FY 2013 CDBG AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND HARMONIUM, INC. INVOLVING CDBG FUNDS ALLOCATED IN FY 2012

This Agreement [Agreement] is made by and between the City of San Diego, a municipal corporation [City], and HARMONIUM, INC. [Agency], hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the City has entered into a grant agreement with the Department of Housing and Urban Development to carry out the Fiscal Year 2012 Community Development Block [CDBG] Grant Program, Catalog of Federal Domestic Assistance [CFDA] No. 14.218, within the City of San Diego California; and

WHEREAS, the City desires to engage the Agency in rendering certain of its services in connection with the CDBG Grant Program, and more particularly to complete the construction of tenant improvements relative to SAN DIEGO REGIONAL TEEN CENTER PUBLIC FACILITY IMPROVEMENTS, herein called "the Project," at 8450 Mira Mesa Boulevard, CA 92126; and

WHEREAS, Agency certifies that the activities to be conducted under this Agreement will meet the Benefit to Low/Moderate Income Persons National Objective of the federal Department of Housing and Urban Development's CDBG Entitlement Program, as defined in Title 24 CFR 570.208; and

WHEREAS, Agency certifies that the activities to be conducted under this Agreement shall be eligible under the Public Facility and Improvements Eligible Activity, as defined in Title 24 CFR 570.200 to 570.208; and

WHEREAS, the Agency is ready, willing and able to perform such services.

NOW THEREFORE, in consideration of the above recitals and mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I – INCORPORATION OF RECITALS

1.1 The Recitals set forth above are true and correct, and are hereby incorporated in full and made a part of this Agreement by this reference.

ARTICLE II – DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

2.1 CDBG Funds – funds allocated to the City by HUD and disbursed by the City to the Agency for the performance of services in connection with the City's Community Development Block Grant [CDBG] Program.

2.2 CDBG Program Administrator - the City employee charged with administering the City's Community Development Block Grant Program.

2.3 C.F.R.- the Code of Federal Regulations

2.4 [Reserved].

2.5 Consultant - the person or firm employed by the Agency to perform the services required by Sections 4.4, 4.5 and 4.6 of this Agreement.

2.6 [Reserved].

2.7 Contractor - means any firm or entity other than the Agency that performs construction for, or furnishes services or supplies to, the Agency. "Contractor" does not include providers of Consultant Services or furnishers of standard commercial supplies, office space, or printing services.

2.8 Facility - means the facility occupied by the Agency, located at 9245 Activity Road, Suite 105, San Diego, CA 92126.

2.9 FY 2012 – The City's fiscal year starting July 1, 2011 and ending June 30, 2012.
FY 2013 – The City's fiscal year starting July 1, 2012 and ending June 30, 2013.

2.10 HUD – U.S. Department of Housing and Urban Development.

2.11 OMB – federal Office of Management and Budget.

2.12 Operating Manual – the City's most current "Operating Manual" which contains prescribed procedures for fiscal management and accountability of projects receiving City and federal funds.

2.13 P.L. – United States Public Law.

2.14 Playing by the Rules Handbook – A handbook dated March 2005, provided by HUD, setting forth the administrative requirements that apply to those receiving and using CDBG funds.

2.15 [Reserved].

2.16 Program Income – any income that accrues to Agency as a result of its receipt and/or use of CDBG Funds under this Agreement, as further described in 24 C.F.R. 570.500(a), including, but not limited to, any rents, interest earned, and client fees.

2.17 Project – Agency's project, as described in the Scope of Work (Exhibit A).

2.18 Project Budget – the total amount of CDBG Funds available to fund this Agreement, as set forth in Exhibit B.

2.19 Project Records – all administrative and/or financial records required in connection with the Project that are prepared and /or gathered by Agency, including, but not limited to, all books, papers, invoices, receipts, accounting records (as described in section 8.2 below), payroll records, personnel records, designs, plans, reports, financial disclosures, audits, other disclosures, certifications, investigative videos, work product, and any other documents, data and/or records pertaining to all matters covered by this Agreement, or required by the Operating Manual and Playing by the Rules Handbook.

2.20 Project Manager – the City's CDBG staff person charged with oversight responsibility for the project.

2.21 Reporting Period- each calendar month in which any work under the Scope of Services was conducted under this Agreement.

2.22 Stat. – United States Statutes at Large.

2.23 Site – the location where the Project is to be performed, located at: 8450 Mira Mesa Boulevard, San Diego, CA 92126.

2.24 Subcontractor – any entity, other than the City, that furnishes supplies and/or services (other than office space, standard commercial supplies, or printing services) to Agency in connection with this Agreement including, but not limited to, consultants and contractors.

2.25 U.S.C. – United States Code

2.26 Works – all materials and deliverables subject to copyright protection that arise, or are developed, in the course of or under this Agreement, including, but not limited to, 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 [IT] procurements, executable code, source code, fixes patches, updates, upgrades, documentation embedded or otherwise, original copy, and other productions materials.

ARTICLE III – TERM OF AGREEMENT

3.1 This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, this Agreement shall be effective until completion of the Scope of Services or September 20, 2012; whichever occurs first. Under no circumstances shall this Agreement be effective prior to July 1, 2012.

3.2 Agency acknowledges and agrees that no extensions of time will be granted to Agency to complete the Scope of Work under this Agreement. Pursuant to City Council Policy 700-02, any allocated funds not expended by September 20, 2012 shall be subject to reprogramming by the City Council.

3.3 Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

3.4 Any changes to the term of this Agreement shall be done in writing as an amendment to this Agreement upon the mutual agreement of the Parties and shall comply with all applicable rules, laws, and regulations.

ARTICLE IV – OBLIGATION OF THE AGENCY

4.1 **Scope of Services**. The Agency is entering into an Agreement with the City to provide necessary services for construction of tenant improvements at the Site. The Agency shall perform the services described in the Scope of Work [Exhibit A], in accordance with the Project Budget [Exhibit B], and all terms and conditions of this Agreement.

4.2 **Services Provided by the Agency**. The Agency shall provide the services necessary to accomplish the Project, as described in the Scope of Work. Agency may provide the services directly or through a Consultant or Contractor, or both, subject to the terms and conditions of this Agreement. Agency shall not use, or allow to be used, any donated or volunteer labor to perform any services or construction under this Agreement, except as permitted by federal law and HUD regulations.

4.3 [Reserved].

4.4 **Specifications and Drawings**. The Agency shall require the Consultant to follow and reference the specifications and drawings described in Sections 4.4.1 through 4.4.3 when designing the Project.

These specifications and drawings must be submitted to the Project Manager for approval prior to any commencement of construction.

4.4.1 **Standard Specifications**:

City Document No.	Filed	Description
PITTS 05040901	05-04-09	Standard Specifications for Public Works Construction, 2009 Edition [Green Book].
PITTS 05090902	05-04-09	Regional and City of San Diego Supplement Amendments, 2009 update.
AEC 1231064	12-31-06	California Department of Transportation, Manual of Uniform Traffic Control Devices [MUTCD 2006].

4.4.2 **Standard Drawings**:

City Document No.	Filed	Description
AEC 1231063	12-31-06	City of San Diego Standard Drawings including all Regional Standard Drawings.

4.4.3 **Uniform Building Code** [U. B. C.] as adopted in the San Diego Municipal Code

4.5 **Environmental Documentation**. The Agency shall provide the City with all environmental documents and any other documents required by law or this Agreement, within 14 calendar days of any request by the City unless otherwise specified by the City.

4.6 **Project Phases**. The Agency shall follow the phases set forth in section 4.6.1 through 4.6.5 of this Agreement.

4.6.1 [Reserved].

4.6.2 [Reserved].

4.6.3 **Construction Document Phase**.

4.6.3.1 The Agency shall require the Consultant to prepare working drawings and specifications setting forth in detail the requirements for the construction of the Project, including the necessary bidding information. The Agency shall require the Consultant to prepare the working drawings and specifications in accordance with the latest City drawing

and specification format and to include, insofar as practicable, City's Standard Specifications.

4.6.3.2 The Agency shall require the Consultant to assist the Agency in filing the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project. The Agency shall require the Consultant to furnish copies of the service and meter locations requests and the utility companies' verifications, if required, along with initial submission of contract documents, to the Agency.

4.6.3.3 The Agency shall require the Consultant to prepare an estimate of the final cost of construction of the project based on working drawings and specifications.

4.6.3.4 The Consultant shall assist the Agency in obtaining all necessary permits for Project. All necessary permit fees will be paid by the City from Project funds, and will be included in the construction budget.

4.6.4 **Final Construction Documents Approval; Bidding; Selection Of Construction Contractor; and Award of Contract Phase.**

4.6.4.1 The Consultant shall prepare construction documents, phase documents, and final cost estimates. Prior to final payment from the City, the Agency shall submit to the Project Manager final stamped plans from the City's Development Services Department. In addition to the construction documents, phase documents, and final cost estimates provided by the Consultant, the final contract documents will include the Federal Labor Standards Provisions, the Federal Non-Discrimination Provisions, the Federal Wage Rates, the City's Equal Opportunity Program Requirements, the City's General Provisions, and any other documents that may be required, which the City will provide to the Agency. The Agency shall be responsible for printing the final contract bidding documents. The Agency shall deliver the final contract bidding documents to the Project Manager for bidding purposes.

4.6.4.2 The bidding process completed by the Agency shall be based on the City's competitive bidding and contractor selection procedures to select a Contractor for the Construction Phase set forth in Section 4.6.5. The Agency shall require its Consultant to assist in the bidding and construction contractor selection process by reviewing and evaluating the bids received. After consultation with the Agency and its Consultant, the City shall select the contractor. The Agency shall award the construction contract to the contractor selected by the City.

