



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

**DATE ISSUED:** May 15, 2019

**REPORT NO:** HAR19-012

**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 Community Development Block Grant Affordable Housing Revolving Loan Fund

**COUNCIL DISTRICT:** Citywide

### **REQUESTED ACTION**

That the Housing Authority of the City of San Diego approve the execution of a Memorandum of Understanding and Scope of Services and Budget, 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 Community Development Block Grant (CDBG) Affordable Housing Revolving Loan Fund (AHRLF).

### **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 Scope of Services and Budget, 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 Community Development Block Grant Affordable Housing Revolving Loan Fund (CDBG AHRLF):
  - a. Delegating the administration, planning, coordination, operation, and oversight of the City's CDBG AHRLF 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 CDBG-AHRLF 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 Scope of Services and Budget relating to CDBG AHRLF, including but not limited to, grants and loan agreements;
- 2) Authorize the President & CEO of the Housing Commission, or designee, to execute the final negotiated MOU and Scope of Services and Budget, 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**

CDBG funds are awarded annually from HUD as formula grants to participating jurisdictions. The City is the participating jurisdiction for this HUD grant. The City has received all HUD and local approvals to allocate a portion of the CDBG grant funds to the AHRLF activity. The Housing Commission administers the AHRLF allocation on behalf of the City. Funds can be used per the HUD CDBG regulations, as approved by the City Council and issued as a loan. The Housing Commission has administered the CDBG AHRLF for the City since 2016.

The San Diego City Council passed Resolution No. R-310407 on May 4, 2016, establishing a new CDBG AHRLF to provide for the Housing Commission's administration, operation, and implementation of all loan, accounting and reporting activities and actions regarding the AHRLF. This agreement will expire on 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 City's CDBG Affordable Housing Revolving Loan Fund, effective July 1, 2019, through June 30, 2024."

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

### **AFFORDABLE HOUSING IMPACT**

Approval of this action will allow for the uninterrupted administration of the CDBG AHRLF program by the Housing Commission and the continued funding of eligible activities under the CDBG AHRLF program as outlined in the MOU and Scope of Services, 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 May 4, 2016, the San Diego City Council passed Council Resolution No. R-310407, establishing a new CDBG AHRLF with an initial investment of \$4,600,000 of the Program Income to be received by the City from the Successor Agency in Fiscal Year 2017 and approving the City's entry into the MOU to provide for the Housing Commission's administration, operation, and implementation of all loan, accounting and reporting activities and actions regarding the AHRLF.

On July 1, 2016, 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 CDBG-AHRLF program for the term July 1, 2016, 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 City's CDBG Affordable Housing Revolving Loan Fund, effective July 1, 2019, through June 30, 2024."

**KEY STAKEHOLDERS and PROJECTED IMPACTS**

The beneficiaries of CDBG-AHRLF 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 Scope of Services and Budget will comply with CDBG AHRLF City policies.

**ENVIRONMENTAL REVIEW**

Approval of the proposed MOU and proposed Scope of Services and Budget 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 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 COMMUNITY DEVELOPMENT BLOCK GRANT AFFORDABLE  
HOUSING REVOLVING LOAN FUND**

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This Memorandum of Understanding (MOU) is dated as of July 1, 2019 (Effective Date) and is entered into by and between the SAN DIEGO HOUSING COMMISSION, a public agency (SDHC), and the CITY OF SAN DIEGO, a municipal corporation (City). 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 United States Department of Housing and Urban Development (HUD) awards Community Development Block Grant (CDBG) program funds to the City on an annual basis;

B. The City and the former Redevelopment Agency of the City of San Diego (Former RDA) previously entered into that certain Loan Agreement (Long-Term Debt), dated March 1, 2011, and that certain Repayment Agreement (CDBG Debt), dated June 30, 2010, evidencing the Former RDA’s obligations to repay the City CDBG funds loaned to the Former RDA;

C. Pursuant to the law dissolving California redevelopment agencies, the City, acting solely in its capacity as the successor agency to the Former RDA (Successor Agency), is repaying the Former RDA’s CDBG obligations to the City with property tax increment revenue previously allocated to the Former RDA, resulting in the City receiving “Program Income” (defined in the federal CDBG program regulations at Title 24 Code of Federal Regulations section 570.500);

D. The City Council approved Resolution No. R-310407, effective May 4, 2016, establishing a new CDBG Affordable Housing Revolving Loan Fund (Fund) and approving the City’s entry into an agreement to provide for SDHC’s administration, operation, and implementation of all loan, accounting and reporting activities and actions regarding the Fund (2016 MOU);

