

CITY OF SAN DIEGO
LEASE

[904 33rd Street, San Diego, CA 92102]

THIS CITY OF SAN DIEGO PERCENTAGE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as Lessor, and BLACK CONTRACTORS ASSOCIATION, a California corporation ("LESSEE"), as lessee, to be effective as of 6/1/2016 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

RECITALS

- A. City owns that certain residential real property consisting of a two-bedroom, one bath, single family residence on approximately 0.17 acres of land (Assessor's Parcel Number 545-062-18), located at 904 33rd Street, San Diego, California 92102 ("Premises"), which LESSEE currently leases pursuant to the City of San Diego Lease between CITY and LESSEE with an effective date of May 1, 2015 (Existing Lease).
- B. The Premises is currently occupied.
- C. LESSEE intends to lease the Premises from CITY exclusively for the purpose of subleasing the Premises to provide one rental housing unit for a veteran or resident, which resident is with income at or below sixty percent (60%) of area median income for the San Diego-Carlsbad Metropolitan Statistical Area as published by HUD ("Qualified Renter").
- D. LESSEE intends to sublease the Premises to a Qualified Renter per the current San Diego Housing Commission Income and Rent Calculation schedule, using the attached **Exhibit A: Housing Commission Income and Rent Calculation schedule**.
- E. Prior to entering into this Lease, or simultaneously herewith, LESSEE shall enter into a monitoring agreement, using the attached **Exhibit B: Reporting and Monitoring Agreement**, with the Housing Commission whereby LESSEE will agree to pay the Housing Commission to monitor LESSEE's compliance with the rent and affordable housing obligations in the Lease. On an annual basis, the San Diego Housing Commission will monitor that the sublessee of the Premises is a Qualified Renter and LESSEE is otherwise in full compliance with all occupancy restrictions applicable to the Lease.
- F. The processing fee for this Lease is hereby waived because the use provides a public benefit by providing one affordable rental housing unit.

SECTION 1: ALLOWED USE

- 1.1 Leasing. Effective as of the first calendar day of the first month following the Effective Date of the Lease (“Commencement Date”), CITY hereby leases the Premises to LESSEE, and LESSEE hereby leases the Premises from CITY under the terms and conditions of this Lease.
- 1.2 Allowed Use. LESSEE shall use the Premises solely and exclusively for the following purposes (the “Allowed Use”):
- 1.2.1 LESSEE shall sublease the Premises as one rental housing unit to a Qualified Renter. LESSEE must comply with all applicable laws including laws relating to landlord’s obligations in leasing residential property such as providing all required disclosures, ensuring the habitability of the Premises at all times, and laws relating to the occupancy and use of a residence of similar size and character as the Premises, including but not limited to those laws limiting the number of occupants.
- 1.2.2 LESSEE shall not use the Premises for any purpose other than the Allowed Use without CITY’s written consent in each instance. The Allowed Use shall be conducted in compliance with all laws, rules and regulations of competent governmental authority.
- 1.2.3 CITY makes no representation or warranty regarding the lawfulness of any Allowed Use, including without limitation whether the Allowed Use is permitted under the land use laws applicable to the Premises.
- 1.3 Business Objective. LESSEE shall diligently use reasonable best efforts to obtain and maintain full occupancy of the Premises at all times and to collect all rent and Security Deposit owing to LESSEE.
- 1.4 Superior Interests. This Lease 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. LESSEE 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, relative to any such superior interest.
- 1.5 Governmental Approvals. By entering into this Lease, the City is not obligating itself to LESSEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE’s occupancy, use, development, maintenance or restoration of the Premises or improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
- 1.5.1 LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any rehabilitation of the Premises or any improvements thereon, or any aspect thereof. Furthermore, CITY does not represent, warrant or guarantee any future approval of any rehabilitation or any aspect thereof by the City of San Diego, in its governmental

capacity, or the City Council, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval.

- 1.5.2 LESSEE's Waiver. LESSEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of CITY's or the City Council's failure to approve any rehabilitation of the Premises.
- 1.6 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages, including consequential or punitive damages. There shall however be determined and stated in writing by the Mayor, or his designee, a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.
- 1.7 Reservation of Rights.
 - 1.7.1 Mineral Rights. CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the Premises.
 - 1.7.2 Easements. CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good.
 - 1.7.3 Repairs. CITY may at all reasonable times upon not less than 72 hours written notice to the LESSEE (except in the event of an emergency, in which case no prior notice shall be required) enter upon the Premises for the purpose of making repairs to or developing municipal resources and services. Nothing in this provision shall be construed to create an obligation on the CITY's behalf to repair or maintain the Premises.
 - 1.7.4 Noninterference. In the exercise of the rights reserved under this section, CITY shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
 - 1.7.5 Costs. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.8 Competent Management. LESSEE shall provide competent management of the Allowed Use to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Use and in compliance with all laws, rules and regulations of competent governmental authority, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with

generally accepted accounting principles consistently applied and absent financial malfeasance.

SECTION 2: SECURITY DEPOSIT

- 2.1 Security Deposit shall mean an amount equal to Two Thousand Dollars (\$2,000). Upon execution of this Lease, LESSEE acknowledges and agrees that CITY shall apply the Two Thousand Dollar Security Deposit from the Existing Lease as security for the performance of LESSEE's obligations under this Lease. CITY shall not be liable to LESSEE for any interest thereon. Any interest earned from such deposit or redeposit shall not become part of the Security Deposit, but shall be and remain the property of CITY. All or any portion of the Security Deposit shall be available unconditionally to CITY to cure, in whole or in part, any breach or default of this Lease by LESSEE, or for expenses incurred by CITY as a result of LESSEE's breach or default of this Lease. LESSEE shall maintain the Security Deposit throughout the Term. Notwithstanding any other provision of this Lease to the contrary, if LESSEE fails or refuses to deposit or maintain the Security Deposit as required by this Lease, CITY may terminate this Lease immediately upon such breach. Upon such termination, LESSEE shall immediately cease its use of the Lease Area and commence and diligently pursue the removal of its property from the Lease Area.
- 2.2 Utilization. If CITY utilizes all or any portion of the Security Deposit, then upon ten (10) days prior written notice, LESSEE shall reimburse the Security Deposit to the full required amount.
- 2.3 Increase. Upon thirty (30) days prior written notice by CITY, LESSEE shall deliver to CITY such additional funds as CITY may reasonably require to adequately secure LESSEE's obligations under this Lease.
- 2.4 Return. Provided LESSEE is not in breach or default of this Permit, CITY shall return the Security Deposit, or any balance thereof, to LESSEE within sixty (60) days after the expiration or termination of this Lease.

