

NCIP-FY22-003-01

FISCAL YEAR 2022 CITY OF SAN DIEGO COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM SUBRECIPIENT AGREEMENT

[COVER SHEET]

Subrecipient Name: Serving Seniors

Term: This Agreement shall commence on 7/1/2021, (Effective Date), subject to approval by City Attorney in accordance with San Diego Charter Section 40, and shall continue until the earlier of [Term]: (a) completion of the Activity or; (b) 6/30/2023

CFDA Number: CDBG -14.218

Federal Award Identification Number:

Subrecipient Mailing Address: 525 14th St. Ste. 200,
San Diego
California, 92101

Activity Title: Senior Center Facility Improvements

Activity Category: FY2022 NCIP (Facilities)

CDBG Activity Budget: \$250,405.62

Leveraged Activity Budget: \$289,500.00

City Council Approval Date: April 20, 2021

Resolution Number: R-313499

IO Number: 000000000000

WBS Number: 0000000

IDIS Number: 7599

CDBG Grant Award Number: B-21-MC-06-0542

Consolidated Plan Goal:

Consolidated Plan Strategy: Goal 2: Objective 4

HUD Matrix Code: 03E Neighborhood Facilities

CDBG Citation: 570.201(c)

National Objective: LMC

Project Outcome Measure: Suitable Living Environment
Availability/Accessibility
Public Facilities

Annual Units: 1

Below is a list of Project Locations:

null									
Description	Address Line 1	Address Line 2	City	Zip Code	State	Council District for Admin Office	Census Tract	Block Group	Low Moderate Income
The Gary and Mary West Senior Wellness Center	1525 4th Ave.		San Diego	92101	California	District 3	56	1	37.69%

This Agreement is entered into by the City of San Diego, acting by and through its Mayor or designee, pursuant to City Council Resolution R-313499, effective 4/20/2021, authorizing entry into this Agreement, and by Subrecipient, by and through the signature of Subrecipient's authorized representative(s), as follow:

Subrecipient Electronic Signature	
Economic Development Department Electronic Signature	
Office of the City Attorney Electronic Signature	

This Agreement is comprised of the following documents:

1. General Terms and Conditions
2. EXHIBIT A: Budget
3. EXHIBIT B: Scope of Work
4. EXHIBIT C: Insurance Requirements
5. EXHIBIT D: City Contract Provisions
6. EXHIBIT E: Federal Contract Provisions
7. EXHIBIT F: Construction Requirements
8. EXHIBIT G: Declaration Form

GENERAL TERMS AND CONDITIONS

In consideration of the covenants, conditions, and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, City and Subrecipient enter into this Fiscal Year 2022 Community Development Block Grant Program Subrecipient Agreement (“Agreement”), as of the Effective Date.

1. **PURPOSES AND INTENT.** City has entered into or will enter into a grant agreement with the United States Department of Housing and Urban Development (“HUD”) to receive Fiscal Year 2022 Community Development Block Grant (“CDBG”) entitlement funds. City requested proposals for funding of eligible activities through City’s Fiscal Year 2022 CDBG program. Subrecipient submitted a proposal to City that was selected for funding from City’s Fiscal Year 2022 CDBG program through City’s competitive proposal evaluation process. Subrecipient’s proposal was approved for funding from City’s Fiscal Year 2022 CDBG program by the City Council through its Resolution R-313499, effective April 20, 2021. City desires to provide funding to Subrecipient through City’s Fiscal Year 2022 CDBG program for performance of the Activity (defined in Section 2).

2. **DEFINITIONS.** In addition to the terms defined on the Cover Page to this Agreement, the following words, terms, and phrases are used in this Agreement with the following meanings, unless the particular context or usage of a word, term or phrase requires another interpretation

2.1. Activity. Collectively, all actions to be performed by Subrecipient as described in the Scope of Work.

2.2. Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

2.3. Agreement. This Fiscal Year 2022 Community Development Block Grant Program Subrecipient Agreement by and between City and Subrecipient, including all of the attached exhibits.

2.4. Application. Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for construction, installation, use or operation of the Improvements or the Business Accelerator, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument as Subrecipient may reasonably request for the Improvements or the Business Accelerator; or (b) to enable Subrecipient to seek any Approval or to use or operate the Improvements or the Business Accelerator in accordance with this Agreement.

2.5. Approval. Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit, or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete the construction of the Improvements

2.6. Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11 of the United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver

or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.7. Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.

2.8. Budget. The total amount of CDBG Funds available pursuant to this Agreement for reimbursement of Activity costs, as set forth in EXHIBIT A.

2.9. Certificate of Occupancy. A “certificate of occupancy” as defined in the Uniform Building Code published by the International Conference of Building Officials, as adopted by the City, from time to time.

2.10. CDBG. United States Department of Housing and Urban Development Community Development Block Grant program.

2.11. CDBG Funds. Entitlement grant funds provided to City by HUD pursuant to the CDBG program or Program Income received by either City or Subrecipient.

2.12. City. The City of San Diego, a California municipal corporation, and any assignee of or successor to the rights, powers or responsibilities of the City of San Diego, a California municipal corporation.

2.13. City Grant. The CDBG Funds provided by the City to Subrecipient pursuant to this Agreement for performance of the Activity by Subrecipient.

2.14. City Parties. Collectively, City, the City Council and all City elected or appointed officials, employees, agents and attorneys.

2.15. City Representative. Defined in Section 23.1.

2.16. Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if an Indemnitor improperly fails to provide a defense for an Indemnitee or provides a defense under a reservation of rights, then Legal Costs of the Indemnitee) and any judgment.

2.17. Comptroller General. Defined in Section 9.1.

2.18. Construction Requirements. The requirements set forth in EXHIBIT F attached to this Agreement.

2.19. Contract Activity Report. Defined in Section 22.2.

2.20. Control. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise. “Controlling” and “controlled” shall have correlating meanings.

2.21. County. The County of San Diego, California.

2.22. Cover Page. The cover page to this Agreement.

2.23. Default. A Monetary Default or a Non-Monetary Default.

2.24. Effective Date. Defined on the Cover Page to this Agreement.

2.25. Environmental Claim. Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

2.26. Environmental Documents. Any and all documents (if any) required to comply with the National Environmental Policy Act (42 U.S.C. sections 4321 - 4347) or the California Environmental Quality Act (Cal. Pub. Res. Code sections 21000 – 21178) for performance of the Activity.

2.27. Environmental Law. All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use or pertaining to occupational health or industrial hygiene or occupational or environmental conditions on, under or about the subject real property, as now or may at any later time be in effect.

2.28. Equity Interest. All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that owns or holds any ownership or equity interest in a Person.

2.29. Event of Default. The occurrence of any one or more of the following:

2.29.1. Monetary Default. A Monetary Default that continues for seven (7) calendar days after Notice to the Party in Default specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount, or the bond, surety or insurance not provided;

2.29.2. Bankruptcy or Insolvency. Subrecipient admits in writing that it is unable to pay its debts as they become due or Subrecipient becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Subrecipient's assets or interest in this Agreement or the Improvements (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated

and discharged within ninety (90) days);

2.29.3. Transfer. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement; or

2.29.4. Non-Monetary Default. Any Non-Monetary Default, other than those specifically addressed in Section 2.29.2 or Section 2.29.3 that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of a Notice of Default, the Party asserted to be in Default shall only be in Default if such Party does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

2.30. Federal. Relating or pursuant to the authority of the federal government of the United States of America.

2.31. Fiscal Year 2022. City's fiscal year starting July 1, 2021, and ending June 30, 2022.

2.32. GAAP. Generally Accepted Accounting Principles.

2.33. GAGAS. Generally Accepted Government Audit Standards.

2.34. Government. Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, municipal, City or otherwise) whether now or later in existence.

2.35. Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, any matter, waste or substance that is subject to any Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source or in the regulations adopted pursuant to Law; provided, however, Hazardous Substance shall not include any household chemical products in normal quantities used for operation and maintenance in compliance with Law.

2.36. Hazardous Substance Discharge. Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into or from real property, or during transportation of any Hazardous Substance to or from real property, or that arises at any time from the construction, installation, use or operation of Improvements or any activities conducted at, on, under or from real property, whether or not caused by a Party.

2.37. HUD. United States Department of Housing and Urban Development.

2.38. Improvements. Any and all alteration, demolition, repair, maintenance, construction, or improvement to real property that is part of the Activity.

2.39. Indemnify. Where this Agreement states that any Indemnitor shall “Indemnify” any Indemnitee from, against, or for a particular Claim, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “Indemnified” shall have the correlative meaning.

2.40. Indemnitee. Any Person entitled to be indemnified under the terms of this Agreement.

2.41. Indemnitor. A Party that agrees to Indemnify any other Person under the terms of this Agreement.

2.42. Intellectual Property. All materials and deliverables subject to copyright protection that arise, or are developed in performance of this Agreement, including editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, photostats, drawings, and other production materials, and for information technology procurements, executable code, source code, fixes patches, updates, upgrades, documentation embedded or otherwise, original copy, and other productions materials.

2.43. Law. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the subject property, or the Improvements, in any way, including relating to any construction, use, maintenance, taxation, operation, occupancy of, or environmental conditions affecting the subject property, or the Improvements, or otherwise relating to this Agreement or any Party’s rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, including any retroactively-applicable law, subject in all cases, however, to any applicable waiver, variance or exemption.

2.44. Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including attorneys’ fees, court costs and expenses, and consultant and expert witness fees and expenses.

2.45. Mandatory Assistance. Defined in Section 21.

2.46. Mayor. The Mayor of City or his or her designee or successor in function.

2.47. Monetary Default. Any failure by a Party to pay, deposit or deliver, when and as this Agreement requires, any amount of money, any bond or surety, evidence of any insurance coverage required to be provided under this Agreement, or any Records, whether to or with a Party or a Third Person.

2.48. Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

2.49. Notice. Any consent, demand, designation, election, notice or request relating to this Agreement. All Notices must be in writing, which includes Notice by e-mail.

2.50. Notify. To give a Notice.

2.51. Operating Manual. City's most current "Operating Manual" containing procedures for fiscal management and accountability for Activities receiving CDBG Funds.

2.52. Parties. Collectively, City and Subrecipient.

2.53. Party. Individually, either City or Subrecipient, as applicable.

2.54. Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

2.55. Playing by the Rules Handbook. A HUD published handbook, dated March 2005, setting forth administrative recommendations applicable to entities receiving CDBG Funds.

2.56. Prevailing Wage Action. Any of the following: (a) any determination by the State Department of Industrial Relations or the Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State Department of Industrial Relations or the Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any of California Labor Code sections 1720 through 1781, as amended from time to time, or any Federal law regarding prevailing wages, including maintaining certified payroll records pursuant to California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts at law or in equity, including pursuant to California Labor Code section 1781 or applicable Federal Law.

2.57. Program Income. Any income that accrues to Subrecipient or its Subcontractors as a result of receipt or use of CDBG Funds under this Agreement, as further described in 24 C.F.R. § 570.500(a).

2.58. Records. All administrative or financial records relating to the Activity prepared or gathered by Subrecipient, including all books, papers, invoices, receipts, accounting records in accordance with GAAP and 2 C.F.R. § 200, payroll records, personnel records, designs, plans, reports, financial disclosures, audits, other disclosures, certifications, investigative videos, work product, and any other documents, data or records pertaining to any or all matters covered by this Agreement, or required by applicable provisions of 24 C.F.R. § 570.506 or the

Operating Manual.

2.59. Reporting Period. Each calendar month during which any Work is performed.

2.60. Retention Period. Defined in Section 9.3.

2.61. Scope of Work. The performances described in EXHIBIT B.

2.62. SDMC. San Diego Municipal Code.

2.63. State. The State of California.

2.64. Subcontract. A contract between Subrecipient and a Subcontractor.

2.65. Subcontractor. Any entity, other than City, furnishing material, labor or services to Subrecipient in connection with the Activity, pursuant to a contract with Subrecipient.

2.66. Subrecipient Parties. Collectively, Subrecipient and its directors, officers, employees, agents, guests, invitees, shareholders, members, managers, partners and Affiliates.

2.67. Subrecipient Representative. Defined in Section 23.2.

2.68. Term. Defined on the Cover Page to this Agreement.

2.69. Third Person. Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

2.70. Transfer. Regarding any property, right or obligation, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right or obligation or of any legal, beneficial or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale or other transfer of any Equity Interest(s) in Declarant of such property, right or obligation by the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses “(b)” or “(c)” of this Section 2.70, shall be deemed a Transfer by Subrecipient, even though Subrecipient is not technically the transferor.

2.71. Unavoidable Delay. A delay in a Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party’s reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, Government action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay

shall not include delay caused by a Party's financial condition or insolvency.

2.72. Work. Any performance described in the Scope of Work.

3. **NATIONAL OBJECTIVE CERTIFICATION**. Subrecipient certifies that the Activity meets one or more of the national objectives for use of CDBG Funds pursuant to 24 C.F.R. § 570.208, as specifically referenced on the Cover Page.

4. **BUDGET**. The total of all payments to be reimbursed to or on behalf of Subrecipient under this Agreement shall not, under any circumstances, exceed the total Budget. Subrecipient acknowledges and agrees that any expenditures by Subrecipient that are not within the prescribed limitations of the Budget, the Operating Manual, or applicable laws, rules, or regulations governing this Agreement, are not chargeable to the Activity under the Budget and shall be borne solely by Subrecipient.

5. REIMBURSEMENT OF EXPENDITURES.

5.1. City Grant Budget Amount. The total of all payments to be reimbursed to or on behalf of Subrecipient under this Agreement shall not, under any circumstances, exceed the total Budget. Subrecipient acknowledges and agrees that any and all expenditures by Subrecipient exceeding the total Budget or not permissible under the Operating Manual, or Laws governing this Agreement, shall be borne solely by Subrecipient. City is under no obligation to contribute any financial assistance to performance of the Activity other than the City Grant, regardless of the actual cost of performing the Activity.

5.2. Reimbursement Requests. Subrecipient shall submit to City timely, complete reimbursement requests in accordance with this Agreement, using forms and instructions (including submittals over the internet) provided by City. City will reimburse Subrecipient on a Reporting Period basis for eligible expenditures, provided that all reports from Subrecipient required under this Agreement (including those required by the Operating Manual) are received by City (on such forms as City may require) within fifteen (15) calendar days after the last day of the immediately preceding Reporting Period. The final payment to Subrecipient shall be withheld by City until all Reporting Period reports required from Subrecipient under this Agreement have been received by City. City additionally reserves the right to withhold ten percent (10%) of the total Budget, until Subrecipient has submitted all City Grant close out documentation to City. Subrecipient shall not be reimbursed for any expenditure without sufficient documentation that the expenditure is eligible for reimbursement under this Agreement and that such eligible expenditure has been paid in full by Subrecipient.