4.6.5 **Construction Phase.**

4.6.5.1 Agency shall not begin construction until the Project Manager has approved all final construction documents; reviewed and approved all subcontracts; and the Agency has held a pre-construction meeting with Agency's Consultant, Agency's Contractor, Agency's Subcontractor, other appropriate Agency representatives, if any, and City representatives. Under no circumstances shall Agency begin construction until a written Notice to Proceed is issued by the Project Manager.

4.6.5.2 The Agency shall require its Consultant to provide technical advice for the Project and any other related work to the Project Manager.

4.6.5.3 The Agency shall require its Consultant to make any and all site visits necessary to ensure that the work is proceeding in accordance with the contract documents. The Agency shall require its Consultant to make written reports on a regular basis to inform the Agency and Project Manager of the progress of the Project; to make other written reports as required by other applicable public agencies; to check and approve schedules and submitted documents required by the contract documents; to prepare change orders for the Project Manager's approval; to write memoranda justifying the need for any change orders; to examine Contractor's requests for progress payments; and, to make recommendations with respect to those Contractor's requests before payments are made.

4.6.5.4 The Agency shall require its Consultant to assemble all written guarantees and warranties, instruction books, diagrams and charts in accordance with the contract documents and to provide a Project maintenance manual to the Agency once the Project is complete.

4.6.5.5 Within 90 calendar days of execution of the Agreement, the Agency shall take all action necessary to obtain a written Notice to Proceed from the Project Manager, unless such period of time is otherwise extended in writing by the Project Manager. The Agency shall under no circumstances commence any construction set forth in the Scope of Services until such time as the Agency has obtained a written Notice to Proceed from the Project Manager.

4.6.5.6 Within 45 calendar days from the date of issuance of the Notice to Proceed, the Agency shall commence construction consistent with the Scope of Services, unless such period of time is otherwise extended in writing by the Project Manager.

ARTICLE V – BUDGET; PAYMENT; PROGRAM INCOME

5.1 **Budget.**

5.1.1 Size of Budget. The budget shall not exceed $100,000 dollars.

5.1.2 [Reserved].

5.2 **Manner of Payment.** Agency shall provide authentic, accurate, and legible written invoices for all fees and expenses incurred in accordance with this Agreement directly to the City on a monthly basis. Written invoices from any of Agency's Contractor, Subcontractor, or other vendors shall be provided to the City in the form originally provided to the Agency with no alterations or other markings on such invoices. Agency shall make original invoices immediately available to the City upon request. Each invoice shall include an itemized description of the completed work, the date such work was done, and all supporting invoices and documentation sufficient for the City to adequately determine eligibility for reimbursement of each and every expenditure and that such expenditure has already been paid in full by the Agency. Invoices approved by the City in accordance with the Agreement will be paid in a timely manner. Partial payments may be made for invoices that receive only partial approval.

5.3 **Final Payment.** Final payment to Agency shall be withheld by the City unless and until all reports required under this Agreement have been received by the City.

5.4 **Payment Requirements and Restrictions.**

5.4.1 Agency assumes all responsibility for taking the appropriate action to properly and timely submit requests for reimbursement to the City.

5.4.1.1 Agency shall not be reimbursed for any expenditure without proper and sufficient proof and documentation that each expenditure is an eligible reimbursement and that such eligible expenditure has been paid in full by the Agency. In addition to providing such proof and documentation, Agency shall complete all of the necessary forms provided by the City in order to properly submit a request for reimbursement.

5.4.1.2 Prior to submittal to the City, Agency shall obtain signatures of at least two separate individuals on each and every request for reimbursement attesting to its truthfulness and accuracy under penalty of perjury. These signatures shall include the Agency's Executive Director or equivalent and a member of the Agency's board of directors authorized to sign on behalf of the Agency. Within 14 calendar days of contract execution, Agency shall provide to the Project Manager in writing the names and official titles of the individuals Agency wishes to designate as signatories for requests for reimbursement. The Project Manager retains the right at all times to approve the individuals designated as signatories.

5.4.1.3 Agency acknowledges and understands that the City reserves the right to deny reimbursement for any request that is not properly submitted, including but not limited to Agency's failure to obtain the required signature certifications or to accurately complete the forms required by the City for reimbursement.

5.4.2 Agency shall not be reimbursed for travel, meals, lodging, or entertainment expenses. Agency shall not be reimbursed with CDBG funds for alcoholic beverages, under any circumstances.

5.4.3 Agency shall not be reimbursed for any costs incurred in its operations, directly or indirectly, during any period of federal, state or local debarment, suspension, or ineligibility of Agency, when Agency has notice (actual, constructive, or implied) of such debarment, suspension or ineligibility.

5.4.4 Any expenditure by Agency that is not within the prescribed limitation set forth in this Agreement (including the Project Budget), the Operating Manual, the Playing by the Rules Handbook, and applicable laws, rules, and regulations governing this Agreement, is not chargeable to the Project and shall be borne solely by the Agency.

5.4.5 If Agency receives (or has received) additional funding for the Project from a source or sources other than the City, the use of which requires that Agency make an accounting to, or be subject to, an audit by such other source, then Agency shall charge Project expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Project which is properly chargeable to, and actually claimed for compensation under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.

5.4.6 Agency acknowledges and understands that the City must comply with HUD's requirement that funds allocated for the Project are to be expended in a timely manner and further understands that the City must timely and properly monitor and administer to all CDBG contracts.

5.4.6.1 Agency shall timely and properly submit a minimum of one request for reimbursement during each Reporting Period, unless the Agency otherwise seeks and obtains a written exception to this requirement from the Project Manager. Each request for reimbursement must be accompanied with all supporting invoices and documentation sufficient for the City to determine eligibility for reimbursement. Any failure to do so may be deemed a waiver of the Agency's right to reimbursement for such expenditure(s).

5.4.6.2 Within 45 calendar days from the date of invoice from any

Subcontractor, Agency shall properly submit a request for reimbursement for such expenditure(s) with the Project Manager. Any failure to do so may be deemed a waiver of the Agency's right to reimbursement for such expenditure(s).

5.4.6.3 Agency shall submit to the City any and all final requests for reimbursement including, but not limited to, any documentation substantiating this request no later than thirty (30) calendar days from the expiration or termination of this Agreement, whichever is sooner. Agency completely waives any and all rights to submit any further documentation of expenditures and to receive any reimbursement for any submissions of documentation beyond this time period. Furthermore, any such remaining fund balances in the Project for which a request for reimbursement has not been properly and timely submitted to the City shall be automatically subject to reprogramming.

5.4.6.4. Agency shall include all of the required project closeout documentation and demographics with Agency's final request for reimbursement. The City reserves the right to withhold ten (10) percent of the Budget amount set forth in 5.1.1 until all project closeout documentation and demographics have been submitted to the City.

5.4.7 Upon the determination of the City and/or HUD that any reimbursement has been provided to the Agency for an ineligible expenditure or based on a fraudulent or other illegal submittal of a request for reimbursement by the Agency, Agency shall return such funds to the City within 14 calendar days upon written request to the Agency. In addition to the remedies set forth in Article XI of the Agreement, if Agency fails to timely return such funds, the City reserves the right to deduct such amounts from any future reimbursement owed to the Agency.

5.4.8 Upon the determination of the City and/or HUD that any reimbursement has been provided to the Agency based on an inadequate or improper submittal of a request for reimbursement by the Agency including, but not limited to, the provision of inadequate support documentation for expenditures or services provided and/or the failure to properly complete required forms, Agency shall provide any and all documentation required by the City and/or HUD in order to fully remedy such concern(s). Agency shall provide such documentation within 14 calendar days of any written request to the Agency. In the event that the Agency is unable or unwilling to remedy such concern(s), Agency shall return such funds to the City within 14 calendar days of any written determination by the City and/or HUD that such submittal remains inadequate or improper. In addition to the remedies set forth in Article XI of the Agreement, if Agency fails to timely return such funds, the City reserves the right to deduct such amounts from any future reimbursement owed to the Agency.

5.5 **Program Income.**

5.5.1 Agency may use Program Income to improve the services performed by Agency under this Agreement, provided that Agency submits to the City a written budget detailing Agency's proposed use of the Program Income, and Agency obtains prior written approval from the City of the written budget.

5.5.2 Agency shall separately account for any and all Program Income accrued and/or used by Agency. In addition, Agency shall include an accounting of any and all Program income accrued and/or used by Agency in its monthly (or quarterly) reports, and in its annual audits and/or financial reports, submitted to the City.

5.5.3 If the City grants approval of Agency's written budget (described in Section 5.5.1 above) regarding Agency's proposed use of Program Income, all provisions of this Agreement shall apply to the specific activities contained in the written budget. In such event, Agency acknowledges that all transfers of CDBG Funds by the City to Agency shall be adjusted according to the principals described in 24 C.F.R. 570.504(b)(2)(i) and (ii).

5.5.4 If the City does not grant approval of Agency's written budget (describe in section 5.5.1 above) regarding Agency's proposed use of Program Income, Agency shall return to the City any and all Program Income balances (including investments thereof) held by Agency within thirty calendar days of the expiration or termination of this Agreement (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

ARTICLE VI – INSURANCE

6.1 Prerequisite to Commencement of Work

6.1.1 Prior to the execution of this Agreement by the Parties, and prior to Agency's performance of its obligations and/or duties under the Scope of Work [Exhibit A], Agency shall complete each of the following:

(a) Comply with Section 6.2 below regarding insurance companies; and

(b) Obtain all insurance required in Section 6.3 below, and confirm that all insurance policies contain the specific provisions required in Sections 6.3 and 6.5.