SECTION 3: TERM

- 3.1 Term. The term of this Lease ("Term") shall be three (3) years, commencing on the Commencement Date.
- 3.2 Lease Year. "Lease Year" shall mean each twelve (12) month period during the Term.
- 3.3 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. LESSEE's occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall

continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to two (2) times the then fair market rent for the Premises' highest and best use, as determined by an appraisal prepared by a qualified appraiser chosen by CITY in its sole discretion, which rent shall be effective as of the first day of the holdover period, retroactively applied after the appraisal is made.

- 3.4 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender them to CITY free and clear of all liens and encumbrances, and in a condition reasonably satisfactory to CITY.

SECTION 4: IMPROVEMENTS

- 4.1. Premises Repairs. From the Effective Date of this Lease, LESSEE shall make all necessary repairs and improvements to the Premises ("Premises Repairs") at LESSEE's sole cost and expense to maintain the Premises in a habitable condition in accordance with all applicable laws. All improvements and Premises Repairs shall comply with all applicable government regulations. The CITY is not obligating itself to LESSEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to LESSEE'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.

- 4.1.1. Performance Bond. Prior to the commencement of Premises Repairs in excess of Five Hundred (\$500) Dollars, PERMITTEE shall provide CITY with a performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. However, in no event will the amount of the Performance Bond be less than ten thousand dollars (\$10,000). The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the Premises Repairs be completed in accordance with this Lease and all applicable laws and regulations. At the option of CITY, in the event the Premises Repairs are not completed to the full satisfaction of the CITY in its sole discretion, CITY may use the performance bond to complete the uncompleted Premises Repairs and restore the Premises to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

- 4.2. Condition of Premises. LESSEE, at its sole expense, shall maintain in good order, repair and operation, in accordance with all applicable laws and regulations, the Premises and the improvements throughout the Term of the Lease without expense to City, and to perform or cause to be performed all repairs and replacements necessary to maintain and preserve the Premises and any improvements thereon.
- 4.3. Landscaping. LESSEE shall maintain landscaping on the Premises in a healthy condition.

- 4.4. Prevailing Wage. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements in **Exhibit C**, attached hereto.

SECTION 5: RENT

- 5.1 Monthly Rent. Commencing the first month after the Commencement Date, the monthly rent payable to CITY shall equal four and a half percent (4.5%) of all Gross Revenue (defined below) for the prior month. The Monthly Rent shall be due in arrears within 15 days of the end of the prior month.
- 5.2 Gross Revenue. As used in this Lease, "Gross Revenue" shall mean the rent paid by the Qualified Renter to LESSEE under a sublease for the Premises. Possessory interest taxes, other property taxes, insurance or condemnation proceeds, or security deposits shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include sublease deposits received by LESSEE. LESSEE shall clearly indicate the amount of all income on its books and records.
- 5.3 Rent to be Paid to LESSEE by the Qualified Renter. LESSEE is required to restrict the rent charged to the Qualified Renter for the Premises so that it is affordable at or below sixty percent (60%) of such area median income per the current San Diego Housing Commission Income and Rent Calculation schedule, attached as Exhibit A, which is currently **\$1,229** per month.
- 5.4 Annual Rent Adjustments. An adjustment of rents to the Qualified Renter of the Premises shall be performed annually in accordance with the rents shown in the applicable Housing Commission rent schedule for the affected unit type within a one mile or ten block radius of the Premises.
- 5.5 Monitoring Agreement. The rent and occupancy restrictions in this Lease shall be monitored annually by the Housing Commission. LESSEE will agree to pay the Housing Commission, at LESSEE'S sole cost and expense, to monitor LESSEE's compliance with the rent and affordable housing obligations in the Lease. LESSEE shall cooperate with and provide information reasonably required by the San Diego Housing Commission to perform its obligations under the Monitoring Agreement. LESSEE will pay an annual monitoring fee to the Housing Commission in accordance with the then-existing Housing Commission fee schedules.
- 5.6 Annual Statements. Within thirty (30) days after the end of the third Lease Year, LESSEE shall deliver to CITY a statement of Gross Revenue for the Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by

source, and expenses categorized by type. The statement shall also include calculations of Rent, and any other amounts payable to CITY under this Lease for the Lease Year. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's operations and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

- 5.7 Time and Place of Payment. All rent payments shall be made payable to "City Treasurer" and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 5.8 Records. LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is approved by CITY.

- 5.8.1 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term, plus five (5) years. LESSEE shall make such books, records and documentation available for inspection and audit by CITY in one location within the County of San Diego.

LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to LESSEE's operations and activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

5.8.2 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:

- (a) For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- (b) LESSEE failed to maintain materially true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

5.9 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from

exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

SECTION 6: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 6.1 Leasehold Encumbrances. LESSEE may not encumber LESSEE's leasehold estate by deed of trust or other security instrument for any reason.
- 6.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease to anyone without CITY's written consent in each instance. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent in each instance. As used in this Lease "assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals or controlling shareholders. Notwithstanding the foregoing, LESSEE is entitled to sublease the Premises without the necessity of obtaining CITY's consent so long as the following conditions are met: (1) LESSEE subleases the Premises to a Qualified Renter, (2) the sublease between LESSEE and the Qualified Renter contains a provision that restricts the rent of the Premises so that it is affordable at or below sixty percent (60%) of such area median income in accordance with the current San Diego Housing Commission Income and Rent Calculation schedule, attached hereto as Exhibit A, and (3) LESSEE provides CITY with written notice, at least ten calendar days prior to execution of any sublease, of LESSEE's intent to sublease the Premises, which notice shall include the name of the sublessee(s), a complete copy of the proposed sublease and information confirming that the proposed sublessee(s) is a Qualified Renter. LESSEE shall not grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, guests and subtenants, to use or occupy the Premises or any part of the Premises without CITY's written consent in each instance.
 - 6.2.1 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.
 - 6.2.2 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its assignees shall make a full and complete disclosure of the name and identity of each and every person/entity directly or indirectly involved in this Lease and the precise nature of all interests of all such persons. Other than LESSEE's residential subtenants, each and every person/entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.