5.3. Ineligible Expenditures. Subrecipient shall not be reimbursed for travel, meals, lodging, entertainment expenses, or alcoholic beverages, under any circumstances. Subrecipient shall not be reimbursed for any expenditures, directly or indirectly, during any period of Federal, State, City or other debarment, suspension, or ineligibility of Subrecipient from participation in activities using CDBG Funds, when Subrecipient has notice (actual, constructive, or implied) of such debarment, suspension, or ineligibility.

5.4. Supporting Information. Subrecipient shall provide City with authentic, accurate,

and legible written documentation for all expenditures relating to the Activity and for which Subrecipient requests reimbursement under this Agreement on a Reporting Period basis. Written invoices from Subrecipient's Subcontractors shall be provided to City in the form originally provided to Subrecipient, with no alterations or other markings on such invoices. Subrecipient shall make original invoices immediately available to City upon request. The documentation provided by Subrecipient to City shall include an itemized description of the completed work, the date such work was done, and all supporting invoices and documentation sufficient for City to adequately determine eligibility for reimbursement of each and every expenditure and that such expenditure has been paid in full by Subrecipient. Partial reimbursement may be made for reimbursement requests that receive only partial approval from City. The Subrecipient Representative shall sign each and every request for reimbursement, attesting to its truthfulness and accuracy under penalty of perjury. Subrecipient acknowledges and agrees that City reserves the right to deny reimbursement for any request that is not properly submitted.

5.5. Time for Submittal. Subrecipient shall timely and properly submit a minimum of one reimbursement request for each Reporting Period, even if Subrecipient did not make any expenditures in performance of the Activity that are reimbursable under this Agreement during the Reporting Period and the reimbursement request is for zero dollars (\$0). Within forty-five (45) calendar days after the date of performance of any labor or services as part of the Activity, purchase of materials, supplies or equipment relating to the Activity, or receipt of an invoice for any expenditures incurred by Subrecipient relating to the Activity, in each case that are reimbursable under this Agreement, Subrecipient shall submit a reimbursement request for such labor, services, materials, supplies, equipment, or other expenditure(s) to City. Any failure to so submit a reimbursement request may be deemed a waiver of Subrecipient's right to reimbursement for such labor, services, materials, supplies, equipment, or other expenditure(s). Subrecipient shall submit to City any and all final reimbursement requests, including any documentation substantiating the requests, within thirty (30) calendar days after the earlier of: (a) completion of the Activity; (b) expiration of the Term; or (c) termination of this Agreement. Subrecipient waives any and all right to submit any documentation of Activity expense or to receive reimbursement for any Activity expense submitted to City for reimbursement after such thirty (30) calendar day time period. Furthermore, any remaining CDBG Funds balance in the Budget for which a reimbursement request has not been properly and timely submitted to City before the expiration of such thirty (30) calendar day time period shall be subject to reprogramming by City, without Notice to Subrecipient.

5.6. Other Funding Sources. If Subrecipient receives (or has received) additional funding for the Activity from a source or sources other than City, then Subrecipient shall charge Activity expenditures to the appropriate funding source at the time incurred. Any expenditure incurred in connection with the Activity that is properly chargeable to a funding source other than CDBG Funds allocated to the Activity under this Agreement shall not be allowed as a reimbursable Activity expense under this Agreement.

5.7. Timely Expenditure. Subrecipient acknowledges that City must comply with HUD's requirement that CDBG Funds allocated for the Activity be expended in a timely manner and that City must monitor and administer all contracts involving City CDBG Funds. Subrecipient agrees to expend all CDBG Funds allocated to the

Budget and complete the Activity before expiration of the Term. Any CDBG Funds not expended by Subrecipient before expiration of the Term may be reprogrammed by City Council without Notice to Subrecipient and will not be available to reimburse Subrecipient for any Activity expense incurred by Subrecipient.

5.8. Return of Improper Reimbursement. Upon the determination of City or HUD that any reimbursement provided to Subrecipient under this Agreement was for an ineligible expenditure or based on a fraudulent or other illegal or improper submittal of a request for reimbursement by Subrecipient, Subrecipient shall return such funds to City within fourteen (14) calendar days after Notice to Subrecipient. Upon the determination of City or HUD that any reimbursement provided to Subrecipient was based on an inadequate or improper submittal of a request for reimbursement by Subrecipient, Subrecipient shall provide any and all documentation required by City or HUD to fully remedy such concern(s), within fourteen (14) calendar days after Notice to Subrecipient. If Subrecipient is unable or unwilling to provide documentation to fully remedy such concern(s), Subrecipient shall return the reimbursed funds to City within such fourteen (14) calendar day time period. In addition to the remedies set forth in Section 17, if Subrecipient fails to timely return any funds to City in accordance with this Section 5.8, City reserves the right to deduct such amounts from any future reimbursement becoming due to Subrecipient under this Agreement.

6. **PROGRAM INCOME**. Subrecipient may use Program Income for performance of the Activity, provided that Subrecipient submits to City a written budget detailing Subrecipient's proposed use of Program Income and obtains City's prior written approval of such written budget, in City's sole and absolute discretion. Subrecipient shall separately account for any and all Program Income accrued or used by Subrecipient in its reports, audits or financial statements submitted to City under Section 8. If City approves Subrecipient's written budget for use of Program Income, all provisions of this Agreement shall apply to the use of such Program Income. Subrecipient agrees that substantially all Program Income approved by City for use by Subrecipient shall be used by Subrecipient for eligible activities before Subrecipient requests disbursement of additional CDBG Funds from City. If City does not approve Subrecipient's written budget for use of Program Income, Subrecipient shall return to City any and all Program Income balances (including investments thereof) held by Subrecipient within thirty (30) calendar days after the later of: (a) City's Notice of disapproval of Subrecipient's proposed budget; (b) expiration of the Term; (c) termination of this Agreement; or (d) Subrecipient's receipt of the Program Income.

7. **INSURANCE**. Prior to the Effective Date and prior to Subrecipient's performance of any Work, Subrecipient shall obtain and maintain, to protect the City Parties against all insurable Claims relating to this Agreement or the Activity, at the sole cost and expense of Subrecipient, all insurance coverage required in EXHIBIT C attached to this Agreement and deliver written certificates or policies of insurance evidencing all required insurance coverage to City. Subrecipient shall require and ensure that any and all Subcontractors obtain and maintain all of the insurance coverage required in EXHIBIT C. Neither Subrecipient nor any Subcontractor shall commence any Work, unless and until written evidence of all insurance required to be carried by Subrecipient and such Subcontractor under this Section 7 has been submitted to and approved by City.

8. REPORTS, FINANCIAL STATEMENTS, AND AUDITS.

8.1 Periodic Reports. Subrecipient shall submit to City a fiscal and programmatic report on a Reporting Period basis summarizing Subrecipient's expenditures in pursuing the Activity and the elements of the Activity completed during the applicable Reporting Period, along with any and all invoices and other documentation required by City. Such a report shall be submitted within fifteen (15) calendar days after the end of each Reporting Period. Upon City's request, Subrecipient shall participate in one or more annual reporting workshops regarding use of CDBG Funds.

8.2 End of Agreement Report. Subrecipient shall submit to City a report containing a narrative summary of the elements of the Activity completed as of the date of the report, a financial summary of Activity expenditures claimed to and reimbursed by City under this Agreement, and a list of any real property acquired or improved, in whole or in part, with CDBG Funds provided under this Agreement exceeding \$25,000, all within thirty (30) calendar days after the earlier of: (a) completion of the Activity; (b) expiration of the Term; or (c) termination of this Agreement.

8.3 Subrecipient Financial Statements. For each fiscal year that Subrecipient receives CDBG Funds pursuant to this Agreement, Subrecipient shall have audited financial statements prepared by an independent certified public accountant, in accordance with GAAP and GAGAS. Subrecipient shall provide City a copy of Subrecipient's audited financial statements within six (6) months after the end of Subrecipient's fiscal year. Audited financial statements shall include all of the following: (a) a balance sheet, income statement, and cash flow statement showing use of revenues and expenditures for all CDBG Funds received by Subrecipient pursuant to this Agreement; (b) a statement certifying compliance with all terms and conditions of this Agreement signed by the Subrecipient Representative; and (c) a statement certifying that all reports and disclosures required from Subrecipient under this Agreement have been completed, signed, and submitted by the Subrecipient Representative.

8.4 Subrecipient Audit. If Subrecipient is expending \$750,000 or more (or the current Federal threshold) in total Federal funding from all sources in a year, Subrecipient shall have an audit conducted in accordance with 2 C.F.R. Subpart F (sections 200.500 – 200.520) within nine (9) months after the end of Subrecipient's fiscal year. Subrecipient shall electronically submit a copy of the audit to the Federal Audit Clearinghouse, including the required data collection and reporting package described in 2 C.F.R. § 200.512, within the earlier of thirty (30) calendar days after Subrecipient's receipt of the audit or nine (9) months after the end of Subrecipient's fiscal year. Subrecipient must submit a copy of any management letters issued by the auditor for the audit to City within nine (9) months after the end of Subrecipient's fiscal year.

8.5 City and Federal Government Access to Audit Information. Subrecipient shall provide in any agreement Subrecipient enters into with an audit firm that: (a) the audit firm shall provide access for City or the Federal government to the working papers of the auditor(s) who prepare(s) the audit(s) for Subrecipient; and (b) Subrecipient waives any claim of privilege or confidentiality regarding, and consents

to and authorizes the audit firm to release to City or the Federal government, any and all information obtained and utilized by such audit firm as the basis of any audit report issued by the audit firm and relating to Subrecipient.

8.6 Other Audits. If Subrecipient is subject to an audit from a source other than City, Subrecipient shall provide a copy of the audit to City within thirty (30) calendar days after Subrecipient's receipt of the audit. City, in its sole and absolute discretion, may conduct a review of any such Third Person audit(s). Subrecipient shall fully cooperate with any such review by City, including providing any and all documentation associated with any such Third Person audit(s) within fourteen (14) calendar days after Notice from City.

8.7 Adverse Audit Findings. If any type of audit or monitoring review reveals any pattern of suspicious or questionable requests for reimbursement by Subrecipient under this Agreement, City shall have the right, in its sole and absolute discretion, to take remedial action under Section 17 or 18. If an independent audit identifies any concerns about Subrecipient's accounting practices or internal controls that results in an independent auditor's opinion other than an unqualified opinion, City shall have the right to suspend or terminate this Agreement, effective immediately upon Notice to Subrecipient. On any such termination, City shall have the right to reprogram any and all unexpended CDBG Funds allocated to the Budget under this Agreement.

8.8 Subrecipient Cooperation. Subrecipient shall fully cooperate with City and any other auditors in any review or investigation of Subrecipient's conduct or action(s) relating to this Agreement. Failure by Subrecipient to so cooperate shall be a Monetary Default by Subrecipient under this Agreement.

9. RECORDS.

9.1. Maintenance, Inspection and Photocopying. Subrecipient and its Subcontractors shall maintain all Records during the Term and the Retention Period (defined in Section 9.3). At any time during normal business hours and as often as requested, Subrecipient and its Subcontractors shall permit City, HUD, the Comptroller General of the United States ("Comptroller General"), or any of their duly authorized representatives, to inspect and photocopy, at a reasonable location within the County (e.g., the offices of Subrecipient), all Records for the purposes of making audits, examinations, excerpts, or transcriptions, or monitoring and evaluating Subrecipient's performance of its obligations under this Agreement. Upon any request by City, HUD, Comptroller General, or any of their duly authorized representatives, for any Records, Subrecipient and its Subcontractors shall submit exact duplicates of the originals of the requested Records to the requesting party for the purposes described in this Section 9.1. City, HUD, and Comptroller General may retain copies of the Records, if such retention is deemed necessary by City, HUD, or Comptroller General, in their respective sole and absolute discretion. If Subrecipient or a Subcontractor is unable to make any Records available for inspection within the County, then Subrecipient shall pay all of City's travel-related costs to inspect and photocopy the Records at the location where the Records are maintained. Any refusal by Subrecipient or a Subcontractor to comply with this Section 9.1 shall be a Monetary Default by Subrecipient under this Agreement.

9.2. Ownership of Original Records. Once Subrecipient receives any reimbursement

from City under this Agreement, all Records shall be the property of City. City's ownership of the Records includes the use, reproduction, or reuse of the Records, and all incidental rights, whether or not the work for which the Records were prepared is performed. No Records shall be shown to any other Person, except as authorized by City in writing, or where such Records are subject disclosure pursuant to the California Public Records Act, as determined by the City Attorney.

9.3. Records Retention Period. Subrecipient and its Subcontractors shall retain originals of all Records for at least three (3) years after the later of ("Retention Period"): (a) Subrecipient's submission of all required reports under this Agreement; or (b) City and Subrecipient make all final payments and resolve all pending matters (including audit findings) under this Agreement. All Records shall be kept at Subrecipient's (or relevant Subcontractor's) regular place of business. At any time during the Retention Period, Subrecipient and its Subcontractors shall permit City, HUD, Comptroller General, or any of their respective authorized representatives, to inspect and photocopy any and all Records for the purposes described in Section 9.1. After expiration of the Retention Period, Subrecipient and its Subcontractors shall provide City with thirty (30) calendar days' advance Notice of their respective intent to dispose of any Records. During this thirty (30) calendar day time period, Subrecipient and its Subcontractors shall provide any and all Records to City upon Notice from City requesting the Records.

10. PROCUREMENT OF GOODS AND SERVICES. All procurement of goods and services by Subrecipient and its Subcontractors in performance of the Activity obligating or resulting in expenditure of any CDBG Funds shall be consistent with CDBG program procurement requirements and comply with Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code, and all other laws and policies applicable to City's procurement of such goods and services with CDBG Funds, as modified by Section 10.2. A violation of this Section 10 shall be an Event of Default by Subrecipient under this Agreement.

10.1. Agreement Duration. Agreements for procured goods or services may not exceed five (5) years, nor may they be renewed, unless renewal was included in the original solicitation and does not result in the total term of the agreement exceeding five (5) years. A simple extension of the term of an agreement that does not result in an obligation of Subrecipient to pay additional CDBG Funds to the contractor is not considered a renewal of an agreement. However, no renewal or extension of an agreement may result the term of the agreement exceeding five (5) years.

10.2. Bid Requirements. Subrecipient or its Subcontractors shall obtain the following price bids before awarding a contract that will be funded in whole or in part with CDBG Funds: (a) when a contract provides for an expenditure equal to or less than \$10,000 in total, Subrecipient may award the contract based on, at least, two (2) written price bids from different sources; (b) when a contract provides for an expenditure greater than \$10,000, but equal to or less than \$50,000 in total, Subrecipient may award the contract after soliciting written price bids from, at least, five (5) potential sources and receiving, at least, three (3) written price bids from different sources; or (c) when a contract provides for an expenditure greater than \$50,000, but equal to or less than \$1,000,000 in total, Subrecipient may award the

contract only after advertising for sealed bids or proposals for a minimum of five (5) days in the San Diego Daily Transcript Newspaper at least thirty (30) days before the sealed bids or proposals are due.

