STATE OF CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	Docket No. HSA-FY20/21-154
The Crossroads at Washington 1126 & 1146 East Washington Avenue Santa Ana, California 92701	Standard Voluntary Agreement Health and Safety Code Section 25355.5(a)(1)(C)
Proponents:	
Housing Authority of the City of Santa Ana	
20 Civic Center Plaza (M-26)	
Santa Ana, California 92701	
County of Orange	
601 North Ross Street, Second Floor	
Santa Ana, California 92701	

The California Department of Toxic Substances Control (DTSC) and Housing Authority of the City of Santa Ana and County of Orange (Proponent) enter into this Standard Voluntary Agreement (Agreement) and agree as follows:

1. <u>Site</u>. This Agreement applies to the Site located at 1126 & 1146 East Washington Avenue, Santa Ana, in Orange County, California 92701 (Site), identified by Orange County] Assessor's Parcel Number(s) (APN) 398-092-13 and 398-092-14, and any off-site area to which hazardous substances have or may have migrated from the Site. The Site is approximately 2.286 acres in size and is bordered by East Washington Avenue to the north and an Interstate-5 off-ramp to the east. Historical Site uses for the southern parcel included orchards, row crops, and equipment and materials storage. Historical Site uses of the northern parcel included orchards, automotive service and repair facilities, including four underground storage tanks, a warehouse building, and equipment storage. The Site is currently vacant with only building foundations remaining. The surrounding property uses include a mix of commercial and industrial properties to the west and south. Site location map and a Site diagram are attached as Exhibits A and B.

2. <u>Jurisdiction</u>. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code section 25355.5(a)(1)(C), which authorizes DTSC to enter into an enforceable agreement to oversee investigation and/or remediation of a release or a threatened release of any hazardous substance at or from the Site.

3. <u>Purpose</u>. The purpose of this Agreement is for Proponent to investigate, remediate, and/or evaluate a release, a threatened release, or a potential release of any hazardous substance at or from the Site under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from Proponent for DTSC's oversight costs incurred pursuant to this Agreement.

4. <u>Ownership and Notification</u>.

4.1. The Site is owned by County of Orange (APN 398-092-13) and Housing Authority of the City of Santa Ana (APN 398-092-14).

4.2. Prior to DTSC providing oversight or review or comment on any document, Proponent shall provide DTSC with all of the following: (a) proof of the identity of all current record owners of fee title to the Site and their mailing addresses; (b) written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by Proponent; and (c) an acknowledgment of the receipt of the notice required in subparagraph (b) from the property owners or proof that Proponent has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

4.3. Proponent shall notify DTSC of any changes in ownership of the Site subsequent to the Effective Date of this Agreement and provide written evidence that Proponent notified the new owner(s) of record of the actions completed or proposed by Proponent under this Agreement.

5. <u>Substances Found at the Site</u>. Based on the information available to DTSC and Proponent, the Site is or may be contaminated with hazardous substances, including petroleum hydrocarbons, lead, arsenic, and volatile organic compounds, including tetrachloroethylene.

6. <u>Scope of Work and DTSC Oversight</u>. DTSC shall review and provide Proponent with written comments on all Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling and remedial activities, as appropriate. Proponent agrees to perform all the work required by this Agreement. Proponent shall perform the work in accordance with applicable local, state and federal statutes, regulations, ordinances, rules and guidance documents, in particular, Health and Safety Code section 25300 et seq., as amended.

7. <u>Additional Activities</u>. DTSC and Proponent may amend this Agreement to include additional activities in accordance with Paragraph 17 of this Agreement. If DTSC expects to incur additional oversight costs for these additional activities, it will provide an estimate of the additional oversight costs to Proponent.

8. Endangerment During Implementation.

8.1 Proponent shall notify DTSC's Project Manager immediately upon learning of any condition that may pose an immediate threat to public health or safety or the environment. Within seven days of the onset of such a condition, Proponent shall furnish a report to DTSC, signed by Proponent's Project Manager, setting forth the conditions and events that occurred and the measures taken in response thereto.

8.2 In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Proponent to conduct additional activities in accordance with Paragraph 7 of this Agreement or to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment. DTSC may request that Proponent implement interim measures to address any immediate threat or imminent or substantial endangerment.

