

**BANYARD MANAGEMENT  
Board of Directors Meeting**

2039 Forest Avenue  
Chico, CA 95928

**SPECIAL MEETING AGENDA**

September 16, 2021  
2:00 p.m.

Members of the Board of Commissioners and HACB staff will be participating either in person or remotely. The Board of Commissioners welcomes and encourages public participation in the Board meetings either in person or remotely from a safe location.

Members of the public may be heard on any items on the Commissioners' agenda. A person addressing the Commissioners will be limited to 5 minutes unless the Chairperson grants a longer period of time. Comments by members of the public on any item on the agenda will only be allowed during consideration of the item by the Commissioners. Members of the public desiring to be heard on matters under jurisdiction of the Directors, but not on the agenda, may address the Commissioners during agenda item 6.

-----

**Please join my meeting from your computer, tablet or smartphone.**

<https://global.gotomeeting.com/join/785160421>

**You can also dial in using your phone.**

United States (Toll Free): [1 877 309 2073](tel:18773092073)

United States: +1 (571) 317-3129

**Access Code:** 785-160-421

If you have any trouble accessing the meeting agenda, or attachments; or if you are disabled and need special assistance to participate in this meeting, please email [marysolp@butte-housing.com](mailto:marysolp@butte-housing.com) or call 530-895-4474 x.210.

Notification at least 24 hours prior to the meeting will enable the Housing Authority to make a reasonable attempt to assist you.

---

NEXT RESOLUTION NO. 21-4B

**ITEMS OF BUSINESS**

1. ROLL CALL
2. AGENDA AMENDMENTS
3. CONSENT CALENDAR

*Banyard Management  
Board of Directors  
Agenda –Special Meeting of September 16, 2021  
Page 1*

4. CORRESPONDENCE

5. REPORTS FROM PRESIDENT

5.1 Strategic Asset Plan – Agreement with CalAHA regarding Asset Repositioning Chico Commons Apartments.

Recommendation:

Resolution No. 21-4B

6. MEETING OPEN FOR PUBLIC DISCUSSION

7. MATTERS CONTINUED FOR DISCUSSION

8. SPECIAL REPORTS

9. REPORTS FROM DIRECTORS

10. MATTERS INITIATED BY DIRECTORS

11. EXECUTIVE SESSION

12. DIRECTORS' CALENDAR

**Next meeting – November 18, 2021.**

13. ADJOURNMENT

September 10, 2021

MEMO

To: HACB Board of Commissioners  
BCAHDC Board of Directors  
Banyard Management Board of Directors

From: Ed Mayer, Executive Director and President

Subject: Strategic Asset Plan – Asset Repositioning Status update



*1200 Park Ave Apartments*



*Walker Commons Apartments*



*Chico Commons Apartments*

Following up on last month's memo, action to authorize a contract with the California Affordable Housing Agency (CalAHA) is being considered this month by the Boards of both Butte County Affordable Housing Development Corporation (BCAHDC) and Banyard Management (Banyard).

The contract is to secure CalAHA services in repositioning of the three (3) tax-credit regulated affordable housing properties in which BCAHDC and Banyard are Managing General Partners (MGP's) in the three (3) owning partnerships. All located in Chico, the properties include 1200 Park Avenue Apartments and Walker Commons Apartments, in which BCAHDC is MGP, and Chico Commons Apartments, in which Banyard is MGP.

Repositioning work includes assessment of the properties from an "owner's perspective" regarding capital improvements. The work includes:

- Analysis of the ability to leverage the properties for proceeds in support of assessed capital improvement work.
- Conventional commercial financing, bond-financing, and sale-leaseback financing approaches will be evaluated.
- Determination of the financing approach most appropriate, striking a balance between mid-term need and flexibility, and long-term financing opportunity.
- Execution of the financing and build-out the improvements.

CalAHA, in partnership with Dawson Holdings, Sausalito and Precision General Commercial Contractors (a Dawson-related entity), will perform the services on a turnkey basis on behalf of the owning partnerships – 1200 Park Avenue LP, Walker Commons LP, and Chico Commons LP. Both CalAHA and Dawson/PGCC are well known: BCAHDC is in partnership with Dawson through the

Gridley Springs I Apartments property in Gridley, and Precision GCC completed all the apartment improvement work at Gridley Springs I and II, while occupied, with a scope-of-work similar to what's being considered.