6.1.2 Agency shall not allow any Subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the Subcontractor (as described in Section 6.3 below) has been obtained and has been submitted to the City for review and approval.

6.2 **Insurance Companies**. All insurance required in Section 6.3 below shall be carried only by insurers that have been rated "A-, VI" or better, by the current A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted "surplus lines" carriers, only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers [LESLI list].

6.3 **Types of Insurance**. At all times during the term of this Agreement, the Agency shall maintain and require its subcontractors to maintain insurance coverage as follows:

6.3.1 **Commercial General Liability**. Commercial General Liability [CGL] Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of $1 million dollars per occurrence and subject to an annual aggregate of $2 million dollars. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured versus insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

6.3.2 **Commercial Automobile Liability**. For all of the Agency's automobiles including owned, hired and non-owned automobiles, the Agency shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of $1 million dollars per occurrence. Insurance certificate shall reflect coverage for any automobile [Any Auto].

6.3.3 **Workers' Compensation**. For all of the Agency's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Agency shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of $1 million dollars of employers' liability coverage.

6.3.4 [Reserved].

6.4 **Deductibles**. All deductibles on any policy shall be the responsibility of the Agency and shall be disclosed to the City at the time the evidence of insurance is provided.

6.5 **Required Endorsements**. The Agency shall submit the following endorsements to the policies of insurance for review by the City before any work is initiated under this Agreement.

6.5.1 **Commercial General Liability Insurance Endorsements**

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 1580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by Agency or on Agency's behalf, (b) Agency's products, (c) Agency's work, including but not limited to your completed operations performed by Agency or on Agency's behalf, or (d) premises owned, leased, controlled or used by Agency.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by this Commercial General Liability policy or policies is primary to any insurance or self insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respect to operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of the Agency's insurance and shall not contribute to it.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 17.1 Notices.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Agency's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

6.5.2 **Automobile Liability Insurance Endorsements**

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, Agency shall ensure that the policy or policies are endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Agency.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) calendar days prior written notice (10 calendar days for cancellation due to non-payments of premiums) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in Section 17.1 Notices.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Agency's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

6.5.3 **Worker's Compensation and Employer's Liability Insurance Endorsements.**

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) calendar days prior written notice (10 calendar days of cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the City at the address specified in section 17.1 Notices.

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights or subrogation against the City and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City.

6.6 **Reservation of Rights**. The City reserves the right, from time to time, to review the Agency's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to the City.

6.7 **Additional Insurance**. The Agency may obtain additional insurance not required by this Agreement.

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

6.9 **Requirement to Maintain Insurance**. Any failure by Agency to maintain the insurance required in Section 6.3 above throughout the term of this Agreement, or to provide the City evidence of such insurance coverage as required under this Agreement, shall constitute a material breach of this Agreement and shall be grounds for immediate termination.

6.10 **Agency's Liability Not Limited to Insurance Coverage.** Agency's liability, including, but not limited to, Agency's indemnification obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.

6.11 **Modifications Affecting City's Exposure to Loss.** Agency shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of the Agreement.

ARTICLE VII – REPORTS; DISCLOSURES; AUDITS

7.1 **Monthly Reports.** Agency shall submit to the City a fiscal and programmatic report on a monthly basis that summarizes the Project expenditures and Project goals accomplished during the Reporting Period, along with any and all invoices and documentation required by the City. Each report shall be submitted within fifteen calendar days of the end of each Reporting Period.

7.2 **Year-End Report.** Agency shall submit to the City a narrative report that summarizes the Project goals accomplished during the term of this Agreement. This report shall be limited to two pages in length, and shall be submitted within thirty calendar days of the expiration of this Agreement, or in the event of earlier termination, within thirty calendar days of such termination. Agency shall also submit to the City a financial summary report that provides confirmation of project expenditures claimed to and reimbursed by the City for costs incurred during the term of this Agreement. In addition, Agency shall submit a property records report that identifies any real property acquired or improved in whole or in part with CDBG funds in excess of $25,000 or personal property acquired or improved in whole or in part with CDBG funds in excess of $500.

7.3 **Audits.**

7.3.1 For each fiscal year in which Agency receives CDBG Funds, Agency shall have Financial Statement Audits prepared in accordance with Generally Accepted Accounting Principles [GAAP] and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards [GAAS]. This audit shall include the following statements:

(a) an audited financial statement to include a Balance Sheet, Income Statement, and Cash Flow Statement showing use of revenues and expenditures of all funds received by Agency;

(b) a statement certifying compliance with all terms and conditions of the City's contract with Agency, and that all required reports and disclosures have been completed, signed, and submitted by an executive officer of Agency; and

(c) Copies of the State form 199 and the Federal Form 990 signed tax reports that have been submitted to the taxing agency.

Agency shall provide the City a copy of the Financial Statement Audit within 150 calendar days of the end of Agency's fiscal year. Extensions of up to thirty calendar days to this deadline may be granted by the City, upon written request by Agency.

7.3.2 If Agency is expending $500,000 or more (or the current federal threshold) in total federal funding from all sources in a year shall, pursuant to the Single Audit

Act of 1984 [P.L. 98-502], Agency shall have an Annual Single Audit conducted in accordance with Federal OMB Circular Nos. A-110 and A-133. Agency shall ensure that the Single Audit is completed within 180 calendar days of the end of Agency's fiscal year. If Agency is completing audits by calendar year (rather than fiscal year), Agency shall ensure that the Single Audit is completed within 180 calendar days of December 31st. Agency shall provide the City with a copy of the Single Audit within fifteen calendar days of Agency's receipt of the audit.

7.3.3 Agency shall ensure that the Financial Statement Audit and Annual Single Audit are completed by a Certified Public Accountant. Agency shall include a clause in any Agreement or Agreement Agency enters into with an audit firm to provide access by the City or federal government to the working papers of the independent auditor who prepares the audit(s) for Agency. By executing this Agreement, Agency also waives any claim of privilege or confidentiality and consents to and authorizes any and all audit firms hired by Agency in connection with this Agreement to release any and all information obtained and utilized by any such audit firm as the basis of any audit report issued by the audit firm involving the Agency.
Individual projects funded by the City shall be clearly identified in the audits, as well as the dollar amounts allocated to such projects by the City.

7.3.4 If Agency is subject to an audit from a source other than the City, Agency shall provide a copy of the audit to the City within thirty calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third party audit(s). Agency shall fully cooperate with any such annual review by the City by providing any and all documentation associated with ay such third-party audit(s) within 14 calendar days of request by the City unless otherwise specified by the City.

7.3.5 In the event that any type of audit or monitoring review reveals any pattern of suspicious or questionable request for reimbursement submittals to the City, the City in its sole discretion reserves the right to take action as provided under Article XI of the Agreement including, but not limited to, immediately suspending the Agreement in whole or in part to further investigate such matters upon provision of written notice to the Agency.

7.3.6 In the event that an independent audit outlines any concerns about the Agency's accounting practices or internal controls which results in an opinion other than an unqualified opinion, the City reserves the right to immediately suspend or terminate this Agreement as well as any and all other active contracts between the City and the Agency involving the use of CDBG funds effective immediately upon written notice to the Agency. Furthermore, the City reserves the right not to execute future contracts with the Agency until such time as an independent auditor can attests to an unqualified opinion that demonstrates the Agency's accounting practices and internal controls fully comply with GAAP. If the Agency is unable to obtain an unqualified opinion by an independent auditor

within ninety (90) calendar days of the issuance of the initial independent auditor's opinion, the City further reserves the right to reprogram any and all pending CDBG funds allocated to the Agency.

7.3.7 Agency shall fully cooperate with the City and any other auditors related to any review or investigation of Agency's conduct or action(s) relating to this Agreement. Such cooperation shall include, but is not limited to, the timely provision of responses and documentation requested in any such review or investigation. Failure by the Agency to do so shall constitute a material breach of the Agreement, which shall subject the Agency to immediate termination of the Agreement.

7.4 **Other Disclosures.** If Agency receives (or expects to receive) $500,000 or more in federal, state, and/or City funds in a year, when that funding represents more than ten percent of Agency's annual budget, Agency shall include in its annual CDBG application an itemization setting forth the salary and wage ranges for each of Agency's job classifications, including actual executive salaries and benefits packages, applicable for the contract period.

ARTICLE VIII – PROJECT RECORDS

8.1 **General.** Agency shall maintain, and require its Subcontractors to maintain, all Project Records during the term of this Agreement including those required by the federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities funded under this Agreement.

8.2 **Accounting Records**. Agency shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with General Accepted Accounting Principles [GAAP].

8.3 **Inspection and Photocopying**. At any time during normal business hours and as often as requested, Agency shall permit, and require its Subcontractors to permit, the 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 of San Diego (e.g., the offices of Agency), all Project Records for the purposes of making audits, examinations, excerpts, and/or transcriptions, as well as monitoring and/or evaluating Agency's performance of its obligations and/or duties under this Agreement. The City, HUD, and Comptroller General may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City, HUD, or Comptroller General in its sole discretion. The City will keep all copies of Project Records in the strictest confidence required by law. If Agency is unable to make any Project Records available for inspection within the County of San Diego, then Agency shall pay all of the City's travel-related costs to inspect and/or audit the Project Records at the location where the Project Records are maintained. Any refusal by Agency to fully comply with the provisions of this section shall be deemed a material breach of this

Agreement and shall be grounds for immediate termination.

8.4 **Duplicates of Records**. Upon any request by the City, HUD, Comptroller General, or any of their duly authorized representatives, for any Project Records, Agency shall submit, and require its Subcontractors to submit, exact duplicates of the originals of the requested Project Records to the requesting party for the purposes described in Section 8.3 above.