E. The 2016 MOU will terminate on June 30, 2019;

F. The City Council approved Resolution R-312442, effective April 26, 2019, authorizing a new MOU with the SDHC for fiscal years 2020 to 2024, so that the SDHC will continue to administer, operate, and implement all loan, accounting, reporting and other actions regarding the Fund;

G. On June 25, 2019, the Housing Authority of the City of San Diego (“Housing Authority”) approved Resolution HA- authorizing the SDHC to enter into this MOU to administer, operate, and implement all loan, accounting, reporting and other actions regarding the Fund;

NOW THEREFORE, in consideration of the above Recitals, the covenants, conditions and agreements set forth in this MOU, and other good and valuable consideration, the Parties agree as follows:

**1. DEFINITIONS.** For the purposes of this MOU, the terms listed below are defined as follows:

**1.1. Action Plan.** Defined in Section 4.11.

**1.2. Budget.** Defined in Section 2.

**1.3. CAPER.** Defined in Section 4.11.

**1.4. CDBG Funds.** Entitlement grant funds provided to City by HUD pursuant to the CDBG program or Program Income.

**1.5. City Representative.** Defined in Section 25.

**1.6. Consolidated Plan.** Defined in Section 4.11.

**1.7. EDD.** Defined in Section 4.11.

**1.8. Effective Date.** Defined in the initial paragraph of this MOU.

**1.9. Federal.** Relating to the federal government of the United States of America.

**1.10. Fee Schedule.** The schedule of fees chargeable by SDHC for making Loans attached to this MOU as Exhibit E.

**1.11. Fiscal Year.** Each time period starting on July 1 and ending on the immediately following June 30.

**1.12. Fiscal Year 2020.** City’s fiscal year starting July 1, 2019, and ending June 30, 2020.

**1.13. Fund Records.** All administrative or financial records required in connection with the Fund that are prepared or gathered by SDHC, including all Loan documents, Loan applications, Loan underwriting policies or guidelines, books, papers, invoices, receipts, accounting records prepared in accordance with Generally Accepted Accounting Principles (GAAP) and 2 C.F.R. section 200, reports, financial disclosures, audits, other disclosures, certifications, work product, and any other documents, data or records pertaining to any or all matters covered by this MOU, or required by 24 C.F.R. section 570.506 or the Operating Manual.

**1.14. HUD.** Defined in Recital A.

**1.15. Loan.** Each loan made by SDHC with money advanced to SDHC from the Fund under this MOU and pursuant to any of the programs described in Section 2.

**1.16. Loan Package.** Loan agreement, promissory note, deed of trust, any associated surety bonds or guarantees, any associated indemnity agreements, the Loan application completed by the borrower, all underwriting review information received or generated by SDHC in underwriting or approving the Loan, any other documents or information in the possession or control of SDHC and material to the Loan. The requirements of this section do not apply to forgivable loans issued for rehabilitation of shelters/transitional housing projects serving homeless, as detailed in Exhibit C.

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

**1.18. Notify.** To give a Notice.

**1.19. Operating Manual.** City's most current "Operating Manual" containing procedures for fiscal management and accountability regarding use of CDBG Funds.

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

**1.21. Program Income.** Any income that accrues to SDHC as a result of its receipt or use of CDBG Funds under this MOU, as further described in 24 C.F.R. section 570.500(a), including any rents, interest earned, and client fees.

**1.22. Reporting Period.** Each calendar month during the Term.

**1.23. Scope of Services.** Defined in Section 2.

**1.24. SDHC Representative.** Defined in Section 26.

**1.25. State.** The State of California.

**1.26. Term.** Defined in Section 6.

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

**2. FUND PROGRAMS.** The City established the Fund to provide loans pursuant to the following programs. These programs are further described in the FY 2020 Scope of Services attached to this MOU as Exhibit C (Scope of Services) and FY 2020 Budget attached to this MOU as Exhibit D (Budget). For any given Fiscal Year during the Term, the Scope of Services and Budget may provide for Loans under none, one, or any combination of the following programs:

**2.1.** Homeownership Down Payment Assistance;

**2.2.** Affordable Multifamily Housing Acquisition and/or Rehabilitation (homeless shelters and/or transitional housing)

**2.3.** Affordable Multifamily Housing Acquisition and/or Rehabilitation (with a focus on permanent supportive housing).