SECTION 7: DEFAULT AND REMEDIES

7.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

- 7.1.1. LESSEE fails to make any payment required under this Lease when due;
- 7.1.2. LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
- 7.1.3. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law, and such proceeding is not dismissed within sixty (60) days thereafter;
- 7.1.4. LESSEE is adjudicated a bankrupt; or
- 7.1.5. LESSEE makes a general assignment for the benefit of creditors.

7.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a thirty (30) day written Notice of Intent to Terminate the Lease. If LESSEE does not cure the default within the thirty-day period, CITY may terminate the Lease and all rights of LESSEE (and all persons claiming rights through LESSEE) to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- 7.2.1. the worth at the time of award of any unpaid rent that was due at the time of termination;
- 7.2.2. the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- 7.2.3. the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- 7.2.4. any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- 7.2.5. all other amounts in addition to or in lieu of those previously stated as may be permitted at law or in equity.

As used in clauses 7.2.1 and 7.2.2., above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 7.2.3., above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any and all other amounts payable by LESSEE under this Lease.

- 7.3 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.
- 7.4 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 8: EMINENT DOMAIN

- 8.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:
- 8.1.1 Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 8.1.2 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.

- 8.1.3 Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements owned by LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 8.1.4 Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any LESSEE-owned improvements on the Premises in accordance with this Lease.
- 8.1.5 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 9: INDEMNITY; HOLD HARMLESS; INSURANCE

- 9.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, volunteers, agents or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its rights and obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY or its elected officials, officers, employees, representatives or agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.
- 9.2 Insurance. LESSEE shall procure and maintain for the duration of the Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by LESSEE, LESSEE's agents, representatives, employees or subcontractors.
- 9.2.1 Types of Insurance. At all times during the term of this Lease, the LESSEE shall maintain insurance coverage as follows:

- 9.2.1.1. 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.
- 9.2.1.2. Commercial Automobile Liability. For all of the LESSEE's automobiles including owned, hired and non-owned automobiles, the LESSEE 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).
- 9.2.1.3. Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.
- 9.2.1.4. Workers' Compensation. For all of the LESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, the LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the LESSEE 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.
- 9.2.2 Self-Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require LESSEE to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- 9.2.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this LEASE 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 only 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.

- 9.2.4 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 LESSEE thirty (30) days prior written notice. LESSEE 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.
- 9.2.5 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 9.2.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the City before any work is initiated under this Agreement.

9.2.6.1. Commercial General Liability Insurance Endorsements:

- 9.2.6.1.1. 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.
- 9.2.6.1.2. 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.

9.2.6.2. Worker's Compensation Insurance Endorsements:

- 9.2.6.2.1. 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.

SECTION 10: IMPROVEMENTS; ALTERATIONS; MAINTENANCE

- 10.1 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

- 10.2 Acceptance of Premises. LESSEE shall take possession of the Premises "as is". CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
- 10.3 Improvements/Alterations. No improvements, structures or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY's written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
- 10.4 Construction Bond. If LESSEE constructs improvements on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans

approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. Notwithstanding the foregoing, LESSEE shall not be required to deposit any such bond, cash security or other security related to Rehabilitation.

- 10.5 **Liens.** LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 10.6 **Waste, Damage, or Destruction.** LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy and sanitary, LESSEE shall restore the Premises to a decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction.
- 10.7 **Entry and Inspection.** Upon not less than 72 hours written notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, may enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
- 10.8 **Maintenance.** LESSEE shall maintain the Premises and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy, habitable and sanitary condition reasonably satisfactory to CITY. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Premises.
- 10.9 **Utilities.** LESSEE shall order, obtain and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground.
- 10.10 **Taxes.** LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this

Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

10.11 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.

10.12 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.

10.13 Hazardous Substances.

10.13.1 LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's written consent. LESSEE shall obtain and maintain all required licenses and 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.

10.13.2 Definitions. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of Hazardous Substances. "Hazardous Substances" shall mean any hazardous liquid, solid, gaseous material, or waste substances listed by the Environmental Protection Agency or the State of California as a Hazardous Substance, and any type of petroleum-related substances and their chemical constituents.

10.13.3 Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE

shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules and regulations of competent governmental authority

- 10.13.4 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove, or cause to be removed, all such Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.
- 10.13.5 Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE'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, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 10.13.6 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE 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 LESSEE 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, LESSEE shall take all actions necessary to alleviate the danger. LESSEE 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.
- 10.13.7 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), 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 LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authority, 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, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

SECTION 11: GENERAL PROVISIONS

- 11.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States Postal Service, postage prepaid and addressed as follows:

If to LESSEE:

BLACK CONTRACTORS ASSOCIATION
Attention: Abdur-Rahim Hameed, President
6125 Imperial Avenue
San Diego, CA 92114

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

- 11.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules and regulations of competent legal authority, at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE fire-suppression equipment).
- 11.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record

subject to disclosure under the California Public Records Act. LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the California Public Records Act.

- 11.4 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 11.5 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
- 11.6 Equal Pay Ordinance. Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. LESSEE, by executing this Lease, certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- 11.6.1 LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.
- 11.6.2 Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
- 11.7 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable laws, rules and

regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:

- 11.7.1 LESSEE shall not discriminate against qualified persons 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.
- 11.7.2 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 LESSEE.
- 11.7.3 LESSEE shall include language in each commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.
- 11.7.4 Intentionally deleted.
- 11.7.5 Intentionally deleted.
- 11.7.6 LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Lease.
- 11.8 Drug-free Workplace. LESSEE shall 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:
 - 11.8.1 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; and
 - 11.8.2 Establish a drug-free awareness program to inform employees about all of the following:
 - 11.8.2.1 The dangers of drug abuse in the workplace;
 - 11.8.2.2 LESSEE's policy of maintaining a drug-free workplace;
 - 11.8.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 11.8.2.4 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each of its sublicenses and contracts related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

- 11.9 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a City of San Diego officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
- 11.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 11.11 Storm Water Pollution Prevention Program. LESSEE shall comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, Permitted, or managed property, or in performance of services and activities on behalf of CITY regardless of location.
- LESSEE shall comply with CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution with CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.
- LESSEE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.
- 11.12 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.

