[Date]

VIA FACSIMILE #

and VIA

[Consultant Name and Address]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Re: Environmental Consultant Agreement among Fannie Mae, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Lender”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Consultant”)

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This letter shall constitute the entire agreement (“Agreement”) among Fannie Mae, the Lender and Consultant whereby Consultant will provide professional environmental consulting services for Fannie Mae and the Lender. The address and legal description of the property (“Property”) to be inspected is described on Exhibit A attached hereto and incorporated herein. It is acknowledged that the services to be performed by Consultant are, among other purposes, to assist Fannie Mae, the Lender and their respective real estate appraiser(s) in determining the “as is” value of the Property.

All services performed by Consultant pursuant to this Agreement shall be in accordance with the terms and conditions set forth below:

1. Phase I Guidelines. Consultant shall perform a Phase I Assessment (“Phase I”) for the Property in accordance with the guidelines and requirements attached as Attachment “1” hereto.

2. Services. Consultant shall use its best efforts in performing any services in accordance with this Agreement. Consultant shall first provide an electronic draft of the Phase I to Fannie Mae and the Lender for Fannie Mae’s and the Lender’s review prior to finalizing the Phase I report. The first draft of the Phase I shall be due to Fannie Mae and the Lender on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Due Date”). Thereafter, if requested by Fannie Mae and the Lender, Consultant shall furnish either a final electronic report or a total of three (3) final written reports to Fannie Mae and the Lender within a reasonable time following delivery of the first draft of the Phase I. Fannie Mae, the Lender and Consultant shall mutually agree, at the time of delivery of the first draft as to the date (the “Final Due Date”) by which the final electronic or written reports shall be delivered to Fannie Mae and the Lender.

3. Delays. If Consultant fails to deliver the draft report on or before the Due Date, or fails to deliver the final report by the Final Due Date, and Consultant fails to notify Fannie Mae and the Lender in a timely manner of delays (as outlined below), then Fannie Mae and the Lender may, in their sole discretion, assessa penalty in the aggregate amount of $\_\_\_\_\_\_\_\_ per calendar day (the “Daily Penalty”) for each day of delay, to be deducted from Consultant’s compensation, until Fannie Mae and the Lender have received the draft Phase I or final Phase I, as applicable. If Consultant believes there will be a delay in the timely delivery of a draft or final Phase I, Consultant shall advise Fannie Mae and the Lender in writing, with an explanation of the reason for the delay.

If Consultant advises Fannie Mae and the Lender of an expected delay in delivery of a draft Phase I, Fannie Mae and the Lender may, in their sole discretion, either confirm with the Consultant that such delay is acceptable, or provide notice to Consultant the such delay is not acceptable and assess the Daily Penalty for each day of delay, to be deducted from Consultant’s compensation, until the draft or final Phase I, as applicable, is delivered.

4. Compensation. Consultant shall receive a fee of $\_\_\_\_\_\_\_\_ as full and entire compensation for its consulting services relating to the furnishing of the draft and final Phase I under this Agreement. Notwithstanding any termination of this Agreement, in the event that Additional Services are required, Consultant may charge an additional fee not to exceed $\_\_\_\_\_\_\_\_ per hour for any Additional Services requested by Fannie Mae and the Lender. Such Additional Services may include, but are not limited to, being deposed, testifying in court, or meeting with Fannie Mae and the Lender. The Consultant’s compensation for such Additional Services shall not exceed $\_\_\_\_\_\_\_\_\_\_\_. All invoices for Consultant’s compensation shall be addressed jointly to Fannie Mae and the Lender and delivered to Fannie Mae for payment.