**3. ANNUAL SCOPE OF SERVICES AND BUDGET PROCESS.** On or before June 15 of each year during the Term where this MOU will continue in effect for the fiscal year beginning on the immediately following July 1 (Next Fiscal Year), City and SDHC shall negotiate and attempt to agree on both a Fiscal Year Scope of Services and Budget for such Next Fiscal Year during the Term. The Parties may agree, for any Fiscal Year during the Term, that the Scope of Services and Budget will provide for no new Loans from the Fund during such Fiscal Year, with this MOU continuing in effect for servicing loans previously made from the Fund and the Parties negotiating and attempting to agree in the future on a Scope of Services and Budget for later Fiscal Years during the Term, through the annual Scope of Services and Budget approval process set forth in this Section 3. Each Scope of Services and Budget for a Next Fiscal Year that provides for City to allocate additional money to the Fund shall be approved by the City Council, in its sole and absolute discretion, through City's annual HUD programs Action Plan approval process. The Parties are under no obligation to agree on a Scope of Services or Budget for any Next Fiscal Year during the Term. If the Parties do not timely agree on a Scope of Services or Budget for any Next Fiscal Year during the Term in accordance with this Section 3, then either Party may terminate this MOU by thirty (30) calendar days' Notice to the other Party given within thirty (30) calendar days after the June 15 on which the Scope of Services and Budget for such Next Fiscal Year were to be agreed upon, with the effective date of termination being the June 30 immediately following the June 15 on which the Scope of Services and Budget for such Next Fiscal Year were to be agreed upon.

**4. LOAN ADMINISTRATION.** SDHC shall be responsible for the general administration, operation and oversight of all Loans, including all of the following:

**4.1.** Making Loans for use within the City's boundaries and among the different categories of housing programs described in Section 2 pursuant to program and underwriting guidelines reasonably acceptable to City;

**4.2.** Servicing Loans (including collection of Loans in default). If any Loans remain outstanding when this MOU expires or is terminated, SDHC will either continue to service such Loans on behalf of City on terms mutually agreed upon between City and SDHC or assign all of SDHC's rights and security under such Loans to City or City's designee;

**4.3.** Causing any and all money advanced from the Fund to SDHC to be loaned and repaid as soon as possible to create and maintain the revolving character of the Fund. The requirements of this section do not apply to forgivable loans issued for rehabilitation of shelters/transitional housing projects serving homeless, as detailed in Exhibit C.;

**4.4.** Establishing appropriate financial management systems to account for Loans and repayments of principal and interest on Loans. SDHC shall enter into written Loan agreements with any and all borrowers of Loans;

**4.5.** Completing all required reporting about Loans in HUD reporting systems in a timely manner and providing City with complete and accurate documentation in the time and manner requested by the City Representative to enable City to enter documentation/information about Loans and money advanced from the Fund to SDHC under this MOU in IDIS, in accordance with CDBG regulations;

**4.6.** Complying with HUD's CDBG program requirements for income determinations, underwriting and subsidy layering guidelines, rehabilitation standards, refinancing guidelines, and affordability requirements for all Loans;

**4.7.** Maintain or establish written policies and procedures for making and servicing Loans under each program described in Section 2 that comply with all CDBG regulations and requirements. Upon Notice from the City Representative, SDHC shall provide a copy of its written policies, standards and guidelines for making and servicing Loans under each program described in Section 2 to the City Representative for review. SDHC shall Notify City at least thirty (30) calendar days in advance of any and all changes to SDHC's policies and procedures for making and servicing Loans under any program described in Section 2 taking effect;

**4.8.** Taking all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities financed with Loans and, as applicable, providing relocation assistance in accordance with applicable Federal and State law;

**4.9.** Subject to Section 17.2, ensuring that each activity carried out with a Loan is assessed in accordance with the provisions of the National Environmental Policy Act of 1969



(NEPA) and the related authorities listed in HUD's implementing regulations at 24 C.F.R. part 58, and the California Environmental Quality Act, California Public Resources Code sections 21000, et seq. (CEQA).

**4.9.1. SDHC shall complete all required environmental review records (ERR) for each activity authorized by this MOU, including any necessary public noticing requirements and filing ERR with HUD;**

**4.9.2. SDHC shall provide to the City any and all documents required to comply with section 4.9;**

**4.9.3. SDHC shall not make any Loan before completion of all required environmental review. The documents associated with NEPA and CEQA compliance for Loans must be maintained by SDHC as a Fund Record;**

**4.10. Attending regular meetings with the City Representative, on a schedule to be mutually determined by the City Representative and SDHC Representative, but not expected to be more frequent than monthly, to exchange information and provide informal reporting as to SDHC's activities related to Loans and money advanced from the Fund to SDHC under this MOU;**

**4.11. Cooperating with the City's Economic Development Department (EDD) staff in the development and execution of the City's Consolidated Plan (Consolidated Plan), Annual Action Plan (Action Plan), and Consolidated Annual Performance and Evaluation Report (CAPER), with respect to the Fund, including 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. Part 91; and**

**4.12. Notifying the City Representative of all public meetings and events regarding this MOU or SDHC's activities related to Loans or money advanced from the Fund to SDHC under this MOU, with sufficient time to allow the City to have a representative appear on its behalf but not later than three (3) calendar days before the meeting or event.**

**5. NATIONAL OBJECTIVES CERTIFICATIONS.** SDHC certifies that all of the projects or activities financed with money loaned from the Fund will meet one of the national objectives for use of CDBG Funds pursuant to 24 C.F.R. section 570.208.

