENDMENT.** Notwithstanding any provision of the ACC to the contrary, the Parties agree to amend and hereby do amend the ACC as follows:

**A. TERM AND FUNDING OF ACC**

1. The ACC, as amended herein, is hereby extended for a subsequent term of twelve (12) months, beginning on February 1, 2022, and ending on January 31, 2023 (“Extension Term”), with the option by HUD to further extend it for up to four additional and successive extension terms of six (6) calendar months each (collectively, “Additional Extension Terms”), subject to the availability of sufficient appropriations and further subject to the remaining paragraphs of this Section II. A.
2. Upon execution by HUD of this Tenth Amendment, HUD will obligate funds in an amount sufficient to make payments for an initial increment of the Extension Term and will provide the PHA with written notice of the amount of the obligation and of the approximate period of time within the Extension Term to which it will be applied. HUD will provide additional funding for the remaining increment, or for each of the remaining increments, of the Extension Term (or of the Additional Extension Term, as applicable) subject to the availability of sufficient appropriations. When such appropriations are available, HUD will obligate additional funding and will provide the PHA with written notice of the amount of each such additional

obligation and of the approximate period of time within the Extension Term (or within the Additional Extension Term, as applicable) to which it will be applied.

3. Any extension of the ACC, as amended herein, for any Additional Extension Term(s) shall be exercised in HUD's sole discretion, at HUD's sole option, and without any requirement of consent, agreement, or acknowledgment by the PHA, provided that HUD gives notice to the PHA as set forth below.
4. The first Additional Extension Term, if elected by HUD, shall begin on February 1, 2023, and end on July 31, 2023 ("First Additional Extension Term"). If HUD elects to exercise the option to extend the ACC, as amended herein, for this First Additional Extension Term, HUD shall give written notice to the PHA on or before January 1, 2023.
5. The second Additional Extension Term, if elected by HUD, shall begin on August 1, 2023, and end on January 31, 2024 ("Second Additional Extension Term"). If HUD elects to exercise the option to extend the ACC, as amended herein, for this Second Additional Extension Term, HUD shall give written notice to the PHA on or before July 1, 2023.
6. The third Additional Extension Term, if elected by HUD, shall begin on February 1, 2024, and end on July 31, 2024 ("Third Additional Extension Term"). If HUD elects to exercise the option to extend the ACC, as amended herein, for this Third Additional Extension Term, HUD shall give written notice to the PHA on or before January 1, 2024.
7. The fourth Additional Extension Term, if elected by HUD, shall begin on August 1, 2024, and end on January 31, 2025 ("Fourth Additional Extension Term"). If HUD elects to exercise the option to extend the ACC, as amended herein, for this Fourth Additional Extension Term, HUD shall give written notice to the PHA on or before July 1, 2024.
8. If HUD completes or anticipates completing the Solicitation referenced in Section I.H. before the expiration of the Extension Term, or of any of the Additional Extension Terms, if exercised by HUD, HUD shall have the unilateral right, which HUD may exercise in its sole discretion, at its sole option, and without the consent, agreement, or acknowledgment of the PHA, to terminate this ACC, as amended herein, by providing the PHA written notice of such termination at least one hundred and twenty (120) calendar days before the date on which HUD elects to terminate the ACC.

9. HUD may provide written notice to the PHA wherever required in this Tenth Amendment by e-mail, pdf, or facsimile.

**B. TRANSITION-OUT PERIOD**

1. If HUD issues written notice to the PHA that it has completed or anticipates completing the Solicitation, a one hundred and twenty (120) calendar day Transition-Out period shall begin on the date specified in HUD's notice. The remaining paragraphs in this Section II. B. shall apply if HUD issues such notice.
2. The PHA shall employ sufficient personnel to ensure both full, continued compliance with the terms of the ACC, as amended herein, and an orderly transition of tasks and responsibilities to the successor Contractor ("Contractor").
3. The PHA shall provide an orderly transition of work acceptance and accomplishment so that the Contractor may take full control of the tasks by the end of the corresponding Transition-In period under the Solicitation.
4. The PHA shall communicate with the Contractor to ensure a successful transition of responsibility of tasks. These communications shall include but not be limited to transmitting information regarding the following: (a) any properties that are currently out of compliance with HUD requirements; (b) any special circumstances specific to particular HAP Contracts and to the Section 8 program, in general; and (c) any other subjects, matters, or issues that require particular attention or as HUD may direct.
5. As HUD transfers responsibility for properties to the Contractor, as outlined in HUD's Transition Guide (which HUD will provide the PHA by the beginning of the Transition-Out period), the PHA shall no longer have primary responsibility for tasks associated with such properties but may be requested to respond to inquiries and/or to provide non-proprietary information to the Contractor and/or to HUD through the end of the Transition-Out period.

**III. INCONSISTENCY WITH ACC**

- A. In the event of any inconsistency between the terms of the ACC and the terms of this Tenth Amendment, the terms of this Tenth Amendment shall govern.

B. All terms of the ACC that are not inconsistent with the terms and provisions of this Tenth Amendment shall continue in full force and effect.

#### **IV. ALL OTHER TERMS**

All other terms of the ACC shall remain the same.

#### **V. NO IMPAIRMENT OF PHA'S RIGHTS**

Nothing in this ACC, as amended herein, shall be construed to impair, limit, or otherwise affect any rights that the PHA may have, or to constitute a waiver of any rights that the PHA may have, in connection with any Solicitation published during the Extension Term or any Additional Extension Term.

#### **VI. EFFECTIVE DATE**

This Tenth Amendment shall become effective on February 1, 2022.

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# Signature Page

## **PUBLIC HOUSING AGENCY**

**Name of PHA**

\_\_\_\_\_  
(Print or Type)

**Geographic Area Served:**

\_\_\_\_\_  
(Print or Type)

**By:**

\_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Name and official title (Print or Type)

\_\_\_\_\_  
Date (mm/dd/yyyy) (Print or Type)

## **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**By:**

\_\_\_\_\_  
Signature of authorized representative

\_\_\_\_\_  
Ethan D. Handelman, Deputy Assistant Secretary for Multifamily Housing Programs

\_\_\_\_\_  
Date (mm/dd/yyyy) (Print or Type)