- 11.13 Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 11.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 11.15 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 11.16 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 11.17 Counterparts. This Lease 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.
- 11.18 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Lease shall be in writing and signed by all the parties hereto.
- 11.19 Partial Invalidity. If any term, covenant, condition or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

[The remainder of this page intentionally left blank.]

11.20 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease 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 Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants 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 Lease is executed to be effective as of the Effective Date.

Date: 5/17/18

BLACK CONTRACTORS ASSOCIATION, a
California corporation

BY: [Signature]
Name: ABDUL-RASHID HAMMED
Title: President/CEO

Date: 5/17/18

THE CITY OF SAN DIEGO, a California
municipal corporation

Approved as to form and legality:

MARA W. ELLIOTT, CITY ATTORNEY

BY: [Signature]
Cybele L. Thompson
Director, Real Estate Assets Department

By: Melissa Ahles
Name: Melissa Ahles
Title: Deputy City Attorney

Exhibit A: Housing Commission Income and Rent Calculation Schedule
Exhibit B: Reporting and Monitoring Agreement
Exhibit C: Prevailing Wage

EXHIBIT A

SAN DIEGO HOUSING COMMISSION INCOME AND RENT CALCULATIONS

U.S. Department of Housing and Urban Development 2017 SAN DIEGO MEDIAN INCOME:

\$79,300

Note: The table contains income limits for 2017 extremely low, very low and low income, as adjusted for family size and other factors adopted and amended from time to time by the U.S. Department of Housing and Urban Development (HUD). HUD adjusted San Diego Very Low Income limits for a "high housing cost area" factor.

Family Size	Unit Size	Extremely Low Income 30% AMI (Adjusted by HUD)			35% AMI (Adjusted by HUD)			40% AMI (Adjusted by HUD)		
		ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³
ONE	STUDIO	\$19,100	\$478	\$477	\$22,300	\$558	\$557	\$25,450	\$636	\$637
TWO	1-BR	\$21,800	\$545	\$511	\$25,450	\$636	\$597	\$29,100	\$728	\$682
THREE	2-BR	\$24,550	\$614	\$614	\$28,650	\$716	\$716	\$32,750	\$819	\$819
FOUR	3-BR	\$27,250	\$681	\$709	\$31,800	\$795	\$827	\$36,350	\$909	\$945
FIVE	4-BR	\$29,450	\$736	\$791	\$34,350	\$859	\$923	\$39,300	\$983	\$1,055
SIX	5-BR	\$32,960	\$824	\$873	\$36,900	\$923	\$1,018	\$42,200	\$1,055	\$1,164
SEVEN	6-BR	\$37,140	\$929		\$39,450	\$986		\$45,100	\$1,128	
EIGHT		\$41,320			\$42,000			\$48,000		

Family Size	Unit Size	Very Low Income 50% AMI (Adjusted by HUD)				60% AMI (Adjusted by HUD)			65% AMI (Adjusted by HUD)		
		ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	"Low HOME" ³	ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	ANNUAL INCOME ¹	GROSS RENT ²	"High HOME" ³
ONE	STUDIO	\$31,850	\$796	\$796	\$796	\$38,220	\$956	\$955	\$41,350	\$1,034	\$1,048
TWO	1-BR	\$36,400	\$910	\$853	\$853	\$43,680	\$1,092	\$1,023	\$47,300	\$1,183	\$1,124
THREE	2-BR	\$40,950	\$1,024	\$1,023	\$1,023	\$49,140	\$1,229	\$1,228	\$53,200	\$1,330	\$1,351
FOUR	3-BR	\$45,450	\$1,136	\$1,181	\$1,181	\$54,540	\$1,364	\$1,418	\$59,100	\$1,478	\$1,552
FIVE	4-BR	\$49,100	\$1,228	\$1,318	\$1,318	\$58,920	\$1,473	\$1,582	\$63,850	\$1,596	\$1,713
SIX	5-BR	\$52,750	\$1,319	\$1,455	\$1,455	\$63,300	\$1,583	\$1,746	\$68,550	\$1,714	\$1,871
SEVEN	6-BR	\$56,400	\$1,410		\$1,590	\$67,680	\$1,692		\$73,300	\$1,833	\$2,029
EIGHT		\$60,000				\$72,000			\$78,000		

Family Size	Unit Size	70% AMI (Adjusted by HUD)		80% AMI (Adjusted by HUD)		100% Area Median Income (No HUD adjustment)		120% AMI (No HUD adjustment)	
		ANNUAL INCOME ¹	GROSS RENT ²	ANNUAL INCOME ¹	GROSS RENT ²	ANNUAL INCOME ¹	GROSS RENT ²	ANNUAL INCOME ¹	GROSS RENT ²
ONE	STUDIO	\$44,550	\$1,114	\$50,950	\$1,274	\$55,500	\$1,388	\$66,600	\$1,665
TWO	1-BR	\$50,900	\$1,273	\$58,200	\$1,455	\$63,450	\$1,586	\$76,100	\$1,903
THREE	2-BR	\$57,300	\$1,433	\$65,500	\$1,638	\$71,350	\$1,784	\$85,650	\$2,141
FOUR	3-BR	\$63,650	\$1,591	\$72,750	\$1,819	\$79,300	\$1,983	\$95,150	\$2,379
FIVE	4-BR	\$68,750	\$1,719	\$78,600	\$1,965	\$85,650	\$2,141	\$102,750	\$2,569
SIX	5-BR	\$73,850	\$1,846	\$84,400	\$2,110	\$92,000	\$2,300	\$110,350	\$2,759
SEVEN	6-BR	\$78,950	\$1,974	\$90,250	\$2,256	\$98,350	\$2,459	\$118,000	\$2,950
EIGHT		\$84,000		\$96,050		\$104,700		\$125,600	

* TCAC = Tax Credit Allocation Committee

1. Annual Income = Gross annual income adjusted by family size for Area Median Income (AMI) level. May contain additional adjustments as determined annually by HUD.
2. Gross rent minus utility allowance = maximum cash rent. See the "San Diego Housing Commission Utility Allowance Schedule" to calculate the utility allowance based on the project's actual utility mix.
3. For projects with multiple funding sources, use the lowest rents applicable and/or apply HUD's MTSP "Hold Harmless" policy. "Low HOME" and "High HOME" rents effective June 15, 2017.

