

This Memorandum of Understanding ("MOU") is entered into on November 8, 2022 (the "Effective Date"), by and among the Marin County Superintendent of Schools (the "Superintendent"), the Marin County Board of Education (the "BOE", and collectively with the Superintendent, the "Marin County Office of Education" or the "MCOE"), Marin County ("County"), and Education Housing Partners, Inc., a California nonprofit public benefit corporation ("Developer").

**Recitals.** The following recitals are all incorporated into the MOU:

A. The State of California, acting by and through the Department of General Services (the "State"), issued request for proposal No. 3-20 in accordance with Executive Order N-06-09 to develop an approximately 8.3 acre portion of that certain real property owned by the State commonly referred to as APN 108-152-12 (such 8.3 acre portion, the "Property"). Developer and its co-responder, Eden Housing, Inc., a California corporation ("EHI"), were selected pursuant to such RFP process to develop the Property into an affordable housing project (the "Oak Hill Project"). Developer and EHI have entered into a Lease Option Agreement (the "LOA") which permits them or their assignees to enter into two separate ground leases with the State to develop their respective components of the Oak Hill Project (described in Recital B, below).

B. The Oak Hill Project consists of three components: (1) a 115 unit affordable housing project to be developed by EHI (the "AH Project"), (2) an approximately 135 unit affordable housing project to be developed pursuant to this MOU (the "Workforce Housing Project") and (3) certain infrastructure/parking improvements that benefit/serve both the AH Project and the Workforce Housing Project (the "Common Improvements"). The Oak Hill Project is more particularly described in the "Oak Hill Project Plan" attached hereto as Exhibit A. The Workforce Housing Project and its related rights and obligations to the Common Improvements are collectively referred to herein as the "Project".

C. Concurrently with the execution of this MOU, Developer and EHI have entered into a separate Memorandum of Understanding (the "Development MOU") regarding their joint pursuit of the land use entitlements for the Oak Hill Project, their joint design and construction of the Common Improvements and the payment of the third-party costs incurred with respect to the foregoing (the "Oak Hill Project Costs").

D. The County and MCOE desire to provide workforce housing opportunities for their respective employees and therefore desire to (1) support Developer's performance under the LOA and (2) through a joint powers authority formed by MCOE and the County (the "JPA"), assist in the transfer of Developer's rights under the LOA and with respect to the Project work product.

E. The Parties enter into this MOU in order to (1) approve certain baseline documents related to the Project, (2) establish a framework for the formation of the JPA, (3) memorialize the parties' agreement regarding the Developer's pursuit of Discretionary Approvals (defined below) and (4) outline the proposed principal terms of an Assignment, Development and Management Agreement (defined in Section 5, below) for the Project to be considered by the JPA upon its formation.

**NOW THEREFORE**, the Parties agree as follows:

1. **Oak Hill Project Plan; Project Plan; Project Business Plan.** The Parties hereby approve (a) the programmatic information for the Oak Hill Project and the Project attached hereto as Exhibit A (respectively, the “Oak Hill Project Plan” and the “Project Plan”) and (b) the initial budget and preliminary schedule for obtaining the entitlements for the Oak Hill Project, the completion of the construction documents for the Project and the construction of the Project (collectively, the “Project Business Plan”) attached hereto as Exhibit B. Any update to the Project Business Plan shall include the following components:

1.1 the approved Oak Hill Project Plan and Project Plan;

1.2 while not included in Exhibit A, but to be included in subsequent updates to the Project Business Plan, a strategic plan for the pursuit and Final Approval (defined below) of the discretionary land use approvals necessary for the development of the Oak Hill Project, which shall include, without limitation, the State’s certification of an environmental review document under the California Environmental Quality Act (“CEQA”) (the “Discretionary Approvals”);

1.3 a budget for third party costs to be incurred in relation to the formation of the JPA, the Final Approval of the Discretionary Approvals and the Project construction documents and the construction of the Project; and

1.4 a schedule for the formation of the JPA, the Final Approval of the Discretionary Approvals and the Project construction documents and the construction of the Project.