9. <u>Access</u>. Proponent shall provide, and/or obtain access to the Site and take all reasonable efforts to obtain access to offsite areas to which access is necessary to implement the Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of law.

10. <u>Sampling, Data and Document Availability</u>. When requested by DTSC, Proponent shall make available for DTSC's inspection, and shall provide copies of, all data and information concerning contamination at or from the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement. For all final reports, Proponent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file compatible with Adobe Acrobat or a formatted file compatible with Microsoft Word. 11. <u>Record Preservation</u>. Proponent shall retain, during the implementation of this Agreement and for a minimum of six years after its termination, all data, reports, and other documents that relate to the performance of this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, Proponent shall either comply with the request, deliver the documents to DTSC, or permit DTSC to copy the documents at Proponent's expense prior to destruction.

12. <u>Notification of Field Activities</u>. Proponent shall inform DTSC at least seven days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Proponent pursuant to this Agreement.

13. <u>Project Managers</u>. Within 14 days of the effective date of this Agreement, DTSC and Proponent shall each designate a Project Manager and shall notify each other in writing of the Project Manager selected. The Proponent's Project Manager shall have the technical expertise in project management, regulatory compliance, and hazardous substance site investigation and remediation sufficient to fulfill his or her responsibilities. Each Project Manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. All communications between DTSC and Proponent, and all notices, documents and correspondence concerning the activities performed pursuant to this Agreement shall be directed through the Project Managers. Each party may change its Project Manager with at least seven days prior written notice.

14. <u>Proponent's Consultant and Contractor</u>. All engineering work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional engineer licensed in California, with expertise in hazardous substance site investigation and remediation. All geological work performed pursuant to this Agreement shall be under the direction and supervision of a registered professional geologist licensed in California, with expertise in hazardous substance site investigation and remediation. Proponent's contractors and consultants shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Agreement, Proponent shall notify DTSC's Project Manager in writing of the name, title, and qualifications of the registered professional engineer and/or professional geologist and of any contractors or consultants and their personnel to be used in carrying out the work under this Agreement in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

15. <u>DTSC Review and Approval</u>. All work performed pursuant to this Agreement is subject to DTSC's review and approval. If DTSC determines that any

report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) return comments to Proponent with recommended changes and a date by which the Proponent must submit to DTSC a revised document incorporating or addressing the recommended changes; or (b) modify the document in consultation with Proponent and approve the document as modified. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to Proponent in writing by DTSC's Branch Chief or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve Proponent of the obligation to obtain such written approvals.

16. Payment.

16.1 Proponent is required to pay (a) all costs incurred by DTSC in association with preparation of this Agreement, and for oversight activities, including review of documents, conducted prior to the effective date of this Agreement; and (b) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents and activities described in Exhibit C and associated documents, and oversight of field activities. Costs incurred include interest on unpaid amounts that are billed and outstanding more than 60 days from the date of the invoice.

16.2 An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC may provide an adjusted cost estimate as the work progresses. Prior to adjusting the cost estimate, DTSC will provide Proponent with a written notice and a detailed explanation of the change to the cost estimate. DTSC will bill Proponent quarterly. Proponent agrees to make payment within 30 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by Proponent.

16.3 In anticipation of oversight activities to be conducted, Proponent shall make an advance payment of \$13,958 to DTSC no later than 10 days after this Agreement is fully executed. It is expressly understood and agreed that DTSC's receipt of the entire advance payment as provided in this paragraph is a condition precedent to DTSC's obligation to provide oversight, review of or comment on documents. DTSC will draw-down from the advance payment, which will be documented in DTSC's invoice. When the advance payment is depleted, DTSC will continue to request payment through the invoice process.

16.4 All payments made by Proponent pursuant to this Agreement shall be by check payable to the "Department of Toxic Substances Control" and bearing on its face

the project code for the Site (Site # 401955-11) and the docket number [HSA-FY20/21-154] of this Agreement. Upon request by Proponent, DTSC may accept payments made by credit cards or electronic funds transfer. Payments by check shall be sent to:

Accounting Office Department of Toxic Substances Control P.O. Box 806 Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Project Manager.

16.5 DTSC shall retain all cost records associated with the work performed under this Agreement as may be required by state law. DTSC will make all documents that support DTSC's cost determination available for inspection upon request in accordance with the Public Records Act, Government Code section 6250 et seq.