11. **IMPROVEMENTS.** If the Activity includes any Improvements, the Construction Requirements shall apply to this Agreement and performance of the Activity.

12. **CITY GRANT CLOSE OUT.** City will close out the City Grant provided under this Agreement to Subrecipient for the Activity when: (1) all Activity expenses to be paid with the City Grant are reimbursed to the Subrecipient, exclusive of audit expenses; (2) the Activity for which the City Grant was provided is completed and satisfies a national objective under 24 C.F.R. § 570.208; (3) all audits and reports to be provided by Subrecipient under this Agreement are complete and delivered to City; and (4) all other responsibilities of Subrecipient under this Agreement and Law are performed or there is no further City interest in keeping this Agreement open for the purpose of securing such performance. When all of the conditions to City Grant close out set forth in the immediately preceding sentence are satisfied, City will Notify Subrecipient that the City Grant has been closed out. City close out of the City Grant may occur after expiration of the Term, but Subrecipient must submit all material required for City Grant close out to City before the expiration of the Term.

13. **COMPLIANCE WITH LAW.** Subrecipient and its Subcontractors shall comply with all Law and all directives issued by City, or its authorized representatives, under authority of any Law.

14. **CITY CONTRACT PROVISIONS.** Subrecipient shall comply with City's contract provisions set forth in EXHIBIT D attached to this Agreement.

15. **FEDERAL CONTRACT PROVISIONS.** Subrecipient shall comply with the Federal contract provisions set forth in EXHIBIT E attached to this Agreement.

16. **INDEMNIFICATION.**

16.1. Subrecipient Indemnity Obligations. Subrecipient shall Indemnify the City Parties against any Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of the Subrecipient Parties; (b) any Application made by or at Subrecipient's request; (c) any agreement that Subrecipient (or anyone claiming by or through Subrecipient) makes with a Third Person regarding this Agreement, the City Grant, or the Activity; (d) any worker's compensation claim or determination relating to any employee of the Subrecipient Parties or their Subcontractors; (e) any Environmental Claim attributable to any action or failure to act by the Subrecipient Parties; or (f) any Prevailing Wage Action.

16.2. Independent of Insurance Obligations. Subrecipient's Indemnity obligations under this Agreement shall not be construed or interpreted as restricting, limiting, or modifying Subrecipient's insurance or other obligations under this Agreement. Subrecipient's obligation to Indemnify the City Parties under this Agreement is independent of Subrecipient's insurance and other obligations under this Agreement. Subrecipient's compliance with Subrecipient's insurance obligations and other obligations under this Agreement shall not restrict, limit or modify Subrecipient's

obligations to Indemnify the City Parties under this Agreement and are independent of Subrecipient's obligations to Indemnify the City Parties and Subrecipient's other obligations under this Agreement.

16.3. Survival of Indemnification and Defense Obligations. The obligations of Subrecipient under this Agreement to Indemnify the City Parties shall survive the expiration or earlier termination of this Agreement, until any and all actual or prospective Claims regarding any matter subject to any such obligation under this Agreement to Indemnify the City Parties are fully, finally, absolutely and completely barred by applicable statutes of limitations.

17. **EVENT OF DEFAULT REMEDIES**. Notwithstanding any provision of this Agreement to the contrary, if an Event of Default by Subrecipient occurs, City may exercise any or all of the following remedies: (a) suspending one or more payments under this Agreement to Subrecipient, until Subrecipient and each Subcontractor is in compliance with this Agreement; (b) not reimbursing Subrecipient for all or part of the expenses of the Activity; (c) immediately terminating this Agreement in accordance with either Section 18.3 or Section 18.4; (d) those remedies set forth in 24 C.F.R. § 570.910, pursuant to 24 C.F.R. § 570.501(b); (e) deeming Subrecipient ineligible from consideration for any future CDBG funding from City; (f) any other remedy specified in this Agreement; or (g) any remedy available at law or in equity. The rights and remedies of City under this Agreement are cumulative and exercise of any one or more of such rights or remedies shall not limit, waive, or prevent City's exercise of any other rights or remedies under this Agreement, at law or in equity, existing as of the Effective Date or later enacted or established, that may be available to City against Subrecipient.

18. TERMINATION

18.1. End of Term. Upon the expiration of the Term, this Agreement shall automatically terminate, without any required action by or Notice to either Party.

18.2. Convenience. Notwithstanding the Term of this Agreement or any provision of this Agreement to the contrary, in accordance with 24 C.F.R. § 85.44, City or Subrecipient may terminate this Agreement for any reason, at any time, upon thirty (30) calendar days' Notice of termination to the other Party.

18.3. Event of Default. Notwithstanding any provision of this Agreement to the contrary, City, in its sole and absolute discretion, may immediately terminate this Agreement by Notice to Subrecipient, following the occurrence of an Event of Default by Subrecipient, subject to the provisions of Section 18.4.

18.4. Incurable Default. Notwithstanding any provision of this Agreement to the contrary, City, in its sole and absolute discretion, may immediately terminate this Agreement by Notice to Subrecipient if:

18.4.1. Subrecipient made or makes a material misrepresentation to City relating to this Agreement or any money received by Subrecipient pursuant to this Agreement, regardless of whether Subrecipient had knowledge or intent with respect to the misrepresentation;

18.4.2. Subrecipient violates any term or condition of this Agreement for which

immediate termination is expressly authorized in this Agreement;

18.4.3. Subrecipient, or any of its directors, members, or officers becomes subject to any court action or proceeding relating to the performance of Subrecipient's obligations under this Agreement that materially and adversely affects Subrecipient's performance of its obligations under this Agreement;

18.4.4. Subrecipient misappropriates any funds received by Subrecipient pursuant to this Agreement;

18.4.5. Subrecipient files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors;

18.4.6. Any or all of the CDBG Funds allocated to City by HUD (not just funds awarded under this Agreement) are suspended, terminated, delayed or recovered by the Federal government; or

18.4.7. Subrecipient is unable or unwilling to comply with any additional term or condition governing the Activity or this Agreement that may be required by newly enacted (or amended) Law.

18.5. Effect of Termination. Termination of this Agreement shall terminate the rights and obligations of the Parties under this Agreement, except the Parties' rights or obligations arising under this Agreement upon such termination or expressly stated in this Agreement as surviving termination of this Agreement.

19. SUBRECIPIENT RESPONSIBILITIES ON EXPIRATION OR TERMINATION OF THIS AGREEMENT. If this Agreement expires or is terminated, Subrecipient shall comply with Sections 6 and 8 of this Agreement and Section 12 of EXHIBIT E attached to this Agreement.

20. INFORMAL DISPUTE RESOLUTION. If there is any dispute between the Parties as to their respective rights, obligations, or duties under this Agreement, or the meaning or interpretation of any provision of this Agreement, the Parties shall first attempt to resolve such dispute by informal discussion between the City Representative and the Subrecipient Representative. Within five (5) calendar days of determining the existence of any such dispute, the Party determining there is such a dispute shall give Notice to the other Party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor thereafter to meet within five (5) calendar days of the second Party's receipt of such Notice, or at such time thereafter as is reasonable under the circumstances.

21. MANDATORY ASSISTANCE. If any dispute or litigation, or both, involving a Third Person, where the dispute or litigation arises out of, or relates to, this Agreement, City is named as a party to such dispute or litigation, and Subrecipient's Indemnity obligations under Section 16 do not apply to such dispute or litigation, then upon City's Notice to Subrecipient requesting such assistance, the Subrecipient Parties shall fully assist City in resolving the dispute or litigation. Assistance to City pursuant to this Section 21 is referred to in this Agreement as "Mandatory Assistance" and includes providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute or litigation. In providing City with Mandatory Assistance, if the Subrecipient

Parties incur reasonable costs (excluding Legal Costs), City will reimburse the Subrecipient Parties for such costs. However, if it is determined through resolution of the Third Person dispute or litigation, or both, that such Third Person dispute or litigation was attributable, in whole or in part, to one or more acts or omissions of one or more of the Subrecipient Parties, Subrecipient shall fully reimburse City for all amounts paid to the Subrecipient Parties in reimbursement of costs incurred in providing Mandatory Assistance and shall Indemnify City pursuant to Section 16 for all liability related to or arising from the Third Person dispute or litigation, or both.

22. SUBCONTRACTS AND SUBCONTRACTOR LIST. Subrecipient shall provide to City a copy of all subcontracts Subrecipient has entered into (or intends to enter into contingent upon entering into this Agreement) in connection with the Activity, along with a written statement describing the justification for the subcontract and an itemization of all costs for the subcontract. Subrecipient shall procure all subcontracts in conformance with Section 10. Subrecipient shall maintain documentation of the process used to procure all subcontracts and shall provide a copy of all such documentation to City, within ten (10) calendar days after Notice from City requesting such documentation. Within ten (10) calendar days after Notice from City requesting a list of Subrecipient's Subcontractors, Subrecipient shall provide City with a complete list of Subrecipient's Subcontractors, listing the names and contact information of all Subcontractors Subrecipient has hired or retained, or intends to hire or retain, in connection with the Activity. Subrecipient shall monitor all subcontracts on a regular basis to ensure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance and shall be made available to City during monitoring reviews or within ten (10) calendar days after Notice from City requesting such reports and evidence. Subrecipient shall comply with 2 C.F.R. § 200.321, as applicable, regarding affirmative efforts to contract with minority businesses, women's business enterprises, and labor surplus area firms. Subrecipient shall provide City, at the time of Activity completion, a report on the minority business or women's business enterprise status of all Subcontractors with contracts of \$10,000 or greater. If, during the Term, Subrecipient identifies a need for one or more additional subcontracts, Subrecipient shall, within ten (10) calendar days after the date of any such subcontract, provide a copy of the subcontract to City, along with a written statement describing the justification for the additional subcontract, an itemization of all costs for the additional subcontract, and an updated list of Subcontractors.

22.1. Required Subcontract Language. Subrecipient shall ensure that all subcontracts entered into in connection with the Activity contain the provisions in EXHIBIT D attached to this Agreement and the provisions in EXHIBIT E attached to this Agreement.

22.2. Contract Activity Report. Within ten (10) calendar days after Notice from City requesting such information, Subrecipient shall provide City: (a) statistical information (as described in City's then current form of "Contract Activity Report"), including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and (b) an invoice from each Subcontractor listed in the Contract Activity Report.

22.3. Prohibition on Use of Certain Subcontractors. Subrecipient shall not employ, award any contract to, engage the services of, or fund any Subcontractor, during any period when Subrecipient has notice (actual, constructive, or implied) of such

Subcontractor's Federal, State, City or other debarment, suspension, or ineligibility. Subrecipient shall electronically certify to City that Subrecipient is in compliance with this Section 22.3. A contract award must not be made to any person or entity listed on the Federal government wide Excluded Parties List System in the Federal System Award Management, in accordance with 2 C.F.R. Part 180.

23. REPRESENTATIVES.

23.1 City Representative. City's Economic Development Department is City's administrator for this Agreement. The Community Development Division Program Manager in City's Economic Development Department is City's representative for all purposes of this Agreement ("City Representative"). The City Representative shall communicate with Subrecipient on all matters related to the administration of this Agreement and Subrecipient's performance of its obligations under this Agreement. When this Agreement refers to communications to or with City, those communications shall be with the City Representative, unless this Agreement or the City Representative specifies otherwise. When this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the Mayor or his or her designee, unless this Agreement specifies otherwise. City, in its sole and absolute discretion, may change the identity of the City Representative at any time by Notice to Subrecipient at least ten (10) days in advance of the effective date of such change.

23.2 Subrecipient Representative. Subrecipient's Primary Representative identified in City's ED Grants System is Subrecipient's representative who shall act and receive Notices on behalf of Subrecipient for all purposes of this Agreement ("Subrecipient Representative"). Subrecipient may change the identity of the Subrecipient Representative by Notice to City at least ten (10) calendar days before the date of such change. City may communicate with the Subrecipient Representative on all matters relating to this Agreement.

24. **NO PARTNERSHIP OR JOINT VENTURE**. The Parties each intend and agree that City and Subrecipient are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture or similar business arrangement, relationship or association between or among them. Subrecipient acknowledges and agrees that Subrecipient is an independent contractor and not an agent or employee of City. Any provision of this Agreement that may appear to give City a right to direct Subrecipient concerning the details of performing its obligations under this Agreement, or to exercise any control over such performance, shall mean only that Subrecipient shall follow the direction of City concerning the end results of the performance. Subrecipient shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind, on behalf of or against City, whether by contract or otherwise.

25. **NO ASSIGNMENT OR DELEGATION**. Because this Agreement is entered into by City in reliance upon Subrecipient's qualifications, experience, and personnel, Subrecipient shall not assign any of its rights or delegate or subcontract any of its obligations or duties under this Agreement, without the prior written consent of City, which may be given, withheld or conditioned in City's sole and absolute discretion. Any asserted assignment of Subrecipient's rights or delegation or subcontract of Subrecipient's obligations or duties under this Agreement shall not create a contractual relationship between City and any asserted assignee, delegatee or Subcontractor, and any such

assignment, delegation or Subcontract shall be ineffective, null and void.

26. CONFIDENTIALITY OF INFORMATION. All information provided by City to Subrecipient in connection with this Agreement is for the sole use of Subrecipient in performing Subrecipient's obligations under this Agreement. Subrecipient shall not release any of this information to any Third Person, without the prior written consent of City, except information that: (a) was publicly known, or otherwise known to Subrecipient, at the time the information was provided to Subrecipient by City; (b) subsequently becomes publicly known, through no act or omission of Subrecipient; (c) becomes known to Subrecipient from a source or means other than City; or (d) is considered a "public record," pursuant to the California Public Records Act (California Government Code sections 6250 – 6276.48), as determined by the City Attorney.

27. INTELLECTUAL PROPERTY. City, on behalf of itself and the Federal Government, reserves a royalty-free, non-exclusive, and irrevocable, license to reproduce, publish, or otherwise use and to authorize others to use for City or Federal Government purposes: (a) all Intellectual Property developed with CDBG Funds provided through the City Grant; or (b) all Intellectual Property that Subrecipient or any of its Subcontractors' acquires, directly or indirectly, using CDBG Funds provided through the City Grant.

28. GENERAL PROVISIONS.

28.1 Notices, Demands, and Communications between the Parties. Any and all Notices submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.) or by first-class registered or certified mail through the United States Postal Service, postage prepaid, return receipt requested, to the address of the recipient Party, as designated on the Cover Page to this Agreement or at the end of this Section 28.1. Notices may be sent in the same manner to such other addresses as a Party may from time to time designate by Notice in accordance with this Section 28.1. Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that the Notice is dispatched by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service or three (3) calendar days after the Notice is deposited with the United States Postal Service in accordance with this Section 28.1. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice address for Subrecipient, as of the Effective Date, is set forth on the Cover Page to this Agreement. The Notice address for City, as of the Effective Date, is: City of San Diego, Economic Development Department, ATTN: Community Development Division Program Manager, 1200 Third Avenue, Suite 1400, San Diego, CA 92101; email address: CDBG@sandiego.gov.

