



Real Estate Assets Department
SDC003

SD Housing Commission
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48

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



CITY OF SAN DIEGO

LICENSE AGREEMENT

THIS CITY OF SAN DIEGO PUBLIC PURPOSE LICENSE ("License") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO HOUSING COMMISSION, a public agency ("LICENSEE"), to be effective **April 26, 2021** when signed by the parties and approved by the San Diego City Attorney and general counsel of the LICENSEE (the "Effective Date").

RECITALS

- A. CITY is the owner of that certain real property located at **1401 Imperial Avenue, San Diego, California 92101**.
- B. CITY and LICENSEE have entered into that certain Memorandum of Understanding for the Homelessness Response Center dated January 4, 2021 approved by the San Diego City Council under Resolution R-313275 and the Housing Authority of the City of San Diego under Resolution HA- 1883 that provides for the operation of the Homelessness Response Center ("HRC") and establishes the respective roles and duties of the CITY and LICENSEE concerning the operation and administration of the HRC ("MOU").
- C. CITY and LICENSEE desire to enter into this short-term License to allow LICENSEE to enter and use the Premises (as defined below) to operate the HRC in accordance with the terms and conditions of this License and the MOU.
- D. The term of this License is intended to coincide with the term of the MOU, as may be amended and extended from time to time.

NOW THEREFORE, based upon the foregoing Recitals, which are incorporated into this License by this reference, and for valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. Right to Enter. Subject to the terms and conditions of this License, CITY hereby grants permission to LICENSEE to enter upon that certain property improved with an approximately 26,508 square foot three-story building located at 1401 Imperial Avenue, San Diego, CA 92101 ("Premises"), as further depicted in **Exhibit A: Legal Description of Premises** solely for the Allowed Uses (as defined below). Notwithstanding any provision to the contrary within this License, LICENSEE shall not enter or allow any person to enter the wind tunnels without the authorization of the CITY. LICENSEE shall not alter the wind tunnels or remove any materials, items, debris, or components that are within or a part of the wind tunnels.
- 2. Revocable License. This License is not a lease. It is a license to access and use the Premises for the purposes stated herein, and may be revoked at will by CITY pursuant to requirements of Paragraph 45, in its sole discretion. CITY shall not be obligated for any

loss, financial or otherwise, which may be incurred by LICENSEE as a result of such revocation or the termination of this License. LICENSEE expressly waives any claim for expense or loss which LICENSEE might incur as a result of CITY's revocation or termination of this License. CITY may at all times enter upon the Premises for any reason upon 24 hour notice to LICENSEE. Notice required under this section may be satisfied via electronic mail.

3. Term. The term of this License ("Term") will commence on the Effective Date and will expire on June 30, 2021, subject to earlier termination as set forth in this License, including termination by either party as set forth in Paragraph 45. The Term may be extended for up to two (2) consecutive additional years (July 1 – June 30), one year at a time, by written approval between the CITY and LICENSEE, in their respective sole discretion, contingent on the parties extending the MOU. This License shall expire without any further action of either party upon the expiration or termination of the MOU.
4. Good Neighbor Provisions. LICENSEE through itself or its third party contractor shall take such measures as are possible/under the LICENSEE's control to prevent client queuing, loitering, and littering in the vicinity of the Premises; maintain a secure and healthful environment for delivery of services at the Premises; address litter, debris, and graffiti on the Premises; maintain the Premises, at all times, in an orderly and vermin-free condition; enforce a zero-tolerance policy for alcohol or drug use on site; designate a point of contact to address issues that may arise at the Premises and coordinate security issues with the Police Department; and Report criminal activity to law enforcement. LICENSEE's point of contact to address issues that may arise at the Premises is: Falon Leszczynski, 619-415-1555, falonl@sdhc.org.
5. Waiver of Rent and Processing Fee. The standard processing fee and the annual rent are hereby waived due the public purposes, specifically assisting in the provision of resources and other services to homeless individuals within the City, that LICENSEE will provide at the Premises.
6. Holdover. Any holding over by LICENSEE after the expiration or earlier termination of this License shall not be considered a renewal or extension of this License. The occupancy of the Premises after the expiration or earlier termination of this License shall constitute a month-to-month at-will revocable license, and all other terms and conditions of this License shall continue in full force and effect.
7. Allowed Uses. LICENSEE may use the Premises for the purposes of operating, and maintaining the HRC on the Premises that provides critical services to address the housing crisis and provides critical services to persons experiencing homelessness, by developing and implementing a streamlined, coordinated, client-centric, City homelessness response in alignment with the five "Foundational Strategies" of the City of San Diego's Community Action Plan on Homelessness, and provide and coordinate access to a range of mainstream services that impact housing stability, in accordance with the MOU ("Allowed Uses"). LICENSEE will diligently pursue the use of the Premises solely for the Allowed Uses and for no other purpose whatsoever without CITY's prior written consent throughout the

Term. The use of the Premises for any unauthorized purpose will subject this License to termination at the sole discretion of the CITY. CITY is granting LICENSEE a non-exclusive license to enter the Premises and make limited use of the Premises, based on the terms and conditions of this License. No provisions of this License shall be construed to either create a landlord/tenant or agency relationship between CITY and LICENSEE or create any form of a limited estate in favor of LICENSEE.

8. Competent Management. LICENSEE will provide competent management of the Allowed Uses. "Competent management" will mean management practices generally considered acceptable within LICENSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" will mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.
9. Operation of Facilities. LICENSEE will conduct its business and operate the Premises, in accordance with a schedule as agreed between the CITY and the LICENSEE, based on budget availability and identified needs to best serve the target population.
10. Trash and Refuse. LICENSEE will, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. LICENSEE will ensure that refuse containers are emptied on a regular basis and will prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. LICENSEE will ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable law at the time of refuse collection.
11. Waste, Damage, or Destruction. LICENSEE will not commit or allow to be committed any waste or any public or private nuisance on the Premises, will keep the Premises clean and clear of refuse and obstructions, and will dispose of all garbage, trash, and rubbish in a manner reasonably satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LICENSEE will restore the Premises to their prior condition within a reasonable time. The CITY shall provide for Environmental Services cleanings of the sidewalk at the exterior of the Premises; the City is to determine the type and frequency of the cleaning.
12. Maintenance. Except as otherwise set forth herein, LICENSEE shall, maintain the nonstructural portions of the Premises, building systems, and building equipment in good order and repair, and in a safe, healthy and sanitary condition at all times during the Term. LICENSEE's maintenance obligations include janitorial and routine maintenance and repair services at the Premises, including but not limited to, pest control, maintenance of heating, air conditioning and ventilation ("HVAC"), fire/life safety systems and equipment, elevator, security systems, and general minor repairs, such as of: plumbing and electrical issues. LICENSEE shall keep the Premises free and clear of rubbish, debris, and litter at all times. For maintenance and necessary major repairs which are outside the scope of the annual funds appropriated for repairs, unanticipated, or extraordinary in nature, and not caused by LICENSEE's failure to maintain the Premises as set forth in this Section,