8.5 **Ownership of Records**. Once Agency has received any reimbursement from the City for Agency's performance of its obligations and/or duties under this Agreement, all Project Records shall be the property of the City. The City's ownership of the Project Records includes the use, reproduction, and/or reuse of the Project Records, as well as all incidental rights, whether or not the work for which the Project Records were prepared has been performed. No Project Records shall be shown to any other public or private person or entity, except as authorized by the City in writing, or unless such Project Records are subject to the California Public Records Act.

8.6 **Storage Period.** Agency shall store, and require its Subcontractors to store, all Project Records for a period of not less than five years after Agency's final submission of all required reports under this Agreement, or five years after the City and Agency make all final payments, or until all pending matters (including audit findings) have been resolved, whichever is longest. All Project Records shall be kept at Agency's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Agency shall permit, and require its Subcontractors to permit, the City, HUD, Comptroller General, or any of their duly authorized representatives, to inspect and photocopy all Project Records for the purposes described in Section 8.3 above. After the storage period has expired, Agency shall provide the City with thirty calendar days written notice of its intent to dispose of any Project Records. During this time period, the Agency shall provide any and all Project Records to the City upon request of the City.

ARTICLE IX – COMPLIANCE WITH LAWS AND POLICIES

9.1 **General**. Agency shall comply, and require its subcontractors to comply, with all applicable laws, statues, rules, regulations, orders, ordinances, resolutions, permits, requirements, and policies of the federal, state, and local governments, as they pertain to this Agreement. In addition, Agency shall immediately comply, and require its subcontractors to immediately comply, with all directives issued by the City, or its duly authorized representatives, under authority of any law, statute, rule, regulation, order, ordinance, resolution, permit, requirement, or policy of the federal, state, or local governments. Failure by the Agency to accept or comply with rules, regulations, and procedures which affect the terms of this Agreement, and which the City shall present in writing, shall be deemed a material breach of this Agreement and shall be grounds for immediate termination by the City.

9.2 **Conflict of Interest**

9.2.1 Agency shall comply, and require its Subcontractors to comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:

(a) the conflict of interest provisions in 24 C.F.R. 570.611, and in OMB Circular No. A-110;

(b) California Government Code sections 1090 et. seq., and 81000 et. seq.;

(c) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);

(d) the City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and

(e) the "Conflict of Interest and Procurement Policy for Non-profit Corporations Contracting with the City of San Diego" [Exhibit C].

9.2.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. If Agency becomes aware at any time during the Term of this Agreement of any financial or economic interest, Agency shall immediately disclose in writing such interest to the Project Manager. If such a financial and/or economic interest is determined to exist, the City is authorized to immediately terminate this Agreement by giving written notice thereof or to take any action deemed appropriate under Article XI of this Agreement.

9.2.3 If, in performing its obligations and duties set forth in this Agreement, Agency 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 the City that would otherwise be performed by a City employee holding a position specified in the City's conflict of interest regulations, Agency shall be subject to the City's conflict of interest regulations, requiring the completion of one or more statements of economic interests, disclosing Agency's relevant financial interests.

9.2.3.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Agency shall file a Form 700 [Assuming Office Statement] within thirty calendar days of the City's determination that Agency is subject to the City's conflict of interest regulations. Agency shall also file a Form 700 [Annual Statement] on or before April 1, disclosing any financial

interests held during the previous calendar year for which Agency was subject to the City's conflict of interest regulations.

9.2.3.2 If the City requires Agency to file a statement of economic interests as a result of the obligations and duties performed, Agency shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

9.2.4 Agency shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees 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, and/or other relationships.

9.2.5 Agency's personnel, employed in performing the obligations and duties under this Agreement, shall not accept gratuities, or any other favors, from any Subcontractor or potential Subcontractor. Agency shall not recommend or specify any product, supplier, or contractor with whom Agency has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

9.2.6 If Agency violates any conflict of interest law, or any of the provisions of Section 9.2 of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies available under the law. Further, any such violation shall subject Agency to liability to the City for attorney's fees and all damages sustained as a result of the violation.

9.3 **Employment of City Staff.** Pursuant to City Council Policy 300-11, the City, at its sole discretion, may unilaterally and immediately terminate this Agreement if Agency employs an individual, who, within twelve 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 the City Council in connection with the selection of Agency for the City's CDBG Program.

9.4 **Equal Employment Opportunity.**

9.4.1 Agency shall comply, and require its Subcontractors to comply, with the City's Equal Employment Opportunity [EEO] Outreach Program, codified in San Diego Municipal Code sections 22.2701 – 22.2707. Agency and all of its Subcontractors are individually responsible for abiding by its contents.

9.4.2 Agency shall comply, and require its Subcontractors to comply, with Title VII of the Civil Rights Act of 1964 (as amended by Executive Orders 11246, 11375, and 12086; as supplemented by 41 C.F.R. chapter 60), the California Fair Employment Practices Act, and any other applicable federal and state laws and/or

regulations hereinafter enacted.

9.4.3 Agency shall not discriminate, and shall require its Subcontractors not to discriminate, on the basis of race, color, gender, religion, national origin, sexual orientation, age, familial status, or disability, in performing any obligation or duty in connection with this Agreement, including, but not limited to, the provision of services, privileges, facilities, advantages, and accommodations.

9.4.4 Agency, and its Subcontractors, shall provide equal opportunity in all employment practices.

9.4.5 Agency shall submit to the City, a current Work Force Report, and if requested by the Equal Opportunity Contracting [EOC] staff, an Equal Employment Opportunity Plan, as required by San Diego Municipal Code section 22.2705.

9.4.6 Agency understands that compliance with the EEO provisions shall be monitored and reviewed by the City's EOC staff.

9.4.7 Agency acknowledges that its failure to comply with the above requirements, or its submittal of false information in response to these requirements fully authorizes the City to take any of the following actions: the withholding of reimbursement payments until Agency complies with the above; immediate termination of this Agreement; debarment; and/or other sanctions, including suspension from participating in future City contracts (as a prime or Subcontractor) for a period of not less than one year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this Section shall prohibit Agency from participating in future City contracts, until all penalties have been satisfied.

9.4.8 Nothing in this Section shall be interpreted to hold Agency liable for any discriminatory practice of its Subcontractors.

9.5 **Non-Discrimination in Contracting.**

9.5.1 Agency shall comply, and shall require its Subcontractors to comply, with the City's Nondiscrimination in Contracting Ordinance, codified in San Diego Municipal Code sections 22.3501 – 22.3517.

9.5.2 Agency shall not discriminate, and require its Subcontractors not to discriminate, on the basis of race, color, gender, religion, national origin, ethnicity, sexual orientation, age, familial status, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, any Subcontractors, vendors, or suppliers.

9.5.3 Within sixty calendar days of a request by the City, Agency shall provide the City a truthful and complete list of the names of all Subcontractors, vendors, and

suppliers that Agency has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Agency for each subcontract or supply contract. Agency shall fully cooperate in any investigation conducted by the City, pursuant to the City's Nondiscrimination in Contracting Ordinance, referenced above.

9.5.4 Violation of any provision of Section 9.5 shall be considered a material breach of this Agreement, and may result in remedies being ordered against Agency up to, and including, immediate termination of this Agreement, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance.

9.6 **Local Business and Employment**. Agency acknowledges that the City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Agency shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Agency shall hire qualified local residents and firms, whenever feasible.

9.7 **Living Wage Ordinance**. Agency shall comply, and require its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201 et seq., in performing its obligations and/or duties under this Agreement.

9.8 **Americans with Disabilities Act**. Agency hereby certifies that it agrees to comply, and require its Subcontractors to comply with City Council Policy 100-04, as adopted by City Council Resolution R-282153, relating to the federally-mandated Americans with Disabilities Act [ADA], as incorporated into this Agreement by this reference. Agency, and its Subcontractors, shall be individually responsible for their own ADA program.

9.9 **Drug – Free Workplace.**

9.9.1 Agency shall comply, and require its Subcontractors to comply, with the City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952. Agency shall certify, and require its Subcontractors to certify, that it shall provide a drug-free workplace, by submitting to the City a "Contractor Certification for a Drug-Free Workplace" form. This certification shall be a condition precedent to this Agreement and shall be delivered to the City prior to execution of this Agreement by the City and approval by the City Attorney.

9.9.2 Agency shall post in a prominent place at the Project Site a statement setting forth its drug-free 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 prohibition.

9.9.3 Agency 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.

9.9.4 Agency shall ensure that all subcontracts in connection with this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Section 9.9 of this Agreement, as required by City Council Policy 100-17.

9.9.5 Agency, and its Subcontractors, shall be individually responsible for their own drug-free workplace program.

9.10 **Lobbying and Political Activities.**

9.10.1 Agency shall not use, and shall require its Subcontractors not to use, any of the funds, personnel, or materials received in connection with this Agreement, to influence, or attempt to influence, any governmental decision or election in any manner whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of federal, state, or local government. The term, "influence or attempt to influence," shall mean the making, with the intent to influence, any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.

9.10.2 Agency acknowledges that funds received for the Project have been provided pursuant to a federal grant, and shall comply with the laws set forth at 31 U.S.C. 1352 and 24 C.F.R. 87.

9.10.3 Agency shall complete and sign a certification form, certifying Agency's knowledge of, and promise to comply with, each of the provisions set forth in Section 9.10 of this Agreement. This certification shall be a condition precedent to this Agreement and shall be delivered to the City prior to execution of this Agreement by the City and approval by the City Attorney. Agency shall also require this same certification to be included in all subcontracts, subgrants, and cooperative agreements exceeding $100,000.