28.2 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State.

28.3 Integration. This Agreement, the exhibits attached to this Agreement, and all documents or materials referred to in this Agreement constitute the entire agreement of the Parties about the subject matter of this Agreement. All prior negotiations or

agreements between the Parties about the subject matter of this Agreement are merged into this Agreement.

28.4 No Implied Waiver. No failure of any Party to insist upon the strict performance by another Party of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy for a Default or Event of Default shall constitute a waiver of any such Default or Event of Default or the requirement to comply with such term, covenant, or condition. No waiver of any Default or Event of Default shall affect or alter this Agreement, and each and every term, covenant, and condition, in this Agreement shall continue in full force and effect regarding any existing or subsequent Default or Event of Default.

28.5 Successors in Interest. Subject to Section 28.20, this Agreement, and all rights, obligations, or duties under this Agreement, shall be in full force and effect, whether or not any Party to this Agreement has been succeeded by another Person, and all rights, obligations, or duties under this Agreement shall be binding on each Party's successor in interest.

28.6 Severability. If any term or provision of this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to Persons or circumstances, other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms and provisions of this Agreement shall be valid and be enforced to the fullest extent Law allows.

28.7 Conflicts between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and any exhibit attached to this Agreement, the exhibit shall control. If a conflict exists between an applicable Law and this Agreement, then the Law shall control. Varying degrees of stringency among the main body of this Agreement, the attached exhibits, or Law are not deemed conflicts, and the most stringent requirement shall control. Each Party shall Notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28.8 Headings. All headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

28.9 Exhibits Incorporated. All exhibits attached to this Agreement or referenced in this Agreement are incorporated into this Agreement.

28.10 Time of the Essence. Time is of the essence of each provision of this Agreement, unless otherwise specified in this Agreement.

28.11 Warranty against Payment of Consideration for Agreement. Subrecipient represents and warrants to City that: (a) Subrecipient has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Subrecipient and Third Persons to whom fees are paid for professional services related to planning, design or construction of Improvements or documentation of this Agreement; and (b) no gratuities, in the form of entertainment,

gifts or otherwise have been or will be given by Subrecipient or any of Subrecipient Parties to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties of this Section 28.11 shall entitle City to terminate this Agreement immediately, without liability, by Notice to Subrecipient. Upon any termination of this Agreement pursuant to this Section 28.11, Subrecipient shall immediately refund any and all payments made to or on behalf of Subrecipient by City pursuant to this Agreement prior to the date of such termination.

28.12 Non-liability of City Officials and Employees. No elected or appointed official or employee of City shall be personally liable to Subrecipient, or any successor in interest to Subrecipient, in the event of any Default or Event of Default by City under this Agreement or for any amount that may become due to Subrecipient or to Subrecipient's successor on any obligations under the terms of this Agreement, except to the extent resulting from the sole negligence or willful misconduct of such elected or appointed official or employee.

28.13 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

28.14 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. All Parties have participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this Agreement may be used in the singular, plural, past tense, or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

28.15 Governing Law and Venue. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into and is to be fully performed in the County. All legal actions arising from this Agreement shall be filed in, and the Parties agree to submit to the personal jurisdiction of, the Superior Court of the State in and for the County or the United States District Court with jurisdiction in the County.

28.16 Unavoidable Delay; Extension of Time for Performance. Subject to any specific provisions of this Agreement limiting or restricting the effects of an Unavoidable Delay (if any), performance by a Party under this Agreement shall not be deemed or considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time.

28.17 Tax Consequences. Subrecipient acknowledges and agrees that Subrecipient shall bear any and all responsibility, liability, costs or expenses connected in any way with any tax consequences experienced by Subrecipient related to this Agreement.

28.18 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

28.19 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. All amendments to this Agreement must be in writing and signed by the authorized representative(s) of each Party, respectively. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid, unless made in the form of a written amendment to this Agreement signed by the authorized representative(s) of each Party, respectively. The Parties agree to enter into any and all amendments to this Agreement that are or become necessary to comply with any and all new or modified Laws affecting this Agreement.

28.20 Prohibition of Transfers. Subrecipient acknowledges and agrees that the qualifications and identity of Subrecipient is of particular importance and concern to City. Subrecipient further acknowledges and agrees that City has relied and is relying on the specific qualifications and identity of Subrecipient in entering into this Agreement and City would not have entered into this Agreement, but for the specific qualifications and identity of Subrecipient. As a consequence, Transfers by Subrecipient are only permitted with the prior written consent of City, in City's sole and absolute discretion. Subrecipient will not create or permit to be made or created any Transfer, except in accordance with this Section 28.20, whether made or created voluntarily, involuntarily or by operation of law. Any Transfer made in contravention of this Section 28.20 shall be voidable at the election of City, in City's sole and absolute discretion. Subrecipient acknowledges and agrees that the restrictions on Transfers set forth in this Section 28.20 are reasonable. Subrecipient agrees to reimburse City for all costs and expenses incurred by City in connection with City's review of a proposed Transfer, including all Legal Costs and other Third Person consultant fees and expenses.

28.21 Mayor Implementation. City shall implement this Agreement through its Mayor. The Mayor is authorized to enter into agreements and sign documents referenced in this Agreement or reasonably required to implement this Agreement, issue approvals, interpretations or waivers and enter into amendments to this Agreement, all on behalf of City, to the extent that any such action(s) does/do not increase the monetary obligations of City by more than ten percent (10%) of the total Budget. All other actions shall require the consideration and approval of the City Council, unless expressly provided otherwise by separate action of the City Council. Nothing in this Section 28.21 shall restrict the submission to the City Council of any matter within the Mayor's authority under this Section 28.21, in the Mayor's sole and absolute discretion, to obtain the City Council's express and specific authorization on such matter. The specific intent of this Section 28.21 is to authorize certain actions on behalf of City by the Mayor, but not to require that such actions be taken by the Mayor without consideration by the City Council.

28.22 Survival of Agreement. All provisions of this Agreement relating to dispute resolution, indemnity or limitations on damages or remedies shall survive any expiration or termination of this Agreement and shall be applicable to any dispute between the Parties arising from this Agreement, whether arising prior to or following expiration or termination of this Agreement, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment or expiration of all applicable statutory limitations periods. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, shall survive the expiration or termination of this Agreement.

28.23 Pages and Exhibits. This Agreement includes the Cover Page, twenty-two (22) pages of General Terms and Conditions, and seven (7) attached exhibits.

[Remainder of page intentionally blank.]

**EXHIBIT A
BUDGET**

Total Project Funds								
#	Budget Category	City Amount						
1	PE: Salary and Wages	\$0.00						
2	PE: Fringe Benefits	\$0.00						
3	Total Personnel Budget	\$0						
4	NPE: Direct Program Delivery Expenses	\$0.00						
5	NPE: Supplies-Administration Use	\$0.00						
6	NPE: Supplies-Client Use	\$0.00						
7	NPE: Publications/Printing	\$0.00						
8	NPE: Rent/Lease	\$0.00						
9	NPE: Maintenance/Repair	\$0.00						
10	NPE: Utilities	\$0.00						
11	NPE: Communications	\$0.00						
12	NPE: Equipment Rental	\$0.00						
13	NPE: Insurance	\$0.00						
14	NPE: Federally Approved Indirect Cost Rate*	\$0.00						
15	NPE: Construction/Renovation	\$236,231.72						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Title</th> <th style="width: 60%;">Narrative</th> <th style="width: 20%;">Sub Total - City</th> </tr> </thead> <tbody> <tr> <td>NPE: Construction/Renovation</td> <td>Costs to replace flooring and to reseal the roof of the GMWSWC, which provides health and social services, housing, case management, dental care, and other vital services to 3,000 LMI seniors annually. Materials \$74,108.72: \$32,000 for roofing materials including spray foam and roofing sealant; \$42,108.72 for flooring costs including VCT tile and cove bases, adhesive, concrete sealer, and other related materials. Labor \$162,123.00 (Flooring: \$97,328 Roof: \$64,795): Labor costs for laborers in specialized trades. Construction/renovation activities: Flooring activities include removing existing floor, remove/repair existing concrete damage, seal, and install new flooring; Roofing activities include cleaning/prepping roof, cut out blisters, foam fill, and seal roof and duct work. CDBG will not be used for Bid advertisement.</td> <td style="text-align: right;">\$236,231.72</td> </tr> </tbody> </table>	Title	Narrative	Sub Total - City	NPE: Construction/Renovation	Costs to replace flooring and to reseal the roof of the GMWSWC, which provides health and social services, housing, case management, dental care, and other vital services to 3,000 LMI seniors annually. Materials \$74,108.72: \$32,000 for roofing materials including spray foam and roofing sealant; \$42,108.72 for flooring costs including VCT tile and cove bases, adhesive, concrete sealer, and other related materials. Labor \$162,123.00 (Flooring: \$97,328 Roof: \$64,795): Labor costs for laborers in specialized trades. Construction/renovation activities: Flooring activities include removing existing floor, remove/repair existing concrete damage, seal, and install new flooring; Roofing activities include cleaning/prepping roof, cut out blisters, foam fill, and seal roof and duct work. CDBG will not be used for Bid advertisement.	\$236,231.72	
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16	NPE: Construction Management (max. 6% of Project Budget)	\$14,173.90						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Title</th> <th style="width: 60%;">Narrative</th> <th style="width: 20%;">Sub Total - City</th> </tr> </thead> <tbody> <tr> <td>NPE: Construction Management</td> <td>Costs to hire a third-party construction manager to oversee all phases of the project (preconstruction, construction, and post construction). Services include: coordinate with all companies and agencies; prepare the specifications and construction contracts; manage the competitive bid process; coordinate all required permits; develop and implement the project schedule; prepare project reporting and compliance; monitor and report on labor compliance; and other construction management related activities. Total budget is \$14,173.90 (6% of 'Construction/Renovation' budget line item).</td> <td style="text-align: right;">\$14,173.90</td> </tr> </tbody> </table>	Title	Narrative	Sub Total - City	NPE: Construction Management	Costs to hire a third-party construction manager to oversee all phases of the project (preconstruction, construction, and post construction). Services include: coordinate with all companies and agencies; prepare the specifications and construction contracts; manage the competitive bid process; coordinate all required permits; develop and implement the project schedule; prepare project reporting and compliance; monitor and report on labor compliance; and other construction management related activities. Total budget is \$14,173.90 (6% of 'Construction/Renovation' budget line item).	\$14,173.90	
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17	NPE: Loans	\$0.00
18	NPE: Consultant Services	\$0.00
19	NPE: Direct Loans to Businesses	\$0.00
20	Total Non-Personnel Budget	\$250,405.62
21	Total Budget	\$250,405.62

EXHIBIT B
SCOPE OF WORK

Project Goals and Outcomes

Consolidated Plan Goal	Strategic Plan Goal Goal 2: Objective 4
HUD Matrix Code 03E Neighborhood Facilities	
CDBG Citation 570.201(c)	National Objective LMC
Objective Category Suitable Living Environment	Outcome Category Availability/Accessibility
Outcome Indicator Public Facilities	Annual Units 1.00
Programmatic Report (MPR) NCIP – PFI & SUS	

Project Details

Project Description

The Senior Center Facility Improvements project will complete roofing repairs to prevent future leaks from developing and flooring replacements of areas that have become worn down and damaged at the Gary & Mary West Senior Wellness Center (GMWSWC), which serves as a “one-stop-shop” for seniors in need of nutritious meals, health and social services, and lifelong learning and enrichment activities.

Target Population

The Senior Center Facility Improvements project will target LMI seniors living in the City of San Diego. All are over the age of 60 with the largest growth among those who are between ages 60 and 65. Most are single with no familial support and live alone in nearby apartments, single room occupancy hotels, or in some cases, on the street. More than three-quarters of the seniors served have incomes well below the poverty level, averaging just \$1,074 per month. Two-thirds are ethnic minorities, including Hispanic (22%), African American (17%), Asian/Pacific Islander (27%), Native American (1%), and multiracial/ethnic (8%). Many exhibit one or more risk factors, including poverty, malnutrition, chronic medical conditions, mental illness, homelessness, chemical dependency, and isolation. Nearly one-half suffer from some sort of mental health challenge, including depression or dementia, and nearly 80% have chronic health conditions - some of which are under control, but many untreated before working with Subrecipient staff. At least 25% of these seniors report having been homeless at some time, with 18% homeless for ten or more months.

Project Outcome

A total of one (1) nonprofit public facility will be improved to benefit LMI individuals.

A total of 3,000 unduplicated City of San Diego individuals will have improved access to services and resources for the purpose of creating a suitable living environment upon completion of the facility improvements.

Project Activities

The Gary & Mary West Wellness Center (GMWSWC), open 365 days a year, is the only center of its kind in the downtown area that provides a broad base of services to LMI seniors. The facility is LEED Certified for its resource efficiency. Wraparound services that include meals, nurse case management, social services, and activities are provided to nearly 3,000 LMI seniors annually. The Subrecipient engages over 25 on-site partners offering immediate access to dental care, legal advice, psychiatric services, and other vital resources at the GMWSWC. Each year, 180,000+ nutritious meals, 5,000 health and social service visits, and 800 classes and activities are provided on-site.

The Senior Center Facility Improvements project will focus on two major improvements:

Flooring – The daily foot traffic has taken a toll on the 10-year old floors, which has become worn down and damaged. In certain areas, the floors are cracking and splitting. The existing flooring in high traffic areas used by project clients will be replaced throughout the GMWSWC with durable, high-quality Vinyl Composition Tile (VCT). Designed to handle heavy foot and rolling load traffic, VCT is a cost-effective durable flooring that will last for the next decade. The tile will be installed in all areas of the building where services are provided, including:

The Senior Nutrition Center – Dining room and kitchen serving more than 170,000 nutritious meals and thousands of bags of fresh produce annually. Is also the setting for dozens of senior activities and social events throughout the year.

The Learning Institute – A multipurpose space where fitness classes, travel classes, civic engagement meetings, and other activities are held.

The Gathering Place – A recreational lounge area with sofas, chairs, and television where seniors can relax, visit with friends, or wait for lunch and/or scheduled appointments.

The Game Room – Seniors commune together to play games, do a puzzle, play cards, and participate in other social activities that promote healthy connection and social interactions.

Clinical Offices – Offices utilized by the Subrecipient's clinical team of social services case managers, nurses, care navigators, and collaborative partners to provide direct healthcare and clinical services to clients.

Roofing - The GMWSWC's spray foam roof requires a recoat to fix current leaks and prevent future leaks from developing. The roof also has multiple blisters and sun spots that need to be fixed before they crack open and allow water to pond. Ponding water causes algae and other growth that can lead to structural damage and shorten the life of the roof. The resealing will extend the life of the roof for another 15 years. A roofing permit is required.