CITY shall work with LICENSEE to provide funding to LICENSEE for the maintenance or necessary repairs, or complete and/or facilitate the repairs directly at the CITY's sole expense. LICENSEE shall keep the exterior perimeter of the Premises free and clear of rubbish, debris, litter, graffiti at all times. LICENSEE will, without limitation, perform all maintenance and repair to all components of the Premises in accordance with this License. LICENSEE shall contract directly with required vendors as needed to conduct annual and quarterly fire alarm system and fire sprinkler system maintenance and inspections in accordance with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect. LICENSEE shall be responsible for maintenance relating to exterior lighting at the Premises as set forth in Section 13 of this License. Should maintenance or minor repairs exceed the amount of the annual maintenance budget in aggregate for each annual operating year, the CITY and LICENSEE will work to identify potential funding to support the un-budgeted expenses, and seek such necessary approvals to amend the budget or other controlling documents as would be required, in order to commit any identified funds. As of the Effective Date, no funds have been identified by CITY or LICENSEE for maintenance costs in excess of the annual maintenance budget. Given the CITY and LICENSEE are both unable to identify additional funding for maintenance in excess of the annual maintenance budget, LICENSEE is not responsible for such repairs or any damages to the Premises due to deferred maintenance as a result of inadequate funding so long as LICENSEE provides written notice to CITY when LICENSEE no longer has funds available for maintenance and repairs. Said notice shall be provided immediately upon depleting the amount of the annual maintenance budget.

CITY shall be responsible for repair of the structural portions of the Premises and the bioswale which is located on the roof of the Premises. LICENSEE is aware that repairs are needed for the roof and bioswale. CITY will work in good faith to seek funding for said repairs. CITY makes no promise to complete these repairs. Any damages to the Premises due to the aforementioned necessary repairs for the roof and bioswale are not the responsibility of the LICENSEE. CITY's failure to complete these repairs will not be a breach by CITY of this License. CITY shall provide for Environmental Services cleanings of the sidewalk at the exterior of the Premises in the manner and frequency determined by the CITY. CITY will ensure that HVAC is operational on the Effective Date. Except as agreed to herein, CITY has no obligation to provide oversight or staffing for the maintenance of the Premises during the Term.

13. Security. LICENSEE acknowledges and agrees that it assumes sole responsibility for continuous security at the Premises for its agents, employees, invitees, licensees, contractors, guests and visitors and will provide such systems and personnel for same, including, without limitation, while such person(s) are using the Premises, as is necessary or appropriate and at its sole cost and expense. LICENSEE shall maintain lighting that illuminates the interior of the Premises, the façade, and adjacent public right of way in a manner designed to enhance the security of the Premises. LICENSEE shall secure the Premises and monitor and report issues in a reasonable amount of time to law enforcement or City environmental services (as applicable) related to the public right-of-way adjacent to the building when made aware of such issues. LICENSEE may contract to provide security personnel to satisfy its obligations under this Section. Notwithstanding anything

to the contrary contained in this License, CITY shall not be liable in any manner for any security personnel, services, procedures or equipment in, at, on or about the Premises or for the failure of the same to prevent or control, or to apprehend anyone suspected of personal injury, property damage or any criminal conduct in, on or about the Premises. To the extent possible, based on the CITY's determination on availability of resources, the CITY shall provide regular San Diego Police Department patrols in the vicinity of the Premises, to the extent determined necessary and appropriate in the sole discretion of the San Diego Police Department

14. CITY's Right to Enter. CITY reserves the right to enter upon, or allow third parties to enter upon the Premises for any reason and at any time upon 24 hour notice or when needed to perform any work or inspections on the Premises and to enter the Premises as CITY deems necessary. Nothing in this section shall require CITY to perform any work or inspections.
15. Superior Interests. This License is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights of way pertaining to the Premises, whether or not of record. LICENSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises for the Allowed Uses, relative to any such superior interest. If LICENSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LICENSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
16. Restoration of the Premises. Upon thirty (30) days after the expiration or termination of this License, LICENSEE shall restore the Premises to the same condition as existed immediately prior to the Term's commencement, less ordinary wear and tear.
17. CITY's Consent, Discretion, and Approval. CITY's consent or approval under this License shall mean the written consent or approval of the Mayor of San Diego or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
18. Unauthorized Activities. LICENSEE shall not engage in any activity on the Premises other than the Allowed Use. Any use of the Premises that was not previously approved in writing by the CITY or otherwise authorized by this License, shall subject LICENSEE to being liable for all costs and damages associated with inspecting, remediating, and/or taking other actions to ensure that the Premises shall be returned to its condition on the Effective Date, as well as being a basis for immediate termination of this License, all of which shall be subject to the sole discretion of the CITY.
19. Improvements/Alterations. No improvements, structures, or installations will be constructed on the exterior of the Premises, and the Premises may not be altered, by LICENSEE without CITY's prior written approval, not to be unreasonably withheld or conditioned. LICENSEE will not make any structural or architectural design alterations to

approved improvements, structures, or installations on the Premises without CITY's prior written approval. This provision will not relieve LICENSEE of any maintenance obligation under this License. CITY will not be obligated by this License to make or assume any expense for any improvements or alterations to the Premises.

20. City Improvements/Alterations/Repairs. Notwithstanding the LICENSEE's responsibility for all maintenance, and without creating any obligation on the CITY to do so, LICENSEE acknowledges that CITY may choose to complete certain repairs to the Premises, and reserves the right to do so, upon notice to the LICENSEE. LICENSEE agrees that it will allow access to the building by CITY and CITY's contractors and agrees to ensure that areas where repairs are being completed are accessible and available for the repairs to be done. LICENSEE further agrees and acknowledges that unless otherwise specified in this License, CITY has not made any promises to complete any specific repairs and that CITY's failure to complete any specific repair will not be a breach by CITY of this License. LICENSEE specifically agrees to hold CITY harmless and waives all rights to damages for any loss resulting from CITY's exercise of its rights reserved under this section.
21. Personal Property.
 - (a) Personal Property. LICENSEE will remove LICENSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this License. Any such items which LICENSEE fails to so remove will be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LICENSEE's sole cost and expense. LICENSEE, at its sole cost and expense, will be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
 - (b) Late Removal. Notwithstanding any provision of this License to the contrary, LICENSEE will pay rent to CITY for any period of time after the expiration or termination of this License, whether by CITY or LICENSEE, needed to remove improvements or personal property as required by this License. Such rent will be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by qualified CITY staff.
 - (c) CITY's Right to Acquire Personal Property. If LICENSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this License, CITY will have the first right to acquire such personal property.
22. Utilities. LICENSEE will order, obtain, and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises.
23. Insurance. LICENSEE shall not enter or come onto the Premises, nor begin any use of the Premises under this License until it has done all of the following: (a) obtained, and provided to the CITY, insurance certificates reflecting evidence of all insurance required

below, however, the CITY reserves the right to request, and the LICENSEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LICENSEE liabilities, including but not limited to LICENSEE's indemnity obligations, under this License, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this License and LICENSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this License may be treated as a material breach of contract by the CITY. The LICENSEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this License.