Any material amendment to the Oak Hill Project Plan, the Project Plan or the Project Business Plan proposed by the Developer shall be subject to the parties’ prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

2. **Term of MOU.** This MOU shall commence on the Effective Date and shall terminate on the earliest to occur of (a) the execution of the Assignment, Development and Management Agreement by the JPA and the Developer, (b) the expiration of the LOA prior to the exercise of the options thereunder or (c) the date that is thirty (30) calendar days after any party’s delivery of written notice to the other parties terminating this Agreement (the “MOU Term”).

3. **JPA Formation.**

3.1 **JPA Purpose.** The JPA shall be formed for the purpose of (a) negotiating and considering the proposed Assignment, Development and Management Agreement and (b) if such agreement is approved by the JPA and Developer, (i) performing the JPA’s obligations under the executed Assignment, Development and Management Agreement and (ii) developing, in conjunction with Developer, the Project and owning the Project.

3.2 **JPA Formation Duties.** From and after the Effective Date, the parties shall use reasonable efforts to form the JPA. Such efforts shall be consistent with the approved Project Business Plan, including the budgeted costs included therein.

(a) Developer proposes that the MCOE and the County retain the law firm of Orrick, Herrington & Sutcliffe, LLP (“Orrick”) to advise on the JPA formation and prepare the primary JPA formation documents (collectively, the “JPA Formation Documents”) for the

parties' review. The preparation of the initial drafts shall be done in consultation with the parties and their respective staff regarding the proposed structure of the JPA. Developer, at its initial expense, will pay the Orrick invoices associated with the preparation of the initial drafts of the JPA Formation Documents.

(b) Consistent with the foregoing, the MCOE and the County, at their initial expense, shall (i) review and finalize the draft JPA Formation Documents; (ii) schedule (including the filing of the required notices) and conduct all hearings necessary for the consideration of the JPA Formation Documents and formation of the JPA; and (iii) retain, direct and coordinate such professional consultants necessary for the performance of the foregoing. The MCOE and the County shall provide the Developer with any substantive changes to the draft JPA Formation Documents for review and comment.

3.3 Formation Expenses. The Parties agree to include the third-party JPA formation expenses incurred by the Parties and (b) the third-party expenses incurred in the negotiation and drafting of this Agreement as eligible expenses for reimbursement in the proposed Assignment, Development and Management Agreement.

#### 4. Project Entitlements.

4.1 Developer Entitlement Duties. From and after the Effective Date, Developer shall use commercially reasonable efforts to pursue and acquire the State's Final Approval of the Discretionary Approvals. Such efforts shall be consistent with the approved Project Business Plan. Consistent with the foregoing, Developer, at its initial expense, shall perform the following:

(a) Discretionary Approvals.

(i) In consultation with the appropriate governmental authorities, identify all Discretionary Approvals necessary for the Oak Hill Project and the policies and procedures associated with obtaining such approvals; and

(ii) Prepare, submit and prosecute any applications to/with the State for the Discretionary Approvals, all in accordance with the Project Business Plan.

All Discretionary Approvals shall be obtained in the name of Developer.

(b) Community Outreach. Develop and implement a strategic community outreach plan to (i) determine the scope of any Oak Hill Project stakeholder issues, (ii) develop community support for the Oak Hill Project and (iii) manage any opposition to the Oak Hill Project.

(c) General Management.

(i) Retain any professional consultants, architects and engineers necessary for the performance of the Entitlement Duties. Developer may retain such parties directly or in conjunction with EHI pursuant to the Development MOU.

(ii) Negotiate any other documents, instruments or agreements or amendments thereto necessary or appropriate for obtaining the Discretionary Approvals and services related to any of the foregoing to the extent such documents,

instruments or agreements, or amendments thereto are consistent with the then applicable Project Business Plan.

(iii) Direct and coordinate the services and activities of the architects, engineers, consultants and others retained by Developer for the Project, in accordance with the Project Business Plan.

(d) Until receipt of Final Approval of the Discretionary Approvals, Developer shall provide the parties with written notice of any public hearings related to the Discretionary Approvals and the opportunity to attend such hearings, provided that Developer shall not be required to re-schedule such hearings to accommodate the parties' schedule.