Planned Schedule:

July 2021 – Execute the CDBG Agreement with the City of San Diego. Hire a third-party construction manager. Start official project sealed bidding process by seeking IFB approval from the City and publishing notices of intent to issue Requests for Proposal with formal ads in area newspapers. Schedule date for mandatory job walk-through for all respondents to the RFP. Schedule date for the formal opening of bids and notify respondents of RFP. A re-confirmation of the project cost analysis will be completed.

August 2021 - Subrecipient staff will complete monthly programmatic reports and requests for reimbursement submittals to the City of San Diego through the implementation of the project closeout process. Establish a final date for submission of RFPs from contractors via a sealed bid process. Conduct the formal bid opening process. Review and score bids received. Request and receive permission from the City to award the project and notify all bidders of the decision. Present price proposal information to full board for approval of contract or transaction. Schedule Pre-Construction meeting.

September 2021 – Anticipate that 10% of CDBG funds (\$25,040.56) will be expended. Meet with the City Project Manager in preparation for the Pre-Construction meeting. Gather and distribute documents to the

selected contractor in advance of the Pre-Construction meeting. Execute contract agreement with the selected contractor. Obtain a copy of any subcontractor agreements executed by the selected contractor. Submit all required documents to City Project Manager. Obtain Notice to Proceed from City Project Manager after Pre-Construction meeting. Issue Notice to Proceed to the selected contractor. Selected contractor to obtain all necessary permits to begin construction.

October 2021 – Anticipate that 40% of CDBG funds (\$100,162.25) will be expended. Construction will begin on floor replacements.

November 2021 – Anticipate that 70% of CDBG funds (\$175,283.93) will be expended. Construction will continue on floor replacement and roof repairs will begin.

December 2021 – Anticipate that 100% of CDBG funds (\$250,405.62) will be expended. Construction phases/activities will be completed and final inspection approvals will be documented. Subrecipient will collect information on beneficiaries for a minimum of two months. The number of low and moderate-income individuals served on-site at the improved portions of the facility will be reported to the City.

March/April 2022 - Final closeout reports will be completed and submitted to the City of San Diego.

A more detailed description of the specific construction activities to be completed shall be approved by the Community Development Division (CDD) after the FY 2022 CDBG Agreement between the City and Subrecipient is executed and Subrecipient completes the required bidding process. Approved project activities to be paid with CDBG funds shall not be implemented by Subrecipient prior to issuance of the Notice to Proceed by the Community Development Project Manager.

All improvements completed shall be accessible, utilized by and/or directly benefit project clients served.

Federal and state prevailing wage laws and other labor standard requirements apply to this project.

Subrecipient shall ensure that Low/Moderate-Income Limited Clientele (LMC) eligibility determinations are completed based on the most current CDBG Income Limits issued by HUD, which will be distributed by CDD. Subrecipient is required to obtain documentation regarding their race and ethnicity of the persons assisted at the improved facility, the family size of the persons, and the annual income of their family. Income includes: gross wages, social security payments, retirement, disability, alimony, child support, and unemployment. Income does not include food stamp assistance or lump sum payments such as insurance settlements. Occasional overtime is excluded, but regular overtime is included. Subrecipient must ensure that at least 51 percent of the total clients served by this project are members of a low/moderate-income family. Presumed Low-Income Clientele benefit documentation may only apply to projects that exclusively serve a group of persons in any one or combination of the following categories: abused children; battered spouses; elderly persons 62 years or older; adults meeting the Census' Current Population Reports definition of "severely disabled"; homeless persons; illiterate adults; persons living with AIDS; and migrant farm workers.

EXHIBIT C

INSURANCE REQUIREMENTS

1. **General Requirements.** Subrecipient shall not begin any performance under this Agreement until it has: (1) provided City insurance certificates and endorsements evidencing all insurance policies and endorsements described in this EXHIBIT C; (2) obtained City approval of each insurance company or companies issuing such insurance policies or endorsements; and (3) confirmed that all insurance policies contain the special provisions described in this EXHIBIT C. Subrecipient's liabilities, including its Indemnity obligations under this Agreement, shall not be limited in any way to the insurance coverage described in this EXHIBIT C. Maintenance of the insurance coverage described in this EXHIBIT C is a material term of this Agreement and Subrecipient's failure to maintain or renew any such insurance coverage or to provide evidence of renewal or replacement of any such insurance coverage during the Term of this Agreement shall be an Event of Default by Subrecipient.

2. **Specific Insurance.** Subrecipient shall procure and maintain for the duration of this Agreement insurance against Claims for injuries to Persons or damages to property that may arise from or in connection with performance under this Agreement by Subrecipient or any other Subrecipient Parties. Subrecipient shall provide, at a minimum, the following insurance coverage:

2.1 **Commercial General Liability.** Insurance Services Office Form CG 00 01 covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with liability limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Agreement (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the amount of the required occurrence limit.

2.2 **Commercial Automobile Liability.** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if CDC has no owned autos, Code 8 (hired) and Code 9 (non-owned), with a liability limit no less than \$1,000,000 per accident for bodily injury and property damage.

2.3 **Workers' Compensation.** Workers' Compensation Insurance as required by the State, with statutory liability limits, and Employer's Liability Insurance with a liability limit of no less than \$1,000,000 per accident for bodily injury or disease.

2.4 **Other Insurance Provisions.** The insurance policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

2.4.1 ***Additional Insured Status.*** The City Parties are to be covered as additional insured on the required Commercial General Liability insurance policy with respect to liability arising out of work or operations performed by or on behalf of Subrecipient, including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Subrecipient's Commercial General Liability insurance policy (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or

CG 20 38; and CG 20 37, if a later edition is used).

2.4.2 Primary Coverage. For any Claims related to this Agreement, Subrecipient's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City Parties. Any insurance or self-insurance maintained by the City Parties shall be excess of Subrecipient's insurance and shall not contribute with it.

2.4.3 Notice of Cancellation. Each insurance policy shall provide that coverage shall not be canceled, except after thirty (30) calendar days' Notice of cancellation to City.

2.4.4 Waiver of Subrogation. Subrecipient grants to City a waiver of any right to subrogation that any insurer of Subrecipient may acquire against City by virtue of the payment of any loss under any insurance policy. Subrecipient agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this waiver applies regardless of whether or not Subrecipient obtains such a waiver of subrogation endorsement from the insurer.

2.5 Deductibles/Self Insured Retentions. All deductibles under any insurance policy shall be the sole responsibility of Subrecipient and shall be disclosed to City at the time the evidence of the insurance coverage is provided to City. Self-insured retentions under any insurance policy shall be the sole responsibility of Subrecipient and must be declared to and approved by City at the time the evidence of the insurance coverage is provided to City. City may require Subrecipient to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigation, claim administration, and defense expenses within the deductible or retention. Each insurance policy with a self-insured retention shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

2.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise approved in writing by City. City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance issued by non-admitted carriers are subject to all of the requirements of this Agreement applicable to insurance policies issued by admitted carriers.

2.7 Verification of Coverage. Subrecipient shall furnish City with original certificates and amendatory endorsements or copies of all applicable insurance policy language effecting the insurance coverage described in this EXHIBIT C. All insurance certificates and endorsements are to be received and approved by City before any performance commences under this Agreement. Failure to obtain the required insurance documents prior to the beginning performance shall not waive Subrecipient's obligation to provide the required insurance coverage or evidence of such insurance coverage. City reserves the right to require complete, certified copies of all insurance policies, including endorsements, described in this EXHIBIT C, at any time.

2.8 Special Risks or Circumstances. City reserves the right to modify the insurance requirements of this Agreement, including liability limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

2.9 Additional Insurance. Subrecipient may obtain additional insurance not required by this Agreement, as long as the City Parties are named additional insured under such insurance policies.

2.10 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies, including, but not limited to, all endorsements.

2.11 Subcontractors. Subrecipient shall require and verify that all Subcontractors maintain insurance meeting all the insurance requirements of this Agreement. Subrecipient shall also ensure that the City Parties are additional insured under insurance required from Subcontractors. For commercial general liability insurance coverage, Subcontractors shall provide coverage with a form at least as broad as the CG 20 38 04 13 endorsement.

2.12 Deliveries to City. Evidence of Subrecipient's maintenance of all insurance policies required by this Agreement shall be delivered to City within five (5) days after the Effective Date. No later than three (3) days before any insurance required by this Agreement expires, is cancelled or its liability limits are reduced or exhausted, Subrecipient shall deliver to City evidence of Subrecipient's maintenance of all insurance required by this Agreement. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) calendar days' advance written notice of such action has been given to City by certified mail, return receipt requested. Phrases such as "endeavor to" and "but failure to mail such Notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties pursuant to this Agreement.

2.13 No Representation. No Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

EXHIBIT D
CITY CONTRACT PROVISIONS

1. **COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP).** Subrecipient shall comply with City's EOCP Requirements. Subrecipient shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Subrecipient shall provide equal opportunity in all employment practices. Subrecipient shall ensure that its Subcontractors comply with this program. Nothing in this EXHIBIT D, Section 1, shall be interpreted to hold Subrecipient liable for any discriminatory practice of its Subcontractors.

2. **NON-DISCRIMINATION IN CONTRACTING.** Subrecipient shall comply with City's Nondiscrimination in Contracting Ordinance, codified in SDMC sections 22.3501 – 22.3517. Subrecipient shall not discriminate on the basis of race, color, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Subrecipient shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Subrecipient agrees and understands that violation of this EXHIBIT D, Section 2, shall be considered a material breach of this Agreement and may result in termination of this Agreement, debarment or other sanctions.

2.1 Within sixty (60) calendar days after Notice from City requesting such information, Subrecipient shall provide City a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Subrecipient has used in the past five years on any of its contracts that were undertaken within the County, including the total dollar amount paid by Subrecipient for each subcontract or supply contract. Subrecipient shall fully cooperate in any investigation conducted by City, pursuant to City's Nondiscrimination in Contracting Ordinance, referenced above in this EXHIBIT D, Section 2.

3. **LOCAL BUSINESS AND EMPLOYMENT.** Subrecipient acknowledges that City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Subrecipient shall, to the extent reasonably possible and allowed by Law, solicit applications for employment and bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Subrecipient shall hire qualified local residents and firms, whenever feasible and allowed by Law.

4. **LIVING WAGES.** This Agreement is subject to City's Living Wage Ordinance ("LWO"), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits, unless an exemption applies. SDMC section 22.4225 requires Subrecipient to fill out and file a living wage certification with the City Manager within thirty (30) days after the Effective Date. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect increases in the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Subrecipient agrees to require all of its Subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

4.1 **Exemption from Living Wage Ordinance.** Pursuant to SDMC section 22.4215, this Agreement may be exempt from the LWO. For a determination on this exemption, Subrecipient must complete the Living Wage Ordinance Application for Exemption.

4.2 **Proof of Compliance.** Subrecipient shall submit written proof of compliance with or exemption from the LWO on or before the first day of each Fiscal Year during the Term. No funds will be provided by City to Subrecipient under this Agreement unless and until written proof of Subrecipient's compliance with or exemption from the LWO is received and approved by the City Representative.

5. **AMERICANS WITH DISABILITIES ACT.** Subrecipient shall comply with City Council Policy 100 04, as adopted by City Council Resolution R-282153, relating to the Federally mandated Americans with Disabilities Act.

6. **DRUG – FREE WORKPLACE.** Subrecipient shall comply with City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R 277952. Subrecipient shall certify that it will provide a drug free workplace, by electronically submitting to City a "Certification for a Drug-Free Workplace" form approved by an authorized representative of Subrecipient. Submittal of this certification by Subrecipient shall be a condition precedent to this Agreement. Subrecipient shall post in a prominent place at its offices a statement setting forth their drug-free workplace policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violating the policy. Subrecipient shall establish a drug free awareness program to inform employees about each of the following: (a) the dangers of drug abuse in the workplace; (b) the policy of maintaining a drug free workplace; (c) the availability of drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations.

7. **EMPLOYMENT OF CITY STAFF.** Pursuant to City Council Policy 300-11, if Subrecipient employs an individual, who, within twelve (12) months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to City Council in connection with the entry into this Agreement, City, in its sole and absolute discretion, shall have the right to unilaterally and immediately terminate this Agreement by Notice to Subrecipient.

8. **ENDORSEMENT.** Subrecipient shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements or creating any advertisement or writing that identifies or refers to City as the user of a product or service, without obtaining the prior written approval of City, which approval may be given or withheld in City's sole and absolute discretion.

9. **EQUAL BENEFITS ORDINANCE.** In accordance with City's Equal Benefits Ordinance, codified in SDMC sections 22.4301-22.4308 ("EBO"), Subrecipient shall provide and maintain equal benefits, as defined in SDMC section 22.4302 during the Term. Failure of Subrecipient to maintain equal benefits consistent with the EBO is an Event of Default by Subrecipient (SDMC 22.4304(e)). Subrecipient shall notify its employees of the equal benefits policy at the time of hire and during open enrollment

periods and must post a copy of the following statement in an area frequented by its employees:

“During the performance of a contract with City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.”

9.1 Subrecipient shall immediately give City access to documents and records sufficient for City to verify that Subrecipient is providing equal benefits and otherwise complying with the EBO requirements. The full text of the EBO and the “Rules Implementing the Equal Benefits Ordinance” are posted on City’s website at www.sandiego.gov/purchasing/ or can be requested from City’s Equal Benefits Program Office at (619) 533-3948.

10. **CONFLICT OF INTEREST.** Subrecipient and its Subcontractors shall comply with all Federal, State, and City conflict of interest laws, regulations, and policies applicable to this Agreement, including the applicable provisions of each of the following: (a) the conflict of interest provisions of 24 C.F.R. § 570.611 or 2 C.F.R. § 200.318; (b) California Government Code sections 1090 - 1099 or sections 81000 - 91014; and (c) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) or sections 5230 – 5240 (applicable to nonprofit public benefit corporations).

10.1 Public Officer or Employee Economic Interests. The Parties are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. If Subrecipient becomes aware during the Term of any financial or economic interest of any public officer or employee of City relating to this Agreement, Subrecipient shall immediately Notify City. If such a financial or economic interest is determined by City to exist, City shall have the right to immediately terminate this Agreement by giving Notice of termination to Subrecipient.

10.2 Statements of Economic Interests. In performing its obligations under in this Agreement, if an employee or representative of Subrecipient makes or participates in a “governmental decision,” as described in title 2, section 18701(a)(2) of the California Code of Regulations or performs the same (or substantially all the same) duties for City that would otherwise be performed by a City employee holding a position specified in City’s conflict of interest code, that Person shall be subject to City’s conflict of interest code, requiring the filing of one or more statements of economic interests disclosing such person’s relevant financial interests. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 (“Form 700”) and filed with the City Clerk. Each Person required to file a Form 700 shall do so within thirty (30) calendar days after City’s determination that such Person is subject to City’s conflict of interest code (“Assuming Office Statement”). All required Persons shall also file a Form 700 on or before each April 1 (“Annual Statement”) disclosing any and all financial interests held during the previous calendar year for which the Person was subject to City’s conflict of interest code.