Note: Due to the Housing and Economic Recovery Act of 2008 the data presented in this chart may not be applicable to projects financed with Section 42 Low Income Housing Tax Credits (LIHTC) or section 142 tax exempt private equity bonds (MTSP). If you believe your affordable housing project is affected by this change and have questions regarding Rent & Income limits, please contact Irma Betancourt at irmab@sdhc.org.

This general income and rental rate information is derived from the U.S. Department of Housing and Urban Development very low income figures published April 14, 2017. HOME Rents effective June 15, 2017.

EXHIBIT B

REPORTING AND MONITORING AGREEMENT

ADMINISTRATION AGREEMENT

Rental Unit

904 33rd Street, San Diego, CA

This Administration Agreement ("Agreement") is entered into as of _____, 2018, by and among the CITY OF SAN DIEGO, a California municipal corporation (the "City"), the San Diego Housing Commission, a public agency ("Administrator"), and the Black Contractors Association, a California corporation ("Participant"), which shall collectively be referred to as the "Parties", when signed by the Parties and the San Diego City Attorney.

RECITALS

- A. The City is the owner of that certain two-bedroom, one bathroom single family residence located at 904 33rd Street, San Diego, California, 92102 also known as APN 545-062-18 (the "Property").
- B. Prior to entering into this Agreement, or simultaneously herewith, Participant will enter into a lease agreement with the City to lease the Property ("City Lease"). During the City Lease term, including any extensions thereto, the City will own all improvements on the Property.
- C. The Property is to be subleased as one rental housing unit to a veteran or resident, which resident has an income at or below sixty percent (60%) of area median income for the San Diego-Carlsbad Metropolitan Statistical Area as published by US Department of Housing and Urban Development ("HUD") (which renter shall hereinafter be referred to as the "Qualified Renter"); Participant is obligated by the City Lease to charge rent to the Qualified Renter per the current San Diego Housing Commission Income and Rent Calculation schedule (hereinafter, collectively referred to as the "Affordable Housing Requirements").
- D. The City desires to use the staff, skills, and facilities of the Administrator to provide monitoring and reporting requirements on the Property to ensure Participant is complying with the Affordable Housing Requirements.
- E. The Parties represent that they have the capacity and the legal right to enter into this Agreement.
- F. The Parties desire to enter into this Agreement to, among other things, provide that (i) Participant shall pay a fee to the Administrator as consideration for monitoring the Property for compliance with the Affordable Housing Requirements; and (ii) the Administrator shall administer and perform all monitoring and reporting requirements on the Property and provide the reports set forth in Section VII of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

I. Purpose of Agreement

The purpose of this Agreement is to provide for the administration of Participant's Affordable Housing Requirements under the City Lease.

II. Scope of Work

A. Services. In addition to the reporting requirements set forth in Section VII below, the Administrator shall monitor that Participant is in compliance with the Affordable Housing Requirements of the City Lease, including, without limitation: (i) establishing the eligibility criteria for Qualifying Renters in accordance with the income levels published by HUD for the San Diego-Carlsbad Metropolitan Statistical Area; and (ii) monitoring ongoing compliance with Affordable Housing Requirements of the City Lease, as applicable, including an annual certification that the Property remains occupied by a Qualified Renter. The City will notify the Administrator of any amendments to the City Lease that would affect the Affordable Housing Requirements of the City Lease.

B. Administrator and City Approval of Rents. The maximum amount which Participant may charge as rent for the Property is set forth in the San Diego Housing Commission Income and Rent Calculation schedule, a current copy of which is attached hereto as Exhibit A, and incorporated herein by this reference.

C. City Rights and Obligations. All rights, obligations, and/or duties of the City under the City Lease, not otherwise the subject of this Agreement, shall remain the rights, obligations, and/or duties of the City.

III. Parties to Agreement

The Parties to this Agreement are the City, the Administrator, and Participant.

IV. Representatives of the Parties

The representatives of the respective Parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

A. The representative of the Administrator shall be:

Rick Gentry, President and Chief Executive Officer

San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, California 92101

- B. The representative of Participant shall be:

Abdur-Rahim Hameed
President - National Black Contractors Association
6125 Imperial Avenue
San Diego, Ca 92114
(619) 865-9057 f. (619) 263-6865

- C. The representative of City shall be:

Director, Real Estate Assets
City of San Diego
1200 Third Ave, Suite 1700
San Diego, California 92101

Any Party may designate another representative by providing written notice to the other Parties.

V. Time of Performance

Services pursuant to this Agreement shall commence as of the date of the execution of this Agreement by all of the Parties and the San Diego City Attorney and shall terminate upon the earlier of: (i) expiration or termination of the City Lease; or (ii) termination of this Agreement pursuant to Sections XII or XV below.

VI. Monitoring of the Administrator by the City

The City may monitor the Administrator's performance of its duties under this Agreement. The Administrator shall reasonably cooperate with the City in connection with such monitoring.

VII. Monitoring and Reporting Requirements

Administrator Requirements.

- A. The Administrator shall determine whether proposed applicants are income eligible to qualify as tenants for the Property, i.e., Qualified Renters.
- B. The Administrator shall monitor the following, pursuant to Exhibit A attached hereto:

- (1) Occupancy by Qualified Renters (i.e., income at or below sixty percent (60%) of area median income for the San Diego-Carlsbad Metropolitan Statistical Area as published by HUD); and
 - (2) That the rent charged by Participant is in accordance with the current San Diego Housing Commission Income and Rent Calculation schedule, Exhibit A.
- C. The Administrator shall submit to the City annual reports of its monitoring activities pursuant to this Agreement.
 - D. The Administrator shall re-certify household income annually. If a household's income increases to above 140% of the applicable income limitation, the household will be required to move out. Participant shall be solely responsible for any eviction of tenants; the Administrator shall have no obligation to evict any persons.
 - E. Annually, the Administrator shall provide the City with an updated rent chart based upon the San Diego-Carlsbad Metropolitan Statistical Area.

Participant Requirements.