As used herein, "Final Approval" of the Discretionary Approvals shall mean that the State has taken its final action to approve the Discretionary Approvals and all applicable administrative appeal or legal challenge periods have expired without the timely filing of an appeal or legal challenge or, in the event of a timely appeal or legal challenge, such matter has been finally resolved in a manner that permits the development of the Oak Hill Project. The parties acknowledge that Developer may not obtain Final Approval of the Discretionary Approvals during the term of this Agreement and that such Final Approval may occur during the term of the Assignment, Development and Management Agreement.

4.2 MCOE and County Entitlement Duties. If requested by the Developer, MCOE and County staff shall support Developer's efforts to develop the Project per this MOU at material public hearings and public outreach meetings related to the Project.

4.3 Entitlement Costs. The Parties agree to include in the proposed Assignment, Development and Management Agreement that third-party expenses incurred by Developer in negotiating and entering into the LOA and pursuant to this Section 4 be eligible for reimbursement

**5. Proposed Assignment, Development and Management Agreement and Related Agreements.** Developer proposes that Developer and the JPA negotiate an agreement for the entitlement, design, funding, construction and management of the Project based on the following principal terms (the "Assignment, Development and Management Agreement"):

5.1 Parties. The parties to the Assignment, Development and Management Agreement would be Developer and the JPA.

5.2 Entitlement and Design Matters. Consistent with the Project Business Plan:

(a) Developer Duties. Subject to the JPA's performance of its specified duties, Developer would be primarily responsible for obtaining the Final Approval of the Discretionary Approvals, the State's approval of the Project construction documents (the "Construction Documents") and written confirmation that the State is prepared to issue a building permit for the Project upon the payment of the applicable fees ("Construction Document Approval"). Such efforts would include, without limitation, the retention, direction and coordination of the third party consultants and legal counsel that are necessary to accomplish the foregoing. All work product associated with the foregoing (collectively, the "Project Work Product") would be owned by Developer.

(b) JPA Duties. The JPA's duties would be limited to (i) supporting Developer's efforts at material public hearings and public outreach meeting related to the Project and (ii) reviewing and commenting on draft Project Work Project.

(c) Entitlement and Design Expenses. Developer would be responsible for paying all third party costs associated with this Section 5.2, which costs would be eligible for reimbursement pursuant to Section 5.4(b), below.

5.3 Project Contracting. The Developer proposes to minimize the risk of Project cost overruns by having (a) the Developer retain the design professionals necessary to prepare the Project Construction Documents and (b) the JPA retain (i) a construction manager at-risk entity ("CMAR") pursuant to California Public Contract Code Section 20146 to assist with the design of the Project and serve as the general contractor for the construction of the Project and (ii) the Developer as the JPA's owner's representative to oversee and manage the CMAR's performance under the applicable contract.

(a) Project Construction Documents. The Developer, at its initial cost, would retain the third party design professionals necessary to prepare and obtain the State's approval of the Project Construction Documents.

(b) CMAR Contract. The JPA and the Developer would consult on the most efficient procedure for the JPA to retain the CMAR to perform value engineering services during the preparation and approval of the Project Construction Documents, act as the general contractor for the construction of the Project, provide the payment and completion surety bonds related to the construction of the Project and provide a guaranteed maximum price (the "GMAX") for the Project (which GMAX would include a mutually acceptable contingency). The Developer would recommend general contractors for, as applicable, the JPA's consideration or participation in any procedure necessary for the JPA to retain the CMAR. The Developer, at its initial cost, would (i) prepare any Project information necessary for the JPA's solicitation of the CMAR and (ii) retain legal counsel to prepare (A) a draft form of construction contract and (B) draft responses to any CMAR comments on the construction contract, each for the JPA's consideration. The JPA, at its initial cost, would retain any additional legal counsel necessary to negotiate and finalize the contract with the selected CMAR.