5. Covenants. Consultant covenants that in performing its services hereunder it shall: (i) comply with all federal, state, and local statutes, codes, rules, regulations, and guidelines including, but not limited to, those related to zoning, environmental, fire, safety, and health matters; (ii) comply with all generally accepted environmental and scientific standards, protocols, and guidelines and the attached guidelines and requirements; (iii) perform its services in a professional and good workmanlike manner; and (iv) perform all services generally performed by environmental consultants in conducting the type of services required by this Agreement. Consultant further covenants to furnish all labor and testing equipment necessary, or engage with a qualified third-party testing firm, to perform all of the terms and requirements of this Agreement.

6. Licenses. Consultant represents that it and, where appropriate, each and every employee of Consultant, has the capability, experience, means, and appropriate licenses and permits required to perform the services contemplated by this Agreement. Consultant represents that Consultant is aware of, and in full compliance with, the laws of the state where the Property is located for the licensing and certification of environmental consultants. Consultant must provide evidence to Fannie Mae and the Lender to document that Consultant is licensed or certified as appropriate under applicable state law. This can be accomplished by noting the Consultant’s license or certification number on the report or by providing a copy of the appropriate license or certification to Fannie Mae and the Lender.

7. Skills; Employees. Consultant shall at all times utilize appropriately qualified and skilled personnel to perform the services required by this Agreement. Consultant’s services hereunder shall be rendered by its own employees unless Consultant receives express written permission from Fannie Mae and the Lender to retain non‑employees to perform specified services, in which case such non-employees shall be bound by and comply with the terms and conditions of this Agreement. Consultant shall take all appropriate steps to ensure that all work by its employees under this Agreement is undertaken in a professional and good workmanlike manner and in accordance with established procedures. Consultant shall be responsible for the acts and omissions of its employees and others retained by Consultant who perform work in connection with this Agreement. Notwithstanding the above, Consultant may retain non-employee secretarial or clerical personnel, without obtaining permission from Fannie Mae and the Lender.

8. Liens. Consultant shall be responsible for the satisfaction or payment of any claims or liens by any provider of work, labor, material, or services engaged by Consultant, and Consultant shall hold harmless and indemnify Fannie Mae, the Lender, and their respective officers, directors, employees, agents, and representatives, against any such claim whatsoever, including all costs, expenses, and attorneys’ fees, whether suit be brought or not. Such liens shall be discharged by Consultant within 30 days after notice of filing thereof, by bonding, payment, or otherwise upon request, and, as a condition to Fannie Mae’s obligation to make any payments to Consultant, shall submit such lien waivers, affidavits, and proofs of payment as Fannie Mae and the Lender shall require.

9. Indemnification. Consultant shall hold harmless and indemnify Fannie Mae, the Lender, and their respective directors, officers, employees, agents, and representatives from and against all loss, liability, penalty, damage, expense, cost, including attorneys’ fees, of any kind, to person and property relating in any way to the performance of Consultant’s services under this Agreement, whether or not suit is brought. Consultant assumes all risk of property loss or damage and of personal injury or death which its officers, directors, employees, agents, and representatives may sustain in connection with this Agreement.

10. Termination. Fannie Mae, the Lender and Consultant shall have the right to terminate this Agreement at any time upon one business day written notice to the other parties. In the event of termination by Fannie Mae or the Lender, Fannie Mae shall be liable to Consultant for fees for services rendered to the effective date of such termination. Notwithstanding any termination of this Agreement, Consultant’s obligations under Paragraphs 11 through 14 below shall survive and remain in full force and effect.

11. Limited Access to Information / Joint Communications. Consultant shall use reasonable precautions so that access to information relating to its services for Fannie Mae and the Lender is limited to those persons within its employ for whom it is necessary and appropriate for purposes of performing the services required under this Agreement. All communications with Consultant will be held jointly with Fannie Mae and Lender. The contact information for Fannie Mae, Lender and Consultant are set forth following the respective signatures on this Agreement.