**6. TERM.** This MOU shall be effective from July 1, 2019 through and including June 30, 2024. The Term of the MOU will coincide with the City's Consolidated Plan for fiscal years 2020 to 2024. This MOU supersedes and terminates all prior MOUs between the City and the SDHC for the Fund.

**6.1. AMENDMENTS TO MOU.** SDHC's President and Chief Executive Officer or designee, and the Mayor or designee, shall have the authority to execute amendments to this MOU, which do not otherwise require City Council approval. Any amendment to this MOU shall be memorialized in a written instrument signed by the Parties.

**7. LOAN FUNDING.** After July 1, 2019, City will advance \$10,000,000 from the Fund to SDHC for the purpose of funding Loans pursuant to this MOU. The Funding for Loans pursuant to this MOU is subject to annual City Council approval through the HUD programs annual Action Plan approval process and Budget approval process set forth in Section 3. SDHC shall establish and maintain a separate account within its accounts, books, and records for receipt of money from the Fund pursuant to this MOU, funding Loans, receiving repayments on Loans, and paying Program Income generated from SDHC use of money advanced to SDHC from the Fund under this MOU to City for deposit into the Fund. For each Loan made by SDHC, SDHC shall deliver a Loan Package to the City Representative. SDHC and City shall negotiate and attempt to agree on a Fee Schedule for each Next Fiscal Year during the Term as part of the annual Scope of Services and Budget approval process set forth in Section 3. In making Loans or otherwise performing under this MOU, SDHC shall only charge fees and costs set forth in a City approved Fee Schedule to Loan borrowers or money advanced from the Fund to SDHC under this MOU.

**8. PROGRAM INCOME.** SDHC shall pay all Program Income from SDHC use of money advanced to SDHC from the Fund under this MOU back to City for deposit into the Fund on a quarterly basis on or before each January 15, April 15, July 15, and October 15 during the Term (to the extent such Program Income is received by SDHC at any time during the three (3) month period immediately preceding each such date). SDHC shall separately account for any and all Program Income from SDHC use of money advanced from the Fund to SDHC under this MOU in its reports submitted to City under Section 10 and in its annual audits or financial reports or statements submitted to City under Section 11. SDHC shall return to City any and all Program Income balances (including investments thereof) held by SDHC within thirty (30) calendar days after the earlier of: (a) expiration of the Term; or (b) termination of this MOU. SDHC shall make Loans using all money from the Fund advanced to SDHC pursuant to this MOU before requesting any other CDBG Funds from City for the same purposes for which SDHC is to make Loans pursuant to this MOU.

**9. INSURANCE.** Prior to the Effective Date, SDHC shall obtain all insurance required in Exhibit B attached to this MOU and deliver to City written certificates or policies of insurance evidencing such insurance coverage. SDHC shall not undertake any Fund activities unless and until evidence of all insurance required to be carried by SDHC under this Section 8 has been submitted to and approved by City. SDHC shall maintain all of the insurance coverage required to be obtained under this Section 9 throughout the Term.

**10. SDHC REPORTS.** SDHC shall submit to City a fiscal and programmatic report on a Reporting Period basis that summarizes each Loan made from the Fund and the associated activities financed with each such Loan during the applicable Reporting Period, along with any and all other documentation required by City. Such a report shall be submitted within forty-five (45) calendar days after the end of each Reporting Period.

**11. AUDITS.**

**11.1. SDHC Financial Statements.** For each fiscal year that SDHC makes one or more Loans from the Fund, SDHC shall have audited financial statements prepared by an independent certified public accountant, in accordance with GAAP and Generally Accepted Government Audit Standards (GAGAS). SDHC shall provide City a copy of SDHC's audited financial

statements within nine (9) months after the end of SDHC's fiscal year. Extensions of up to thirty (30) calendar days may be granted by City, upon written request by SDHC. Audited financial statements shall include all of the following: (a) a balance sheet, income statement, and cash flow statement showing use of revenues and expenditures for all funds received by SDHC; (b) a statement certifying compliance with all terms and conditions of this MOU, and that all reports and disclosures required from SDHC under this MOU have been completed, signed, and submitted by an authorized and approved officer of SDHC. If SDHC is subject to an audit from a source other than City, SDHC shall provide a copy of the audit to City within thirty (30) calendar days after receipt of the audit.