23.1 Types of Insurance. At all times during the Term of this License, the LICENSEE shall maintain insurance coverage as follows:

- a. 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 \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- b. Commercial Automobile Liability. For all of the LICENSEE's automobiles including owned, hired and non-owned automobiles, the LICENSEE 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 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- c. Causes of Loss-Special Form Property Insurance. LICENSEE shall obtain and maintain, at its sole cost, Causes of Loss-Special Form Property Insurance on all of LICENSEE's insurable property related to the Allowed Uses of the Premises under this Permit or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LICENSEE shall deliver a certificate of such insurance to the CITY's Real Estate Assets Department.
- d. Workers' Compensation. For all of the LICENSEE's employees who are subject to this License and to the extent required by the applicable state or federal law, the LICENSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and the LICENSEE shall provide an endorsement that the insurer waives the right of subrogation

against the CITY and its respective elected officials, officers, employees, agents and representatives.

- 23.2 Deductibles. All deductibles on any policy shall be the responsibility of the LICENSEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.
- 23.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this License or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner 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 on if the carrier is authorized to do business in the State of California and is included on the list of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 23.4 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LICENSEE thirty (30) days prior written notice. LICENSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 23.5 Accident Reports. Within 24 hours of discovery, LICENSEE shall report to CITY any accident causing property damage or injury to persons on the Property or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties (to the extent this information is available, considering the nature of the population to be served), a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 23.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the CITY before entering onto the Premises or initiating any of the Allowed Uses under this License.

Commercial General Liability Insurance Endorsements.

- i. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, 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 you or on your behalf, (b) your products, (c) your work, including but not limited to

your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you

- ii. Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the 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 respects 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 Contractor's insurance and shall not contribute to it.
- iii. Severability of Interest. The policy or policies must be endorsed to provide that the LICENSEE'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.

Automobile Liability Insurance Endorsements.

- iv. Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, 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 automobile owned, leased hired or borrowed by or on behalf of the LICENSEE.
 - v. Severability of Interest. The policy or policies must be endorsed to provide that LICENSEE'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.
 - vi. Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of 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.
24. Indemnification & Hold Harmless. In compliance with the terms of the MOU, the City and the Commission agree to indemnify, protect, and hold harmless one another, including their elected officials, officers, agents, representatives, departments, subcontractors, and employees, from and against any and all claims, demands, actions, proceedings, suits, liabilities, damages, costs (including reasonable attorneys' fees) or expenses for, including damage to property, the loss or use thereof, or injury or death to any person, caused by, arising out of, or related to the performance of services under the License by the CITY or the LICENSEE, their elected officials, officers, agents, representatives, departments, subcontractors, and employees. The CITY's and LICENSEE's duty to indemnify and hold

harmless one another shall not include any indemnification or defense, for claim or liability arising from the established sole negligence or willful misconduct of the other, or the other's elected officials, officers, agents, representatives, departments, subcontractors, and employees.

25. No Discrimination. LICENSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status, or physical disability in LICENSEE's use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
26. Reserved.
27. LICENSEE's Risk. LICENSEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Allowed Use and any damages to the improvements on, under, or in the vicinity of the Premises resulting directly or indirectly thereby.
28. Nuisance and Noise Disturbances. LICENSEE shall not use the Premises in any manner which, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area or that violates the CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
29. No Assignment or Sublicense. LICENSEE shall not assign or sublicense any rights granted by this License nor any interest therein or grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LICENSEE's employees, agents, and guests, to use or occupy the Premises or any part of the Premises without CITY's prior written consent. Any such consent shall not be deemed a consent to any subsequent assignment, sublicense, occupation, or use by another person. Approval of any such proposed assignment or sublicense may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law shall automatically terminate this License.
30. Signs. LICENSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising in the Premises without CITY's prior written consent. If any such unauthorized item is found on the Premises, LICENSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at LICENSEE's cost.
31. Encumbrances. LICENSEE shall keep the Premises free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this License or the Allowed Uses. LICENSEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation reasonable attorney fees and costs, relating to or charged against the Premises, including without limitation LICENSEE's failure or the failure of any contractor or subcontractor hired by

LICENSEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

32. Compliance with Laws. LICENSEE shall, at its sole cost and expense, at all times in its occupancy, use, and maintenance of the Premises comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to the LICENSEE's occupancy, use, and maintenance of the Premises.
33. Prevailing Wages. LICENSEE shall comply with any state or federal prevailing wage requirements which apply to it for any construction, alteration, demolition, repair, and maintenance work performed under this License.
34. Hazardous Materials. LICENSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of any Hazardous Substance or otherwise regulated substances in, on, under or from the Premises. LICENSEE and LICENSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's prior written consent. LICENSEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
 - 34.1 Release. For all purposes of this License, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a Hazardous Substance.
 - 34.2 Hazardous Substance. For all purposes of this License, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
 - 34.3 Remediation. If LICENSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a Hazardous Substance, LICENSEE shall pay all costs of remediation and removal for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
 - 34.4 Removal. If LICENSEE or LICENSEE's agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, LICENSEE or LICENSEE's agent shall remove all Hazardous Substances in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this License. CITY reserves the

right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. LICENSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

- 34.5 Indemnity. LICENSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LICENSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LICENSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 34.6 Notice of Release. If LICENSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, LICENSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LICENSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LICENSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LICENSEE shall take all actions necessary to alleviate the danger. LICENSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- 34.7 Environmental Assessment. Upon reasonable cause to believe that LICENSEE's occupancy, use, development, maintenance, or restoration of the Premises resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LICENSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LICENSEE's occupancy, use, development, maintenance, or restoration of the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by CITY, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LICENSEE shall cause, or if LICENSEE fails to do so within a reasonable period of time, as determined by

CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental laws and regulations are achieved, and LICENSEE shall pay all costs and expenses therefore.