The repositioning plan, including the proposed renovation work plan and financing approach, will need be approved by the partnership's Investor Limited Partner (HACB), the regulators, such as CTCAC, and the lenders, such as the City of Chico.

*BCAHDC and Banyard recommendation: adoption of contracting resolutions with CalAHA*

BANYARD MANAGEMENT

RESOLUTION NO. 21-4B

AUTHORIZATION TO ENTER INTO AGREEMENT WITH  
CALIFORNIA AFFORDABLE HOUSING AGENCY  
FOR PHYSICAL AND FINANCIAL REPOSITIONING OF  
CHICO COMMONS APARTMENTS, CHICO

WHEREAS, Banyard Management (Banyard) is Managing General Partner (MGP) of the partnership that own the Chico Commons Apartments property, located in Chico, and owned by Chico Commons LP, and

WHEREAS, as MGP, Banyard concerns itself with ongoing property conditions and operations, to ensure ongoing viability of the property in accordance with applicable regulatory and loan agreements, as well as ensuring Banyard's mission in providing affordable housing opportunity to the citizens of Butte County, and

WHEREAS, Banyard seeks to assess the property for physical needs to ensure long term physical viability of the property, and further seeks to implement the physical improvements determined to be made in the best interest of the property, its operation, and its residents, and finally, seeks to finance the improvements; and

WHEREAS, the California Affordable Housing Agency (CalAHA), a joint powers authority comprised of California housing authority members, has provided a proposal to Banyard that addresses the repositioning needs of the property, such proposal addressing property assessment, evaluation of improvement feasibility, financial packaging, and build-out, all in a turnkey manner; and

WHEREAS, the proposal made by CalAHA has been determined to be in the best interest of Banyard, the Chico Commons Apartments property, and the tenants served;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of Banyard Management to authorize the entering into of an agreement with the California Affordable Housing Agency (CalAHA) for purposes of the physical and financial repositioning of the Chico Commons Apartments, located in Chico, such resolution being made as Managing General Partner on behalf of the owning partnership, Chico Commons LP, such agreement with CalAHA attached to and made a part of this Resolution No. 21-4B.

Dated: September 16, 2021.

---

Edward S. Mayer President

ATTEST:

---

Marysol Perez, Secretary

## **MEMORANDUM OF UNDERSTANDING** **FOR CONSULTING SERVICES**

This Memorandum of Understanding for Consulting Services (“MOU”) between California Affordable Housing Agency (“CalAHA” and/or “Consultant”), 1200 Park Avenue Apartments Limited Partnership (“1200 Park”), Chico Commons Apartments Limited Partnership (“Chico Commons”) and Walker Commons Apartments Limited Partnership (“Walker Commons”) is made and entered as of September 1, 2021 as follows:

### **RECITALS**

A. Housing Authority of the County of Butte is a California public housing authority doing business in the following counties: Butte and Glen and is a member agency of the California Affordable Housing Agency; and

B. California Affordable Housing Agency is a joint exercise of powers agency pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code in accordance with Articles 1 through 5 of Chapter 1 of the Part 2 of Division 24 of the California Health and Safety Code of California consisting of seventeen member agencies doing business in the thirty (30) jurisdictions located throughout California including, but not limited to Butte County and Glen County; and

C. 1200 Park Avenue Apartments Limited Partnership is a single purpose California Limited Partnership that owns and operates the 1200 Park Avenue Apartments located at \_\_\_\_\_; and

D. Chico Commons Apartments Limited Partnership is a single purpose California Limited Partnership that owns and operates the Chico Commons Apartments located at \_\_\_\_\_; and

E. Walker Commons Apartments Limited Partnership is a single purpose California Limited Partnership that owns and operates the Walker Commons Apartments located at \_\_\_\_\_; and

F. Each of the three above listed general partnership is in need to consulting services to assist with the repositioning and refinancing of the three apartment projects that the limited partnerships own and operate and would like to work with CalAHA to complete and repositioning and refinancing.

