



## REPORT TO THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

**DATE ISSUED:** May 15, 2019

**REPORT NO:** HAR19-011

**ATTENTION:** Chair and Members of the Housing Authority of the City of San Diego  
For the Agenda of June 25, 2019

**SUBJECT:** Memorandum of Understanding between the City of San Diego and the San Diego Housing Commission Regarding the City of San Diego's Administration of the Federal HOME Investment Partnerships Program

**COUNCIL DISTRICT:** Citywide

### **REQUESTED ACTION**

That the Housing Authority of the City of San Diego approve the execution of a Memorandum of Understanding and a Subrecipient Agreement, in a form approved by General Counsel, between the City of San Diego and the San Diego Housing Commission regarding the City of San Diego's administration of the federal HOME Investment Partnerships Program.

### **STAFF RECOMMENDATION**

That the Housing Authority of the City of San Diego (Housing Authority) take the following actions:

- 1) Approve the execution of a Memorandum of Understanding (MOU) and Subrecipient Agreement, in a form approved by General Counsel, between the City of San Diego (City) and the Housing Commission regarding the City's administration of the federal HOME Investment Partnerships Program (HOME):
  - a. Delegating the administration, planning, coordination, operation, and oversight of the City's HOME program to the Housing Commission;
  - b. Authorizing the President and Chief Executive Officer (President & CEO), or designee, of the Housing Commission to execute all necessary documents required by the U.S. Department of Housing and Urban Development (HUD) and the regulations of the HOME program; and
  - c. Authorizing the President & CEO of the Housing Commission, or designee, subject to approval as to form and legality by the General Counsel of the Housing Commission, to execute any and all documents within the scope of the powers delegated to the Housing Commission in the MOU and Subrecipient Agreements relating to HOME, including but not limited to, grants and loan agreements; and
- 2) Authorize the President & CEO of the Housing Commission, or designee, to execute the final negotiated MOU and Subrecipient Agreement, and any and all amendment(s) thereto, in a form approved by General Counsel, and to take all actions necessary to implement these approvals.

### **SUMMARY**

HOME funds are awarded annually by HUD as formula grants to participating jurisdictions. The City is the participating jurisdiction for this HUD grant; the Housing Commission is the Subrecipient, as defined by the HUD HOME regulations. The HOME program is dedicated to the establishment of affordable housing for low-income households. Funds can be used for grants, loans or rental assistance and security deposits and have historically been used to fund the development of affordable rental housing, first-time homebuyer programs, and housing rehabilitation programs. The Housing Commission has administered the HOME program for the City since 1991.

On April 23, 2019, the San Diego City Council passed Resolution No. R-312442, which included authorization for the Mayor, or designee, on behalf of the City of San Diego, “to negotiate and enter into a Memorandum of Understanding with the Housing Commission for the administration of the HOME Program, effective July 1, 2019 through June 30, 2024.”

On June 26, 2012, the City and the Housing Commission entered into an MOU, setting forth the roles and responsibilities of the City and the Housing Commission for the management, administration and monitoring of the City’s HOME program for the term of July 1, 2011, through September 30, 2014.

On July 24, 2013, HUD published a Final Rule in the Federal Register to amend the HOME program regulations. HUD’s goal in releasing the programmatic updates is to provide participating jurisdictions and their partners with regulatory guidance to enhance the efficiencies and effectiveness of the HOME program. The new draft MOU and Subrecipient Agreement will memorialize these programmatic changes.

On October 6, 2014, the City and the Housing Commission entered into an MOU, setting forth the roles and responsibilities for the City and the Housing Commission for the management, administration and monitoring of the City’s HOME program for the term of July 1, 2014, through June 30, 2019. The City and the Housing Commission propose that the Housing Commission continue to administer the City’s HOME program, as well as plan, coordinate, operate, administer and implement programs for the operation of the City’s HOME program.

The term of the proposed MOU is consistent with the City’s Five Year Consolidated Plan, Fiscal Years (FY) 2020-2024. The proposed Subrecipient Agreement will be a one-year agreement, expiring at the end of Fiscal Year (FY) 2020. The City requires that a new Subrecipient Agreement be executed annually.

