

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**COUNTY OF SANTA BARBARA**

**AND**

**SANTA BARBARA COMMUNITY HOUSING CORPORATION**

**FOR**

**COUNTY SECURITY TRUST ACCOUNT FUND NUMBER: 1163 FOR THE REPAYMENT  
OF CASA DEL MURAL SPECIAL USER HOUSING REHABILITATION LOAN  
AGREEMENT NUMBER: 88-HRL-S-279**

**WHEREAS**, Santa Barbara Community Housing Corporation (SBCHC), is a non-profit organization dedicated to providing safe and affordable housing, including special needs housing in conjunction with County and its Department of Behavioral Wellness (BWell) at Casa Del Mural, located at 4570 Calle Real in the unincorporated area of Santa Barbara County;

**WHEREAS**, on December 5, 1989, COUNTY and SBCHC entered into a Lease Agreement as thereafter amended (hereinafter “Lease”) for SBCHC’s use of the building known as Casa Del Mural, located at 4570 Calle Real, in the unincorporated area of Santa Barbara County (hereinafter “Premises”) the term of which expires November 30, 2032, for SBCHC to develop and operate a residential project for mentally ill persons in order to meet requirements of the State of California for demonstrated site control pursuant to the regulations of the Permanent Housing for Handicapped program (“PHH”) and the Special User Housing Rehabilitation Program (“SUHRP”);

**WHEREAS**, on January 1, 1992, in furtherance of SBCHC’s rights and obligations under the Lease and First Amendment, SBCHC obtained a thirty-year SUHRP loan 88-HRL-S-279 from the State of California, Department of Housing and Community Development (“HCD”) in the amount of \$200,000 at a rate of three percent (3%) fixed simple interest per year, due and payable in full by lump-sum payment on January 23, 2022 (hereinafter “SUHRP Loan”);

**WHEREAS**, COUNTY Auditor-Controller’s Office thereafter established an account in the amount of Fifty Thousand (\$50,000), County Fund No. 1163 (“Fund 1163”), to be used to accumulate funds for repayment of the SUHRP Loan. Due to an underperformance of the estimated interest rate of Fund 1163, the fund has not and will not accrue enough interest to cover the principal and interest of the SUHRP Loan when due;

**WHEREAS**, on November 3, 2009, the parties executed the Second Amendment to Lease Agreement (hereinafter “Second Amendment”), which clarified certain loan obligations of SBCHC and modified SBCHC’s property management duties, including, but not limited to collaborating with COUNTY on resident selection, collecting security deposits and rents, preparing reports, and forwarding to COUNTY funds in excess of the cumulative total of all security deposits for tenants currently residing at the Premises, less SBCHC’s fee of \$500 per month;

**WHEREAS**, beginning in the Fourth Quarter of Fiscal Year 2017-2018 to present, SBCHC has been withholding rents otherwise owed to County under the Lease Agreement in order to cover the shortfall of accumulated funds in Fund 1163;

**WHEREAS**, concurrently herewith, the parties executed a Third Amendment to the Lease Agreement (hereinafter “Third Amendment”), which amends and further defines the responsibilities of SBCHC and the County regarding property management services, use of fees, and remittance of collected rents;

**WHEREAS**, COUNTY and the SBCHC desire to establish this Memorandum of Understanding (MOU) to define the County and SBCHC’s roles and responsibilities with respect to repayment of the SURHP Loan between the California Department of Housing and Community Development and SBCHC for improvements made to the Premises; including the use of County funds contained in Fund 1163, and SBCHC’s obligation to remit withheld and future rents to the County in accordance with this MOU for the eventual repayment of the SUHRP Loan in full on or before January 23, 2022; and

**NOW THEREFORE**, this Memorandum of Understanding (MOU or Agreement) is entered into effective the date of execution by the County, between the **County of Santa Barbara** and the **Santa Barbara Community Housing Corporation** in consideration of the mutual covenants and conditions contained herein as follows:

**I. SBCHC RESPONSIBILITIES.**

- A. SBCHC shall collect rents from tenants at Casa Del Mural and shall remit such rents minus SBCHC’ fee of \$700 per month, to the COUNTY in accordance with the Lease as amended;
- B. SBCHC shall remit to COUNTY all rents owed to County under the Lease as amended and previously withheld, within 15 days of the execution of the MOU, to be deposited by the County in Fund No. 1163, for repayment of the SUHRP Loan;
- C. SBCHC understands and agrees the obligations of the SUHRP Loan falls onto it as the BORROWER. SBCHC shall use the funds provided to it by County from Fund No. 1163 exclusively to repay the California Department of Housing and Community Development for the SUHRP Loan due January 23, 2022;
- D. SBCHC confirms that excess funds in Fund 1163 above what is needed for repayment of SUHRP Loan shall remain as COUNTY’s property to be used for the provision of mental health services; and
- E. SBCHC shall provide documentation of the repayment of the SUHRP Loan to the County within 15 days of repayment.

**II. COUNTY RESPONSIBILITIES.**

- A. County will authorize and remit funds deposited into Fund No. 1163 to SBCHC for repayment of the SUHRP Loan. County will authorize and remit payment only to the extent funding is available in Fund No. 1163 and only up to the full obligation amount of \$380,000 necessary for SBCHC to make payment to the State prior to January 23, 2022;

- B. In the event the balance in Fund 1163 is inadequate to repay the full SUHRP Loan amount when it becomes due, through no fault of SBCHC and subject to the availability of appropriated COUNTY funds, COUNTY may temporarily advance funds to cover the remaining balance (County Advanced Funds). Such advance shall be at the discretion of the County upon terms to be determined in the best interest of the County for the continued provision of a valuable service and greatly needed housing for formerly homeless individuals with severe mental illnesses in accordance with California Government Code §26227. Any such advance shall be the subject of a separate agreement between County and SBCHC; and
- C. In the event there are funds in excess of the amount needed for repayment of the SUHRP Loan in Fund 1163, such funds shall remain the property of COUNTY to be used for the provision of mental health services.