**NOW THEREFORE**, in consideration of the mutual recitals of understanding set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

## **Section 1.**            **INCORPORATION OF RECITALS**

The parties find and declare that the above stated recitals are true and are hereby incorporated into this MOU.

## **Section 2.**            **SCOPE OF SERVICES**

The services to be provided by Consultant for the three housing projects: 1200 Park Avenue Apartments, Walk Commons Apartments and Chico Commons Apartments (hereinafter referred to as “Projects”) will be to assist the above referenced Limited Partnerships as follows:

- a. Undertake to perform analysis and completion of a capital needs improvement report from an “owner’s perspective”;
- b. Analyze and provide recommendations regarding the ability to leverage the Projects to provide funding sources to support the identified capital improvement work;
- c. Analyze, compare and provide recommendations regarding which funding stream source would be most appropriate, striking a balance between mid-term need and flexibility and long-term financing opportunity;
- d. Work with Limited Partnerships to apply for and obtain sufficient funding to complete the identified and agreed to capital improvements and Projects’ related funding to ensure the continued viability of the Projects;
- e. Assist Limited Partnerships with the rehabilitation work and relocation of tenants, if necessary, for the Projects;
- f. Oversee and monitor all aspects of the rehabilitation work to assure compliance with all applicable local, state and federal requirements for the work to be performed;
- g. Oversee and monitor the rehabilitation work performed by the general contractors, Precision General Commercial Contractors, Inc. (“PGCC”) and its subcontractors to assure satisfactory performance of rehabilitation and approval of Projects through completion of all rehabilitation work;
- h. Assist Limited Partnerships in any conversions of construction loans to permanent financing loans;
- i. Assist Limited Partnerships in any needed applications, requests or actions to apply for and/or change ownership of Projects as deemed appropriate by the Limited Partnerships to ensure the continued viability and proper management of the Projects along with any legal work or actions for any dissolution or cessation of Limited Partnerships business activities by any/or all of the Limited Partnerships.

It is contemplated and understood by all parties to this Agreement that the parties agreeable to have Dawson Holdings, Inc. and Precision General Commercial Contractors, Inc.

work on the Projects as subcontractors and areas of expertise in the Scope of Work items identified above which would be in the best interest of the Limited Partnerships and the Projects.

**Section 3.**                    **PHASES OF WORK TO BE PERFORMED**

The work and services to be provided will be divided into four phases:

- |           |  |
|-----------|--|
| Phase I   | Feasibility                                    |
| Phase II  | Funding of Project                             |
| Phase III | Rehabilitation Work                            |
| Phase IV  | Ownership transfer and Winddown of Partnership |

**Section 4.**                    **TERM**

The Term of this MOU shall be from September 1, 2021 to December 31, 2023 (“Term”) inclusive, subject to the provisions of Section 8 of this MOU.

**Section 5.**                    **COORDINATION**

Consultant shall cooperate with Limited Partnerships’ staff in the performance of all work under this Agreement.

**Section 6.**                    **PERFORMANCE STANDARD**

Consultant shall perform all work under this Agreement in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. Agency has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant agrees to provide all services under this Agreement in accord with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant’s work by Agency shall not operate as a waiver or release. If Agency determines that any of Consultant’s work is not in accord with such level of competency and standard of care, Agency, in its sole discretion, shall have the right to do any or all of the following (a) require Consultant to meet with Agency to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Section 7; or (d) pursue any and all other remedies at law or in equity.

**Section 7.**                    **ASSIGNED PERSONNEL**

Consultant shall assign only competent personnel to perform the work under this Agreement. In the event that at any time Agency, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform the work under this Agreement,



Consultant shall remove such person or persons immediately upon receiving written notice from Agency.

Any and all persons identified in this Agreement or any Exhibit hereto as the project manager, project team, or other professional performing the work under this Agreement are deemed by Agency to be key personnel whose services were a material inducement to Agency to enter into this Agreement, and without whose services Agency would not have entered into this Agreement, Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Agency.

In the event that any of Consultant's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant's control, Consultant shall be responsible for timely provision of adequately qualified replacements.

#### **Section 8.**                    **COMPENSATION**

The compensation to be paid to Consultant, including professional services, supplies, and travel provided by Consultant, shall be paid according to the CalAHA Fee Schedule for various services included in this MOU is set out in Exhibit A, entitled "Fee Schedule for Services", which is attached hereto and incorporated herein.