(c) Owner's Representative Services. The Developer proposes to perform comprehensive construction management services for the Project during the design, permitting and construction of the Project. The Developer's scope of work would include, without limitation, the management of the Project schedule and budget, overseeing and managing the CMAR's performance under the applicable contract, holding necessary Project meetings with the JPA, contractors and relevant third parties, review of Project invoices, Project accounting and review and acceptance of the CMAR's work. Such services would be completed in return for a fee equal to three percent (3%) of the total Project hard and soft costs included in the Project budget (the "OR Fee").

(d) Project Contracting Expenses. The third party costs incurred by the parties pursuant to this Section 5.3 would be eligible for reimbursement pursuant to Section 5.4(b), below.

5.4 Project Funding. The Developer proposes that the Project costs would be funded by (a) third party grants sourced by the Developer, (b) tax-exempt mortgage revenue

bonds issued by the JPA (“Bond Financing”) and (c) at the Developer’s sole discretion, additional funds advanced by the Developer.

(a) Third Party Grants; Developer Advances. Prior to the assignment of the Project Rights to the JPA, the Developer shall be primarily responsible for raising third-party funds sufficient to pay the third party Project costs incurred by the Developer pursuant to this Agreement and the Assignment, Development and Management Agreement (the “Developer Costs”) and the Project Fee (defined below). Any such third-party funds shall be applied first to Developer Costs and then to the payment of the Project Fee. To the extent Developer is not able to secure sufficient third-party funds, (i) Developer shall have the right, but not the obligation, to either suspend the Project while it pursues additional third-party funds or advance its own funds for the payment of Developer Costs and (ii) the Project Fee shall accrue. Any funds advanced by Developer and accrued Project Fees shall accrue interest at rate of twelve percent (12%) per annum and such advanced funds and accrued interest shall be deemed Developer Costs.

At the Developer’s option, the Developer and the JPA would complete a private placement Bond Financing prior to the closing of the Project Assignment pursuant to Section 5.6, whereby (1) the Developer or its principals would purchase the bonds, (2) the JPA would make the net bond proceeds available to the Developer to fund costs incurred pursuant to Section 5.4(a), (3) the principal amount of the bonds would accrue interest at 12% and the 12% interest set forth in the preceding paragraph would not accrue on any costs funded by such net proceeds and (4) if the net proceeds of the public Bond Financing conducted in conjunction with the closing of the Project Assignment were insufficient to repay the private placement bonds and accrued interest, such private placement bonds would be subordinated to the “A” and “B” series bonds and incorporated into the “C” series bonds set forth in Section 5.4(b)(v), below.

(b) Bond Financing. The Developer proposes that the Bond Financing would be based on the following:

(i) The Bond Financing shall be in an amount sufficient to pay for all third party costs incurred by the Developer, MCOE and County under this Agreement and the Assignment, Development and Management Agreement that are not funded by third party grants, the Project Fee and the OR Fee (each defined below) (collectively, the “Project Costs”).

(ii) The amounts to be reimbursed to the MCOE, County, JPA and the Developer would be paid from Bond Financing proceeds;

(iii) The Bond Financing will not allow recourse to MCOE, County or JPA funds;

(iv) The JPA shall pledge the Ground Lease and Work Product as collateral for the Bond Financing; and

(v) The Bond Financing will include “A” series and “B” series bonds to pay the Project Costs and, to the extent the “A” series and “B” series bond proceeds are insufficient to pay the Project Costs in full, the County and MCOE will use commercially reasonable efforts to work with the JPA to issue and the Developer shall accept “C” series bonds to Developer or its designee in an amount sufficient to pay any shortfall in the payment of the Developer Costs, the Project Fee and the OR Fee in full.

The Developer, at its initial cost, would prepare and provide all Project information necessary for the issuance of the Bond Financing. The Parties intend for the JPA to retain Orrick to prepare the documents related to the issuance of the Bond Financing for the parties' review. The preparation of the initial drafts shall be done in consultation with the parties and their respective staff. Developer, at its initial expense, would pay the Orrick invoices associated with the preparation of the initial drafts of the Bond Financing Documents. It is the intent of the Parties that the JPA, at its initial expense, shall (A) review and finalize the draft Bond Financing Documents; (B) schedule (including the filing of the required notices) and conduct all hearings necessary for the consideration, approval and issuance of the Bond Financing; and (C) retain, direct and coordinate such professional consultants necessary for the performance of the foregoing. The Parties further intend that the JPA would provide the Developer with any proposed substantive changes to the draft Bond Financing Documents for review and comment.