35. Repair. LICENSEE shall be responsible, at its sole cost and expense, for the repair or replacement of any damage to the Premises or the surrounding property caused directly or indirectly by LICENSEE's use of the Premises, including items that CITY staff has determined to be damaged. LICENSEE shall comply with the direction of CITY's Real Estate Assets Department with respect to the method of any repairs or replacement arising under this License.
36. Water Quality – Best Management Practices. CITY and LICENSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of CITY's precious water resources. It is CITY's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, CITY will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately CITY's responsibility to prevent pollutant discharges to the storm drain system. Therefore, CITY will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

37. Waiver. CITY'S failure to insist upon the strict performance of any of LICENSEE 's obligations under this License, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Premises CITY-owned and held in trust for the benefit of CITY's citizens. CITY's failure to discover a breach of any obligation of this License or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
38. Counterparts. This License may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
39. Exhibits. All exhibits referenced in this License are incorporated into this License by this reference. In the event of a conflict between this License and any exhibit to this License, the terms, conditions, and obligations of this License shall control.
40. Acceptance of Premises. By signing this License, LICENSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Premises. LICENSEE

acknowledges that the Premises are in good order and condition and will take possession of the Premises "as is." LICENSEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Premises or its suitability for the Allowed Uses, and that LICENSEE is relying solely on its own and independent inspections, tests, investigations and observations of the Premises in entering into this License. LICENSEE accepts the Premises in its current condition. LICENSEE acknowledges and agrees that unless set forth in this License, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Premises at any time either prior to, on or after the Effective Date. LICENSEE shall not hold CITY responsible for any defects in the Premises. LICENSEE accepts and assumes all risk of harm to all persons and property from any defects in the Premises or any improvements thereon, and shall be solely responsible therefore.

41. Disabled Access Compliance. LICENSEE will, as applicable to the Premises and LICENSEE's possession, use, and occupancy of the Premises, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, LICENSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LICENSEE's compliance will include without limitation the following:
 - 41.1 LICENSEE will not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - 41.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LICENSEE.
 - 41.3 LICENSEE will include language in each sublicense which indicates the sublicensee's agreement to abide by the provisions of this section.
 - 41.4 LICENSEE and each of its sublicensees will be individually responsible for their own ADA employment programs.
 - 41.5 LICENSEE will post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - 41.6 Where required by law, all improvements, fixtures, structures, or installations on the Premises will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to individuals with disabilities. All improvements and alterations will be at LICENSEE's sole expense.

- 41.7 LICENSEE's failure to comply with the accessibility requirements of this section or submitting false information in response to these accessibility requirements, or both, will be a default of this License.
42. Drug-free Workplace. LICENSEE will abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- (a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.
 - (b) Establish a drug-free awareness program to inform employees about all of the following:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) LICENSEE's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations.
 - (c) LICENSEE will include in each of its sublicenses and contracts related to this License language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LICENSEE, and each of its sublicensees and contractors, will be individually responsible for their own drug-free workplace program.
43. Reserved.
44. Reserved.
45. Termination. CITY may terminate this License for any reason upon thirty (30) days prior written notice delivered to LICENSEE by CITY; however, in the event of a default or emergency during which the CITY in its sole discretion determines it necessary to terminate the License, termination may occur immediately upon written notice. LICENSEE may terminate this License for any reason upon thirty (30) days prior written notice delivered to CITY by LICENSEE.
46. Cumulative Remedies. CITY's rights and remedies under this License are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.

47. Survival. Any obligation which accrues under this License prior to its expiration or termination shall survive such expiration or termination.
48. Entire Agreement. This License constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them and pertaining to this License and the Allowed Use. Any modification, alteration, or amendment of this License shall be in writing and signed by all the parties hereto.
49. Partial Invalidity. If any term, covenant, condition, or provision of this License is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
50. Controlling Law/Venue. This License and all License documents will be deemed to be made under, and will be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this License, including the interpretation or application of any of its terms or any related disputes, will be in the County of San Diego, State of California.
51. Notices. Any notice required or permitted to be given under this License shall be in writing and may be served personally or delivered by United States mail, postage prepaid, or electronic mail, where permitted, and addressed to CITY or LICENSEE as follows:

CITY:

CITY OF SAN DIEGO and
Attn: Director, Real Estate Assets
Department
1200 Third Ave, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020
PMAus@sandiego.gov

City of San Diego
Attn: Chief of Homelessness Strategies
Homelessness Strategies Division
202 C Street (MS 9A)
San Diego, CA 92101
619-236-6213
KHalsey@sandiego.gov

LICENSEE:

SAN DIEGO HOUSING COMMISSION
Attn: Executive Vice President of Strategic Initiatives
1122 Broadway, Ste. 300
San Diego, CA 92101
(619) 578-7696
lisaj@sdhc.org

51. Governmental Approvals. By entering into this License, neither CITY nor CITY's City Council is obligating itself to LICENSEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to LICENSEE's occupancy, use, development, maintenance or restoration of the Premises. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.

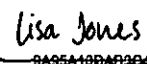
52. Authority to Contract. Each individual executing this License on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this License on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions 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 License is binding upon such person or entity in accordance with its terms. Each person executing this License on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this License is executed to be effective as of the Effective Date.

THE CITY OF SAN DIEGO,
a California municipal corporation

By: 
Penny Mays
Director, Real Estate Assets

SAN DIEGO HOUSING COMMISSION,
a public agency

DocuSigned by:

By: 
Print Name: Lisa Jones
Executive Vice President, Strategic Initiatives

Approved as to form this _____ day
of _____, 2021.

MARA W. ELLIOTT, City Attorney

By: _____
Name: _____
Title: _____

Approved as to Form:
Christensen & Spath LLP

DS
EH

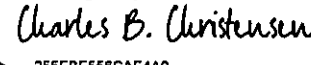
DocuSigned by:

By: 
Charles B. Christensen, General Counsel
San Diego Housing Commission
Date: 4/20/2021

Exhibit A: Legal Description of Premises

Exhibit B: Memorandum of Understanding between CITY and LICENSEE

52. Authority to Contract. Each individual executing this License on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this License on behalf of such person or 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 License is binding upon such person or entity in accordance with its terms. Each person executing this License on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this License is executed to be effective as of the Effective Date.

THE CITY OF SAN DIEGO,
a California municipal corporation

By: [Signature]
Penny Maas
Director, Real Estate Assets

SAN DIEGO HOUSING COMMISSION,
a public agency

DocuSigned by:
By: [Signature]
Print Name: Lisa Jones
Executive Vice President, Strategic Initiatives

Approved as to form this 22nd day
of April, 2021.

MARA W. ELLIOTT, City Attorney

By: [Signature]
Name: Marco A. Verdugo
Title: Deputy City Attorney

Approved as to Form:
Christensen & Spath LLP

DS
EH

DocuSigned by:
By: [Signature]
Charles B. Christensen
Charles B. Christensen, General Counsel
San Diego Housing Commission
Date: 4/20/2021

Exhibit A: Legal Description of Premises

Exhibit B: Memorandum of Understanding between CITY and LICENSEE

EXHIBIT A
Legal Description of Premises

The land referred to herein below is situated in the City of San Diego, in the County of San Diego, State of California and is described as follows:

LOTS "A" AND "B" OF BLOCK 169 OF HORTON'S ADDITION IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREFORE MADE BY L.L. LOCKLING AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

APN 535-614-01 AND 535-614-02

EXHIBIT B:
MOU Between LICENSEE and CITY

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN DIEGO AND
THE SAN DIEGO HOUSING COMMISSION
FOR THE HOMELESSNESS RESPONSE CENTER**

This Memorandum of Understanding between the City of San Diego and the San Diego Housing Commission for the Homelessness Response Center ("MOU") is dated as of January 4, 2021, and is entered into by and between the SAN DIEGO HOUSING COMMISSION, a public agency ("Commission") and the CITY OF SAN DIEGO, a municipal corporation ("City"), hereinafter, collectively, referred to as the "Parties" and each individually, as a "Party," shall become effective upon signature of both Parties.