#### **Section 9.**                    **METHOD OF PAYMENT**

1. Not more frequently than monthly, Consultant shall submit invoices to Agency, no later than the tenth (10<sup>th</sup>) of the month for the preceding month. Consultant shall submit to Agency a written invoice. All invoices shall include:

- A. A monthly total and itemization of all costs by line item;
- B. A simplified worksheet that explains how charges on invoices were calculated and list employees by name, position, location, and amount charged.

#### **Section 10.**                    **INDEPENDENT CONTRACTOR**

Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the services required of the Consultant by the terms of this MOU. Consultant shall be liable for its acts and omissions, and those of its subcontractors and agents. Nothing contained herein shall be constructed as creating an employment, agency or partnership relationship and/or agreement between Agency and the Consultant.

Terms in this MOU referring to direction from Agency shall be construed as providing for directions as to policy and the result of Consultant's work only and not as to the means or methods by which such a result is obtained. Except as expressly provided in this MOU, nothing in this MOU shall operate to confer rights or benefits on persons or entities not a party to this MOU.

**Section 11.****INDEMNIFICATION**

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including Agency, and to defend and indemnify, hold harmless, and release Agency, its elected representatives, officers, agents, and employees, from and against any actions, claims, damages, demands, losses, liabilities, disabilities or expenses, defense costs (including reasonable attorney fees), of any kind or nature, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or related to Consultant's or its agents', employees', Consultants', sub-Consultants', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against Agency based upon a claim relating to Consultant's performance or obligations under this Agreement. Consultant's obligations under this section apply whether or not there is concurrent negligence on Agency's part, but to the extent required by law, excluding liability due to Agency's conduct. Agency shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This Indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents. The obligation of this indemnity shall be for the full amount of all damage to Agency, including defense costs, and shall not be limited by any insurance limits.

**Section 12.****INSURANCE REQUIREMENTS**

CalAHA agrees to have and maintain a general liability policy of insurance with a limit of a minimum limit of liability of one million dollars (\$1,000,000), a copy of which shall be provided to Agency with twenty (20) days of the date this MOU is signed by the parties to this MOU. The Agency, its officers, officials, employees, and agents are to be named as additional insureds on the general liability policy with respect to liability arising out of the work performed by or on behalf of CalAHA.

**Section 13.****LICENSE AND PERMITS**

Consultant shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, and all other appropriate governmental agencies to provide agreed upon services. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by Agency. Consultant shall have in effect and shall maintain appropriate licensure during the term of this Agreement, if applicable.

**Section 14.****NONDISCRIMINATION**

Consultant certifies that any service provided pursuant to this MOU shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and Agency laws and regulations and any administrative directives established by the Agency, Board of Commissioners for the Agency, and Administrative Officers. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a

different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

**Section 15.**                    **TERMINATION**

- A.     Agency and/or Consultant shall have the right to terminate this MOU, without cause, by giving not less than thirty (30) days' written notice of termination.
- B.     If Consultant fails to perform any of its material obligations under this MOU, in addition to all other remedies provided by law, Agency may terminate this Agreement immediately upon written notice.
- C.     Agency's Executive Director, or designee, is empowered to terminate this MOU on behalf of Agency.
- D.     In the event of termination, Consultant shall deliver to Agency copies of all reports, documents, and other work performed by Consultant under this MOU, and upon receipt thereof, Agency shall pay Consultant for all services performed up to the date of termination.

**Section 16.**                    **GOVERNING LAW/ VENUE**

This Agreement shall be deemed to have been executed in Butte County, California. The formation, interpretation, and performance of this MOU shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation, and performance of this MOU shall be in Butte County, California.

**Section 17.**                    **RIGHT TO AUDIT, INSPECT AND COPY RECORDS**

Consultant agrees to permit Agency and any authorized State or Federal agency to audit, inspect and copy all records, notes and writings of any kind in connection with the services provided by Consultant under this Agreement, to the extent permitted by law, for the purpose of monitoring the quality and quantity of services, accessibility and appropriateness of services, and ensuring fiscal accountability. All such audits, inspections, and copying shall occur during normal business hours. Upon request, Consultant shall supply copies of any and all such records to Agency. Failure to provide the documents requested by Agency within the requested time frame indicated may result in Agency withholding payments due under this Agreement.