10.3 City Conflict of Interest Restrictions. If City requires any employee or representative of Subrecipient to file a Form 700, that Person shall be considered a “City Official,” subject to the provisions of City’s Ethics Ordinance (SDMC sections 27.3501-27.3595), including the prohibition against lobbying City for one (1) year following the expiration or termination of this Agreement. Subrecipient shall

establish, and make known to its employees and representatives, appropriate safeguards to prohibit them from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. Subrecipient's personnel employed in performing Subrecipient's obligations under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Subrecipient shall not recommend or specify any product, supplier, or contractor with whom Subrecipient or any of its employees or representatives has or have a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies. If Subrecipient or any of its employees or representatives violate any conflict of interest law, regulation or policy or any of the provisions of this EXHIBIT D, Section 10, Subrecipient shall be liable to City for Legal Costs and all damages sustained by City as a result of the violation.

11. **OPERATING MANUAL.** Subrecipient acknowledges receipt of and shall comply with the Operating Manual, including those provisions related to fiscal accountability, eligible and ineligible expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, bonding requirements, and other administrative functions. Any desired changes to the procedures set forth in the Operating Manual must be requested by Subrecipient in writing and approved by City in writing, in City's sole and absolute discretion, before such changes may be implemented.

EXHIBIT E
FEDERAL CONTRACT PROVISIONS

1. **UNIFORM ADMINISTRATIVE REQUIREMENTS.** Subrecipient shall comply with 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as modified by 24 C.F.R. § 570.502.
2. **GENERAL FEDERAL CDBG PROGRAM REQUIREMENTS.** Subrecipient shall comply with all Federal laws and regulations described in 24 C.F.R. § 570, including subpart K (sections 570.600-570.614), except that: (a) Subrecipient does not assume City's environmental responsibilities described at 24 C.F.R. § 570.604; and (b) Subrecipient does not assume City's responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52.
3. **LOBBYING AND POLITICAL ACTIVITIES.** Subrecipient shall not use any of the CDBG Funds provided to it under this Agreement (including any Program Income) to pay any Person for influencing or attempting to influence any decision or election by any electorate, legislative body, government agency, grantee, bureau, board, commission, district, or any other instrument of Federal, state, city or other local government. The phrase "influencing or attempting to influence" means making, with the intent to influence, any communication to, or appearance before, a board, body, officer, or employee of a governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election. Subrecipient shall comply with 31 USC 1352 and 24 C.F.R. Part 87. Subrecipient shall sign and deliver to City the certification set forth in 24 C.F.R. Part 87, Appendix A, prior to entering into this Agreement, which certification shall be a condition precedent to this Agreement. Subrecipient shall also require this same certification to be included in all Subcontracts paid for with money advanced to Subrecipient pursuant to the City Grant. Additionally, Subrecipient shall disclose to City any funds from any other source paid by Subrecipient (or their respective principals or agents) to any Person, within the last year, for influencing or attempting to influence decisions of the Federal government, by completing, signing, and submitting to City, Standard Form LLL, "Disclosure of Lobbying Activities," found at 24 C.F.R. Part 87, Appendix B. Subrecipient understands that the duty to disclose lobbying activities is a continuing requirement and, therefore, shall make such disclosures at the end of each calendar quarter during the Term in which any activity requiring disclosure occurs or more often, if required by applicable Law.
4. **RECOGNITION OF FUNDING SOURCE.** Subrecipient shall ensure recognition of the role of the City Grant in financing the Improvements and the Business Accelerator. All publications relating to the Improvements or the Business Accelerator shall include the following statement: "This program is funded in whole or in part with Community Development Block Grant program funds provided by the U.S. Department of Housing and Urban Development to the City of San Diego."
5. **PLAYING BY THE RULES HANDBOOK.** By entering into this Agreement, Subrecipient acknowledges that Subrecipient has received, read, and understood the contents of the Playing by the Rules Handbook and shall fully comply with all of the administrative recommendations set forth in such handbook.
6. **NO DISCRIMINATION.** Subrecipient shall comply with Title VI of the Civil Rights Act

of 1964 and the implementing regulations in 24 C.F.R. Part 1, Executive Order 11063, as amended by Executive Order 12259, and the implementing regulations in 24 C.F.R. Part 107, the California Fair Employment Practices Act, and any other applicable Federal or State law or regulation prohibiting discrimination on any basis enacted before or after the Effective Date. Subrecipient shall not discriminate on the basis of race, color, gender, religion, national origin, sexual orientation, age, familial status, or disability, in performing this Agreement, including in employment opportunities, the provision of labor, services, privileges, facilities, advantages, or accommodations. Subrecipient's failure to comply with the requirements of this EXHIBIT E, Section 6, shall be an Event of Default by Subrecipient.

7. **COPELAND "ANTI-KICKBACK" ACT.** As applicable, Subrecipient shall comply with the Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by the Department of Labor regulations at 29 C.F.R. Part 3.

8. **ENERGY POLICY AND CONSERVATION ACT.** As applicable, Subrecipient shall comply with the mandatory standards and policies relating to energy efficiency, contained in the State's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

9. **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.** As applicable, Subrecipient shall comply with all applicable standards, orders or regulations issued pursuant to Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387), for contracts in excess of \$150,000.

10. **RELIGIOUS ACTIVITIES.** Subrecipient shall comply with all applicable HUD requirements governing the use of CDBG Funds by religious organizations, including 24 C.F.R. § 570.200(j), referring to 24 C.F.R. § 5.109, and Executive Order 11245, as amended by Executive Order 13279.

11. **SECTION 3 CLAUSE.** If applicable under 24 C.F.R. § 135.3, then pursuant to 24 C.F.R. § 135.38, Subrecipient (and, if indicated below, City) shall comply with the following "Section 3 Clause":

11.1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

11.2. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

11.3. Subrecipient agrees to send to each labor organization or representative of workers with which Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers'

representative of Subrecipient's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the Person(s) taking applications for each of the positions and the anticipated date the work shall begin.

11.4. Subrecipient agrees to include this Section 3 Clause in every subcontract subject to compliance with the regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. Subrecipient will not subcontract with any subcontractor where Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

11.5. Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after Subrecipient is selected, but before this Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent Subrecipient's obligations under 24 C.F.R. Part 135.

11.6. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted agreements.

11.7. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

11.8. Subrecipient shall document its good faith efforts to comply with the terms and conditions of the above Section 3 Clause and furnish such documentation to City, upon request.

12. **REVERSION OF ASSETS.** Upon the expiration or termination of this Agreement, Subrecipient shall transfer to City any CDBG Funds (including Program Income) on hand at the time of such expiration or termination and relating to the City Grant. As applicable, Subrecipient shall comply with the requirements of 24 C.F.R. § 570.503(b)(7) regarding the use or disposition of any real property acquired or improved with CDBG Funds in excess of \$25,000. If Subrecipient does not use the real property to meet one of the national objectives in 24 C.F.R. § 570.208 for at least five (5) years after the expiration or termination of this Agreement, Subrecipient shall pay City an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of funds other than CDBG Funds for the acquisition of, or improvement to, the property.

13. **FAIR HOUSING ACT.** As applicable, Subrecipient shall comply with Title VIII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), age or disability. Subrecipient shall post in a prominent place at its offices the Equal Housing Opportunity Logo provided by City, which may be obtained through the City's Economic Development Department, and any other fair housing materials provided by City during the Term.

14. **SECTION 504.** As applicable, Subrecipient shall comply with any and all Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973, prohibiting discrimination against persons with disabilities in any Federally assisted program. City shall provide Subrecipient with any guidelines necessary for compliance with that portion of the regulations applicable during the Term.

15. **LIMITED ENGLISH PROFICIENCY.** As applicable, Subrecipient shall comply with Executive Order 12166, enacted on August 11, 2000, mandating that any recipient of HUD assistance funds reduce barriers to access for limited English proficiency ("LEP") persons. Subrecipient shall comply with and make good faith and reasonable efforts to carry out the purposes of Executive Order 12166 relating to "Improving Access to Services by Persons with Limited English Proficiency." Subrecipient acknowledges that failure to ensure LEP access to HUD benefits may violate Title VI of the Civil Rights Act of 1964.

16. **LEAD-BASED PAINT.** As applicable, Subrecipient shall comply with 24 C.F.R. § 570.608 relating to the Lead-Based Paint Poisoning Prevention Act (42 USC 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R.

EXHIBIT F
CONSTRUCTION REQUIREMENTS1. Definitions.

1.1. *Declaration.* That certain “Declaration of Covenants, Conditions and Restrictions Restricting Use of Property” to be entered into by and between City and Subrecipient and recorded against the subject real property, substantially in the form of EXHIBIT G attached to this Agreement.

1.2. *Federally Assisted Construction Contract.* Any agreement between Subrecipient and another Person for construction of the Improvements paid for in whole or in part with CDBG Funds or borrowed on the credit of City or the Federal government pursuant to the CDBG program, where Subrecipient participates in the construction of the Improvements, including supervision, inspection, and other onsite functions incidental to the actual construction of the Improvements.

1.3. *Notice to Proceed.* Notice from City to Subrecipient that all conditions precedent to commencement of construction of the Improvements under this Agreement have been satisfied or waived.

1.4. *Prime Contractor.* Any Subcontractor that is acting as a general contractor or prime contractor for construction of the Improvements.

2. Improvements Construction. Subrecipient shall construct the Improvements in accordance with the terms, conditions and covenants of this Agreement. Subrecipient may act as Prime Contractor for such construction or contract with a third person Prime Contractor for such construction. Subrecipient shall not use, or allow to be used, any donated or volunteered labor to perform any labor or services under this Agreement, except as permitted by Federal law and HUD regulations. Use of donated or volunteered labor or services in performance of any construction shall be promptly reported to City.

3. Compliance Documentation. Subrecipient shall provide City with all Environmental Documents and any other documents required by law or this Agreement for construction of any and all Improvements, within fourteen (14) calendar days after Notice from City, unless otherwise specified in the Notice from City. Subrecipient shall also provide written documentation to the satisfaction of City of Subrecipient’s legal authority to construct all Improvements in accordance with this Agreement.

4. Pre-Construction Actions. Subrecipient shall not begin work on the Improvements, unless and until: (a) Subrecipient obtains all required Approvals from City and other Governments with jurisdiction over construction of the Improvements; (b) City approves all final construction plans and specifications for construction of the Improvements; (c) City reviews and approves all Subcontracts proposed by Subrecipient for construction of the Improvements; and (d) Subrecipient holds a pre-construction meeting with the City Representative, any Third Person Prime Contractor, and all Subcontractors expected to participate in construction of the Improvements (collectively, “Pre-Construction Requirements”). Subrecipient shall complete all of the Pre-Construction Requirements and Notify City of such completion. Upon City’s confirmation of Subrecipient’s completion of all of the Pre-Construction Requirements, City shall issue a Notice to Proceed to Subrecipient. Under no circumstances shall Subrecipient or any Subcontractor commence

construction of the Improvements, unless and until Subrecipient receives Notice to Proceed from City.

5. Commencement of Construction. Within thirty (30) days after the date of City issuance of a Notice to Proceed, Subrecipient shall commence construction of the Improvements in accordance with the terms, conditions and covenants of this Agreement.

6. Construction Schedule. Subrecipient is responsible for ensuring that construction of the Improvements proceeds to completion within the Term. Completion of the Improvements shall be evidenced by Subrecipient recording a Notice of Completion in accordance with California Civil Code section 8182 or section 9204, as applicable, and City issuance of a final Certificate of Occupancy for the Improvements, if applicable, or alternatively, final City inspector sign-off on the Improvements, if a Certificate of Occupancy is not required for the Improvements. Subrecipient is also responsible for ensuring that written reports are completed on a regular basis, that any Prime Contractor's and any and all Subcontractors' requests for progress payments are reviewed before payments are made, and that necessary change orders are prepared and submitted to City for approval, prior to implementation.

7. Maintenance of Documents. Subrecipient is responsible for ensuring maintenance of all written guarantees and warranties, instruction books, diagrams, charts, and a maintenance manuals relating to construction of the Improvements following completion of the Improvements.

8. Scope of Work Changes. Should circumstances require and the Parties agree, in their respective sole and absolute discretion, that the scope of the Improvements should be changed or amended, such change or amendment shall be accomplished only as follows: (a) a change to the scope of the Improvements that does not affect the total amount to be paid or reimbursed to Subrecipient under this Agreement shall be accomplished by a written "Scope of Work Adjustment" form provided by City that is signed by the authorized representatives of both City and Subrecipient; or (b) a change to the scope of the Improvements that increases the total amount to be paid or reimbursed to Subrecipient under this Agreement shall be made by a written amendment to this Agreement in accordance with Section 28.19.

9. Builder's Risk Insurance. During construction of the Improvements, Subrecipient shall obtain and maintain builder's risk or course of construction insurance covering all risks of loss, less policy exclusions, on a completed value (non-reporting) basis, in an amount sufficient to prevent coinsurance, but in any event not less than one hundred percent (100%) of the completed value of the subject construction, including cost of debris removal, but excluding foundation and excavations. Such insurance shall also: (a) grant permission to occupy; and (b) cover, for replacement cost, all materials on or about any offsite storage location intended for use in, or in connection with, the Improvements. Builder's Risk Insurance coverage shall commence at the time of contractor mobilization for the Improvements. Builder's Risk Insurance shall be subject to the provisions of EXHIBIT C attached to this Agreement.

10. City Prevailing Wage Requirements. Subrecipient and all Subcontractors shall comply with SDMC section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 (State prevailing wage law) for any and all construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and for

any and all alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000. Pursuant to San Diego Municipal Code section 22.3019 (“PWO”), construction work performed or funded pursuant to this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000 is subject to the State of California prevailing wage law set forth in California Labor Code section 1720 through 1861 (“Prevailing Wage Law”) and in undertaking any and all such work, Subrecipient and its Subcontractors shall comply with Prevailing Wage Law, including the requirements set forth in this EXHIBIT F. This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay “living wage” pursuant to San Diego Municipal Code section 22.4201 through 22.4245 (“LWO”). If both Prevailing Wage Law and the LWO are applicable to particular work, Subrecipient must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate, and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

10.1. *Compliance with Prevailing Wage Requirements.* Pursuant to Prevailing Wage Law, Subrecipient and its Subcontractors shall ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations (DIR), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

10.1.1. **Wage Rates.** Copies of the prevailing rate of per diem wages are on file at City’s Equal Opportunity Contracting Department and are available for inspection to any interested Person on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Subrecipient or its Subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to any interested party upon request. Subrecipient shall deliver evidence of the required job site posting to City, within 5 calendar days after such posting.

10.1.2. **Duration of Wage Rates.** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the term of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the term of

this Agreement, such wage rate shall apply to the balance of the term of this Agreement.

10.2. *Penalties for Violations.* Subrecipient and its Subcontractors shall comply with California Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with California Labor Code section 1775 shall be in addition to any other applicable penalties allowed under California Labor Code section 1720-1861.