### **AFFORDABLE HOUSING IMPACT**

Approval of this action will allow for the uninterrupted administration of the HOME program by the Housing Commission and the continued funding of eligible activities under the HOME program, consistent with the City’s Five-Year Consolidated Plan.

### **FISCAL CONSIDERATIONS**

There is no fiscal impact related to these actions. Actions requested in this report include the authorization to enter into an MOU. No funding is being allocated to a specific program or activity.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION**

On December 9, 1991, the City Council passed Resolution No. R-279138, assigning administration of the City's affordable housing programs funded under the Federal HOME program to the Housing Commission.

On July 26, 1994, the City Council passed Resolution No. R-284352, confirming the delegation of administration of the HOME program to the Housing Commission.

On December 4, 1995, the City Council passed Resolution No. R-286709 approving the delegation of administration of the HOME program to the Housing Commission.

On June 26, 2012, the City and the Housing Commission entered into an MOU, setting forth the roles and responsibilities of the City and the Housing Commission for the management, administration and monitoring of the City's HOME program for the term July 1, 2011, through September 30, 2014.

On April 30, 2014, the City Council passed Resolution R-308904, removing authorization for the Housing Commission to draw down HOME funds, as previously authorized by City Council resolutions, to comply with new HOME regulations. The resolution also confirmed authorization for the Housing Commission to continue to plan, coordinate, operate, administer and implement programs for operation of the City's HOME program.

On September 30, 2014, the City Council passed Resolution No. R-309245, approving the MOU between the City and Housing Commission related to the City's HOME Program.

On October 6, 2014, the City and the Housing Commission entered into an MOU, setting forth the roles and responsibilities of the City and the Housing Commission for the management, administration and monitoring of the City's HOME program for the term July 1, 2014, through June 30, 2019.

On April 23, 2019, the San Diego City Council passed Resolution No. R-312442, which included authorization for the Mayor, or designee, on behalf of the City of San Diego, "to negotiate and enter into a Memorandum of Understanding with the Housing Commission for the administration of the HOME Program, effective July 1, 2019 through June 30, 2024."

**KEY STAKEHOLDERS and PROJECTED IMPACTS**

The beneficiaries of HOME activities are individuals and households earning a maximum of 80 percent of Area Median Income in the City. Residential developers, nonprofit housing providers, and real estate lenders and agents may also be impacted by program changes. The proposed MOU and proposed Subrecipient Agreement will comply with the HOME Final Rule and City policies.

**ENVIRONMENTAL REVIEW**

Approval of the proposed MOU and proposed Subrecipient Agreement is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b)(5), as it is a governmental administrative activity that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c)(3), is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required. This activity is exempt from the National Environmental Policy Act pursuant to

Part 58.37(a)(3) of the Title 24 Code of Federal Regulations as an administrative and management related activity.

Respectfully submitted,

*Liliana Caracoza*

Liliana Caracoza  
Senior Program Analyst  
Real Estate Division

Approved by,

*Jeff Davis*

Jeff Davis  
Executive Vice President, Chief of Staff  
San Diego Housing Commission

Hard copies are available for review during business hours at the security information desk in the main lobby and the fifth floor reception desk of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org).

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF SAN DIEGO  
AND  
THE SAN DIEGO HOUSING COMMISSION  
REGARDING THE  
HOME INVESTMENT PARTNERSHIPS PROGRAM**

This Memorandum of Understanding (“MOU”) between the SAN DIEGO HOUSING COMMISSION, a public agency (“SDHC”), and the CITY OF SAN DIEGO, a California municipal corporation (“City”), is dated as of \_\_\_\_\_, 2019, for reference purposes only. SDHC and City are sometimes referred to in this MOU, individually, as a “Party” and, collectively, as the “Parties.” The Parties enter into this MOU with reference to the following recited facts (each, a “Recital”):