- A. Participant shall provide complete and accurate information required by the Administrator with regard to the Affordable Housing Requirements of the City Lease, immediately upon request.
- B. Participant shall timely pay all fees to the Administrator as required by this Agreement.

VIII. Books and Records

A. Complete Books. The Administrator shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement. Participant shall maintain or cause to be maintained complete and accurate books, reports, files, and records necessary to carry out its monitoring and reporting obligations under this Agreement.

B. Availability. All records prepared in accordance with this Agreement shall be made available to the City for copying and inspection at any time without notice during normal business hours.

IX. Access to Records

A. The City shall have full and free access to all books, papers, documents, and records of the Administrator and/or Participant that are pertinent to the obligations of all Parties under this Agreement.

B. Excluding those records that may be privileged or otherwise exempt from disclosure under the law, the Administrator shall have full and free access to all books, papers, documents and records of the City and/or Participant that are pertinent to the Administrator's obligations under this Agreement.

X. Ownership, Use and Distribution of Documents

A. All records, reports, books, papers, documents, computer discs or other information prepared or developed by the Administrator or Participant on behalf of the City in connection with services rendered under this Agreement, are, and shall remain the exclusive property of the City, provided, however, the Administrator shall not be required to secure any prior authorization, written or otherwise, from one another prior to any sharing, production, distribution or other dissemination of the same.

B. Upon expiration of this Agreement or in the event of termination of this Agreement by the City or the Administrator as provided in Sections XII or XV below, the Administrator agrees to provide to the City and Participant copies of all records, reports, books, papers, documents, computer discs or other information prepared as a result of this Agreement not previously provided to the City or Participant.

XI. Payment of Compensation

A. Amount. In consideration for the services provided by the Administrator with respect to the Property as referenced in this Agreement, the Administrator may establish and collect a fee annually ("Annual Monitoring Fee") from Participant for services rendered pursuant to this Agreement to monitor and enforce the Affordable Housing Requirements of the Property contained in the City Lease. The amount of the Annual Monitoring Fee charged shall be based upon the current San Diego Housing Commission Annual Occupancy Monitoring Fee Schedule, Exhibit B, attached hereto, which Exhibit is subject to revision annually, based on the Commission's costs for monitoring functions. In no event shall the monitoring fee decrease.

B. Time of Payment. Concurrently with Participant's execution and delivery of this Agreement, Participant shall pay to the Administrator a monitoring fee as referenced in Exhibit B. The Administrator's right to the Annual Monitoring Fee referenced in Exhibit B shall commence concurrent with activities referenced in Section VII above. Participant shall pay to the Administrator the Annual Monitoring Fee in accordance with Exhibit B, and as calculated by, Section XI.A above. Participant shall pay such other fees set forth in Exhibit B as required hereunder. Participant's failure to timely pay the Annual Monitoring Fee or any other fees required hereunder shall constitute a material default under this Agreement. Such breach shall entitle the Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XII above or Section XV below.

C. Administrator Entitled to All Fees. Participant also agrees to pay additional fees as necessary to reasonably compensate the Administrator in the event the Administrator's monitoring results in a need to take additional steps to enforce the covenants and conditions contained in the City Lease (see Exhibit B attached hereto). Participant further agrees that failure to pay all such

fees within fifteen (15) business days after receipt of a billing statement for such fees shall constitute a material breach of the covenants and conditions of this Agreement. Such breach shall entitle the Administrator, in addition to all other rights that it has at law, equity and under the terms of this Agreement, to terminate this Agreement in accordance with Section XII above or Section XV below. In the event that the City directs the Administrator to take legal steps, including the initiation of litigation, to enforce the City Lease, or both, then the Administrator shall be entitled to the legal costs and fees and other court costs associated with such enforcement actions, in addition to the fees set forth herein. The City shall compensate the Administrator for such fees and costs as incurred, and the Administrator shall seek reimbursement of such fees and costs in any litigation against the Participant. The City may, in lieu of requesting the Administrator to enforce the terms of the City Lease, enforce the obligations itself.

XII. Default

In the event of any breach or default hereunder, which the defaulting or breaching Party fails to satisfactorily cure within ten (10) calendar days of receiving written notice from a non-defaulting Party specifying the nature of the default or breach, the non-defaulting Party may immediately cancel and/or terminate this Agreement upon written notice to all other Parties and/or maintain any and all legally permissible actions at law or in equity against the defaulting Party to enforce the correction of any such default or breach or to enjoin any such default or breach.

XIII. No Partnership

The Parties hereto are entering into this Agreement independently from one another and shall not be deemed officers, officials, agents, partners or employees of one another.

XIV. Amendment or Assignment of Agreement

All amendments to this Agreement must be in writing and executed with mutual consent of the Administrator, the City and Participant. This Agreement may not be assigned by any Party without the written approval of the remaining Parties, and such approval shall not be unreasonably withheld.

XV. Termination

This Agreement may be terminated with or without cause by the City or the Administrator upon thirty (30) calendar days' written prior notice to all other Parties.

XVI. Complete Agreement

This Agreement contains the full and complete agreement between the parties concerning the matters contained herein. No verbal agreements or conversation with any officer, official, agent or employee of any Party shall affect or modify any of the terms and conditions of this Agreement.

XVII. Limitations on Agreement

The Parties agree that this Agreement is not in any way intended to, and does not, revise, amend or otherwise affect any of the terms, conditions or priority of the City Lease, nor the enforcement thereof, except as specifically set forth herein. The Parties hereby agree that, except as expressly provided herein, the provisions of the City Lease shall be and remain unmodified and in full force and effect.

XVIII. Counterparts

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement.

XIX. Time of Essence

Time is expressly declared to be of the essence in this Agreement, and of each and every provision in which time is an element.

XX. Captions

Section or paragraph titles and captions contained in this Agreement are inserted as a matter of convenience and for reference, and are not a substantive part of this Agreement.

XXI. Additional Documents

The Parties each agree to sign any additional documents, which are reasonably necessary to carry out this Agreement or to accomplish its intent.

XXII. Benefit and Burden

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns. This Agreement is not intended to benefit any person other than the Parties hereto.

XXIII. Governing Law

This Agreement has been entered into in the State of California and shall be interpreted and enforced under California law.

XXIV. Venue

Any action that may be filed to enforce or interpret the terms of this Agreement shall be filed in a court located within the City of San Diego, California.