RECITALS

WHEREAS, the City and the Commission wish to execute this MOU to provide for the operation of a Homelessness Response Center ("HRC") located at 1401 Imperial Avenue in the City of San Diego ("HRC Premises");

NOW THEREFORE, the City and Commission agree as follows:

- I. **Incorporation of Recital.** The recital set forth above is true and correct and is incorporated into this MOU by this reference, as though fully set forth in this MOU.
- II. **HRC Premises.** The Parties shall agree as follows:
 - A. Upon City-possession of the HRC Premises from the current leaseholder, the Commission shall be permitted access to conduct a walk-through and inspections of the HRC Premises with Commission-retained forensic experts (the "Experts") to assess the condition of the property.
 - B. To the extent the Experts determine that there are any necessary improvements that require remediation, the Commission may recommend that the City perform any necessary remediation highlighted by the Experts or provide funding to the Commission for remediation as directed by the Experts.
 - C. Pending inspection, review, remediation (if any), and, ultimate approval of the condition of the HRC Premises by the Commission, the City shall maintain and retain control of the HRC Premises.
 - D. Nothing herein shall require that the Commission take possession of the HRC Premises until such time, if ever, that it has approved the condition of the property and/or issues identified by the Experts have been remediated.
 - E. After the completion of any necessary remediation as noted by the Experts, and upon Commission-approval of the condition of the HRC Premises, the Parties shall negotiate an occupancy agreement for the Commission's use of the HRC Premises. The terms of the occupancy agreement shall be in a form approved by the City Attorney and Commission's General Counsel and shall be subject to any necessary governmental approvals.

- F. Should the Commission fail to approve the condition of the HRC Premises, or the Parties fail to enter into an occupancy agreement for Commission's use of the HRC Premises, the Parties will endeavor to locate another property on which to operate the HRC. If another property is located, or Parties are able to perform certain of the responsibilities set forth below in this MOU remotely, the Parties will amend this MOU to provide for operation of the HRC. If Parties are not able to mutually agree on revised terms relating to the operation of the HRC at another site or remotely, either of the Parties may terminate this MOU upon ten (10) days written notice under this section.
- G. Nothing herein shall require the City to issue an occupancy agreement to the Commission or allow the Commission or a third party operator to occupy or commence operations at the HRC Premises prior to the execution of an occupancy agreement for the HRC Premises.

III. **Homelessness Response Center.** Contingent on the execution of an occupancy agreement between the City and the Commission for the use of the HRC Premises as set forth in Article II above, the Parties obligations for the operation of the HRC shall be as follows:

- A. **Commission Responsibilities.** The Commission, through the Commission Administrator, defined below, shall be responsible for the general management, operation, administration, and oversight of the HRC as defined herein, and as further defined within the applicable subcontractor agreement entered into by the Commission and a third party operator for provision of specified component services of the HRC, once executed. Any responsibilities set forth in Section III(B) ("City Responsibilities") below shall be explicitly excluded from the Commission's responsibilities. The Commission's responsibilities relating to the HRC include the following:

- I. **Administration, Operation and Oversight of the HRC.** Commission shall:
 - a. Through the HCR program, develop and implement a streamlined, coordinated, client-centric, City homelessness response in alignment with the five "Foundational Strategies" of the City of San Diego's Community Action Plan on Homelessness.
 - b. Use a system-wide approach to administer services in three major phases that aligns with the Community Action Plan's "Desired Homeless Assistance System Flow":
 - i. Phase One: Engagement Services
 - ii. Phase Two: Crisis Response and Stabilization
 - iii. Phase Three: Housing and Services
 - c. The services also include: leveraging coordinated outreach services (as are detailed in a separate agreement); centralized shelter placement services and, to the extent possible, intake; and oversight of the services as set forth in the Commission's subcontractor agreement, which the Commission may, upon mutual agreement with the City Administrator (defined below), modify to improve or expand services or adapt to changed conditions.

2. Data-Informed Performance and Systems Monitoring. Commission shall:
 - a. Conduct ongoing monitoring and reporting of the HRC's performance in alignment with the Community Action Plan's Foundational Strategies to "improve the performance of existing systems," "create a client-centered homeless assistance system," and "increase access to permanent housing solutions."
 - i. Monitoring will include key indicators across the coordinated homeless response system and will align with the Community Action Plan Foundational Strategies and Three-Year Goals.
 - b. Prepare and maintain program-related records in a manner that complies with all applicable laws and regulations and provide those records in a reasonable amount of time to the City upon request.
 - c. Enter and maintain appropriate data in the Regional Task Force on the Homeless-approved Homeless Management Information System.
 - d. Compile and track information including, but not limited to: the number and type of staff working on the HRC program; number of people served, what services they engaged in, and outcomes; outreach program data such as contacts and outcomes (that are detailed in a separate agreement); housing navigation outcomes; partnerships with community organizations on and off the HRC Premises; demographic data about program clients; information regarding how clients access the program (i.e., walk-ins, referrals, etc.); and the data listed in the Performance Standards and Performance Monitoring section of the Third Party Scope of Work. Compilation and tracking of such information is subject to change based on agreement between the City and Commission Administrators, for example to expand or improve data collection.
 - e. Provide regular, not less than quarterly, reporting to the City Administrator for review, feedback, and subsequent publishing for public access in a form agreed to by the City and Commission Administrators.
3. Advisory Groups. Commission shall:
 - a. Identify, form, and organize System Advisory Groups in alignment with recommendations from the Community Action Plan and with input from the Community Action Plan Implementation Team and Leadership Council.
 - b. Maintain regular communication with System Advisory Groups to create a feedback mechanism to gain input and feedback.
 - c. Provide that Commission or a third party operator under contract with the Commission to provide services at the HRC hold meetings with the Neighborhood Advisory Committee on a monthly basis to provide opportunity for neighborhood input and communication. Meeting frequency can be amended to no less than quarterly with notice to the City Administrator and reduced further with mutual written agreement of the City Administrator.
4. Use of HRC Premises. Contingent upon the satisfaction of Article II of this MOU, and, where applicable, upon the execution of an occupancy agreement between the City and Commission for the use of the HRC Premises, Commission shall:
 - a. Provide or contract to provide security personnel to secure the building and monitor and report issues in a reasonable amount of time to law enforcement or City environmental services (as applicable) related to the