17. <u>Amendments</u>. This Agreement may be amended in writing by mutual agreement of DTSC and Proponent. Such amendment shall be effective the third business day following the day the last party signing the amendment sends its notification of signing to the other party. The parties may agree to a different effective date.

18. <u>Termination for Convenience</u>.

18.1 Except as otherwise provided in this paragraph, each party to this Agreement reserves the right to unilaterally terminate this Agreement for any reason. Termination may be accomplished by giving a 30-day advance written notice of the election to terminate this Agreement to the other party. In the event that this Agreement is terminated under Paragraph 18.1, Proponent shall be responsible for DTSC costs through the effective date of termination.

18.2 If operation and maintenance activities are required for the final remedy, Proponent may not terminate the Agreement under Paragraph 18.1 upon DTSC's approval of an Operation and Maintenance Plan as proposed by Proponent, unless an Operation and Maintenance Agreement is entered into between DTSC and Proponent or between DTSC and a party responsible for the required operation and maintenance activities.

19. <u>Calendar of Tasks and Schedules</u>. The attached Exhibit E (Calendar of Tasks and Schedules) is merely for the convenience of listing in one location the submittals required by this Agreement. The Calendar of Tasks and Schedules lists activities specific to this project based on the available information. DTSC and Proponent shall make a reasonable effort to complete the activity within the schedule

outlined in Exhibit E. A schedule for each related activity shall be established as part of this Agreement.

If Proponent is unable to meet the activity's schedule, Proponent will notify DTSC's Project Manager 10 days prior to the scheduled action or submittal date. If DTSC is unable to meet the activity's schedule, DTSC will notify Proponent 10 days prior to the scheduled action or submittal date.

20. <u>Incorporation of Exhibits, Plans and Reports</u>. All exhibits are incorporated into this Agreement by reference. All plans, schedules and reports that require DTSC's approval and are submitted by Proponent pursuant to this Agreement are incorporated in this Agreement upon DTSC's approval.

21. <u>Reservation of Rights</u>. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment, including the right to recover its costs incurred therefor. Proponent reserves all of its statutory and regulatory rights, defenses and remedies available to the Proponent under applicable laws.

22. <u>Non-Admission of Liability</u>. By entering into this Agreement, Proponent does not admit to any finding of fact or conclusion of law set forth in this Agreement or any fault or liability under applicable laws.

23. <u>Proponent Liabilities</u>. Nothing in this Agreement shall constitute or be considered a covenant not to sue, release or satisfaction from liability by DTSC for any condition or claim arising as a result of Proponent's past, current, or future operations or ownership of the Site.

24. <u>Government Liabilities</u>. The State of California or DTSC shall not be liable for any injuries or damages to persons or the Site resulting from acts or omissions by Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California or DTSC be held as a party to any contract entered into by Proponent or its agents in carrying out the activities pursuant to this Agreement.

25. <u>Third Party Actions</u>. In the event that Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, Proponent shall notify DTSC in writing within 10 days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

26. <u>California Law</u>. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

27. <u>Severability</u>. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining provisions of the Agreement.

28. <u>Parties Bound</u>. This Agreement applies to and is binding, jointly and severally, upon Proponent and its agents, receivers, trustees, successors and assignees, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement. Proponent shall ensure that its contractors, subcontractors and agents receive a copy of this Agreement and comply with this Agreement.

29. <u>Effective Date</u>. The effective date of this Agreement is the date of signature by DTSC's authorized representative after this Agreement is first signed by Proponent's authorized representative. Except as otherwise specified, "days" means calendar days.

30. <u>Representative Authority</u>. Each undersigned representative of the party to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the party to this Agreement.

31. <u>Counterparts</u>. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document. This Agreement and documents related to it may be executed and transmitted by facsimile or pdf copy, which copies shall be deemed to be, and utilized in all respects as, an original. However, Proponent must provide the wet-inked signed original of each counterpart to DTSC by mail within 14 calendar days of signing.