**RECITALS**

A. The City is a designated grantee that annually receives federal funds through the U.S. Department of Housing and Urban Development (“HUD”) HOME Investment Partnerships Program (“HOME”), CFDA No. 14.239, to create affordable housing for low-income people;

B. HOME funds may be used for one or more of the activities identified in 24 C.F.R. § 92.205 to develop and support affordable rental housing and homeownership including, without limitation: (1) acquisition, new construction, reconstruction or rehabilitation of housing; (2) provision of tenant-based rental assistance; (3) payment of reasonable administrative and planning costs; and (4) payment of operating expenses of Community Housing Development Organizations (“CHDO”s), subject to the limitations on the use of those funds set forth in 24 C.F.R. §§ 92.206 through 92.209;

C. The City is a “Participating Jurisdiction” and SDHC is a “Subrecipient,” as defined in HUD regulations 24 C.F.R. § 92.2;

D. The City’s Economic Development Department (“EDD”) has oversight and program compliance responsibility for the City’s annual HOME grant;

E. The SDHC plans, coordinates, operates, administers and implements programs for the operation of the City’s HOME program pursuant to City Council Resolution R-308904, effective April 30, 2014;

F. The City desires that the SDHC continues to plan, coordinate, operate, administer, and implement programs for the operation of the City’s HOME program;

G. The City is authorized to negotiate and enter into this MOU with the SDHC for administration of the City’s HOME program for fiscal years 2020 through 2024 pursuant to City Council Resolution R-312442, effective April 26, 2019;

H. The SDHC is authorized to enter into this MOU with the City for administration of the City's HOME program for fiscal years 2020 through 2024 pursuant to Housing Authority Resolution \_\_\_\_\_, effective \_\_\_\_\_;

I. The intent of this MOU is to ensure that sufficient administrative systems are developed and maintained for the HOME funds used and/or administered by the SDHC to ensure full compliance with the HOME grant's objectives and regulations;

J. The City and SDHC acknowledge that the SDHC is a public agency, and in the event of any conflict between any provision of this MOU and any applicable HUD regulation, notice, or requirement, then the SDHC shall comply with the applicable HUD regulation, notice or requirement, and that shall be deemed to satisfy the SDHC's obligations under this MOU with respect to such provision.

**NOW, THEREFORE,** City and SDHC agree as follows:

**1. Term.** This MOU shall be effective from July 1, 2019 through and including June 30, 2024. This MOU supersedes and terminates all prior MOUs between the City and SDHC for the HOME program.

**2. Amendments to MOU.** The Mayor, or designee, shall have the authority to execute any amendments to this MOU, which do not otherwise require City Council approval. The President and Chief Executive Officer of the SDHC, or designee, shall have the authority to execute any amendments to this MOU, which do not otherwise require SDHC Board or Housing Authority of the City of San Diego approval. Any amendment to this MOU shall be memorialized in a written instrument signed by the Parties.

**3. Termination.** Either the SDHC or the City may terminate this MOU for any reason by providing 90 days written notice to each other.

**4. SDHC Responsibilities.** The SDHC shall administer the HOME program in order to provide decent affordable housing to lower-income households, expand the capacity of nonprofit housing providers, strengthen the ability of the state and local governments to provide housing, and leverage private sector participation in housing projects. The SDHC shall be responsible for the general administration, planning, coordination, operation and oversight of the City's HOME grant program, as defined below and as further defined within applicable subrecipient agreement(s), once executed. The SDHC's responsibilities related to the HOME Program shall include the following:

**4.1.** Ensure that all Federal and HOME regulations applicable to the utilization of HOME funds are adhered to by the SDHC and its subcontractors including but not limited to, 24 C.F.R. § 92 ("HOME Program Final Rule") and any amendments thereto, 24 C.F.R. §§ 84 and 85 as applicable, and OMB Uniform Guidance.

**4.2.** Fully cooperate with the City's EDD staff as set forth herein in the development and execution of the City's Consolidated Plan ("Con Plan"), Annual Action Plan ("Action Plan") and Consolidated Annual Performance & Evaluation Report ("CAPER"), with respect to HOME funds, which includes, but is not limited to, attending meetings, responding to City Council,

Mayoral and Independent Budget Analyst inquiries, and developing goals and outcomes, program standards, and narratives in compliance with the requirements of 24 C.F.R. § 91.