10.3. *Payroll Records.* Subrecipient and its Subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Subrecipient shall, and shall require its Subcontractors to, comply with California Labor Code section 1776, including having provisions requiring such compliance in all contracts with Subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR, and submitting certified payroll records to City through City's web-based Labor Compliance Program (described in this EXHIBIT F, Section 10.8). Further, Subrecipient and its Subcontractors shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. Subrecipient is responsible for ensuring that its Subcontractors submit certified payroll records to City, the Labor Commissioner and DIR.

10.4. *Apprentices.* Subrecipient and its Subcontractors shall comply with California Labor Code section 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Subrecipient shall be held responsible for its compliance and the compliance of its Subcontractors with California Labor Code section 1777.5, 1777.6 and 1777.7.

10.5. *Working Hours.* Subrecipient and its Subcontractors shall comply with California Labor Code section 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

10.6. *Required Provisions for Subcontracts.* Subrecipient shall include, at a minimum, a copy of the following provisions in any contract it enters into with a Subcontractor: California Labor Code section 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

10.7. *Labor Code Section 1861 Certification.* In accordance with California Labor Code section 3700, Subrecipient and its Subcontractors are required to secure the payment of compensation of their respective employees and by signing this Agreement or any subcontract, respectively, Subrecipient and each of its Subcontractors certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for

workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Subrecipient shall include this certification by each Subcontractor in each contract with a Subcontractor.

10.8. *Labor Compliance Program.* City has its own Labor Compliance Program authorized in August 2011 by DIR. City will withhold payments to Subrecipient when payroll records are delinquent or deemed inadequate by City or another governmental entity, or it has been established, after an investigation by City or another governmental entity, that underpayment(s) have occurred. For questions or assistance, please contact City's Equal Opportunity Contracting Department at 619-236-6000.

10.9. *Subrecipient and Subcontractor Registration Requirements.* All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work pursuant to California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

10.9.1. **Inadvertent Error.** A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

10.9.2. **Cancellation.** A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of California Labor Code section 1725.5.

10.9.3. **Verification.** By entering into this Agreement, Subrecipient is certifying that it has verified or will verify that all Subcontractors used on work subject to Prevailing Wage Law are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and shall provide proof of such Subcontractor registration to City.

10.10. *Stop Order.* If Subrecipient or its subcontractor(s) engage in any work without having been registered in violation of California Labor Code sections 1725.5

or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is/are registered. Failure to observe a stop order is a misdemeanor.

10.11. *List of all Subcontractors.* City may ask Subrecipient for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized in performance of any work under this Agreement at any time during performance of this Agreement, and Subrecipient shall provide the list within ten (10) working days of City's request. Additionally, Subrecipient shall provide City with a complete list of all subcontractors utilized in performance of any work under this Agreement (regardless of tier), within ten working days of the completion of the work, along with their DIR registration numbers. City shall withhold payments to Subrecipient until at least 30 days after this information is provided to City.

10.12. *Exemptions for Small Projects.* There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. Subrecipient shall still comply with California Labor Code sections 1720, et. seq. The only recognized exemptions are listed below:

10.12.1. **Registration.** Subrecipient will not be required to register with the DIR for small projects. (California Labor Code section 1771.1).

10.12.2. **Certified Payroll Records.** The records required in California Labor Code section 1776 shall be required to be kept and submitted to City, but will not be required to be submitted online with the DIR directly. Subrecipient will need to keep those records for at least three years following the completion of the subject work. (California Labor Code section 1771.4).

10.12.3. **List of all Subcontractors.** Subrecipient will not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in EXHIBIT F, Section 10.11. (California Labor Code section 1773.3).

10.13. *Filing of Form PWC-100.* Subrecipient shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.

10.14. *Filing of Notice of Completion.* Subrecipient shall record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.

11. Federal Davis-Bacon Act Compliance. Subrecipient and each Subcontractor shall comply with the Federal "Davis-Bacon Act" (40 USC sections 3141-3144 and sections 3146-3148), as supplemented by Department of Labor regulations (29 C.F.R. Part 5), for construction contracts in excess of \$2,000. Subrecipient and each Subcontractor shall ensure that all laborers and mechanics performing work relating to the Activity are paid at a rate not less than the prevailing wage rate specified in a wage determination made by the United States Secretary of Labor and are paid not less than once per week. If wage rates higher than those required under the Davis-Bacon Act are imposed by State, City or

other local law, nothing in this EXHIBIT F, Section 11, is intended to relieve Subrecipient or any Subcontractor of the obligation, if any, to pay the higher wage rate. Subrecipient and each Subcontractor shall submit certified payroll records to City on a weekly basis, including the original statements of compliance.

12. Federally Assisted Construction Contract Required Clauses. Federally assisted construction contracts entered into by Subrecipient or any Subcontractor, shall include the following clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by City's contracting officer, advising the labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by City and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive

Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

13. Declaration. In accordance with 24 C.F.R. § 570.505, if the Activity involves the acquisition or improvement of real property with more than \$25,000 of CDBG Funds, Subrecipient shall make and enter into the Declaration and authorizes City to record the Declaration in the official records of the County with respect to the subject real property, all before City disburses any CDBG Funds to Subrecipient pursuant to this Agreement. Subrecipient represents and warrants to City that Subrecipient has the, right, power, and authority to make and enter into the Declaration and authorize City to record the Declaration in the official records of the County with respect to the subject real property.

EXHIBIT G

DECLARATION (Form)

[Attached behind this cover page.]

RECORDING REQUESTED BY WHEN RECORDED MAIL TO:	
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SPACE ABOVE LINE FOR RECORDER'S USE ONLY

EXEMPT FROM RECORDING FEES PURSUANT TO GOVT. CODE §27383

**CITY OF SAN DIEGO
 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 RESTRICTING USE OF PROPERTY
 ([INSERT SUBRECIPIENT NAME OR PROPERTY IDENTIFICATION])**

THIS CITY OF SAN DIEGO COMMUNITY DEVELOPMENT BLOCK GRANT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE OF PROPERTY (this "Regulatory Agreement") is dated as of **[TO BE DETERMINED]**, and is made by and between the CITY OF SAN DIEGO, a California municipal corporation ("City"), and **[INSERT NAME, ENTITY FORM, AND STATE OF DOMICILE OF PROPERTY OWNER]** ("Owner"), with reference to the following recited facts (each, a "Recital").

RECITALS

- A. Declarant [owns fee title to or holds a leasehold interest pursuant to that certain **[INSERT DESCRIPTION OF LEASE AGREEMENT]** ("Lease")] in that certain real property and improvements specifically described in Exhibit "A" attached to this Declaration ("Property");
- B. Declarant obtained a grant from City funded with United States Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") program funds;
- C. Declarant intends to use the grant proceeds to improve the Property pursuant to that certain Fiscal Year 2022 City of San Diego Community Development Block Grant Subrecipient Agreement, dated July 1, 2021, between Declarant and City ("Agreement");
- D. CDBG program regulations at 24 C.F.R. § 570.505 prohibit changing the use or planned use of real property acquired or improved, in whole or in part, with more than \$25,000 of CDBG grant funds;
- E. Declarant is willing to enter into and make this Declaration to assure City of the use of the Property for the Intended Use (defined in Section 1) for at least five (5) years after Declarant's improvement of the Property with the CDBG grant proceeds received from

City pursuant to the Agreement;

F. This Declaration shall restrict the use of the Property following the date of the first recording of this Declaration in the official records of the County of San Diego, California (“Recording Date”), to ensure that the Property shall, at all times from and after the Recording Date, until expiration of this Declaration, be used for the Intended Use;

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, COVENANTS AND UNDERTAKINGS SET FORTH IN THIS DECLARATION AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, DECLARANT COVENANTS, DECLARES AND AGREES FOR THE BENEFIT OF CITY, AS FOLLOWS:

1. **DEFINITIONS.** As used in this Declaration, the following words, terms or phrases shall have the meaning provided in the initial paragraph of this Declaration, the Recitals, or in this Section 1, unless the specific context of usage of a particular word, term or phrase may otherwise require:

1.1 **Affiliate.** Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

1.2 **Agreement.** Defined in Recital C.

1.3 **Application.** Any agreement, application, certificate, document or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any Construction, including any application for any building permit, Certificate of Occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision or such other instrument as Declarant may request; or (b) to enable Declarant to seek any Approval or to operate the Property in accordance with this Declaration.

1.4 **Approval.** Any license, permit, approval, consent, certificate, ruling, variance, authorization, conditional use permit or amendment to any of the foregoing, as shall be necessary or appropriate under any Law to commence, perform or complete any Construction or to use or occupy the Property.

1.5 **CDBG.** Defined in Recital A.

1.6 **Certificate of Occupancy.** A “certificate of occupancy” as defined in the Uniform Building Code published by the International Conference of Building Officials, as adopted by the City, from time to time.

1.7 **City.** Defined in the initial paragraph of this Declaration.

1.8 **City Parties.** Collectively, City, the City Council, and the elected officials, employees, agents and attorneys of City.

1.9 **City Party.** Individually, City, the City Council, or the elected officials, employees, agents or attorneys of City.

1.10 **Claim.** Any claim, loss, cost, damage, expense, liability, lien, action, cause of

action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if Declarant improperly fails to provide a defense for an Indemnitee or provides a defense under a reservation of rights, then Legal Costs of the Indemnitee) and any judgment.

1.11 **Condemnation.** Any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by a Government through exercise of the power of eminent domain or other similar proceeding.

1.12 **Construction.** Any alteration, construction, excavation, demolition, grading, development, expansion, reconstruction, redevelopment, repair, restoration or other work affecting the Property, including new construction.

1.13 **Control.** Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract or otherwise.

1.14 **Controlling and Controlled.** Exercising or having Control.

1.15 **County.** The County of San Diego, California.

1.16 **Declarant.** Defined in the initial paragraph of this Declaration.

1.17 **Declarant Parties.** Collectively, Declarant and all of the partners, members, directors, officers, employees, agents, managers and holders of Equity Interests in Declarant.

1.18 **Default.** Any Monetary Default or Non-Monetary Default.

1.19 **Environmental Claim.** Any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements or expenses, including Legal Costs and fees and costs of environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law or Hazardous Substance Discharge.

1.20 **Environmental Law.** All Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances affecting the Property), occupational or environmental conditions affecting the Property, as now or may at any later time be in effect, and any other Federal, State, local or municipal law, statute, ordinance or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, to the extent the occupational health or industrial hygiene laws, ordinances or regulations relate to Hazardous Substances affecting the Property, or the regulation or protection of the environment,

including ambient air, soil, soil vapor, groundwater, surface water or land use.

1.21 **Equity Interest.** All or any part of any direct equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that directly owns or holds any ownership or equity interest in a Person.

1.22 **Event of Default.** The occurrence of any one or more of the following:

1.22.1 *Monetary Default.* A Monetary Default that continues for ten (10) calendar days after Notice from City, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment, or evidence of insurance not provided;

1.22.2 *Non-Monetary Default.* Any Non-Monetary Default that is not cured within thirty (30) days after Notice to Declarant describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of a Notice of Default, Declarant shall only be in Default if Declarant does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise City of Declarant's intention to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

1.23 **Federal.** Relating or pursuant to the authority of the federal government of the United States of America.

1.24 **Government.** Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, City, district, municipal or otherwise) whether now or later in existence.

1.25 **Hazardous Substance.** Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, any matter, waste or substance that is subject to any Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source or in the regulations adopted pursuant to Law.

1.26 **Hazardous Substance Discharge.** Any deposit, discharge, generation, release or spill of a Hazardous Substance that occurs at, on, under, into, from or around the Property, or during transportation of any Hazardous Substance to or from the Property, whether or not caused by a Party.

1.27 **HUD.** Defined in Recital A.

1.28 **Indemnify.** Where this Declaration states that Declarant shall “indemnify” any Indemnitee from, against, or for a particular Claim, Declarant shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against such Claim (alleged or otherwise). “Indemnified” shall have the correlative meaning.

1.29 **Indemnitee.** Any Person entitled to be Indemnified by Declarant under the terms of this Declaration.

1.30 **Intended Use.** The use(s) described in Exhibit “B” attached to this Declaration.

1.31 **Law.** Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Property, in any way, including any development, Construction, use, maintenance, taxation, operation, occupancy of or environmental condition affecting the Property, or otherwise relating to this Declaration or any Party’s rights, obligations or remedies under this Declaration, or any transfer of any of the foregoing, whether in force on the date of this Declaration or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance or exemption.

1.32 **Lease.** Defined in Recital B.

1.33 **Legal Costs.** In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses, and consultant and expert witness fees and expenses.

1.34 **Monetary Default.** Any failure by Declarant to pay or deposit, when and as this Declaration requires, any amount of money or evidence of any insurance coverage required to be provided under this Declaration, whether to or with City or a Third Person.

1.35 **Non-Monetary Default.** The occurrence of any of the following described events, except to the extent constituting a Monetary Default: (a) Declarant’s failure to perform any of Declarant’s obligations under this Declaration; (b) Declarant’s failure to comply with any affirmative or negative covenant or material restriction or prohibition in this Declaration; or (c) any other event or circumstance that, with the passage of time or giving of Notice, or both, would constitute a breach of this Declaration by Declarant.

1.36 **Notice.** Any consent, demand, designation, election, notice or request relating to this Declaration. All Notices must be in writing.

1.37 **Notify.** To give a Notice.

1.38 **Parties.** Collectively, City and Declarant.

1.39 **Party.** Individually, either City or Declarant, as applicable.

1.40 **Person.** Any association, corporation, governmental entity or agency,

individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.41 **Property.** Defined in Recital A.

1.42 **Recital.** Defined in the initial paragraph of this Declaration.

1.43 **Record, recorded, recording or recordation.** Recordation of the referenced document in the official records of the County.

1.44 **Recording Date.** Defined in Recital I.

1.45 **State.** The State of California.

1.46 **Term.** The period of time beginning on the Recording Date and ending on the fifth (5th) anniversary of Declarant's completion of the improvement of the Property with CDBG funds received from City pursuant to the Agreement.

1.47 **Third Person.** Any Person that is not a Party, an Affiliate of a Party or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

1.48 **Unavoidable Delay.** A delay in either Party performing any obligation under this Declaration, arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strikes, labor troubles or other union activities, casualty, war, acts of terrorism, riots, litigation, governmental action or inaction, regional natural disasters or inability to obtain required materials. Unavoidable Delay shall not include delay caused by a Party's financial condition or insolvency.

2. CDBG COVENANTS AND RESTRICTIONS.

2.1 Declarant Acknowledgment of Potential Impact of Declaration. Declarant acknowledges and agrees that this Declaration imposes certain covenants, conditions and restrictions on the use and occupancy of the Property during the Term that may not constitute the highest and best use of the Property.

2.2 Agreement to Record. Declarant agrees that City may record or cause the recording of this Declaration against the Property in the official records of County.