12. Confidential Nature. All communications pursuant to this Agreement, whether oral or written, between Consultant and/or Fannie Mae, the Lender and/or their respective counsel shall be regarded as confidential. Unless Consultant receives express written permission from Fannie Mae and the Lender or is compelled to disclose by administrative or judicial process, Consultant shall not disclose: (i) the nature or content of any communications, information, documents, studies, data, or reports in any way relating to the Property or to the services performed hereunder, including without limitation, those set forth in Paragraph 13 hereof; (ii) the terms of this Agreement; and (iii) the contents of any assessment performed hereunder. The Consultant understands and agrees that all documents and information in connection with this Agreement and the Property are to be kept STRICTLY CONFIDENTIAL.

13. Work Product. All work papers, test results, records, reports, findings, recommendations, data, memoranda, or other documents prepared or received by Consultant pursuant to this Agreement, regardless of their nature and source, are the property of Fannie Mae and the Lender, shall be considered the work product of Fannie Mae and the Lender, and shall be held by Consultant solely for its convenience and subject to Fannie Mae’s and the Lender’s unqualified right to possession, custody, and control. Upon Fannie Mae’s and the Lender’s request, Consultant shall immediately provide all originals and all copies of such work papers, test results, records, reports, findings, recommendations, data, memoranda, or documents to Fannie Mae and the Lender. Notwithstanding the foregoing, Consultant may maintain a single copy of all such work product, including any summaries, analyses or extracts thereof provided in connection with the services, for the purposes of any compliance guidelines of a licensing or regulatory entity; provided, that (i) all such work product remains the property and work product of Fannie Mae and the Lender and may not be used by Consultant for any purpose whatsoever without the prior written consent of Fannie Mae and the Lender, and (ii) all persons with access to such work product are fully informed of, and agree in writing to observe, the non-disclosure and non-use obligations contained in this Agreement.

14. Unauthorized Release. Consultant shall immediately notify Fannie Mae and the Lender of the occurrence of any of the following events: (i) a request by any person to examine, inspect, or copy any work papers, test results, records, findings, recommendations, data, memoranda, or other documents prepared by Consultant or submitted to Consultant relating in any way to its role as Consultant under this Agreement; and (ii) the exhibition or surrender of any such documents in a manner not expressly authorized by Fannie Mae and the Lender.

15. Insurance Requirements. By acceptance of the terms of this Agreement, Consultant acknowledges it has in place the following insurance coverages in the following amounts and from providers acceptable to Fannie Mae and the Lender:

(a) Comprehensive general liability insurance – per occurrence $1,000,000; umbrella liability $1,000,000;

(b) Automobile liability insurance - $1,000,000;

(c) Professional errors and omissions liability insurance - $1,000,000;

(d) Fidelity bond/crime insurance – not required; and

(e) Worker’s compensation insurance complying with the laws of the state where the work is performed.

Evidence of the above coverages will be made available to Fannie Mae and the Lender by Consultant upon request.

16. Independent Contractor. In the performance of its services under this Agreement, Consultant shall act solely as an independent contractor, and nothing herein contained or implied shall at any time be so construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture partner as between Fannie Mae, the Lender and Consultant.

17. Entire Agreement. This Agreement constitutes the full and complete Agreement of the parties. This Agreement may only be amended in a writing signed by all parties.

18. Execution; Authority. Consultant represents that the person signing below has the authority to do so. Execution of this Agreement by the Consultant’s representative, whose signature appears below, shall constitute Consultant’s acknowledgment of its receipt, understanding, and acceptance of this Agreement. This Agreement shall be effective upon such execution. This Agreement is executed in duplicate originals, and Consultant agrees to return a duplicate original to Fannie Mae and the Lender immediately after Consultant has executed this Agreement.

19. No Assignment. Consultant shall not assign, transfer, or subcontract any of its obligations under this Agreement to any party without the express written consent of Fannie Mae and the Lender.

20. Conflict. In the event of conflict between the terms of this Agreement, including without limitation, Paragraph 9 hereof, and the terms of the report prepared pursuant to the terms hereof, this Agreement shall prevail.