XXV. Attorneys' Fees

The prevailing party in any action including, but not limited to, arbitration, a petition for writ of mandate, and/or an action for declaratory relief, brought to enforce, interpret or reform the provisions of this Agreement shall be entitled to reasonable attorneys' fees and costs (including, but not limited to, experts' fees and costs, and including "costs" regardless of whether recoverable as such under statute) incurred in such action.

XXVI. Waiver

No breach of any provision hereof may be waived unless in writing by all Parties. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

XXVII. Number of Pages and Exhibits

This Agreement includes twelve (12) pages and two (2) Exhibits.

XXVIII. Signing Authority

The representative signing on behalf of each Party to this Agreement represents that authority has been obtained to sign on behalf of such Party.

XXIX. Exhibits and Recitals Incorporated

All exhibits referred to in this Agreement are hereby incorporated in this Agreement by this reference, regardless of whether or not the exhibits are actually attached to this Agreement. The recitals to this Agreement are hereby incorporated in this Agreement by this reference.

XXX. Severability of Provisions

If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

XXXI. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal and personal representatives, successors, and assigns.

[signatures on following page]

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the dates set opposite their signatures.

CITY:

CITY OF SAN DIEGO,
a California municipal corporation

Date: 5/23/18

By: [Signature]
Cybele L. Thompson
Director, Real Estate Assets

APPROVED AS TO FORM:
MARA W. ELLIOTT
City Attorney

By: [Signature]
Name: Melissa Aboles
Title: 5/24/18 Deputy City Attorney

ADMINISTRATOR:

SAN DIEGO HOUSING COMMISSION

Date: _____

By: _____
Jeff Davis
Executive Vice President and Chief of Staff

APPROVED AS TO FORM:
CHRISTENSEN & SPATH LLP

By: _____
Walter F. Spath, III
General Counsel
San Diego Housing Commission

PARTICIPANT:

BLACK CONTRACTORS ASSOCIATION, a California
corporation

Date: 5/17/18

By: [Signature]
Abdur-Rahim Hameed, President

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the dates set opposite their signatures.

CITY:

CITY OF SAN DIEGO,
a California municipal corporation

Date: _____

By: _____

Cybele L. Thompson
Director, Real Estate Assets

APPROVED AS TO FORM:
MARA W. ELLIOTT
City Attorney

By: _____

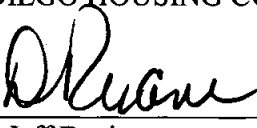
Name: _____

Title: _____

ADMINISTRATOR:

SAN DIEGO HOUSING COMMISSION

Date: _____

By:  _____

Jeff Davis
for Executive Vice President and Chief of Staff

APPROVED AS TO FORM:
CHRISTENSEN & SPATH LLP

By:  _____

Walter F. Spath, III
General Counsel
San Diego Housing Commission

PARTICIPANT:

BLACK CONTRACTORS ASSOCIATION, a California
corporation

Date: _____

By: _____

Abdur-Rahim Hameed, President

EXHIBIT A TO MONITORING AGREEMENT

QUALIFIED RENTER AND RENT SCHEDULE

A "Qualified Renter" shall be a veteran or resident, which veteran or resident is with income at or below sixty percent (60%) of area median income for the San Diego-Carlsbad Metropolitan Statistical Area as published by US Department of Housing and Urban Development ("HUD") ("Affordable Housing Requirements"). See next page for current San Diego Housing Commission Income and Rent calculations.

SAN DIEGO HOUSING COMMISSION INCOME AND RENT CALCULATIONS

U.S. Department of Housing and Urban Development 2017 SAN DIEGO MEDIAN INCOME:

\$79,300

Note: The table contains income limits for 2017 extremely low, very low and low income, as adjusted for family size and other factors adopted and amended from time to time by the U.S. Department of Housing and Urban Development (HUD). HUD adjusted San Diego Very Low Income limits for a "high housing cost area" factor.

Family Size	Unit Size	Extremely Low Income 30% AMI (Adjusted by HUD)			35% AMI (Adjusted by HUD)			40% AMI (Adjusted by HUD)		
		ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³
ONE	STUDIO	\$18,100	\$478	\$477	\$22,300	\$558	\$557	\$25,450	\$636	\$637
TWO	1-BR	\$21,800	\$545	\$511	\$25,450	\$636	\$597	\$29,100	\$728	\$682
THREE	2-BR	\$24,550	\$614	\$614	\$28,650	\$716	\$716	\$32,750	\$819	\$819
FOUR	3-BR	\$27,250	\$681	\$709	\$31,800	\$795	\$827	\$36,350	\$909	\$945
FIVE	4-BR	\$29,450	\$736	\$791	\$34,350	\$859	\$923	\$39,300	\$983	\$1,055
SIX	5-BR	\$32,960	\$824	\$873	\$38,900	\$923	\$1,018	\$42,200	\$1,055	\$1,164
SEVEN	6-BR	\$37,140	\$929		\$39,450	\$988		\$45,100	\$1,128	
EIGHT		\$41,320			\$42,000			\$48,000		

Family Size	Unit Size	Very Low Income 50% AMI (Adjusted by HUD)				60% AMI (Adjusted by HUD)			65% AMI (Adjusted by HUD)		
		ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	"Low HOME" ⁴	ANNUAL INCOME ¹	GROSS RENT ²	TCAC ³	ANNUAL INCOME ¹	GROSS RENT ²	"High HOME" ⁴
ONE	STUDIO	\$31,850	\$796	\$796	\$796	\$38,220	\$956	\$955	\$41,350	\$1,034	\$1,048
TWO	1-BR	\$36,400	\$910	\$853	\$853	\$43,680	\$1,082	\$1,023	\$47,300	\$1,183	\$1,124
THREE	2-BR	\$40,950	\$1,024	\$1,023	\$1,023	\$49,140	\$1,229	\$1,228	\$53,200	\$1,330	\$1,351
FOUR	3-BR	\$45,450	\$1,136	\$1,181	\$1,181	\$54,540	\$1,384	\$1,418	\$59,100	\$1,478	\$1,552
FIVE	4-BR	\$49,100	\$1,228	\$1,318	\$1,318	\$58,920	\$1,473	\$1,582	\$63,850	\$1,586	\$1,713
SIX	5-BR	\$52,750	\$1,319	\$1,455	\$1,455	\$63,300	\$1,583	\$1,748	\$68,550	\$1,714	\$1,871
SEVEN	6-BR	\$56,400	\$1,410		\$1,590	\$67,680	\$1,692		\$73,300	\$1,833	\$2,029
EIGHT		\$60,000				\$72,000			\$78,000		