#### 5.5 Developer Fees and Project Accounting.

(a) Project Fee. In addition to the OR Fee and the fees pursuant to the AMA (defined below), the Developer shall be entitled to a Project Fee (the "Project Fee") equal to two percent (2%) of the total Project hard and soft costs included in the Project budget. The Project Fee shall be paid \$35,000 per month commencing on February of 2021 through the delivery of the Project Assignment. The balance of the Project Fee would be paid upon Developer's delivery of the Project Assignment (defined below) to the JPA.

(b) Accounting. Developer will make available to the JPA an accounting of all Developer Costs. The accounting will be at a reasonable level of detail so as to allow the JPA to determine the reasonableness of the Developer Costs but need not be in accordance with GAAP or any other auditing or accounting standard.

5.6 Assignment of Project Rights. Upon the satisfaction of the following conditions, Developer intends to assign the Project Rights to the JPA pursuant to a form of assignment agreement agreed to by the parties (the "Project Assignment"):

- (a) Final Approval of the Discretionary Approvals;
- (b) Construction Document Approval;
- (c) Satisfaction of the Conditions Precedent set forth in Section 6 of the LOA; and
- (d) The JPA's delivery of written notice to Developer that the JPA is prepared to proceed with the closing of the Bond Financing.

Each of the foregoing conditions precedent would be for the benefit of both the JPA and Developer. Either Party may, in its sole discretion, elect to waive any one of the conditions precedent by delivery of written notice of such waiver to the other Party.

The Parties shall execute and deliver two original counterparts of the Project Assignment within five (5) business days after the satisfaction or waiver of the conditions precedent.


5.7 Asset Management Agreement. Concurrently with the execution and delivery of the Project Assignment, the Parties intend that the JPA would retain the Developer to act as the asset manager for the Project pursuant to a form of asset management agreement

approved by the parties (the "AMA"), which AMA would require the Developer to manage the Project property manager and oversee and manage Project insurance, Bond Financing reports and requirements and capital improvements in return for a fee equal to two and a half percent (2.5%) of Project revenue.

[Signatures on next page.]

County:

County of Marin

By:   
Name: Katie Rice  
Title: President, Board of Supervisors

MCOE:

Superintendent


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Marin Board of Education

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Developer

Education Housing Partners, Inc.,  
a California non-profit benefit corporation

By:   
Name: BRUCE DORFMAN  
Title: CEO

County:

County of Marin

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

MCOE:

Superintendent

By: Mary Jane Burke

Name: Mary Jane Burke

Title: Marin County Superintendent of Schools

Marin Board of Education

By: Patricia D. Garbarino

Name: Patricia D. Garbarino

Title: President, Marin County Board of Education

Developer

Education Housing Partners, Inc.,  
a California non-profit benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit A

Oak Hill Project Plan and Project Plan

The Oak Hill Project is proposed on approximately eight acres of unused State property in the unincorporated area of San Quentin as a result of Governor Newsom's Executive Order N-06-19. This Executive Order directed the Department of General Services to identify State-owned sites to address California's housing crisis. The proposed development will be comprised of two affordable residential communities totaling 250 units, of which 115 apartments will be developed by Eden Housing, Inc. and targeted toward income-eligible families, and 135 apartments will be developed pursuant to this Agreement and the proposed Assignment, Development and Management Agreement, for income qualifying teachers and staff of Marin County school districts and county employees. These two communities will be separately financed and owned.

Both residential communities will offer one, two and three-bedroom for-rent apartment homes and will share common infrastructure, including some amenity areas and a parking structure. Due to the State's ownership of the site, the State will be the lead agency on entitlements, CEQA, and permitting, which will expedite processing as well as provide greater certainty of results and schedule.