**4.3.** Allocate, prior to the submission of the City's Action Plan to HUD, the City's annual HOME grant allocation to eligible activities and/or projects in accordance with the City's goals and specific percentages for each types of funds as defined in the Con Plan and Action Plan.

**4.4.** Attend regular meetings with City EDD staff responsible for the HOME program and administration, on a schedule to be determined by City EDD staff but not expected to be more frequent than quarterly, to exchange information and provide informal reporting as to the SDHC's activities related to this MOU.

**4.5.** Comply will all federal, State and local environmental review requirements, including but not limited to, those requirements necessary to ensure the City is in compliance with 24 C.F.R. Part 58.

**4.5.1.** Complete all required environmental review records ("ERR") for each HOME activity, including any necessary public noticing requirements and filing ERR with HUD.

**4.5.2.** Provide to the City any and all documents required to comply with the National Environmental Policy Act (42 U.S.C. Sections 4321-4347) and or the California Environmental Quality Act (Cal. Pub. Res. Code Sections 21000-21178) for approval before HOME funds are committed to an activity.

**4.6.** Participate in and cooperate with periodic monitoring reviews conducted by the City and/or HUD of HOME funds expended by the SDHC.

**4.7.** Cooperate with any investigations or audits as required by the City or HUD and prepare and provide, at the SDHC's expense, such accountings, audits, and reporting as the City and HUD shall require.

**4.7.1.** Upon termination of this MOU, provided this MOU is not superseded by a subsequent MOU, cooperate with an audit conducted to determine any amounts due to the City and/or HUD. Upon completion of the audit, any funds due to the City or HUD shall be transferred within 30 days.

**4.8.** Provide notice to City Representative of any public meetings and events regarding the SDHC's activities related to this MOU within a reasonable time to allow City Representative to identify City staff to appear on its behalf.

**4.9.** Recognize, and require its Subcontractors to recognize, the role of federal HOME grant funds in all activities performed, facilities and items utilized, and publications prepared, in connection with this MOU. The recognition shall be worded as follows:

This project is funded in whole or in part with HOME Investment Partnerships Grant (HOME) funds provided to the City of San Diego by the U.S. Department of Housing and Urban Development (HUD) and administered by the San Diego Housing Commission.

**5. Compliance with Federal, State and Municipal Regulations.** The SDHC shall comply and require its subcontractors to comply with any and all applicable federal, state, and municipal laws and regulations, including HUD regulations, notices and requirements applicable to the HOME program.

**5.1.** SDHC, to the extent required by law, shall comply, and require its subcontractors to comply, with SDMC § 22.3019 requiring compliance with California Labor Code §§ 1720 through 1861 (State prevailing wage law) for construction work performed or funded pursuant to this MOU cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding \$15,000.

**5.2.** SDHC, to the extent required by law, shall comply, and require its subcontractors to comply, with the Davis-Bacon Act (40 USC §§ 3141-3144 and §§ 3146-3148), as supplemented by Department of Labor regulations (29 CFR § 5), for construction contracts in excess of \$2,000. In accordance with the Federal law, SDHC shall ensure, and require its subcontractors to ensure, that all laborers and mechanics performing work relating to this MOU are paid at a rate not less than the prevailing wage rate specified in a wage determination made by the United States Secretary of Labor and are paid not less than once per week. If wage rates higher than those required under the Federal law are imposed by State, City or other local law, nothing in this section 5.2 is intended to relieve SDHC or its subcontractors of the obligation, if any, to pay the higher wage rate. SDHC shall submit certified payroll records to City on a weekly basis, including the original statements of compliance.

**5.3.** SDHC, to the extent required by law, shall comply, and shall require its subcontractors to comply, with the provisions of City's Living Wage Ordinance, codified in SDMC §§ 22.4201-22.4245, et seq., in performing SDHC's and subcontractors' obligations under this MOU and the subrecipient agreement(s) as further defined in section 7.