Date: _____

A. Edward Morelan, PG, CEG
Branch Chief
Site Mitigation and Restoration Program
Department of Toxic Substances Control

Date: _____

Steven A. Mendoza Executive Director Housing Authority of the City of Santa Ana

Date: _____

Thomas A. Miller Chief Real Estate Officer County Executive Office, Real Estate County of Orange

Approved as to form:

LIST OF EXHIBITS TO THE AGREEMENT

- EXHIBIT A: SITE LOCATION MAP
- EXHIBIT B: SITE DIAGRAM
- EXHIBIT C: SCOPE OF WORK
- EXHIBIT D: COST ESTIMATE FOR DTSC OVERSIGHT SERVICES
- EXHIBIT E: CALENDAR OF TASKS AND SCHEDULE

EXHIBIT A SITE LOCATION MAP



EXHIBIT B SITE DIAGRAM



EXHIBIT C SCOPE OF WORK

The following tasks will be completed as part of this Agreement:

TASK 1 Remedy Selection Document

- 1.1 <u>Removal Action Work Plan.</u> If DTSC determines a removal action is appropriate, Proponent will prepare a Removal Action Work Plan (RAW) in accordance with Health and Safety Code sections 25323.1 and 25356.1. The Removal Action Work Plan will include:
 - A description of the onsite contamination;
 - The goals to be achieved by the removal action;
 - An analysis of the alternative options considered and rejected and the basis for that rejection. This should include a discussion for each alternative which covers its effectiveness, implementability and cost;
 - A description of the recommended alternative (including any required land use covenants, financial assurance, and operation and maintenance plan and agreement requirements).
 - Administrative record list;
 - Sampling and Analysis Plan with corresponding Quality Assurance Plan to confirm the effectiveness of the RAW, if applicable; and
 - Health and Safety Plan describing methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action. A detailed community air monitoring plan shall be included if requested by DTSC.
- 1.2 <u>Remedial Action Plan.</u> If the proposed removal action does not meet the requirements of Health and Safety Code section 25356.1(h), Proponent will prepare a Remedial Action Plan (RAP) in accordance with Health and Safety Code section 25356.1(c) for DTSC review and approval.

The RAP summarizes the results of the site characterization, risk evaluation and feasibility study and sets forth in detail appropriate steps to remedy soil, surface water and groundwater contamination at the Site and adjacent areas. In addition, the RAP shall contain a schedule for implementation of all proposed removal and remedial actions.

TASK 2 California Environmental Quality Act (CEQA)

In order to meet <u>CEQA</u> obligations, DTSC will prepare the necessary CEQA documents. If required, the Proponent shall submit the information necessary for DTSC to prepare these documents.

TASK 3 Public Participation

DTSC requires that specific <u>public engagement</u> activities be conducted for projects undergoing a PEA, RAW, or RAP. However, based on the level of community interest, media interest, sensitive land uses, demographics and other factors, as determined by DTSC, public engagement activities may be requested for other projects types as well. Proponent will be responsible for all costs associated with the translation and/or interpretation of public participation content required under DTSC's policies, procedures, guidance documents, and state and federal law.

The following tasks apply only if a RAW or RAP is being required by DTSC:

- 3.1 Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest, if needed. Proponent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7 (and 25356.1(e), if conducting a RAP) and with DTSC's review and approval.
- 3.2 A scoping meeting regarding the RAW or RAP will include a discussion on the appropriate activities that will be conducted to address public participation.
- 3.3 DTSC may conduct an assessment of community interest in the Site, which may include, but will not be limited to, the development of a survey, outreach to local elected and public officials and community members, distribution of the survey through mail and/or social media, analysis of survey results, and community interviews. Results of the survey will be shared with the Proponent and should be included in the community profile.
- 3.4 Proponent, working collaboratively with DTSC, shall prepare a community profile to examine the level of the community's knowledge of the Site; the types of community concerns; the proximity of the Site to homes and/or schools, day care facilities, churches, etc.; the current and proposed use of the Site; media interest; surrounding land uses; demographic profile and languages; CalEnviroScreen results; information repositories; recommended public engagement activities; and involvement of community groups and elected officials. The community profile

may also include a quarter-mile radius mailing list for the Site, a list of applicable elected officials, and any known community members who may have expressed an interest in the Site.