- public right-of-way adjacent to the building when made aware of any such issues.
- b. Maintain lighting that illuminates the interior of the facility, the façade, and adjacent public right of way in a manner designed to enhance the security of the facility.
 - c. Keep the exterior perimeter of the HRC Premises free of debris and graffiti.
 - d. Provide, itself or through its third party contractor, other “good neighbor” measures including, but not limited to, the following, which may be amended by agreement of the City and Commission Administrator:
 - i. Coordinate regular homeless outreach in surrounding community;
 - ii. Take such measures as are possible/under the Commission’s control to prevent client queuing, loitering, and littering in the vicinity of the premises;
 - iii. Maintain a secure and healthful environment for delivery of services at the premises;
 - iv. Address litter, debris, and graffiti on the premises;
 - v. Maintain the premises, at all times, in an orderly and vermin-free condition;
 - vi. Enforce a zero-tolerance policy for alcohol or drug use on site;
 - vii. Designate a point of contact to address issues that may arise at the premises and coordinate security issues with the Police Department;
 - viii. Report criminal activity to law enforcement; and
 - ix. Provide clients participating in HRC services opportunities to access.
 - e. Compliance with Laws and Regulations. Commission shall comply with all applicable federal, state, and municipal laws and regulations, including all federal regulations and CDBG reporting requirements detailed in **EXHIBIT A**, attached to this MOU, including the monitoring on a periodic basis but not less than annually of all contracts with subcontractors to ensure compliance with all applicable laws and regulations.
- B. City Responsibilities. City shall, contingent on satisfaction of Article II above enter into an occupancy agreement with the Commission for use of the HRC Premises, provide City services (as described in Section III(B)(2), below) at the HRC Premises, and advancing funds for the operation of the HRC (as described in Section III(B)(3), below). Any responsibilities set forth in Section III(A) (“Commission Responsibilities”) above shall be explicitly excluded from City’s Responsibilities. The City’s Responsibilities relating to the HRC include the following:
- 1. Use of HRC Premises. City shall:
 - a. Obtain all necessary permits and clearances for the operation of the HRC on the HRC Premises, including, if required, CEQA review, NEPA review, and any and all necessary permits.

2. City Services. City shall:

- a. Remove unwanted items identified by the Commission as surplus at the HRC Premises, upon the Parties' determination that they require removal in order to allow for provision of services, and dispose of or store the identified items at the City's discretion.
- b. Provide for Environmental Services cleanings of the sidewalk at the exterior of the HRC Premises; the City to determine the type and frequency of cleaning.
- c. To the extent possible, based on the City's determination on availability of resources, the City shall provide regular San Diego Police Department patrols in the vicinity of the HRC Premises, to the extent determined necessary and appropriate in the sole discretion of the San Diego Police Department.

3. Payment and Advancement of Funds for HRC Operating Expenses City shall:

- a. The City shall provide funding under this MOU in monthly installments to reimburse the Commission for funds expended, within 30 days of receipt of an invoice from the Commission. The City will provide a one-time advance to account for at least the HRC's first two months of expenses, within 15 days of the Effective Date of this MOU, upon written request by the Commission of reasonable anticipated expenses for that period, provided the City determines that they will be eligible for reimbursement per the rules related to the available funding sources. The City shall provide reimbursement of funds to the Commission for HRC operating expenses up to a maximum as follows:

FUNDING SOURCE	Year 1	Year 2	Year 3
CDBG	\$1,000,000	\$1,000,000	\$1,000,000
General Fund	\$300,000	\$300,000	\$300,000
Low and Moderate Income Housing Fund	\$250,000	\$250,000	\$250,000
TOTAL	\$1,550,000	\$1,550,000	\$1,550,000

*Funding in Years 2 and 3 is subject to City determining availability.

- b. Perform eligibility analysis and determination to ensure that funds advanced to the Commission for the operation of the HRC are permitted expenditures under the various funding sources, including, but not limited to, CDBG funding, Low and Moderate Income Housing Asset Funds and City of San Diego General Funds. Commission shall provide the City information and documentation as may be requested in order to allow the City to perform the eligibility analysis.

- C. Funding for HRC. At the start of each fiscal year, the Parties will endeavor to secure funding for the performance of obligations for operation of the HRC. Should funding become unavailable at any point during the term of the HRC's operations, either Party may terminate its obligations for the HRC under this MOU. Should additional funding become available for activities at the HRC, through, for example, state grant(s), the City may, in the City's sole direction, transfer such funding for use by the Commission on such grant-eligible activities, subject to any and all restrictions and requirements dictated by the funding source. The Parties will use good faith efforts to obtain funding for the operation of the HRC.
- D. Administration:
- a. The City Administrator will be the Homelessness Strategies Department Director or Chief of Homelessness Strategies, or successor position, or that individual's designee. The Commission Administrator will be the Senior Vice President, Homeless Housing Innovations Division., or successor position, or that individual's designee.
 - b. The City Administrator may provide input to the Commission with respect to the HRC program design and scope, including, for example, what data to collect, and may provide input to the Commission with respect to how to enhance aspects of the program to produce satisfactory results and revise or eliminate aspects of the program that do not. Any such input would be considered by the Commission in alignment with community standards and national best practice. Should such input result in evolution of program design and result in increased costs to the program budget, it would only be implemented if and to the extent that the City administrator is able to identify and commit additional funding to support the change.
- E. Term and Termination.
1. Term. The term of this MOU commences on its effective date and continues through June 30, 2021 (Term). The Term may be administratively extended for up to two (2) consecutive additional years (July 1, 2021 through June 30, 2022 and July 1, 2022 through June 30, 2023), one year at a time, by written agreement between the Mayor and Commission President, in their respective sole discretion, provided that funding for said extensions have been approved by the City Council.
 2. Termination Upon Notice. Either the Commission or the City may terminate this MOU and all obligations hereunder for any reason by providing 30 calendar days written notice to the other. Termination pursuant to Article II above is in addition to the Termination for convenience as set forth herein.