Family Size	Unit Size	70% AMI (Adjusted by HUD)		80% AMI (Adjusted by HUD)		100% Area Median Income (No HUD adjustment)		120% AMI (No HUD adjustment)	
		ANNUAL INCOME ¹	GROSS RENT ²	ANNUAL INCOME ¹	GROSS RENT ²	ANNUAL INCOME ¹	GROSS RENT ²	ANNUAL INCOME ¹	GROSS RENT ²
ONE	STUDIO	\$44,550	\$1,114	\$50,950	\$1,274	\$55,500	\$1,388	\$66,800	\$1,665
TWO	1-BR	\$50,900	\$1,273	\$58,200	\$1,455	\$63,450	\$1,566	\$76,100	\$1,903
THREE	2-BR	\$57,300	\$1,433	\$65,500	\$1,638	\$71,350	\$1,764	\$85,650	\$2,141
FOUR	3-BR	\$63,650	\$1,591	\$72,750	\$1,819	\$79,300	\$1,983	\$95,150	\$2,379
FIVE	4-BR	\$68,750	\$1,719	\$78,600	\$1,965	\$85,650	\$2,141	\$102,750	\$2,569
SIX	5-BR	\$73,850	\$1,846	\$84,400	\$2,110	\$92,000	\$2,300	\$110,350	\$2,759
SEVEN	6-BR	\$78,950	\$1,974	\$90,250	\$2,259	\$98,350	\$2,459	\$118,000	\$2,950
EIGHT		\$84,000		\$96,050		\$104,700		\$125,800	

* TCAC = Tax Credit Allocation Committee

1. Annual Income = Gross annual income adjusted by family size for Area Median Income (AMI) level. May contain additional adjustments as determined annually by HUD.
2. Gross rent minus utility allowance = maximum cash rent. See the "San Diego Housing Commission Utility Allowance Schedule" to calculate the utility allowance based on the project's actual utility mix.
3. For projects with multiple funding sources, use the lowest rents applicable and/or apply HUD's MTSP "Hold Harmless" policy. "Low HOME" and "High HOME" rents effective June 15, 2017.

Note: Due to the Housing and Economic Recovery Act of 2008 the data presented in this chart may not be applicable to projects financed with Section 42 Low Income Housing Tax Credits (LIHTC) or section 142 tax exempt private equity bonds (MTSP). If you believe your affordable housing project is affected by this change and have questions regarding Rent & Income limits, please contact Irma Betancourt at irmab@sdhc.org.

This general income and rental rate information is derived from the U.S. Department of Housing and Urban Development very low income figures published April 14, 2017. HOME Rents effective June 15, 2017.

EXHIBIT B TO MONITORING AGREEMENT

OCCUPANCY MONITORING FEE SCHEDULE – Rental Units

The monitoring fee is an annual charge to cover costs of monitoring compliance with the affordability requirements of a development. Compliance monitoring includes developing a compliance monitoring plan, computer database program and reporting system for the project, 1-2 trainings per year and technical assistance provided by Commission staff to property owner/manager and/or representatives.

Annual Monitoring Fee

The monitoring fee is \$150 per monitored unit. The number of monitored units is equal to the total number of units being monitored under the developer agreement(s) with the Commission.

“In the event that the Property utilizes a high volume of monitoring (for example, due to repeated trainings and/or frequent contact to address inaccurate or incomplete reports) the Commission, in its sole discretion, may elect to charge an additional fee based on an hourly rate of \$100.”

Adjustment of Annual Fee

The Commission reserves the right to revise the Monitoring Fee annually based on the Commission's costs for monitoring functions. In no event shall the monitoring fee decrease.

A fee will not be charged for any of the HOME units unless allowed by HUD per HOME program guidelines.

Maximum Annual Fee

Pursuant to this Agreement and the AARP, the maximum **initial** Annual Monitoring Fee charged by the Administrator shall not exceed **\$150**. This maximum Annual Monitoring Fee amount may be adjusted for changes in the Commission's costs for monitoring functions.

Enforcement Fees

In the event the Administrator, in monitoring compliance, determines that Participant is not in compliance with the covenants and conditions in the Agreement or the AARP, Participant shall pay the Administrator's additional reasonable costs of enforcement. Such costs shall be equal to the Administrator's total documented costs for employee and attorney time expended in securing compliance.

Billing and Payment of Fees

The Administrator shall bill/invoice Participant for the Annual Monitoring Fee at the address of record on an annual basis. Participant shall pay fees to the Administrator within fifteen (15) calendar days of the date of each annual invoice.

EXHIBIT C

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, Lessee, its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
 - 1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - 1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.
2. Penalties for Violations. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
3. Payroll Records. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. LESSEE, its contractors and subcontractors shall also furnish the

records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. Apprentices. LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
5. Working Hours. LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
6. Required Provisions for Subcontracts. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
7. Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
8. Labor Compliance Program. The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. The CITY will instruct LESSEE to withhold contract payments pursuant to the agreement between LESSEE and LESSEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A bidder or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
- 9.1. A bidder's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest

or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

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

9.3. By submitting a bid or proposal to the CITY for work pursuant to this Lease, LESSEE is certifying that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of registration for themselves and all listed subcontractors to the CITY at the time of bid or proposal due date or upon request.

10. Stop Order. For LESSEE, its contractors or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. List of all Subcontractors. The CITY may ask LESSEE for the most current list of contractors and subcontractors (regardless of tier), along with their DIR registration numbers, utilized pursuant to this Lease at any time during the Term, and LESSEE shall provide the list within ten (10) working days of the CITY's request. Additionally, LESSEE shall provide the CITY with a complete list of all subcontractors utilized pursuant to this Lease (regardless of tier), within ten working days of the completion of the work, along with their DIR registration numbers.

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

12.1. Registration. LESSEE will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. LESSEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. List of all Subcontractors. LESSEE shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required above. (Labor Code section 1773.3).