**6. City Responsibilities.** The City shall exercise administrative oversight for the HOME grant Program, which shall include the following responsibilities:

**6.1.** Draft the annual HOME subrecipient agreement(s) between the City and SDHC as further defined in section 7 of this MOU.

**6.2.** Prepare and submit a Con Plan to HUD on a 5-year basis for the City's CDBG, HOME, HOPWA, and ESG grants.

**6.3.** Prepare and submit to HUD an Action Plan and CAPER on an annual basis for the City's HOME grant.

**6.4.** Disburse to the SDHC no more than the agreed upon amount of the City's maximum HOME administration funds for SDHC's eligible administrative and planning costs associated with the City's HOME program, as approved in the subrecipient agreement(s), subject



to the requirements and limitations set forth in 24 C.F.R. § 92.207, in each of the City's Fiscal Years 2020, 2021, 2022, 2023, 2024, which shall be invoiced and disbursed as set forth in the applicable subrecipient agreement(s) between the Parties.

**6.5.** Conduct annual monitoring reviews on the HOME funds expended by SDHC. The City may conduct monitoring reviews on a more frequent basis, as needed.

**6.6.** Coordinate with the designated SDHC Representative (defined in section 11) regarding any HUD or City scheduled audit or investigation of any HOME activities or projects administered by SDHC.

**6.7.** Approve drawdowns for eligible expenditures and complete draws of HOME grant funds in IDIS, on a periodic basis, consistent with HUD Regulations.

**7. Subrecipient Agreement.** Contingent upon City Council approval of the annual HOME allocation for program activities, the City shall draft the annual HOME subrecipient agreement(s) between the City and SDHC, which will, among other things, set forth the terms and conditions of the SDHC's use of federal HOME funds on the City's behalf and define the scope of services, annual budgets and monitoring obligations for HOME eligible activities (including, but not limited to, Housing Construction, Housing Rehabilitation (owner occupied), Homebuyer Assistance, Rental Rehabilitation, Tenant Based Rental Assistance and Administration). Subject to the review and approval of the SDHC, the City and SDHC shall execute the subrecipient agreement(s) on an annual basis on or about July 1 for the fiscal years contemplated within this MOU.

**8. Budget.** The City and the SDHC shall confer and agree upon an annual budget for each fiscal year ("Budget") during the term of this MOU. The Budget for each fiscal year shall be agreed upon prior to the submission of the Action Plan to HUD. The City's annual HOME grant is issued yearly by HUD in a grant award letter and grant agreement ("HOME Investment Partnership Agreement"). HOME funds shall be allocated by SDHC to individual activities and/or projects based upon the City's HOME Investment Partnership Agreement, the agreed upon fiscal year Budget and all applicable regulations, including but not limited to those set forth in section 4 of this MOU and in the applicable subrecipient agreement(s) between the Parties. The HOME activities and/or projects and allocations of funds shall be approved by the SDHC's Board of Commissioners ("Board") and by the Housing Authority, when required, in accordance with SDHC's standard budgeting processes. If the SDHC intends to amend a Budget item previously approved in the Action Plan, the SDHC shall submit such Budget amendment(s) to the City for prior approval to ensure compliance with the City's Con Plan.

**9. Reimbursement Process.** The City must approve all SDHC HOME draw requests and associated activity set ups in IDIS. SDHC shall submit reimbursement requests to the City, when funds are required to reimburse SDHC for payments made for eligible and approved HOME activities. City shall review and approve such requests, if appropriate, and draw funds directly from IDIS to reimburse SDHC expenditures for eligible HOME activities. The City shall make reimbursement payments to the SDHC in accordance with the terms of the applicable subrecipient agreement(s) no later than 30 days after receipt of an invoice from the SDHC, provided that SDHC has provided adequate supporting documentation to the City and the City

determines that the expenditure is eligible, City will notify SDHC if any additional information is needed in a reasonable amount of time. Details regarding the payment schedule, payment requirements and payment restrictions will be confirmed in the subrecipient agreement.