IV. General Provisions.

- A. Indemnification. To the fullest extent provided by law, the City and the Commission agree to indemnify, protect, and hold harmless one another, including their elected officials, officers, agents, representatives, departments, subcontractors, and employees, from and against any and all claims, demands, actions, proceedings, suits, liabilities, damages, costs (including reasonable attorneys' fees) or expenses for, including damage to property, the loss or use thereof, or injury or death to any person, caused by, arising out of, or related to the performance of services under this MOU by the City or the Commission, their elected officials, officers, agents, representatives, departments, subcontractors and employees. The City's and Commission's duty to indemnify and hold harmless one another shall not include any indemnification or defense, for claim or liability arising from the established sole negligence or willful misconduct of the other, or the other's elected officials, officers, agents, representatives, departments, subcontractors, and employees.
- B. Insurance. City certifies that it is self-insured and will maintain the same level of insurance throughout the duration of this MOU. Commission certifies it has obtained insurance as set forth herein:
1. Commission shall obtain a single limit general liability insurance and automobile liability insurance in the minimum amount checked and initialed below. If nothing is checked or indicated below, the limit shall be One Million Dollars (\$1,000,000.00):

☒	General Liability \$1,000,000.00
☒	Workers Compensation \$1,000,000.00
☒	Automobile Liability \$500,000.00
 2. This coverage is in addition to workers compensation insurance and other insurance coverages required by law. The policies shall provide that coverage on all policies may not be canceled, amended, terminated or otherwise modified without thirty (30) days advance written notice to the Commission and City. Coverage shall remain in full force and effect during the entire term of the policy.
- C. Amendment. Any changes to this MOU shall be in writing and signed by both of the Parties.
- D. Assignability. Neither Party shall assign any interest in this MOU and shall not transfer any interest in the same (whether by assignment or novation).
- E. Counterparts. This MOU may be executed in one or more counterparts, each of which

shall be deemed an original. The Parties agree that in order to expedite the execution process, facsimile or electronically conveyed signatures will be considered and accepted as legally binding.

- V. **Entire Agreement; No Novation.** This MOU represents the entire understanding between the Parties about the subject matter of this MOU. This MOU is not a novation of and does not amend or otherwise revise any other agreement, memorandum of agreement or understanding of the Parties.
- VI. **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this MOU. The Parties have participated substantially in the negotiation, drafting, and revision of this MOU, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this MOU may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this MOU. The words "include" and "including" in this MOU shall be construed to be followed by the words: "without limitation." Each collective noun in this MOU shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this MOU, refers to such document, as modified from time to time (excepting any modification that violates this MOU), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this MOU includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this MOU refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.
- VII. **Binding on Successors and Assigns.** This MOU shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.
- VIII. **No Other Representations or Warranties.** Except as expressly set forth in this MOU, no Party makes any representation or warranty material to this MOU to any other Party.

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

**SIGNATURE PAGE
TO
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN DIEGO AND
THE SAN DIEGO HOUSING COMMISSION
FOR THE HOMELESSNESS RESPONSE CENTER**

IN WITNESS WHEREOF, this MOU is entered into by the City of San Diego, acting by and through its Mayor or designee, and by the San Diego Housing Commission, by and through the signature of Commission's authorized representative(s), all as set forth below.

SAN DIEGO HOUSING COMMISSION,
a public agency

CITY OF SAN DIEGO,
a California municipal corporation

By:  _____
DocuSigned by:
Jeff Davis
ID: 4474...
Deputy Chief Executive Officer

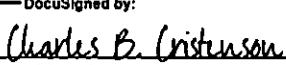
By: _____
Print Name: _____
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CHRISTENSEN & SPATH LLP

MARA W. ELLIOTT
CITY ATTORNEY

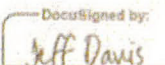
By: Erin Hale  _____
By:  _____
DocuSigned by:
Charles B. Christensen
General Counsel

By: _____
Deputy City Attorney

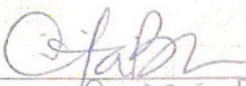
SIGNATURE PAGE
TO
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN DIEGO AND
THE SAN DIEGO HOUSING COMMISSION
FOR THE HOMELESSNESS RESPONSE CENTER

IN WITNESS WHEREOF, this MOU is entered into by the City of San Diego, acting by and through its Mayor or designee, and by the San Diego Housing Commission, by and through the signature of Commission's authorized representative(s), all as set forth below.

SAN DIEGO HOUSING COMMISSION,
a public agency

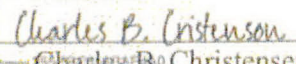
By: 
DocuSigned by:
Jeff Davis
Deputy Chief Executive Officer

CITY OF SAN DIEGO,
a California municipal corporation

By: 
Print Name: Christina Biber
Title: Director, Economic Development

APPROVED AS TO FORM:

CHRISTENSEN & SPATH LLP

By: Erin Hale 
DocuSigned by:
By: 
Charles B. Christensen
General Counsel

APPROVED AS TO FORM:

MARA W. ELLIOTT
CITY ATTORNEY

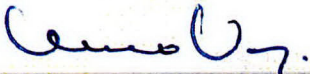
By: 
Deputy City Attorney
MARCO A. VERDUGO

EXHIBIT A

CDBG REPORTING REQUIREMENTS

Set forth below are reporting requirements as required by the Fiscal Year 2020 General Fund Subrecipient Agreement Between the City of San Diego and the San Diego Housing Commission ("Agreement"). The relevant clauses have been set forth below. For the purposes of this MOU, "Agency" shall mean Commission. Upon execution of the Fiscal Year 2021 General Fund Subrecipient Agreement, the Parties hereto shall amend this MOU to incorporate any updated terms.

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 C.F.R. 570.506 and 24 C.F.R. 576.500, and those required by the Operating Manual that are pertinent to the activities to be 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 Generally Accepted Accounting Principles (GAAP) in the industry. Agency shall also comply with 24 C.F.R. part 200 regarding accounting principles and procedures therein, utilizing internal controls, and maintaining necessary source documentation for all costs incurred.
- 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 LEFT INTENTIONALLY BLANK.

- 8.6 STORAGE PERIOD.** Except where longer retention periods are required pursuant to 24 C.F.R. 576.500(y), Agency shall store, and require its Subcontractors to store, all Project Records for a period of not less than five (5) years after Agency's final submission of all required reports under this Agreement, or five (5) 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 (30) 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 the request of the City.

COMPLIANCE WITH LAWS AND POLICIES

- 9.1 GENERAL.** Agency shall comply, and require its Subcontractors to comply, with all applicable laws, statutes, 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, 576.404, 2 C.F.R. 200.112 and 2 C.F.R. 200.318; and
- (b) California Government Code sections 1090 et. seq., and 81000 et. seq.

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 City. If such a financial and/or economic interest is determined to exist, the City may 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 (30) 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 of each Fiscal Year, 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 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 LEFT INTENTIONALLY BLANK.

9.4 EQUAL EMPLOYMENT OPPORTUNITY.

- 9.4.1 Agency shall comply, and shall require its Subcontractors to comply, with the City's Equal Employment Opportunity (EEO) Outreach Program, codified in San Diego Municipal Code (SDMC) sections 22.2701 - 22.2707. Agency shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Agency shall provide equal opportunity in all employment practices. Nothing in this section shall be interpreted to hold Agency liable for any discriminatory practice of its Subcontractors.

- 9.4.2 Agency shall comply, and shall 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.

- 9.4.2 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.