**III. SUHRP LOAN 88-HRL-S-279 REPAYMENT AMOUNT.**

The parties agree that the SUHRP Loan is due and payable on or before January 23, 2022 in the amount of \$380,000, unless otherwise forgiven by the State.

**IV. TERM.**

This agreement shall be effective on the date executed by the County and shall continue thereafter until the occurrence of the latter of the following:

- A. SBCHC’s demonstrated repayment of the SURHP loan;
- B. The State’s forgiveness of the SUHRP Loan, if applicable;
- C. SBCHC’s repayment of County Advanced Funds, if any
- D. Mutual agreement of the Parties; or
- E. Upon written notice of any party, if the other party shall fail to perform its obligations under this Agreement and such failure shall continue for a period of at least sixty (60) days after written notice thereof from the party claiming such default. However, termination of this MOU does not excuse SBCHC’s obligation to repay the SURHP loan.

**V. MISCELLANEOUS.**

- A. **NOTICES.** Whenever it shall become necessary for either party to serve notice on the other respecting the Agreement, such notice shall be in writing, addressed as follows:

To County:           Attn: Director  
                           County of Santa Barbara Department of Behavioral Wellness  
                           300 Camino Del Remedio Road, Bldg 3  
                           Santa Barbara, CA 93110

To SBCHC:           Attn: Executive Director  
                           Santa Barbara Community Housing Corporation  
                           11 East Haley Street  
                           Santa Barbara, CA 93101

**B. THIRD PARTY BENEFICIARY CLAUSE.**

Nothing in this Agreement, express or implied, is intended to confer upon any Person not a party to this Agreement any rights, remedies, obligations or liabilities of any nature whatsoever; provided, however, that the Indemnitees shall, as intended third-party beneficiaries thereof, be entitled to the enforcement of Section V.P.

**C. RECORDS, AUDIT, AND REVIEW.**

CONTRACTOR must keep such business records pursuant to this Contract as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession, and will maintain those records for at least four (4) years following the termination of this Contract. All accounting records must be kept in accordance with generally accepted accounting practices. COUNTY will have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Contract exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Contract (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY. If federal, state or COUNTY audit exceptions are made relating to this CONTRACT, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

**D. NON-ASSIGNMENT.**

Contractor shall not assign, transfer or subcontract this Memorandum of Understanding or any of its rights or obligations under this Agreement without the prior written consent of County and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

**E. SEVERABILITY.**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**F. TIME IS OF THE ESSENCE.**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

**G. NO WAIVER OF DEFAULT.**

No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

**H. ENTIRE AGREEMENT AND AMENDMENT.**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel. All requests for changes shall be in writing. Changes shall be made by an amendment pursuant to this Section. Any amendments or modifications that do not materially change the terms of this Agreement (such as changes to the Designated Representative or Contractor's address for purposes of Notice) may be approved by the Director of the Department of Behavioral Wellness. The Board of Supervisors of the County of Santa Barbara must approve all other amendments and modifications.

**I. SUCCESSORS AND ASSIGNS.**

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**J. COMPLIANCE WITH LAW.**

Contractor shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County is a party thereto or not, that Contractor has violated any such ordinance or statute, shall be conclusive of that fact as between Contractor and County.

**K. CALIFORNIA LAW AND JURISDICTION.**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

**L. EXECUTION OF COUNTERPARTS.**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**M. AUTHORITY.**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(s), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

**N. SURVIVAL.**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

**O. PRECEDENCE.**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

**P. LEGALLY BINDING.**

County and SBCHC agree that the terms of this MOU are valid, legally binding on, and enforceable against, the other Party.

**Q. INDEMNIFICATION.**

SBCHC agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. SBCHC's indemnification obligation applies to COUNTY's active as well as passive negligence but does not apply to COUNTY's sole negligence or willful misconduct.

## R. INSURANCE.

SBCHC shall procure and maintain for the duration of the MOU insurance against claims for injuries to persons or damages to property which may arise from or in connection with the SBCHC's operation and use of the leased premises. The cost of such insurance shall be borne by the SBCHC. Then minimum scope of insurance coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate. **The *County of Santa Barbara* shall be named as an additional insured on the policy.**
2. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (This applies to lessees with employees).
3. Property Insurance: against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

For any claims related to this MOU, the SBCHC's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the SBCHC's insurance and shall not contribute with it.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE**

Memorandum of Understanding between the **County of Santa Barbara** and **Santa Barbara Community Housing Corporation**.

**IN WITNESS WHEREOF**, the parties hereto have caused this Memorandum of Understanding effective on the date executed by County.

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
BOB NELSON, CHAIR  
BOARD OF SUPERVISORS

Date: \_\_\_\_\_

**ATTEST:**

MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

**CONTRACTOR:**

**SANTA BARBARA COMMUNITY HOUSING CORPORATION**

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Representative

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

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

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

RACHEL VAN MULLEM  
COUNTY COUNSEL

**APPROVED AS TO ACCOUNTING FORM:**

BETSY M. SCHAFFER, CPA  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Deputy County Counsel

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

**RECOMMENDED FOR APPROVAL:**

PAMELA FISHER, PSY.D.,  
ACTING DIRECTOR  
DEPARTMENT OF BEHAVIORAL  
WELLNESS

**APPROVED AS TO INSURANCE FORM:**

RAY AROMATORIO, RISK MANAGER  
DEPARTMENT OF RISK MANAGEMENT

By: \_\_\_\_\_  
Acting Director

By: \_\_\_\_\_  
Risk Management