- 3.5 Proponent, working collaboratively with DTSC, shall develop and submit fact sheets or community updates to DTSC for review and approval when specifically requested by DTSC. Proponent may be responsible for printing and distribution of fact sheets or community updates upon DTSC approval using the approved community mailing list.
- 3.6 Proponent, as directed by DTSC, shall publish, in a major local newspaper(s), a public notice announcing the availability of the RAW/RAP for public review and comment. The public comment period shall last a minimum of thirty (30) days.
- 3.7 DTSC may require that Proponent hold a public meeting to inform the public of the proposed activities and to receive public comments on the RAW/RAP.
- 3.8 After the close of the public comment period, DTSC will prepare a response to the public comments received. If required, Proponent shall submit the information necessary for DTSC to prepare this document.
- 3.9 If appropriate, Proponent will revise the RAW/RAP on the basis of comments received from the public and submit the revised RAW/RAP to DTSC for review and approval. If significant or fundamental changes are required, additional public participation activities, including an additional review and comment period, may be required. Proponent will also notify the public of any significant changes from the action proposed in the RAW/RAP.

TASK 4 Tribal Outreach and Consultation

DTSC's assigned Project Manager will coordinate with DTSC's Office of Environmental Equity to ensure compliance with DTSC's Tribal Consultation Policy. This process may include consultation with California tribes to determine whether or not they have an interest in Site activities.

TASK 5 Health and Safety Plan

The Proponent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192. The Health and Safety Plan shall be submitted before field activities begin.

TASK 6 Quality Assurance/Quality Control (QA/QC) Plan

All sampling and analysis conducted by Proponent under this Agreement shall be performed in accordance with a QA/QC Plan submitted by Proponent and approved by DTSC. The QA/QC Plan will describe:

- a) The procedures for the collection, identification, preservation and transport of samples;
- b) The calibration and maintenance of instruments;
- c) The processing, verification, storage and reporting of data, including chain of custody procedures and identification of qualified person(s) conducting the sampling and of a laboratory certified or approved by DTSC pursuant to Health and Safety Code section 25198; and
- d) How the data obtained pursuant to this Agreement will be managed and preserved in accordance with the Preservation of Documentation section of this Agreement.

EXHIBIT D COST ESTIMATE

	COST ESTIMATE WORKSHEET									
Type of Agreement: Standard Voluntary Agreement										
Date: 5/11/2021										
Site Name: The Crossroads at Washington										
Site Code: 401955-11										
DTSC Project Team	VCP Coord.	Project Management	Supervision	Toxicology	Geology	Public Participation	HQ CEQA	OEJTA	Project A	ssistants
Classification (personnel)	Sr. ES	HSE	Sr. ES (Sup)	Senior Toxicologist	Senior Engineering Geologist	PPS	AEP	Sr. ES	Associate Program Analyst	Office Technician (Typing)
TASK: (enter # hrs)										
Agreement										
Prep./Negotiation	6								1	
Project Management		8	4							2
CEQA		12					8			
Cleanup Plan (RAW,										
CLRRA Response Plan,										
RAP, etc.)		18		8	8	12	16	4		
Total No. Hours/Class	6	38	4	8	8	12	24	4	1	2
Hourly Rate/Class	\$217	\$265			\$312	\$165	\$182	\$217	\$165	
Cost/Class	\$1,302	\$10,070	\$1,176	\$2,752	\$2,496	\$1,980	\$4,368	\$868	\$165	\$202
Subtotal	\$25,379									
Contingency (10%)	\$2,538									
Grand Total Cost	\$27,917									
Advance Payment	\$13,958									

EXHIBIT E
CALENDAR OF TASKS AND SCHEDULE

Activity	Schedule
Scoping Meeting	During Agreement negotiation, or shortly after Agreement
	execution based on DTSC evaluation of project needs
Advance Payment	Within 10 days of Agreement execution
Submit existing data	Within 10 days of Agreement execution, or as requested
	by DTSC
Submit draft cleanup plan	As directed by DTSC
Submit Community Profile	Within 30 days of DTSC's request
Submit CEQA documentation	Concurrent with the cleanup plan
Public Review/Comment Period,	Upon DTSC's approval of cleanup plan for public review
mailing of fact sheet to site mailing	and comment.
list and placement of public notice.	
DTSC decision on cleanup plan	DTSC to approve cleanup plan, if appropriate, after
	addressing public comments, within ~150 days of receipt
	of draft.
Invoices	DTSC issues quarterly
Cost estimate and Scope of Work	DTSC updates the scope and cost estimate annually, or
Updates and Amendments	as needed, based on work needed to complete the
	Agreement. Amendments are issued on an as-need basis.