**Section 18.**                    **CONFIDENTIALITY**

Consultant agrees to protect the rights of Agency's tenants and shall comply with applicable laws and regulations, regarding the confidentiality of tenant information.

Consultant shall not use identifying information for any purpose other than carrying out the obligation under this Agreement. Consultant shall not disclose, except as otherwise specifically permitted by this Agreement, or authorized by the tenant, any such identifying information to anyone other than the State without prior written authorization from the State in accordance with State and Federal laws.

For the purpose of the above paragraphs, identifying information shall include, but not be limited to name, identifying number, social security, birth date, residence address, biometric data, symbol, or other particular identifying information assigned to the individual or tenant.

Consultant understands and agrees that, in the performance of the services under this MOU or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by the Agency and that such information may contain proprietary or confidential details, the disclosure of which third parties may be damaging to Agency. Consultant agrees that all such information disclosed by Agency to Consultant shall be held in confidence and used only in performance of this MOU. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data.

#### **Section 19.**                    **OWNERSHIP OF MATERIALS**

All reports, documents or other materials developed or discovered by Consultant or any other person engaged directly or indirectly by Consultant to perform the services required hereunder shall be and remain the property of Agency without restriction or limitation upon their use. Notwithstanding the foregoing, Agency and Consultant agree and acknowledge that Consultant's reports may incorporate Consultant's proprietary information and may use such proprietary information in connection with services for Consultant's clients.

#### **Section 20.**                    **ASSIGNMENT**

This is an agreement for services of Consultant. Agency has relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates, and employees as an inducement to enter into this Agreement. Consultant shall not assign or sub-contract this Agreement without the express written consent of the Agency. Further, Consultant shall not assign any monies due or to become due under the Agreement without the prior written consent of the Agency.

#### **Section 21.**                    **LIABILITY OF AGENCY**

Notwithstanding any other provision of this MOU, in no event shall Agency be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or services performed in connection with this MOU.

## **Section 22.**

## **QUALIFIED PERSONNEL**

Work performed under this MOU shall be performed by competent professionals including any individuals, agents or subcontractors retained by Consultant to assist in the consulting work required under this MOU.

Each party shall designate an officer, employee or other authorized representative to act on that party's behalf with respect to the work. This representative shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner. Each party has the right to change its representative at any time; provided, however, that a party wishing to change its designated representative shall endeavor to notify the other party in writing not less than ten (10) calendar days before making any such change. At the time this Agreement is executed, the parties' designated representatives shall be as follows:

Agency: Edward S. Mayer, Executive  
Housing Authority of the County  
Of Butte 2039 Forest Avenue, Suite 10  
Chico, CA 95928  
(530) 895-4474  
Email: [edm@butte-housing.com](mailto:edm@butte-housing.com)

Consultant: Tom Lewis General Counsel  
806 West 19<sup>th</sup> Street  
Merced, CA 95340  
(209) 354-3500  
Email: [tom@lewislawca.com](mailto:tom@lewislawca.com)

The designated representatives from CalAHA are as follows:

1. Nick Benjamin, Executive Director
2. Thomas, E. Lewis, Legal Counsel
3. Kao Xiong, Administrative Assistant

The designated representatives of Dawson Holdings, Inc. are as follows:

1. Tom Dawson
2. Tim Fluetsch (acquisitions, real estate due diligence, finance)
3. John Hartwick (asset management)
4. Dino Adelfio (acquisitions, real estate due diligence)
5. Justin Solomon (acquisitions, real estate due diligence)

The designated representatives from Jones Hall is as follows:

1. Julie Wunderlich, Bond Counsel

The designated representatives of PHIG Holding, LLC. Is as follows:

1. Patrick Howard, Financial Consultant

**Section 23.**

**NOTICES**

All notices and other communications required or permitted to be given under this MOU shall be in writing and effective when served by regular mail with copy transmitted concurrently by e-mail. All notices of termination delivered pursuant to Section 15 shall, however, be sent by certified or registered mail, return receipt requested. Addresses for notices are as follows:

TO LIMITED PARTNERSHIPS:

1200 Park Avenue Apartments Limited Partnership

---

---

---

Chico Commons Apartments Limited Partnership

---

---

---

Walker Commons Apartments Limited Partnership

---

---

---

TO CONSULTANT:

Nick Benjamin, Executive Director  
California Affordable Housing Agency  
806 West 19<sup>th</sup> Street  
Merced, CA 95340  
(209) 354-3500  
Email: [nick@calaha.org](mailto:nick@calaha.org)

With copy to:

Thomas E. Lewis  
California Affordable Housing Agency  
806 West 19<sup>th</sup> Street  
Merced, CA 95340  
(209) 354-3500  
Email: [tom@lewislawca.com](mailto:tom@lewislawca.com)

## **Section 24.**      **CONDITIONS SUBSEQUENT/NON-APPROPRIATION OF FUNDING**

The services received by Agency and compensation received by Consultant pursuant to all phases of this MOU identified in Section 2 of this Agreement are based on funding resources and operational reserves set aside and committed for said purposes. In the event that such funding and/or reserves are terminated, in whole or in part, for any reason, this Agreement and all obligations of the parties arising from this Agreement may be terminated. Agency agrees to inform Consultant no later than ten (10) calendar days after receiving notification that funding will be terminated and provide the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by Consultant arising out of performance of this Agreement must be submitted to Agency within ten (10) calendar days of the final date for which funding is available.

## **Section 25.**      **ENTIRE AGREEMENT**

This MOU, and any written modifications to the MOU, shall represent the entire and integrated MOU between the parties hereto regarding the subject matter of this MOU and shall constitute the exclusive statement of the terms of the parties' MOU. This MOU, and any written modifications hereto, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this MOU or written modifications, and the parties represent and agree that they are entering into this MOU and any subsequent written modification in sole reliance upon the information set forth in this MOU or written modifications and the parties are not and will not rely on any other information.

## **Section 26.**      **WAIVER OF BREACH**

Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this MOU, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding. No waiver shall be binding unless in writing and signed by the party to be charged or held bound. This MOU may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Agency and the Consultant.

## **Section 27.**      **SEVERABILITY**

Any provisions or portions thereof of this MOU prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this MOU. If the provisions of such MOU may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this MOU are prohibited by, or made unlawful or unenforceable under any applicable law and are therefore stricken or waived, the remainder of this MOU shall be interpreted to achieve the goals or intent of the stricken or

waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

**Section 28.**                    **CONSTRUCTION AND EFFECT**

The language of each and all paragraphs, terms and/or provisions of this Agreement, shall, in all cases and for any and all purposes,, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Agreement.

**Section 29.**                    **EXECUTION OF MOU**

This Agreement may be executed in one or more counterparts all of which shall constitute, and shall be construed as, a single instrument upon delivery and exchange of all copies by the parties. A photocopy or facsimile transmission of the Settlement and Release Agreement, including signatures, shall be deemed to constitute evidence of the Settlement and Release Agreement having been executed.

**Section 30.**                    **ATTORNEYS FEES AND COSTS**

The parties agree that they should bear their own respective costs and fees, including attorneys' fees, in connection with the negotiation and execution of this Agreement. Should either party institute legal proceedings against the other, regarding this Agreement, the prevailing party to any such action shall be entitled to recover reasonable attorneys' fees, reasonable consultant to an expert witness fees, and costs.

**Section 31.**                    **DISPUTE RESOLUTION**

A. In the event of any dispute arising from or in any way relating to this Agreement, the Parties hereby agree to engage in good faith negotiations in an effort to find a solution that serves their respective and mutual interests. Party-principals agree to participate directly in such negotiations. Unless otherwise agreed in writing, the Parties shall have ten (10) business days from the date the questioning party gives written notice to the other of the particular issue to begin these negotiations and thirty (30) business days from the Notice date to complete the negotiations concerning the Dispute.