2.3 CDBG Restrictive Covenants. Subject to the terms, conditions and provisions of this Declaration, Declarant covenants to and for the benefit of City that Declarant shall acquire, improve, develop, own, manage and operate, or cause the management and operation of, the Property at all times during the Term, for the Intended Use and excluding any use inconsistent with the Intended Use.

2.4 Abandonment. Declarant shall not abandon or surrender the operation of all or any part of the Property for the Intended Use during the Term, except due to material casualty or Condemnation that reasonably justifies such abandonment or surrender.

2.5 Compliance. Declarant shall, at all times during the Term and at Declarant's

sole cost and expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

3. **MONITORING.** City shall have the right, but not the obligation, to monitor and enforce the obligations of Declarant under this Declaration.

4. **HAZARDOUS SUBSTANCES.**

4.1 Restrictions. Declarant shall not cause or permit to occur on, under, at or from the Property during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance, or transportation to or from the Property of any Hazardous Substance, unless both: (i) reasonably necessary and customary to construct, operate or maintain the Property for uses this Declaration permits; and (ii) in compliance with all Environmental Laws.

4.2 Compliance; Clean-Up. Declarant shall, at Declarant's sole cost and expense: (a) comply with all Environmental Laws applicable to the Property and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under any Environmental Law; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify the City Parties against any Hazardous Substance Discharge or violation of Environmental Law, in accordance with Section 5. Declarant's obligations under this Section 4 shall not limit Declarant's rights against Third Persons (exclusive of the City Parties).

5. **INDEMNITY.**

5.1 Declarant's Indemnity Obligations. Declarant shall Indemnify the City Parties against any Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of any Declarant Parties; (b) any Application made by or at Declarant's request; (c) any agreements that Declarant (or anyone claiming by or through Declarant) makes with a Third Person regarding the Property; or (d) any Environmental Claim attributable to any action or failure to act by one or more Declarant Parties.

5.2 No City Liability. During the Term: (a) Declarant is and shall be responsible for operation of the Property; and (b) City shall not be liable for any injury or damage to any property (of Declarant or any other Person) or any Person occurring on or about the Property, except to the extent caused solely by City's gross negligence.

5.3 Survival of Indemnification and Defense Obligations. The indemnity and defense obligations of Declarant under this Declaration shall survive the expiration or earlier termination of this Declaration, until any and all actual or prospective Claims regarding any matter subject to an indemnity obligation under this Declaration are fully, finally, absolutely and completely barred by the applicable statutes of limitations or entry of a court judgment that cannot be appealed or further reviewed.

5.4 Immediate Duty to Defend. The duty to defend under this Declaration includes Claims for which an Indemnitee may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default or other obligation on the part of Declarant or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding Declarant's duty to defend the Indemnitee at any stage of any Claim within the scope of Declarant's indemnity obligations under this Declaration.

5.5 No Limitation. Declarant acknowledges and agrees that Declarant's duties, obligations and liabilities under this Declaration, including under Section 4, are in no way limited or otherwise affected by any information any of the City Parties may have concerning the Property or the presence within the Property of any Hazardous Substance, whether the City Parties obtained such information from Declarant, from their own investigations or from a Third Person.

6. **NO CITY RESPONSIBILITY FOR PROPERTY**. City shall have no responsibility for any Construction, management, operation, or maintenance of or on the Property, financially or otherwise.

7. **COVENANTS RUN WITH THE LAND**. Declarant declares its specific intent that the covenants, conditions, restrictions, reservations and agreements set forth in this Declaration are part of a plan for the implementation of CDBG eligible activities pursuant to 24 C.F.R. §§ 570.1 through 570.913 within the territorial jurisdiction of City, and that each shall be deemed covenants running with the land of the Property, binding upon each successor-in-interest of Declarant in the Property for the duration of the Term and for the exclusive benefit of City. Regardless of classification or characterization, each of the covenants, conditions, restrictions and agreements contained in this Declaration touch and concern the land of the Property and each of them is expressly declared to be for the benefit and in favor of City for the duration of the Term pursuant to the authority of 24 C.F.R. § 570.505, regardless of whether City is or remains an owner of any land or interest in land to which such covenants, conditions, restrictions or agreements relate. City, in the event of any Default under this Declaration, has the right to exercise all of the rights and remedies and maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such Default, as provided in this Declaration. Declarant expressly assumes the duty and obligation to perform each of the agreements and covenants and to honor each of the conditions and restrictions set forth in this Declaration. Each and every contract, deed or other instrument hereafter made, entered into or performed covering or conveying all or any portion of the Property or any interest in the Property shall incorporate all of the provisions of this Declaration, either expressly or by reference. Each and every contract, deed or other instrument transferring any estate or interest in the Property shall conclusively be deemed to have been made, entered into, performed, delivered and accepted subject to the agreements, covenants, conditions, reservations and restrictions of this Declaration, regardless of whether such agreements, covenants, conditions, reservations and restrictions are set forth in or referenced in such contract, deed or other instrument.

8. REMEDIES.

8.1 **Remedies.** If an Event of Default occurs, then City shall, in City's sole and absolute discretion, have the right to exercise any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other provision of this Declaration:

8.1.1 **Recover CDBG Investment.** City may recover from Declarant the current fair market value of the Property, less any portion of such fair market value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the Property.

8.1.2 **Suits Before End of Term.** City may sue Declarant for damages or other relief, from time to time, without terminating this Declaration, including action in mandamus, specific performance, or other suit, action or proceeding at law or in equity, to require Declarant to perform the covenants or agreements or observe the conditions or restrictions of this Declaration, or enjoin any acts or things that may be unlawful or in violation of the rights or benefits to City under this Declaration, or by other action at law or in equity, as necessary or convenient to enforce the covenants, agreements, conditions or restrictions of this Declaration. Nothing in this Section 8.1.2 shall be construed to prohibit City from suing Declarant following expiration or termination of the Term, subject to applicable laws.

8.1.3 **Receipt of Money.** No receipt of money by City from Declarant after any Notice of Default shall affect any Notice previously given to Declarant, or waive City's right to enforce payment or deposit of any amount payable or later falling due. Declarant agrees that after service of Notice of Default or the commencement of suit or proceedings, or after final order or judgment, City may demand, receive and collect any money due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such money collected being deemed payments on account of Declarant's liability to City.

8.1.4 **No Implied Waiver.** No failure by City to insist upon strict performance of any condition, covenant, agreement, restriction or reservation of this Declaration or to exercise any right or remedy upon a Default, and no acceptance of full or partial payment of any amount of money due or becoming due to City during the continuance of any such Default, shall waive any such Default or such condition, covenant, agreement, restriction or reservation. No obligation of Declarant under this Declaration, and no Default, shall be modified, except by a written instrument signed by City. No waiver of any Default shall modify this Declaration and each and every covenant, agreement, condition, restriction and reservation of this Declaration shall continue in full force and effect with respect to any other then-existing or subsequent Default of such condition, covenant, agreement, restriction or reservation of this Declaration.

8.1.5 **Damages.** City may recover from Declarant all damages City incurs by reason of Declarant's Default and reimbursement of City's reasonable out of

pocket costs, including Legal Costs. City may recover such damages at any time after Declarant's Default, including after the expiration of the Term. Notwithstanding any Law to the contrary, City need not commence separate actions to enforce Declarant's obligations for each amount or payment not paid or each month's accrual of damages or costs for Declarant's Default, but may bring and prosecute a single combined action for all such damages and costs.

8.1.6 Injunction of Breaches. Whether or not an Event of Default has occurred, City may obtain a court order enjoining Declarant from continuing any Default or from committing any threatened Default. Declarant specifically and expressly acknowledges and agrees that monetary damages would not constitute an adequate remedy to City for any Non-Monetary Default.

8.2 Specific Enforcement. Declarant agrees that potential monetary damages to City would be difficult, if not impossible, to evaluate or quantify upon Declarant's Non-Monetary Default under this Declaration. Therefore, in addition to any other relief to which City may be entitled as a consequence of Declarant's Non-Monetary Default under this Declaration, Declarant agrees to the imposition of the remedy of specific performance against Declarant under this Declaration.

8.3 Enforcement. City shall have the exclusive power to enforce this Declaration and no other Person shall have any right or power to enforce any provision of this Declaration on behalf of City or to compel City to enforce any provision of this Declaration against Declarant or the Property.

9. GENERAL PROVISIONS.

9.1 Relationship of Parties. Nothing contained in this Declaration shall be interpreted or understood by the Parties or by any Third Person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and Declarant or Declarant's agents, employees or contractors. Declarant shall at all times be wholly responsible for the manner in which Declarant or Declarant's agents, employees or contractors, perform any actions required of them by the terms of this Declaration. Except as otherwise expressly provided in this Declaration, Declarant has the right to exercise full control of employment, direction, compensation and discharge of all Persons assisting Declarant in the acquisition, development, operation or maintenance of the Property. Declarant shall be solely responsible for all matters relating to payment of Declarant's agents, employees or contractors, including compliance with tax withholding and all other Laws governing such agents, employees or contractors. Declarant shall be solely responsible for Declarant's own acts and those of Declarant's agents, employees or contractors.

9.2 Subordination. Declarant acknowledges and agrees that this Declaration shall, at all times and under all circumstances, be prior, paramount, and senior to any other non-statutory lien, encumbrance, interest or estate (whether recorded or not) relating to all or any part of the Property. City shall be under no obligation, under any circumstance or for any reason, to subordinate all or any part of this Declaration to any lien, encumbrance, interest, estate or other obligation of Declarant relating to all or any part of the Property. Declarant shall obtain and record all agreements and instruments necessary to place this Declaration in first lien position with respect to

the Property.

9.3 No Claims. Nothing contained in this Declaration shall create or justify any claim against City by any Person that Declarant may have employed or with whom Declarant may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to acquisition of, Construction on, or operation or maintenance of, the Property.

9.4 Approvals. Any approvals required from a Party under this Declaration shall not be unreasonably withheld, conditioned or delayed, except where otherwise specifically provided in this Declaration. Wherever this Declaration states that a Party's approval shall be "reasonable" or not unreasonably withheld: (a) such approval shall not be unreasonably withheld, delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable (if any); and (c) if a Party grants its consent to any matter, this shall not waive its right to require such consent for any further or similar matter.

9.5 Non-liability of City Officials or Employees. No City Party shall be personally liable to Declarant or any successor in interest to Declarant, in any manner under this Declaration.

9.6 Governing Law. This Declaration shall be governed by the procedural and substantive laws of the State, without application of conflicts of laws principles or statutes.

9.7 Amendment. This Declaration may be amended only by a written instrument signed by both Parties.

9.8 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Declaration. A term defined in the singular in this Declaration may be used in the plural and vice versa, all in accordance with ordinary principles of English grammar, which govern all language in this Declaration. The words "include" and "including" in this Declaration shall be construed to be followed by the words: "without limitation." Each collective noun in this Declaration shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Declaration, refers to such document as modified from time to time (except, at City's option, any modification that violates this Declaration), and includes all exhibits, attachments, schedules and riders to such document. The word "or" in this Declaration includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

9.9 Attorney's Fees. If a Party brings a legal action to enforce this Declaration or otherwise arising out of this Declaration, the prevailing Party in such action shall be entitled to recover Legal Costs to be fixed by the court in which a judgment is entered, as well as the costs of such legal action, from the other Party. For the purposes of this Declaration, in the case of City, Legal Costs include the salaries,

costs and overhead of the lawyers employed in the office of the City Attorney who are legal counsel to City in such an action.

9.10 Severability. If any term or provision of this Declaration or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Declaration, or the application of such term or provision to Persons or circumstances, other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms and provisions of this Declaration shall be valid and be enforced to the fullest extent Law allows.

9.11 Time is of the Essence. Time is of the essence with respect to the performance of each term, provision, covenant, condition, restriction, reservation or agreement contained in this Declaration.

9.12 Titles and Headings for Reference Only. The titles and headings of the articles, paragraphs or sections of this Declaration are for convenience of reference only and are not to be considered a part of this Declaration and shall not in any way interpret, modify or restrict the meaning of any term, provision, covenant, condition, restriction, reservation or agreement contained in this Declaration.

9.13 Notices. Any and all Notices sent by a Party to another Party pursuant to or as required by this Declaration shall be proper, if in writing and transmitted to the address of the Party designated in Exhibit "C" attached to this Declaration, by one or more of the following methods: (a) messenger for immediate personal delivery, (b) a nationally recognized overnight (one business day) delivery service (i.e., Federal Express, United Parcel Service, etc.) or (c) registered or certified United States Postal Service first-class mail, postage prepaid, and return receipt requested. Notices may be sent in the same manner to such other addresses as a Party may from time to time designate by Notice, in accordance with this Section 9.13. A Notice shall be deemed received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the date the Notice is delivered by personal delivery, on the date the Notice is delivered (or the date of the second attempted delivery, as set forth in a written statement of the delivery service) by a nationally recognized overnight delivery service, or three (3) calendar days after the Notice is deposited with the United States Postal Service for delivery as provided in this Section 9.13. Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which no Notice was given, shall be deemed receipt of the Notice. Any attorney representing a Party may give any Notice on behalf of such Party. The authorized addresses for the submission of Notices to the Parties, as of the date of this Declaration, are set forth in Exhibit "C" attached to this Declaration.

9.14 Pages and Exhibits. This Declaration includes thirteen (13) pages and three (3) attached exhibits.

9.15 Integration. This Declaration constitutes the entire understanding and integrates all of the terms, conditions, covenants, restrictions, reservations, terms, provisions and agreements of the Parties regarding the subject matter of this Declaration, and supersedes all prior negotiations or previous agreements between the Parties with respect to the subject matter of this Declaration.

9.16 No Merger. None of the terms, conditions, covenants, restrictions, reservations, terms, provisions or agreements set forth in this Declaration shall be deemed to be merged with any deed conveying title to any estate or interest in the Property.

[Remainder of page intentionally blank. Signatures appear on following page.]

**SIGNATURE PAGE
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE
OF PROPERTY
([INSERT PROPERTY ADDRESS])**

IN WITNESS WHEREOF, Declarant has signed, made and entered into this Declaration by and through the signatures of its authorized representative(s), as set forth below:

Declarant:

[TO BE INSERTED]

**EXHIBIT "A"
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE
OF PROPERTY
([INSERT PROPERTY ADDRESS])**

Property Legal Description

[TO BE INSERTED]

EXHIBIT "B"
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE
OF PROPERTY
([INSERT PROPERTY ADDRESS])

Intended Use

[TO BE INSERTED]

EXHIBIT "C"
TO
COMMUNITY DEVELOPMENT BLOCK GRANT
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RESTRICTING USE
OF PROPERTY
([INSERT PROPERTY ADDRESS])

Notice Addresses

[TO BE INSERTED]

If to Declarant:

If to City:

City of San Diego
Economic Development Department
1200 Third Avenue, 14th Floor
San Diego, CA 92101
Attention: CDBG Program Manager