9.10.4 Agency shall disclose to the City any funds from any other source which have been paid by Agency (or its principals or agents), within the last year, to influence or attempt to influence decisions of the federal government, by completing, signing, and submitting to the City, Form LLL, "Disclosure of Lobbying Activities," found at 24 C.F.R. 87, Appendix B.

9.10.5 Agency 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 in which there occurs any event requiring disclosure.

9.11 **Storm Water Pollution Prevention**. Agency shall comply, and require its Subcontractors to comply, with the City's Storm Water Management and Discharge Control Ordinance, codified in San Diego Municipal Code sections 43.0301 et seq., in performing its obligations and/or duties under this Agreement.

9.12 **Product Endorsement**. Agency shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Agency shall not create any advertisement or writing that identifies or refers to the City as the user of a product or service without obtaining the prior written approval of the City.

9.13 **Recognition of Funding Source.** Agency shall ensure, and require its Subcontractors to ensure recognition of the role of the federal CDBG Program in funding Agency's services under this Agreement. All activities performed, facilities and items utilized, and publications prepared, in connection with this Agreement shall be prominently labeled to reference the use of CDBG Funds from HUD as a funding source. The reference shall be worded as follows: "This project is funded in whole or in part with Community Development Block Grant (CDBG) Program funds provided by the U.S. Department of Housing and Urban Development (HUD)."

9.14 **Operating Manual**. Agency acknowledges receipt of, and shall comply with, and require its Subcontractors to comply with the Operating Manual, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible project expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. Any desired changes by Agency to the procedures set forth in the Operating Manual must be requested by Agency in writing and approved by the City in writing before such changes may be implemented.

9.15 **Playing by the Rules Handbook.** By executing this Agreement, Agency acknowledges, and shall require its Subcontractors to acknowledge, that it has received, read, and understood the contents of the Playing by the Rules Handbook and shall fully comply with all of the administrative requirements set forth therein.

9.16 **Equal Benefits Ordinance.**

9.16.1 In accordance with the Equal Benefits Ordinance [EBO], Agency shall provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the

contract [SDMC §22.4304(f)]. Prior to the execution of this Agreement with the City, Agency shall complete the EBO Certification of Compliance and provide it to the City. Failure to maintain equal benefits consistent with the EBO is a material breach of the contract [SDMC §22.4304(e)].

9.16.2 Agency shall notify employees of their 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 employees:

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

9.16.3 Agency shall immediately give the City access to documents and records sufficient for the City to verify that Agency is providing equal benefits and otherwise complying with EBO requirements.

9.16.4 The full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

ARTICLE X – COMPLIANCE WITH OTHER FEDERAL LAWS, REGULATIONS, AND REQUIREMENTS

10.1 **Uniform Administrative Requirements**. Agency shall comply, and require its Subcontractors to comply, with all applicable uniform administrative requirements set forth in 24 C.F.R. 570.502, including, but not limited to, federal CDBG financial and contractual procedures, as well as OMB Circular Nos. A-87 and A-133 for governmental entities, and OMB Circular Nos. A-122, A-21, A-133, and A-110 for non-governmental entities. These federal documents are on file at the City's Economic Development Division, located at 1200 Third Avenue, Suite 1400, San Diego, California 92101.

10.2 **Other Program Requirements**. Agency shall comply, and require its Subcontractors to comply, with all federal laws and regulations described in 24 C.F.R. 570 subpart K (Sections 570.600 through 570.614), except that:

(a) Agency does not assume the City's environmental responsibilities described in 24 C.F.R. 570.604; and

(b) Agency does not assume the City's responsibility for initiating the review process described in 24 C.F.R. part 52.

10.3 **Davis-Bacon Act**. Agency shall comply, and require its Subcontractors to comply, with the Davis-Bacon Act (40 U.S.C. 276a – 276a-7), as supplemented by Department of

Labor regulations (29 C.F.R. part 5) – for construction contracts in excess of $2000.

10.4 **Contract Work Hours and Safety Standards Act**. Agency shall comply, and require its Subcontractors to comply, with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330], as supplemented by Department of Labor regulations (29 C.F.R. part 5) – for construction contracts in excess of $2000, and other contracts that involve the employment of mechanics or laborers in excess of $2500.

10.5 **Energy Policy and Conservation Act**. Agency shall comply, and require its Subcontractors to comply with the mandatory standards and policies relating to energy efficiency, which are contained in California's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

10.6 **Various Environmental Laws and Regulations**. Agency shall comply, and require its Subcontractors to comply, with Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15) – for contracts in excess of $100,000.

10.7 **Copeland "Anti-Kickback" Act**. Agency shall comply, and require its Subcontractors to comply, with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. part 3) – for contracts involving construction or repair.

10.8 **Religious Activities**. Agency shall comply, and require its Subcontractors to comply, with all applicable HUD requirements governing the use of CDBG Funds by religious organizations, set forth in 24 C.F.R. 570.200(j), as well as Executive Order 11245 (as amended by Executive Order 13279).

10.9 **Section 3 Clause**.

10.9.1 If applicable under 24 C.F.R. 135.3, then pursuant to 24 C.F.R. 135.38, Agency (and, if indicated below, the Parties) shall comply with the following "Section 3 Clause":

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 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.

B. The Parties to this contract 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 contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The Agency agrees to send to each labor organization or representative of workers with which the Agency has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Agency'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; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Agency agrees to include this section 3 clause in every subcontract subject to compliance with 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. The Agency will not subcontract with any subcontractor where the Agency has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

E. The Agency will certify that any vacant employment positions, including training positions, that are filled (1) after the Agency is selected but before the contract 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 the Agency's obligations under 24 C.F.R. part 135.

F. 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.

G. 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 U.S.C. 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).

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

10.10 **Reversion of Assets.** Upon expiration of this Agreement, Agency shall transfer to the City any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Agency shall comply with the requirements of 24 C.F.R. 570.503(b)(7) with regard to the use of any real property under the Agency's control that was acquired or improved in whole or in part with CDBG funds in excess of $25,000. In the event that Agency does not use the real property to meet one of the national objectives in 24 C.F.R. 570.208 for at least five years after the expiration of this Agreement, Agency shall pay the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment shall be deemed program income to the City.

10.11 **Fair Housing Act.** Agency shall comply, and require its Subcontractors to comply, with Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), 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), and disability. In addition, Agency shall comply with the regulations issued following Title VI of the 1964 Civil Rights Act (as amended by Executive Orders 11246, 11375, and 12086) and Section 109 of the 1975 Housing and Community Development Act that prohibits discrimination in HUD programs based on sex, race, color, national origin, and religion and administer all programs and activities in a manner to affirmatively further the policies of the Fair Housing Act.

10.11.1 Agency shall post in a prominent place at the Program Site(s) the Equal Housing Opportunity Logo provided by the City which may be obtained through the Contract Administrator or the CDBG Fair Housing Administrator.

10.12 **Section 504.** Agency shall comply, and require its Subcontractors to comply, with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities in any federally assisted program. The City shall provide the Agency with any guidelines necessary for compliance with that portion of the regulations applicable during the term of this Agreement.

10.13 **Limited English Proficiency.** Agency shall comply with Executive Order 12166 enacted on August 11, 2000, which mandates that any recipient of HUD assistance funds reduce barriers to access for limited English proficiency (LEP) persons. Agency 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". Agency acknowledges that failure to ensure LEP access to HUD benefits may violate Title VI civil rights protections based upon national origin.

10.14 **Lead-Based Paint.** Agency shall comply, and require its Subcontractors to comply, with 24 CFR Part 570.608 regarding the requirement to comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part.

ARTICLE XI – SUSPENSION AND TERMINATION

11.1 **Available Remedies.**

11.1.1 Other provisions of this Agreement notwithstanding, if Agency fails to comply with any term or condition of this Agreement, the City's remedies include, but are not limited to, each of the following:

(a) suspending one or more payments to Agency, pending correction of the activity or action not in compliance;

(b) disallowing funds for all or part of the cost of the activity or action not in compliance;

(c) wholly or partly suspending the current award for the Project;

(d) terminating the current award for the Project;

(e) terminating this Agreement;

(f) those remedies set forth in 24 C.F.R. 570.910, pursuant to 24 C.F.R. 570.501(b); and/or

(g) deeming the Agency ineligible from consideration for any future CDBG funding; and/or

(h) any other remedy specified in this Agreement.

11.1.2 If the City notifies Agency that the City has suspended payments or disallowed funds, or that the City has partly suspended the current award for the Project, Agency shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension, disallowance, or partial suspension of funding. If the City wholly suspends or terminates the current award for the Project, Agency shall cease expending funds in connection with

the Project.

11.2 **Termination for Convenience.** Notwithstanding the term of this Agreement as specified in Section 3.1 above, the City or Agency may terminate this Agreement for any reason at any time during the term of this Agreement upon thirty calendar days written notice of the termination to the other party (delivered in accordance with the provisions of Section 17.1 below).

11.3 **Termination for Curable Default.**

11.3.1 Except as provided in Section 11.4 below, the City, at its sole discretion, may terminate this Agreement upon fifteen calendar days written notice to Agency (delivered in accordance with the provisions of Section 17.1 below), if Agency fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of Agency's default. If Agency fails to cure the default within fifteen calendar days of the date Agency receives the written notice, the City may immediately terminate this Agreement.

11.3.2 The City reserves the right to suspend payments to Agency during the fifteen calendar day notice period described in Section 11.3.1 above.