B. If the negotiations do not take place within the time provided in subparagraph "A", above or if the negotiations do not conclude with a mutually agreed upon solution within that time frame (or it's agreed upon extension), the Parties agree to mediate any Dispute. If the Parties cannot agree upon a mediator, each party shall, within 10 business days, following conclusion of their good faith negotiations or expiration of time within which to negotiate as stated in subparagraph "A", above to select one name from a list of mediators maintained by an bona fide dispute resolution provider or other private mediator; the two selected shall then choose a third person who will serve as mediator. The Parties agree to have the principals participate in the mediation process, including being present throughout the mediation session(s). The Parties shall have 45 days within which to commence the first mediation session following



the conclusion of their good faith negotiations or expiration of the time within to negotiate as stated, in subparagraph “A” above.

C. If a party commences a civil lawsuit to enforce this Settlement and Release Agreement, without first engaging in good faith negotiations and mediation pursuant to subparagraphs “A” and “B”, above, the that party shall not be entitled to recover attorneys’ fees and costs, even if they would otherwise be available to that party in such action.

IN WITNESS WHEREOF, the parties hereto have executed this MOU the day first mentioned above.

1200 Park Avenue Apartments Limited Partnership

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

Chico Commons Apartments Limited Partnership

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

Walker Commons Apartments Limited Partnership

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

**Consultant**

California Affordable Housing Agency

By: \_\_\_\_\_  
Nick Benjamin, Executive Director

## Exhibit A

### FEE SCHEDULE FOR SERVICES

#### CaIAHA FEES

#### FOR SERVICES RENDERED BY:

#### Cost Per Hour

Financial Consultant	<u>\$125</u> per hour
Project Manager	<u>\$150</u> per hour
Development Consultant	<u>\$75</u> per hour
Market analyst	<u>\$165</u> per hour
Development Consultant	<u>\$175</u> per hour
General Counsel	<u>\$240</u> per hour

# PHGHoldings LLC

*Structured Finance, Real Estate Investment Banking & Consulting*

## Overview

The purpose for this summary is to provide a review of the proposed structured financing options for the Housing Authority of the County of Butte (“HACB”) in regard to three projects commonly known as 1200 Park, Chico Commons, and Walker Commons. While HACB currently holds Limited Partnership interests in all of these projects, as well as being Master General Partner through its non-profit instrumentalities, it is considering alternatives in which to capitalize the projects for their operational future.

While having previously determined that using 4% Low Income Housing Tax Credits was not a viable option, HACB has been working with the California Affordable Housing Agency (“CalAHA”), a joint powers authority of which HACB is a member, to review remaining financing structure alternatives that will be reviewed herein. One financing consideration is through the issuance of 30-year tax-exempt essential function housing bonds which is a structure method previously used by HACB (referred to as “Bonds” herein). Another is a relatively new approach that uses a 40-year sale-leaseback type structure as established for CalAHA by Aspen Real Estate Financial (referred to as “Aspen” herein); tax-exempt bonds will also be utilized for the Aspen financing.

Lastly, conventional commercial bank financing would be yet another. This would occur as a tax-exempt loan private placement with the bank. This type of financing will require a level of downpayment or equity by HACB, unless those structures mentioned above, along with levels of guarantees from the bank that may adversely impact HACB’s ability to capitalize future projects. The remainder of this report will focus on Bonds and Aspen given their less restrictive covenants.

There is still required work to be completed to confirm an actual financing sizing, specifically for the cost to be allocated for rehabilitation. It is my understanding that HACB has contracted with a third party, Dawson Holdings, to complete this assessment that will be used to help finalize the planned funding of said desired improvements. For this review, we are relying on third party assumptions as provided by the Brawner group and by Aspen in order to provide a basis for comparing the essential function housing bonds with the Aspen sale-leaseback structure.

## Financing Comparison

In comparing the two financing structures, Bonds would place the ownership of the projects in the name of HACB. It is anticipated that CalAHA would issue the Bonds as it did in HACB’s previous bond issue transaction, and proceeds would go to HACB for retiring outstanding debts of the projects, cover the planned rehabilitation, cover reserves and costs of issuance. Bonds would be sold to a combination of individual and institutional investors based on a 30-year final maturity as offered by Brandis-Tallman/Oppenheimer & Co. as the investment banking team. Bonds are subject to a regulatory agreement and all typical legal documents and reports necessary to support a bond issuance. It is expected that an S&P rating would also be applied for in order to lower the interest rate and increase the investor interest in purchasing the Bonds when offered; this would again be similar to that previous bond financing completed by HACB.