**10. City Representative.** The person identified in **Exhibit A** attached to this MOU as City's Notice recipient is the City's representative for all purposes of this MOU ("City Representative"). The City Representative shall communicate with SDHC on all matters related to the administration of this MOU and SDHC's performance of its obligations under this MOU. When this MOU refers to communications to or with City, those communications shall be with the City Representative, unless this MOU or the City Representative specifies otherwise. When this MOU refers to an act or approval to be performed by City, that act or approval shall be performed by the City Representative, unless this MOU specifies otherwise. The City may change the identity of the City Representative at any time by Notice to SDHC at least ten (10) days in advance of the effective date of such change.

**11. SDHC Representative.** The Person identified in **Exhibit A** attached to this MOU as SDHC's Notice recipient is SDHC's representative for all purposes of this MOU ("SDHC Representative"). The SDHC Representative shall communicate with City on all matters related to this MOU. When this MOU refers to any act or approval to be performed by SDHC, that act or approval shall be performed by the SDHC Representative. SDHC may change the identity of the SDHC Representative at any time by Notice to City at least ten (10) days in advance of the effective date of such change.

**12. Indemnification.** To the fullest extent permitted by law, the City and SDHC shall defend, indemnify, protect, and hold harmless one another, including their elected officials, officers, employees, agents, and representatives ("Indemnified Parties") from and against any and all claims, losses, costs (including reasonable attorneys' fees), damages, injuries (including, without limitation, injury to or death of an employee or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this MOU by the City or the SDHC, any subcontractor, any project sponsor, any subrecipient, anyone directly or indirectly employed by any of them, or anyone that any of them control. The City and the SDHC's duty to defend, indemnify, protect and hold harmless one another shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

**13. Insurance.** SDHC shall procure and maintain for the duration of this MOU 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 SDHC, its agents, representatives, employees or subcontractors. SDHC shall provide, at a minimum, the insurance coverage described in **Exhibit B** attached to this MOU.

**14. Notice.** Unless otherwise specified, in all cases where Notice is required under this MOU, Notice shall be in writing and transmitted to the address of City or SDHC, as applicable, as designated in **Exhibit A**, by one or more of the following methods: (a) electronic mail; (b)

messenger for immediate personal delivery; (c) a nationally recognized one Business Day delivery service (i.e., Federal Express, United Parcel Service, etc.); or (d) registered or certified mail, postage prepaid, return receipt requested, through the United States Postal Service. Notice may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice, in accordance with this section 14. Notice shall be deemed received by the addressee on the date sent by electronic mail, if sent before 3:00 p.m. Pacific Time, the date the Notice is delivered by personal delivery, on the date the Notice is delivered (or the date of the second attempted delivery, as set forth in a written statement of the delivery service) by a nationally recognized overnight delivery service, or three (3) calendar days after the Notice is deposited with the United States Postal Service as provided in this section 14. Rejection, other refusal to accept or the inability to deliver a Notice because of a changed address of which no Notice was given, shall be deemed receipt of the Notice. City or SDHC may change its Notice address by Notice delivered in accordance with this section 14.

## **15. Miscellaneous Provisions.**

**15.1. Governing Law.** The terms and conditions of this MOU shall be construed and interpreted in accordance with the laws of the State of California.

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

**15.3. Integration and Amendment.** This MOU and the exhibits attached to this MOU fully express all understandings of the Parties concerning the matters covered in this MOU. All prior negotiations and agreements between the Parties regarding the subject matter of this MOU are merged into this MOU. No change, alteration, amendment, or modification of the terms or conditions of this MOU, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid, unless made in the form of a written amendment to this MOU signed by both Parties. The Parties agree to enter into any and all amendments to this MOU that are necessary to comply with any and all new or modified federal or State of California laws applicable to this MOU.

**15.4. No Waiver.** No failure of either City or SDHC to insist upon the strict performance by the other of any term, covenant, or condition of this MOU, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this MOU, shall constitute a waiver of any such breach or the requirement to comply with such term, covenant, or condition. No waiver of any breach shall affect or alter this MOU, and each and every term, covenant, and condition in this MOU shall continue in full force and effect regarding any existing or subsequent breach.