11.4 **Terminations for Incurable Default.** The City, at its sole discretion, may immediately terminate this Agreement upon written notice to Agency (delivered in accordance with the provisions of Section 17.1 below) if:

(a) Agency makes a material misrepresentation in regard to information furnished to the City pursuant to this Agreement, regardless of whether Agency had knowledge or intent with respect to the misrepresentation;

(b) Agency violates any term or condition of this Agreement for which immediate termination is authorized;

(c) Agency, or any of its officers or directors, becomes subject to any pending court action or proceeding with respect to the performance of Agency's obligations and/or duties under this Agreement (or any prior agreement with the City), that materially and adversely affects Agency's performance of its obligations and/or duties under this Agreement;

(d) Agency misappropriates any funds under this Agreement (or any prior agreement with the City);

(e) Agency files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors;

(f) Any or all of the CDBG Funds allocated to the City by HUD are suspended or terminated; and/or

(g) Agency is unable or unwilling to comply with any additional terms or conditions governing the Project that may be required by newly enacted (or amended) federal, state, and/or local laws, statutes, rules, regulations, orders, ordinances, resolutions, permits, requirements, policies, and/or directives.

11.5 **Termination of Award**. In accordance with 24 C.F.R. 85.43, the City may suspend payments, suspend the current award for the Project, and/or terminate this Agreement if Agency materially fails to comply with any term of the award and may terminate the award for convenience in accordance with 24 C.F.R. 85.44.

11.6 **Rights and Remedies**. The City's termination of this Agreement shall terminate each and every right of Agency, and any person claiming any rights by or through Agency under this Agreement. The rights and remedies of the City enumerated in this Article are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement; nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against Agency.

11.7 **Continuing Responsibilities**.

11.7.1 In the event this Agreement is terminated, Agency shall complete any and all additional work necessary for the orderly filing of documents and closing of Agency's performance of its obligations and duties under this Agreement. For services rendered in completing the work, Agency shall be entitled to fair and reasonable compensation for the services performed by Agency before the effective date of termination. By accepting payment for completion, Agency discharges the City of all of the City's payment obligations and liabilities under this Agreement.

11.7.2 Upon the termination of this Agreement, Agency shall deliver to the City the originals of all Project Records within fifteen calendar days of the termination date of this Agreement. Agency shall retain copies of all Project Records for the storage period specified in Section 8.6 above.

11.7.3 Upon the expiration this Agreement, the City may request that Agency deliver, and Agency shall deliver, within fifteen calendar days of any such request by the City, the originals of all or any specified Project Records to the City. Agency shall retain copies of all Project Records for the storage period specified in Section 8.6 above.

11.7.4 Upon the expiration or termination of this Agreement, Agency shall transfer to the City any CDBG Funds and/or Program Income on hand at the time of such expiration or termination, and any accounts receivable attributable to the use of CDBG Funds and/or Program Income.

11.7.5 Upon the expiration or termination of this Agreement, in accordance with 24 C.F.R. 570.503 (b)(7), Agency shall ensure that the use of any real property under Agency's control that was acquired or improved, in whole or in part, with CDBG Funds (including CDBG Funds provided to Agency in the form of a loan) in excess of $25,000, and/or Program Income in excess of $25,000, is either:

(a) used to meet one of the national objectives in 24 C.F.R. 570.208 until five years after expiration or termination of this Agreement; or

(b) paid to the City, at any time prior to five years from the expiration or termination of this Agreement, in an amount equal to the then-current market value of the property less any portion of the value attributable to expenditures of non-CDBG Funds and/or non-Program Income for the acquisition of, or improvement to, the property. Such payment shall be Program Income to the City.

ARTICLE XII – INFORMAL DISPUTE RESOLUTION; MANDATORY ASSISTANCE

12.1 **Informal Dispute Resolution.** If the City and Agency have any dispute as to their respective rights, obligations, and/or duties under this Agreement, or the meaning or interpretation of any provision contained herein, they shall first attempt to resolve such dispute by informal discussion between their respective representatives. Within five calendar days of determining the existence of any such dispute, the party determining there is such dispute may give written 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 calendar days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

12.2 [Reserved].

12.3 **Mandatory Assistance.**

12.3.1 If a third party dispute or litigation, or both, arises out of, or relates in any way to, the services provided under this Agreement, upon the City's request, Agency, its agents, officers, and employees shall fully assist the City in resolving the dispute or litigation. Agency's assistance to the City, hereinafter referred to as "Mandatory Assistance," includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation.

12.3.2 In providing the City with Mandatory Assistance, if Agency, its agents, officers, and/or employees incur costs, the City will compensate Agency for such costs. However, if it is determined through resolution of the third party dispute or

litigation, or both, that such third party dispute or litigation was attributable, in whole or in part, to the acts or omissions of Agency, its agents, officers, and/or employees, Agency shall fully reimburse the City for all funds paid to Agency, its agents, officers, and/or employees for Mandatory Assistance.

12.3.3 Any attorney's fees Agency may incur as a result of providing Mandatory Assistance are not reimbursable.

ARTICLE XIII – INDEMNIFICATION

13.1 **Indemnification and Hold Harmless Agreement**. Agency shall defend, indemnify, protect, and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, but not limited to, injury to Agency's officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of Agency, its officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required or authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorney's fees and costs. However, Agency's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its elected officials, departments, officers, employees, representatives, and/or agents. The City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Agency shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs.

13.2 **Enforcement Costs**. Agency shall pay the City any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 13.1 above.

13.3 **Not Limited by Insurance.** The provisions of this Article are not limited by the requirements of Article VI [Insurance] above.

ARTICLE XIV – SUBCONTRACTORS

14.1 **Subcontracts and Subcontractors List.**

14.1.1 On or before the date this Agreement is executed by the Parties, Agency shall provide to the City a copy of all subcontracts Agency has entered into (or intends to enter into contingent upon the execution of this Agreement) in connection with this Agreement, including the scope of work, along with a written statement describing the justification for the Subcontractor services, and

an itemization of all costs for the Subcontractor services.

14.1.2 If, during the term of this Agreement, Agency identifies a need for additional Subcontractor services, Agency shall, within ten calendar days of the date of any subcontract for such services, provide to the City a copy of the subcontract, including the scope of work, along with a written statement describing the justification for the additional Subcontractor services, and an itemization of all costs for the additional Subcontractor services.

14.1.3 Within ten calendar days of any request by the City, Agency shall provide to the City a complete and updated Subcontractors List, listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement.

14.1.4 If, during the term of this Agreement, the City has obtained a Subcontractors List from Agency and Agency subsequently identifies a need for additional Subcontractor services, Agency shall, within ten calendar days of the date of any subcontract for such services, provide to the City an updated Subcontractors List that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional Subcontractor services.

14.1.5 Agency shall procure the services of all Subcontractors in conformance with the procedures set forth in Exhibit C. Agency shall maintain documentation of the process used to procure any such Subcontractor services, and shall provide a copy of all such documentation to the City within ten calendar days of any request by the City.

14.1.6 Agency shall monitor all subcontracted services 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 the City during monitoring reviews or upon request by the City.

14.1.7 Agency shall comply with 24 CFR Part 84.44(b) for non-profit organizations or 24 CFR Part 85.36(e) for governmental agencies, as applicable, regarding affirmative efforts to contract with Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), and small businesses. Agency shall provide to the City at the time of project completion a report on the MBE or WBE status of all Subcontractors with contracts of $10,000 or greater.

14.2 **Required Language.** Agency shall ensure that all subcontracts entered into in connection with this Agreement contain the information described in Sections 8.1, 8.2, 8.3, 8.4, 8.6, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.13, 9.14, 9.15, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 10.10, 10.11, 10.12, and 17.4 of this Agreement, and provide as follows:

14.2.1 Subcontractor shall obtain all insurance required in Sections 6.3, 6.4, and 6.5 of

the City's Agreement with Agency, and shall maintain, in full force and effect, such insurance during and all work performed in connection with the City's Agreement with Agency. Subcontractor shall not begin work on a subcontract until all insurance required of the Subcontractor under this Section has been obtained.

14.2.2 In any dispute between Agency and Subcontractor pertaining to the City's Agreement with Agency, the Agency shall not take action to make the City a party to any judicial or administrative proceeding to resolve the dispute. Agency shall defend and indemnify the City (as described in Section 13.1 of the City's Agreement with Agency) in any dispute between Agency and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.

14.3 **Contract Activity Report**. Within ten calendar days of a written request by the City, Agency shall provide the City:

(a) statistical information (as described in the City's 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.

14.4 **Prohibition on use of Certain Subcontractors**. Agency shall not employ, award any contract to, engage the services of, or fund any Subcontractor, during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Agency has notice (actual, constructive, or implied) of such debarment, suspension, or ineligibility. Agency shall submit the certification to show compliance with this section.

ARTICLE XV – CONFIDENTIALITY OF INFORMATION

15.1 All information provided by the City to Agency in connection with this Agreement is for the sole use of Agency. Agency shall not release any of this information to any third party, without the prior written consent of the City.

15.2 Section 15.1 above does not apply to information that:

(a) was publicly known, or otherwise known to Agency, at the time the information was provided to Agency by the City;

(b) subsequently becomes publicly known, through no act or omission of Agency;

(c) becomes known to Agency from a source or means other than the City; or

(d) is considered a "public record," pursuant to the California Public Records Act

(California Government Code sections 6250 –6276.48).

ARTICLE XVI – INTELLECTUAL PROPERTY

16.1 All rights to discoveries and/or inventions that arise or are developed, in the course of or under this Agreement, shall be the property of the City and be disposed of in accordance with City policy. The City, at its own discretion, may file for patents in connection with all rights to any such discoveries and/or inventions.