21. Captions. The captions used herein are for convenience of reference only and do not define or limit the scope, content, or meaning of the provisions contained herein.

Sincerely,

FANNIE MAE

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

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

Title: [Title, Sr. Asset Manager]

Fannie Mae Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[LENDER NAME]

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

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

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

Lender Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AGREED AND ACCEPTED BY CONSULTANT:

[CONSULTANT NAME]

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

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

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

Consultant Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

Property Name and Address:

Legal Description:

**ATTACHMENT “1”**

**ENVIRONMENTAL CONSULTING SERVICES**

For environmental consulting services, the following requirements shall apply:

**Environmental Site Assessment Reports**

**A. Phase I Environmental Site Assessment – All Appropriate Inquiries**

**1. The Phase I Environmental Site Assessment**

The Consultant must provide a Phase I Environmental Site Assessment (“Phase I ESA”) with respect to (a) hazardous substances under CERCLA, and (b) petroleum products or pollutants and contaminants that include petroleum. Where the Phase I ESA is part of a Brownfields Assessment and Characterization Grant awarded by the EPA under CERCLA 42 U.S.C. 9604 (k)(2)(B), or under any other Environmental Law (defined below) that replaces, substitutes or amends that program, then the report must also include within the scope of its investigation those other substances designated by the grant or the cooperative agreements, which may include controlled substances as defined in the Controlled Substances Act (21 U.S.C. 802). The Phase I ESA must be prepared in conformance with:

* the “All Appropriate Inquiries” or “AAI” Rule (40 C.F.R § 312) promulgated by the EPA, and
* the scope and limitations of the American Society of Testing Materials (ASTM) Standard E1527-05, as both the AAI Rule and ASTM E1527-05 may be amended or replaced.

**2. Expanded Evaluation of Other Non-Scope Environmental Issues**

The Phase I ESA must contain an expanded evaluation of other appropriate environmental considerations identified in, but not within the scope of, ASTM E1527-05 (“non-scope considerations”). Non-scope considerations of particular concern to multifamily housing include those relating to asbestos or asbestos-containing materials, radon, lead-based paint, lead in drinking water, mold and unsatisfactory indoor air quality, wetlands and a compliance assessment. The Consultant must generally assess, based on experience, interviews and reasonably available information, whether any facility located on the Property complies with applicable federal, state and local laws, rules, regulations and/or governmental orders, and with applicable permitting and notice requirements (collectively, “Environmental Laws”). All environmental assessments relating to these non-scope considerations must be conducted:

* by environmental professionals as defined under ASTM E1527-05;
* in accordance with Environmental Laws; and
* employing good commercial and customary practices for conducting these types of environmental site assessments.

**3.** **Phase I Environmental Site Assessment – Summary of Conclusions**

The Phase I ESA must include a section that, in conformance with ASTM 1527-05, either:

* clearly concludes that there are no Recognized Environmental Conditions affecting the Property; or
* summarizes all Recognized Environmental Conditions affecting the Property, including a discussion of any data gaps that affect the ability of the Consultant to identify recognized environmental conditions affecting the Property.

The conclusion must also include a report on the non-scope considerations.

**B. Phase II Environmental Site Assessment**

If the Phase I ESA provides no definite conclusion as to the presence or absence of Recognized Environmental Conditions and other non-scope considerations, or if otherwise warranted by conditions on, at or adjacent to the Property (e.g., a leaking underground storage tank), Consultant will prepare a Phase II Environmental Site Assessment (Phase II ESA) that further identifies and quantifies the scope of the condition(s). The Phase II ESA must also specifically address the appropriate methods for remediation, abatement or containment of the Recognized Environmental Conditions, define the scope of work required to comply with all applicable Environmental Laws, the timeline for completion and the cost to perform that scope of work.

**C. Other Environmental Site Assessment Requirements**

The ESA (including any supplements, updates or addenda) must be addressed to, and authorize reliance by, the Lender, Fannie Mae and their respective successors and assigns.