- 9.4.3 Agency, and its Subcontractors, shall provide equal opportunity in all employment practices.
 - 9.4.4 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.
 - 9.4.5 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 SDMC sections 22.3501 -22.3517.
 - 9.5.2 Agency shall not discriminate, and shall 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 (60) 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, and shall require its Subcontractors to acknowledge 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.** Where applicable, Agency shall comply, and shall require its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance (LWO), codified in SDMC sections 22.4201 through 22.4245, in performing its obligations and/or duties under this Agreement.
- 9.8 **AMERICANS WITH DISABILITIES ACT.** Agency shall comply, and shall 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 shall 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 an "Agency Certification for a Drug-Free Workplace" form. This certification shall be a condition precedent to this Agreement and shall be submitted to the City prior to the date of 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(s) 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, in accordance with

the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), 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 submitted to the City prior to the date of 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 ESG and/or CDBG Program in funding Agency's services under this Agreement. All activities performed, facilities and items utilized, and publications prepared, using ESG and/or CDBG funding in connection with this Agreement shall be prominently labeled to reference the use of ESG and/or 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 Emergency Solutions Grant (ESG) and/or Community Development Block Grant (CDBG) Program funds provided by the U.S. Department of Housing and Urban Development (HUD) to the City of San Diego."

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 receiving ESG and/or CDBG funding 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 recommendations 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.

**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 and 576.407, including, but not limited to, federal ESG and/or CDBG financial and contractual procedures as applicable, as well as 2 C.F.R. 200 subparts B through D. These federal documents are on file at the City's Economic Development Department, located at 1200 Third Avenue, Suite 1400, San Diego, CA 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) and 24 C.F.R. 576 subpart E (sections 576.400 through 576.408), except that:
- (a) Agency does not assume the City's environmental responsibilities described in 24 C.F.R. 570.604 or 576.407; 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 agrees that in performing its obligations and duties under this Agreement, Agency shall solely perform those services described in the Scope of Services and shall not perform any construction work, alteration, demolition, repair or maintenance work or otherwise enter into a Federally Assisted Construction Contract, as defined in 41 C.F.R. part 60-1.3. Therefore, the Project is exempt from the Davis-Bacon Act. Pursuant to ESG Grant Program regulations, 24 C.F.R. 576.407(e), the provisions of the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) do not apply to the ESG program.
- 10.4 **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** Agency shall comply, and require its Subcontractors to comply, with 40 U.S.C. 3702 of the Contract Work Hours and Safety Standards Act (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 **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**, Agency shall comply, and require its Subcontractors to comply, with all applicable standards, orders or regulations issued pursuant to Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387)-for contracts in excess of \$150,000.
- 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 ESG and CDBG Funds by religious organizations, including those 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 Agreement 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 Agreement agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this 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 contractor'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 Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent 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 contracts.
- 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) (Section 7(b)) also applies to the work to be performed under this

contract. 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 contract 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 the expiration or termination of this Agreement, Agency shall transfer, and shall require its Subcontractors to transfer, to the City any ESG and/or CDBG funds on hand at the time of expiration and any accounts receivables attributable to the use of ESG and/or CDBG funds. Agency shall comply with the requirements of 24 C.F.R. 570.503(b)(7) with regard to the use or disposition of any real property that was either acquired or improved with CDBG funds in excess of \$25,000.

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 HUD Programs Administration Office.

10.11.2 Agency shall post in a prominent place at the Program Site(s) any other Fair Housing materials provided by the City upon contract execution and/or throughout the term of this Agreement.

10.12 **SECTION 504.** Agency shall comply, and require its Subcontractors to comply, with any Federal regulations issued pursuant to 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 **LEFT INTENTIONALLY BLANK.**

10.14 **LEAD-BASED PAINT.** Agency shall comply, and require its Subcontractors to comply, with 24 C.F.R. 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.

**INDEPENDENT CONTRACTOR; NO ASSIGNMENT; AGENCY'S
DESIGNATED REPRESENTATIVE**

17.1 **ACKNOWLEDGMENTS.** Agency acknowledges, and shall require its Subcontractors to acknowledge, that Agency and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct Agency concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that Agency shall follow the direction of the City concerning the end results of the performance.

Certificate Of Completion

Envelope Id: 6D2F8B794F06453E81C8E14D09CCFBB5
Subject: Please DocuSign: HRC_MOU_Final 12.7.2020.pdf
Source Envelope:
Document Pages: 23
Certificate Pages: 5
AutoNav: Enabled
Enveloped Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

Envelope Originator:
HHIT Submit
1122 Broadway, Suite 300
San Diego, CA 92101
hhitsubmit@sdhc.org
IP Address: 70.186.141.163

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Signer Events

Jeff Davis
jeffd@sdhc.org
Executive Vice President and Chief of Staff
Security Level: Email, Account Authentication
(None)

Signature

DocuSigned by:

EE0040404364474...

Signature Adoption: Pre-selected Style
Using IP Address: 174.65.51.193

Timestamp

Sent: 12/9/2020 11:45:24 AM
Viewed: 12/9/2020 11:59:42 AM
Signed: 12/9/2020 11:59:56 AM

Electronic Record and Signature Disclosure:
Accepted: 12/9/2020 11:59:42 AM
ID: 17eb039d-5d3c-49a1-94d3-667cd0e39799
Company Name: San Diego Housing Commission

Erin Hale
erin@candslaw.net
Security Level: Email, Account Authentication
(None)

DocuSigned by:

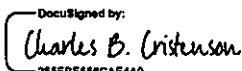
255EBE550CAE4A0...

Signature Adoption: Pre-selected Style
Using IP Address: 98.175.245.134

Sent: 12/9/2020 12:00:02 PM
Viewed: 12/9/2020 12:01:30 PM
Signed: 12/9/2020 1:02:12 PM

Electronic Record and Signature Disclosure:
Accepted: 3/25/2019 9:45:31 AM
ID: e31df8ec-681f-4237-96e8-67dc57729a0f
Company Name: San Diego Housing Commission

Charles B. Cristenson
CBC@candslaw.net
Security Level: Email, Account Authentication
(None)

DocuSigned by:

255EBE550CAE4A0...

Signature Adoption: Pre-selected Style
Using IP Address: 98.175.245.134

Sent: 12/9/2020 1:02:16 PM
Viewed: 12/9/2020 1:07:23 PM
Signed: 12/9/2020 1:07:36 PM

Electronic Record and Signature Disclosure:
Accepted: 12/9/2020 1:07:23 PM
ID: 0bf50208-311c-4c85-a00c-f56413cd1318
Company Name: San Diego Housing Commission

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Jessica Adamo

jessicaa@sdhc.org

Housing Programs Manager

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Accepted: 12/8/2020 1:25:44 PM

ID: 1badb5f7-da45-4ed1-9483-4d93b28de795

Company Name: San Diego Housing Commission

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Sent: 12/9/2020 1:07:39 PM

Viewed: 12/9/2020 1:13:33 PM

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	12/9/2020 11:45:24 AM
Certified Delivered	Security Checked	12/9/2020 1:07:23 PM
Signing Complete	Security Checked	12/9/2020 1:07:36 PM
Completed	Security Checked	12/9/2020 1:07:39 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum

Enabled Security Settings:	Allow per session cookies
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