16.2 Agency acknowledges that all Works shall constitute a "work for hire," as that term is defined in the Copyright Act of 1976, as amended. Accordingly, all rights, title, and interest in and to all Works shall be the exclusive property of the City, including without limitation, all copyrights and other intellectual property rights therein. If for any reason a Work is not deemed to be a "work for hire," Agency hereby grants, transfers, sells, and assigns, free of charge, exclusively to the City, all rights, title, and interest in and to said Work, including all copyrights and other intellectual property rights therein. Agency shall execute and deliver to the City a confirmatory grant and assignment of all rights in and to all Works, and shall execute any other proper document the City deems necessary to ensure the complete and effective transfer of all rights, title, and interest in and to such Works to the City.

16.3 Agency shall deliver all Works to the City within fifteen calendar days of the expiration of this Agreement, or in the event of earlier termination, within fifteen calendar days of such termination. In the event Agency fails to return all Works to the City and the City desires to use such Works, Agency shall provide the City with equivalent materials, at its own expense, or reimburse the City, in full, for the cost of developing equivalent materials.

16.4 Agency represents and warrants that any materials or deliverables, including all Works, provided under this Agreement are original, not encumbered, and do not infringe upon the copyright, trademark, patent, or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials, or Works provided hereunder become the subject of a claim, suit, or allegation of copyright, trademark, or patent infringement, the City shall have the right, in its sole discretion, to require Agency to produce, at Agency's own expense, new non-infringing materials, deliverables, or Works as a means of remedying any claim of infringement, in addition to any other remedy available to the City under law or equity. Agency shall indemnify and hold harmless the City, its elected officials, departments, officers, employees, representatives, and agents from and against any and all claims, actions, costs, judgments, or damages of any type, alleging or threatening that any materials, deliverables, supplies, equipment, services, or Works provided under this Agreement infringe the copyright, trademark, patent, or other intellectual property or proprietary rights of any third party [Third Party Claims of Infringement]. If a Third Party Claim of Infringement is threatened or made before Agency receives payment under this Agreement, the City shall be entitled, upon written notice to Agency, to withhold some or all of such payment.

ARTICLE XVII – MISCELLANEOUS PROVISIONS

17.1 **Notices**. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: CDBG Program, 1200 Third Avenue #1400, San Diego, CA 92101, and notice to the Agency shall be addressed to: [Enter the Agency's address].

17.2 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

17.3 **Non-assignment**. The Agency shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

17.4 **Independent Contractor**. The Agency and any Subcontractors employed by the Agency shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Agency concerning details performing the scope of services, or to exercise any control over such performance, shall mean only that the Agency shall follow the direction of the City concerning the end results of the performance.

17.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Agency, shall be deemed to be both covenants and conditions.

17.6 **Compliance with Controlling Law**. The Agency shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 relating to the payment of prevailing wages during the design, preconstruction and construction phases of a project, including inspection and land surveying work. In addition, Agency shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statues, ordinances, rules, or regulations. The law of the State of California shall govern and control the terms and conditions of this Agreement.

17.7 **Jurisdiction and Venue**. The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement,

subject to the requirements of Article XII above.

17.8 **Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. 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 change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

17.9 **Counterparts**. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

17.10 **No Waiver**. No failure of either the City or the Agency to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term, or conditions. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

17.11 **Successors in Interest**. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

17.12 **Severability**. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

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

17.14 **Drafting Ambiguities**. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of this Agreement.

17.15 **Conflicts Between Terms**. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the

Exhibits, and the laws, rules, regulations, orders, or codes 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.

17.16 **Exhibits Incorporated**. All Exhibits referenced in this Agreement are incorporated into this Agreement by this reference.

17.17 **Survival of Obligation**. All representations, indemnifications, warranties, and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the termination or completion of this Agreement.

17.18 **Changes or Amendments to Agreement**. Agency acknowledges and agrees to fully perform the entire Scope of Services set forth in Exhibit A. In the event that Agency is unable to perform any portion of the Scope of Services through no fault of Agency, Agency agrees to immediately inform the Project Manager in writing of such inability to perform. Within 30 calendar days of failing to perform any required portion of the Scope of Services, including any monthly and/or quarterly goals, the Agency shall contact the Project Manager and present a proposal regarding how the Agency intends to address this inability to perform. Agency agrees that the City retains full and complete discretion regarding any request to amend any portion of the Scope of Services under the Agreement. Should circumstances require and the Parties agree that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be accomplished by a written amendment to the Agreement, signed by the authorized representatives of the City and Agency, unless City Council approval is otherwise required for such an amendment.

17.19 **Effect on Existing Lease Provisions**. If the Agency has an existing lease with the City for the Facility that is the Site of work under this Agreement (the lease agreement is on file with the City Clerk's office as Document No. RR-307489), then all lease provisions shall remain in effect for the duration of this Project.

17.20 **Vendor Registration**. All entities wishing to conduct business with the City of San Diego, or those intending to compete for City contracts, must submit a completed Vendor Registration Form to the City of San Diego's Purchasing and Contracting Department. This form must be received by the City prior to competing for or being awarded any contract.

17.21 **Business Tax License**. Any company doing business with the City of San Diego is required to comply with Section 31.0301 of the San Diego Municipal Code regarding Business Tax. For more information please visit the City of San Diego's website at www.sandiego.gov/treasurer/ or call (619) 615-1500. Any non-profit doing business with the City must submit an IRS letter of Non-profit status. Agency shall also submit their Taxpayer Identification number (form W-9) to the City of San Diego prior to execution of this agreement.

17.22 **Signing Authority**. Each individual executing this Agreement on behalf of a legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such entity in accordance with its terms. Agency shall provide the City with evidence, satisfactory to the City, that such authority is valid and that such entity is a valid, qualified corporation or limited liability company in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Resolution R-307328 authorizing such execution, and by Agency.

Dated this _____ day of _____, 2012.

The City of San Diego

By _____
Jeffrey B. Baer
Director
Purchasing & Contracting Department

Dated this _____ day of _____, 2012.

Harmonium, Inc.

By _____
Rosa Ana Lozada
Chief Executive Officer

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2012.

JAN I. GOLDSMITH
City Attorney

By _____
Kenneth So
Deputy City Attorney

SCOPE OF WORK

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM/
ENTITLEMENT GRANTS
HARMONIUM, INC.
SAN DIEGO REGIONAL TEEN CENTER PUBLIC FACILITY IMPROVEMENTS

1. PROJECT SITE LOCATION
The Agency shall maintain a project office at San Diego Regional Teen Center located at 8450 Mira Mesa Blvd. San Diego, CA 92126.

2. ADMINISTRATIVE OFFICE LOCATION
The Agency shall maintain their administrative office at 9245 Activity Road, Suite 105, San Diego, CA 92126.

3. TARGET POPULATION/GEOGRAPHICAL AREA
The project shall serve approximately six hundred (600) new and unduplicated low to moderate income youth between the ages of 12-18 years during the contract period. The youth served reside within eligible census tracts throughout the City of San Diego, including Districts 1, 2, 3, 4, 5, 6, 7 and 8.

4. PROJECT DESCRIPTION
The proposed project would improve the condition of a City-owned facility that serves low-to-moderate income youth, including transitioned-age, at-risk and underserved adolescents by: 1) Repairing existing damaged sewer lines caused by aging, calcification and root damage, which include repair of the floors after the sewer lines have been repaired, and 2) Repair the damaged roof at the center, which leaks during inclimate weather and creates a slipping/falling hazard for the public and staff. 3) Repair the air conditioning unit on the roof of the San Diego Regional Teen Center. The work to be done is set forth in more detail in the Exhibit B – Budget Justification, which is incorporated by reference to the Scope of Work as though fully set forth herein.

5. PROJECT OUTCOME MEASURES
Pursuant to federal requirements, the project objective, outcome and indicator is defined below. **(Check only one of the options below for each area.)**

Objective Category:
- ☒ Suitable Living Environment
- ☐ Decent Housing
- ☐ Economic Opportunity

Outcome Category:
- ☒ Availability/Accessibility
- ☐ Affordability
- ☐ Sustainability

Outcome Indicator:

☐ People	☒ Public Facilities
☐ Households	☐ Housing Units
☐ Businesses	☐ Jobs
☐ Organizations	☐ Other

6. PROJECT OUTCOME

Approximately six hundred (600) new and unduplicated low to moderate income youth shall have new or improved access to San Diego Regional Teen Center activities for the purpose of enhancing their suitable living environment. These improvements shall increase the availability and accessibility of youth to programs and facilities.

8. PROJECT RECORDS

Agency shall maintain all records required by the Federal regulations specified in Title 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Agency shall make available to the City, the U.S. Government, or their authorized agents all project-related records, documents, and any other financial data or records for review. Such records shall include, but not limited to:

☒ **L/M Income Limited Clientele Activities (LMC)**
For each activity, ***one* of the following five types** of documentation must be maintained:
❖ Documentation showing that the activity is designed to be used exclusively by a segment of the population presumed by HUD to be L/M income persons (abused children, battered spouses, elderly persons*, adults meeting the definition of severely disabled**, homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers); *Definition of Elderly Person-means an individual who is at least 62 years of age. **Definition of Severely Disabled-persons are classified as having a severe disability if they: (a) used a wheel-chair or had used another special aid for six months or longer; (b) are unable to perform one or more "functional activities" or need assistance with an "ADL or IADL"; (c) are prevented from working at a job or doing housework; or (d) have a selected condition including autism, cerebral palsy, Alzheimer's disease, senility or dementia, or mental retardation. Also, persons who are under 65 years of age and who are covered by Medicare or who receive SSI are considered to have a severe disability **OR**
❖ Documentation describing how the nature and the location of the activity establishes that it will be used predominantly by L/M income persons; **OR**
❖ Data showing the size and annual income of the family of each person receiving the benefit; **OR**
❖ Data showing that barriers to mobility or accessibility have been removed and how the barrier removal was restricted to the extent feasible to one of the particular cases authorized under this subcategory; **OR**
❖ Documentation showing that the activity qualifies under the special conditions regarding job services where less than 51% of the persons benefiting are L/M income persons.