**15.5. Successors in Interest.** This MOU and all rights, obligations, or duties under this MOU, shall be in full force and effect, whether or not any Party to this MOU has been succeeded by another entity, and all rights, obligations, or duties under this MOU shall be vested and binding on any Party's successor in interest, subject to the limitations in this MOU on assignment of this MOU.

**15.6. No Assignment.** Neither Party may assign any rights or obligations under this MOU without the prior written consent of the other Party.

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

**15.8. Conflicts between Terms.** If an apparent conflict or inconsistency exists between the main body of this MOU and any exhibit, the main body of this MOU shall control. If a conflict exists between an applicable law, rule, regulation, order, or code and this MOU, then the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this MOU, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other in writing immediately upon the identification of any apparent conflict or inconsistency concerning this MOU.

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

**15.10. Counterparts.** This MOU may be signed in multiple counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had signed the same MOU.

**15.11. Headings.** All headings in this MOU are for convenience of reference only and shall not affect the interpretation of this MOU.

**15.12. Exhibits Incorporated.** All exhibits referenced in or attached to this MOU are incorporated into this MOU.

**15.13. Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this MOU, and all continuing obligations set forth in this MOU, shall survive expiration or earlier termination of this MOU.

**15.14. Incorporation of Recitals.** The Recitals preceding this MOU are true and correct and are incorporated into and made a part of this MOU.

**15.15. Time of Essence.** Time is of the essence of each provision of this MOU, unless otherwise specified in this MOU.

**15.16. Further Assurances.** City and SDHC agree to cooperate fully and execute any and all supplementary documents and take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this MOU.

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

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

SAN DIEGO HOUSING COMMISSION,  
a public agency

CITY OF SAN DIEGO,  
a California municipal corporation

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Christensen & Spath LLP  
A California limited liability partnership

Mara W. Elliott  
City Attorney

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

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

SDHC General Counsel

Marguerite E. Middaugh  
Deputy City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

### **Notice Addresses**

#### **City:**

City of San Diego  
Economic Development Department  
ATTN: Stephen Maduli-Williams  
Community Development Program Manager  
1200 Third Avenue, Suite 1400  
San Diego, CA 92101

(619) 533-6510  
SMaduliWilli@sandiego.gov

#### **SDHC:**

San Diego Housing Commission  
Board and Executive Functions  
Attn: Jeff Davis  
Executive Vice President and Chief of Staff  
1122 Broadway, Suite 300  
San Diego, CA 92101

(619) 578-7606  
jeffd@sdhc.org

Copy to:  
Christensen & Spath LLP  
550 West C Street, Suite 1660  
San Diego, CA 92101  
(619) 236-9343  
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## EXHIBIT B

### INSURANCE REQUIREMENTS

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

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

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

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

1.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If SDHC maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by SDHC. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

1.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1.5.1 *Additional Insured Status.* The City Parties are to be covered as additional insured on the required Commercial General Liability insurance policy with respect to liability arising out of work or operations performed by or on behalf of SDHC, including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to SDHC’s Commercial General Liability insurance policy (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37, if a later edition is used).



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

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

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

1.5.5 *Claims Made Policies* (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, SDHC must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

1.6 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require SDHC to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the 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.

1.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City. 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 Approved Surplus Lines Insurers (LASLI list). All policies of insurance issued by non-admitted carriers are subject to all of the requirements policies of insurance provided by admitted carriers described herein.

1.8 Verification of Coverage. SDHC shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive SDHC's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

1.9 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

1.10 Additional Insurance. SDHC may obtain additional insurance not required by this MOU.

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

1.12 Subcontractors. SDHC shall require and verify that all subcontractors maintain insurance meeting all the insurance requirements stated herein, and SDHC shall ensure that the City Parties are additional insured under insurance required from subcontractors. For commercial general liability insurance coverage, subcontractors shall provide coverage with a form at least as broad as the CG 20 38 04 13 endorsement.