# PHGHoldings LLC

*Structured Finance, Real Estate Investment Banking & Consulting*

Given I had explained how the Aspen structure works in my previous report for HACB, I am only providing a review of how this specific transaction would be structured with Aspen. The Aspen transaction would not include the use of bonds. Instead, this transaction would utilize a financing structure known as a Credit Tenant Lease ("CTL") and would be financed directly by institutional investors, either an insurance company and/or pension fund. In this structure HACB would be selling the projects to Aspen, CalAHA would then lease the projects back from Aspen as defined in a triple net lease for the transaction, and HACB would be providing its credit guaranty supported by its Standard & Poor's Issuer Credit Rating ("ICR") for the financing; no application to S&P would be required given HACB already owns these projects within its greater portfolio and no bond issue is being proposed. For its role as guarantor HACB would receive an up-front fee based on 1% of the Net Present Value of the financing in the amount of \$796,788 according to those projections in Aspen's preliminary financing documents; the balance of \$300,000 would be paid to CalAHA as the lessee. Under the terms of the CTL CalAHA would also be pledging its credit guaranty ahead of HACB's thereby along with the reserved to be established would further reduce the risk exposure to HACB of its guaranty. HACB's familiarity and experience with these projects provides further confidence in the proposed financing. In summary, it is anticipated that the Aspen transaction would be completed in a much shorter timeframe than the use of Bonds, and at a comparable cost, therefore allowing the rehabilitation to get started sooner should that be desired by HACB.

## Reviewing Numbers

Below is a summary of the project and shows a comparison between those estimates reviewed as were provided by Brawner and Aspen.

Property	Unit Type	# Units	Rent \$
1200 Park	1 BR	73	\$ 894
	2 BR	18	\$1,073
Chico Commons	1 BR	19	\$ 894
	2 BR	25	\$1,073
	3 BR	28	\$1,523
Walker Commons	1 BR	56	\$ 894
TOTAL		219 units	

Financing Costs	Brawner	Aspen
Prior Debt Payoff	\$13,973,275	\$13,973,275
Rehabilitation	\$ 7,560,620	\$19,749,021
Reserves	\$ 1,214,000	\$ 1,681,780
Issuance Costs	<u>\$ 1,252,105</u>	<u>\$ 3,444,852</u>
TOTAL	\$24,000,000	\$38,848,928

Operating Summary	Brawner	Aspen
Gross Income	\$2,670,177	\$2,724,613
Vacancies	<u>(\$ 131,441)</u>	<u>(\$ 136,231)</u>
Effective Gross Income	\$2,538,736	\$2,588,382
Operating Exp + Reserves	<u>(\$1,140,003)</u>	<u>(\$1,119,234)</u>
Net Operating Income	\$1,324,221	\$1,469,148
DSCR, min required	1.10x	1.01x

# PHGHoldings LLC

*Structured Finance, Real Estate Investment Banking & Consulting*

## Conclusion:

In terms of bonds versus Aspen structure, Aspen provides a simpler execution in terms of process (much faster to get to a closing), documents and funding, plus it enables you to pull out some funds up front that you don't have in the bond issue and most importantly gives you a much higher funding for rehabilitation. Aspen costs are higher with loan and guarantor fees, reserves, attorneys, and they estimate much higher costs for essential project studies and closing costs. With the Aspen structure HACB will lose its ownership controls and instead give CalAHA lessee rights to work with Aspen in managing the long term success of the projects and still allowing HACB to achieve its goals of affordability with rights to buy back in the future like it is accustomed to having in its Low Income Housing Tax Credits projects.

It is my conclusion that the Aspen structure has merit and would appear to be a more viable structure for HACB to achieve the maximum funding for needed rehabilitation and long-term operation success for these projects. In addition, having the additional benefit of CalAHA as the lessee in the middle of this transaction further protects HACB as to its credit guarantor position in the structured financing.

Further analysis should be completed upon the findings of the rehabilitation costs to be established by Dawson Holdings as noted above in order to provide final projections for required HACB approval.

Patrick Howard  
September 9, 2021