9. CLOSE-OUTS

The Agency's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to:

a. Making final payments;
b. Disposing of program assets (including the return of all unused materials, program income balances, and accounts receivable to the City); and
c. Determining the custodianship of records.

Not withstanding the foregoing, the terms of the Agreement shall remain in effect during any period that the Agency has control over CDBG funds, including program income.

FY 2013
HUD INCOME LIMITS
FOR CITY OF SAN DIEGO

FAMILY SIZE	EXTREMELY LOW INCOME LIMITS (0-30% of median)	VERY LOW INCOME LIMITS (31-50% of median)	LOW/MODERATE INCOME LIMITS (51-80% of median)
1	$0 - $16,900	$16,901 - $28,150	$28,151 - $45,000
2	$0 - $19,300	$19,301 - $32,150	$32,151 - $51,400
3	$0 - $21,700	$21,701 - $36,150	$36,151 - $57,850
4	$0 - $24,100	$24,101 - $40,150	$40,151 - $64,250
5	$0 - $26,050	$26,051 - $43,400	$43,401 - $69,400
6	$0 - $28,000	$28,001 - $46,600	$46,601 - $74,550
7	$0 - $29,900	$29,901 - $49,800	$49,801 - $79,700
8	$0 - $31,850	$31,851 - $53,000	$53,001 - $84,850

FY 2013 BUDGET EXHIBIT

AGENCY **HARMONIUM, INC.**

PROJECT **San Diego Regional Teen Center Public Facility Improvements**

LEAD-BASED PAINT ASSESSMENT/ ABATEMENT	0
CONSTRUCTION MANAGEMENT	0
CONSTRUCTION/RENOVATION	100,000
PROJECT MANAGEMENT SERVICES	0
OTHER EXPENSES (LIST):	
_____	0
OTHER EXPENSES (LIST):	
_____	0
OTHER EXPENSES (LIST):	
_____	0
OTHER EXPENSES (LIST):	
_____	0

TOTAL CDBG PROJECT BUDGET $ **100,000**

FY 2013 BUDGET JUSTIFICATION*

AGENCY: HARMONIUM, INC.

PROJECT: San Diego Regional Teen Center Public Facility Improvements

LINE ITEM	Construction/Renovation (Sewer Lines)	AMOUNT
Detailed Explanation:		
Repair damaged and blocked sewer lines at the existing San Diego		
Regional Teen Center. Project includes removal of soil and concrete to		
excavate the existing sewer lines, installation of approx. 191 linear		
feet of new sewer line with clean-outs for future access, tie-in of new		
sewer line to the existing plumbing system, backfill of excavated areas		
and the installation of approx. 1,300 square feet of concrete to replace		
the concrete removed for sewer access.		(cont. below)
	TOTAL	$ -

LINE ITEM	Construction/Renovation (Roof Repair)	AMOUNT
Detailed Explanation:		
Replace in-kind an approx. 2,000-square-foot flat roof. Project includes		
removal of existing roofing material, inspection and replacement of roof		
decking/substrate as needed, cleaning and prep of roof base, installation		
of new flat-roof membrane and roof drainage system, resealing of all		
rooftop penetrations and equipment, removal and reinstallation of coping		
metal, application of energy-efficient white roof coating to meet State		
Title 24 requirements and removal of all debris.		(cont. below)
	TOTAL	$ -

LINE ITEM	Construction/Renovation (Air Conditioning Repair)	AMOUNT
Detailed Explanation:		
Repair of existing Trane air conditioning unit located on roof of San Diego		
Regional Teen Center building, including replacement of blower motor		
and belts.		(cont. on page 3)
	TOTAL	$ -

*All line items must be justified in relation to CDBG-funded activities to be completed.

FY 2013 BUDGET JUSTIFICATION*

AGENCY: HARMONIUM, INC.

PROJECT: San Diego Regional Teen Center Public Facility Improvements

LINE ITEM	Construction/Renovation	AMOUNT
Detailed Explanation:		
Creation of technical drawings, mechanical plans, engineering calculations and related construction documents necessary for the general contractor to obtain the required construction and operating permits. Payment of permit, plan check and inspection fees associated with the approved project scope.		
	TOTAL	$ 100,000

LINE ITEM		AMOUNT
Detailed Explanation:		
	TOTAL	$ -

LINE ITEM		AMOUNT
Detailed Explanation:		
	TOTAL	$ -

*All line items must be justified in relation to CDBG-funded activities to be completed.

CITY OF SAN DIEGO
FY 2013 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
COST ALLOCATION PLAN

This form details the breakdown of each line item of the CDBG-funded project's annual budget by contributing funding source. (1) List the secured funding source titles in the funding source row that makes up the total CDBG-funded annual budget. (2) Enter the total funding source amount for each funding source title entered in section (1). (3) Enter the total anticipated Program Income (PI) for each funding source title entered in section (1). (4) Enter the total budget for each line item in the budget amount column, as well as the percent and amount contributed by each funding source in Section (1). **NOTE: Please submit a revised plan each time funding sources are secured or terminated during FY 2012.**

AGENCY: Harmonium Inc.

PROJECT: San Diego Regional Teen Center Public Facility Improvements

(1) FUNDING SOURCE TITLE		City SD-FY12 CDBG												TOTAL	
(2) TOTAL FUNDNG SOURCE AMOUNT			100,000												100,000
(3) TOTAL ANTICIPATED PI			-												-
	(4) BUDGET	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount
LEAD-BASED PAINT	-	0.0%	-		-		-		-		-		-	0.0%	-
CONST MGMT	-	0.0%	-		-		-		-		-		-	0.0%	-
CONST/RENOV	100,000	100.0%	100,000		-		-		-		-		-	100.0%	100,000
PROJ MGMT SVCES					-		-		-		-		-	0.0%	-
OTHER EXPENSES	List Below														
			-		-		-		-		-		-	0.0%	-
			-		-		-		-		-		-	0.0%	-
			-		-		-		-		-		-	0.0%	-
TOTAL CDBG PROJECT BIDGET			100,000		-		-		-		-		-		100,000

NOTES ON CALCULATIONS:

EXHIBIT C

CONFLICT OF INTEREST AND PROCUREMENT POLICY FOR NONPROFIT CORPORATIONS CONTRACTING WITH THE CITY OF SAN DIEGO

Purpose

It is important for the City and its citizens to have confidence in the integrity of nonprofit corporations which contract with the City to provide services and administer programs, and which receive funding from or through the City. Officers, directors, members, committee members, staff and volunteers of these nonprofit organizations shall avoid taking actions that give the appearance of being motivated by private gain. The appearance of a conflict of interest is created by the selection, recommendation, or specification of a product, supplier or subcontractor with whom the representative of the nonprofit has a direct or indirect financial, organizational or family interest or relationship. It is the intent of the City to incorporate this policy governing conflicts of interest and procurement of goods and services into the City's contracts with such associations, and to require compliance with this policy as a contract obligation.

This policy is not intended to supersede, negate or otherwise invalidate any statute, ordinance or policy, but is intended to supplement existing authorities governing these subjects. Associations receiving Community Development Block Grant (CDBG) funds, or other funds from the Department of Housing and Urban Development, are subject to federal authorities governing the receipt of those funds.

Contracts or Transactions Involving CDBG Funds

In the case of contracts or transactions involving CDBG funds, no employee, agent, officer or consultant to the organization who is involved in the decision making process or who has access to inside information may obtain a financial benefit from the contract or transaction, unless approval is obtained in writing from the Department of Housing and Urban Development.

Economic Disclosure

Upon request by the City, a director or voting member of a nonprofit corporation contracting with the City shall disclose information to the City about his or her financial interests and business affiliations which may be affected by decisions of the corporation related to the corporation's contract with the City.

Board Roster

All nonprofit corporations contracting with the City shall provide, within 30 days of execution of an agreement, a list of the names of all board members and their business affiliations. In the event that the board membership changes, the corporation shall provide the City with an updated list.

Procedures for Procurement of Goods and Services

All procurement of goods and services by nonprofit associations contracting with the City, which receive funding from or through the City, shall comply with the following standard:

1. Expenditures less than $5,000 from a single contractor in a 12 month period:
   - < No competitive procurement process is required.

2. Expenditures of between $5,000 and $25,000 from a single contractor in a 12-month period:

   - < Obtain three written price proposals or demonstrate why three bids could not be obtained.

   - < Present price proposal information to full board for approval of contract or transaction.

   - < Record the action taken in the meeting minutes, and keep the written price proposals on file.

3. Expenditures of more than $25,000 for goods and/or services from a single contractor in a 12 month period:

   - < Draft a Request for Proposals describing the services or goods required, and requesting information from prospective contractors regarding relevant qualifications and a price proposal.

   - < Publish a notice of the intent to seek proposals for the goods or services in a newspaper or newspapers of general circulation in the City.

   - < Screen all submitted proposals and prepare short list of finalists for consideration by the board for approval. Finalists for a contract or transaction involving expert or professional services shall be interviewed by a screening committee or by the board prior to a final selection being made.

   - < Record action taken by the board in meeting minutes and keep the proposals received on file.

   - < After board approval, execute a contract in writing with the subcontractor or vendor, and submit a copy of the contract to the City.

Remedies

A violation of any provision of this policy shall be grounds for termination of the corporation's contract with the City. A contract or transaction entered into in violation of the conflict of interest and procurement provisions of this policy shall be void and unenforceable, and shall not entitle the corporation or the contractor to any reimbursement or payment for goods or services provided pursuant to the void contract.