The preliminary design concept responds to the environment by gently terracing homes to maximize Bay and hillside views. The community will feature sustainable design, drought-tolerant landscaping, and high-quality finishes. Amenities will include a clubhouse with a lounge and business center, as well as outdoor areas for socializing, playing, and reflecting. Award-winning firms SVA Architects of Oakland and Mill Valley-based RHAA are the architect and landscape architect, respectively, for both developments in the new community.

The residential program for the Project is:

<b>Program</b>			
<b>Unit Type</b>	<b>Qty</b>	<b>%</b>	<b>Net Rentable Area (SF)</b>
<b>Apartments</b>			
Jr. 1 BD / 1 BA	14	10%	625
1 BD / 1 BA	72	53%	725
2 BD / 2 BA	37	27%	1,000
3 BD / 2 BA	12	9%	1,250
<b>Total</b>	<b>135</b>	<b>100%</b>	<b>837</b>

Exhibit B

Project Business Plan

[See Exhibits B-1 and B-2, attached.]

Exhibit B-1  
Preliminary Project Budget

Development Costs		<u>Total Development Cost</u>			
	<u>Notes</u>		<u>Cost</u>	<u>Per Unit</u>	<u>Per NRSE</u>
Land Cost			\$0	\$0	\$0
Site Work & Earthwork	(1) (2)		\$6,261,435	\$46,381	\$55
Building	(2)		\$49,074,120	\$363,512	\$434
Additional Hard Costs	(3)		\$945,000	\$7,000	\$8
GC Fees, Bond, Insurance	(2)		\$3,318,840	\$24,584	\$29
A & E Fees	(4)		\$3,200,000	\$23,704	\$28
Municipal Fees			\$5,400,000	\$40,000	\$48
Legal, Closing, Misc.			\$500,000	\$3,704	\$4
Project FF&E	(5)		\$862,500	\$6,389	\$8
Design Contingency	(6)	3.0%	\$2,087,000	\$15,459	\$18
Inflation Contingency	(6)	20.0%	\$13,912,000	\$103,052	\$123
Offsite Overhead		5.0%	\$5,150,000	\$38,148	\$46
Transaction Costs		3.0%	\$2,250,000	\$16,667	\$20
Capitalized Int and Reserve	(8)		\$12,038,000	\$89,170	\$107
Investment Earnings on Unspent Capital (9)			( <u>\$2,000,000</u> )	( <u>\$14,815</u> )	( <u>\$18</u> )
<b>Total Costs</b>			<b>\$102,998,895</b>	<b>\$762,955</b>	<b>\$912</b>

(1) Includes demolition

(2) Reflects prevailing wage

(3) Includes solar panels and solar thermal

(4) Includes \$250K placeholder for CEQA

(5) Includes \$100k for Fitness Center; remainder for common area FF&E

(6) Contingency based on all expenses other than offsite overhead, construction interest, and transaction costs

(7) N/A

- (8) 24 mos carry on bond issue (Series A & B) during construction plus 12 mos reserve for Series A
- (9) Assumes reinvestment of outstanding funds at 2.0% on average of 50% of total bond proceeds

Exhibit B-2

Preliminary Project Schedule

Selection of Developer by State	February 2021 (completed)
Commence Due Diligence	March 2021 (completed)
Commence Conceptual Design	April 2021 (completed)
Initiate CEQA Process	May 2021 (completed)
Notice of Preparation of an Environmental Impact Report (EIR)	April 2022 (completed)
Execute the LOA with the State	May 2022 (completed)
Complete Schematic Design	August 2022 (completed)
Approve MOU with MCOE and County of Marin	November 2022
Publish Draft EIR	1st Quarter, 2023
Form Joint Powers Authority	1st Quarter, 2023
Final EIR Certification	2 <sup>nd</sup> Quarter, 2023
Bond Issuance/Assignment/Commence Construction	4 <sup>th</sup> Quarter, 2023
Construction Complete/Project Occupancy	1 <sup>st</sup> Quarter, 2026