HOUSING AUTHORITY OF  
THE CITY OF SAN DIEGO

RESOLUTION NUMBER HA-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF SAN DIEGO APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF SAN DIEGO AND THE SAN DIEGO HOUSING COMMISSION FOR THE ADMINISTRATION OF THE CITY'S HOME ENTITLEMENT GRANT PROGRAM AND AUTHORIZING THE SAN DIEGO HOUSING COMMISSION'S SIGNATURE OF THE MOU AND RELATED AMENDMENTS AND SUBRECIPIENT AGREEMENT.

WHEREAS, the City of San Diego (City) is a designated grantee that annually receives federal funds through the United States Department of Housing and Urban Development (HUD) HOME Investment Partnerships Program (HOME); and

WHEREAS, the City is a Participating Jurisdiction and the San Diego Housing Commission (Housing Commission) is a Subrecipient, as these terms are defined in the Code of Federal Regulations, title 24, section 92.2; and

WHEREAS, the City's Economic Development Department (EDD) has oversight and program compliance responsibility for the City's annual HOME grant; and

WHEREAS, the City Council delegated the administration, planning, coordination, operation, and implementation of all activities and actions encompassed by the City's HOME program to the Housing Commission pursuant to City Council Resolutions R-279138 on December 9, 1991, R-284352 on July 26, 1994, and R-286709 on December 4, 1995; and

WHEREAS, the Housing Commission plans, coordinates, operates, administers, and implements programs for the operation of the City's HOME program under the current memorandum of understanding between the City and the Housing Commission (2014 MOU), approved by City Council Resolution R-308904 on April 30, 2014, and which will expire on June 30, 2019; and

WHEREAS, the City and the Housing Commission now propose to enter into a new memorandum of understanding (MOU), a copy of which is included in the backup materials accompanying this Resolution, to clarify their respective roles and responsibilities for the oversight and administration of the City's HOME program; and

WHEREAS, the City Council approved Resolution R-312442 on April 26, 2019, authorizing the Mayor, or designee, on behalf of the City, to negotiate and enter into a new MOU with the Housing Commission for the administration of the City's HOME program, effective July 1, 2019 through June 30, 2024; NOW, THEREFORE,

BE IT RESOLVED, by the Housing Authority of the City of San Diego, as follows:

1. The MOU between the City and the Housing Commission, on file with the Housing Commission's Deputy Secretary as Document No. \_\_\_\_\_, is approved.
2. The Housing Commission President and Chief Executive Officer (President & CEO), or designee, is authorized and directed to sign the MOU, and any and all amendment(s) and related subrecipient agreement.
3. The President & CEO, or designee, is authorized to sign any necessary documents required by HUD in connection with the Housing Commission's implementation of the MOU.

4. The President & CEO, or designee, is authorized to sign any documents and perform any other acts as are necessary and appropriate to implement this Resolution, subject to approval by Housing Commission General Counsel and without further action of the Board of Commissioners of the Housing Commission or the Housing Authority.

APPROVED: MARA W. ELLIOTT, General Counsel

By \_\_\_\_\_  
Katherine A. Malcolm  
Deputy General Counsel

KAM:jdf  
05/16/19  
Or.Dept:SDHC  
Doc. No. 2008362



The City of San Diego  
**Item Approvals**

**Item Subject:** Memorandum of Understanding between the City of San Diego and the San Diego Housing Commission Regarding the City of San Diego's Administration of the Federal HOME Investment Partnerships Program.

<b>Contributing Department</b>	<b>Approval Date</b>
DOCKET OFFICE	05/21/2019

<b>Approving Authority</b>	<b>Approver</b>	<b>Approval Date</b>
HOUSING COMMISSION FINAL DEPARTMENT APPROVER	DAVIS, JEFF	05/15/2019
DEPUTY CHIEF OPERATING OFFICER	CALDWELL, ERIK	05/22/2019
CITY ATTORNEY	MIDDAUGH, MARGUERITE	06/11/2019