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

**11.3. City and Federal Government Access to Audit Information.** SDHC shall provide in any agreement SDHC enters into with an audit firm that the audit firm shall provide access for City or the Federal government to the working papers of the auditor(s) who prepare(s) the audit(s) for SDHC, that SDHC waives any claim of privilege or confidentiality regarding, and consents to and authorizes the audit firm to release, any and all information obtained and utilized by such audit firm as the basis of any audit report issued by the audit firm to City or the Federal government.

**11.4. Adverse Audit Findings.** If any type of audit or monitoring review reveals any pattern of suspicious or questionable financial activity by SDHC, City, in its sole discretion, shall have the right to take remedial action under Section 18 or 19, including immediately suspending this MOU, in whole or in part, to further investigate such matters. If City or an independent audit identifies any material concerns about SDHC's accounting practices or internal controls, City shall have the right to suspend or terminate this MOU, effective immediately, upon Notice to SDHC.

**11.5. SDHC Cooperation.** SDHC shall fully cooperate with City and any other auditors in any review or investigation of SDHC's conduct or action(s) relating to this MOU. Failure by SDHC to so cooperate shall constitute a material breach of this MOU. SDHC's failure to provide required financial statements, audits or other information, notwithstanding expiration of the Term or other termination of this MOU, shall be a material breach of this MOU.

## **12. FUND RECORDS.**

**12.1. Maintenance, Inspection and Photocopying.** SDHC shall maintain, all Fund Records during the Term and the Retention Period (defined in Section 12.3). At any time during normal business hours and as often as requested, SDHC shall permit City, HUD, the Comptroller

General of the United States (Comptroller General), or any of their duly authorized representatives, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the SDHC offices), all Fund Records for the purposes of making audits, examinations, excerpts, or transcriptions, or monitoring and evaluating SDHC's performance of its obligations under this MOU. Upon any request by City, HUD, Comptroller General, or any of their duly authorized representatives, for any Fund Records, SDHC shall submit exact duplicates of the originals of the requested Fund Records to the requesting party for the purposes described in this Section 12.1. City, HUD, and Comptroller General may retain copies of the Fund Records, if such retention is deemed necessary by City, HUD, or Comptroller General, in any of their respective sole discretion. If SDHC is unable to make any Fund Records available for inspection within the County of San Diego, then SDHC shall pay all of City's travel-related costs to inspect and photocopy the Fund Records at the location where the Fund Records are maintained. Any refusal by SDHC to fully comply with the provisions of this Section 12.1 shall be a material breach of this MOU.

**12.2. Ownership of Original Records.** All Fund Records shall be the property of City. City's ownership of the Fund Records includes the use, reproduction, or reuse of the Fund Records, and all incidental rights, whether or not the activity for which the Fund Records were prepared occurred. No Fund Records shall be shown to any other public or private person or entity, except as authorized by City in writing, or where such Fund Records are subject to disclosure pursuant to the California Public Records Act or other law, as determined by the City Attorney.

**12.3. Fund Records Retention Period.** SDHC shall retain electronic copies of all Fund Records for at least three (3) years after expiration or termination of this MOU and SDHC performing all of its obligations under Section 20 (Retention Period). All Fund Records shall be kept at SDHC's regular place of business. At any time during the Retention Period, SDHC shall permit City, HUD, Comptroller General, or any of their duly authorized representatives, to inspect and photocopy any and all Fund Records for the purposes described in Section 12.1. After expiration of the Retention Period, SDHC shall provide City with thirty (30) calendar days' Notice of its intent to dispose of any Fund Records. During this thirty (30) calendar day time period, SDHC shall provide any and all Fund Records to City upon Notice from City.

**13. COMPLIANCE WITH LAWS AND POLICIES.** SDHC shall comply with all applicable laws, statutes, rules, regulations, orders, ordinances, resolutions, permits, requirements, and policies of the Federal, State, City and other local governments pertaining to administration of the Fund or making or servicing Loans from the Fund to the extent applicable to SDHC as a public agency. In addition, SDHC shall immediately comply with all directives issued by City, or its duly authorized representatives, under authority of any law, statute, rule, regulation, order, ordinance, resolution, permit, requirement, or policy of Federal, State, City or other government. Failure by SDHC to accept or comply with the provisions of this Section 13 shall be a material breach of this MOU.

**14. CONFLICT OF INTEREST.** SDHC shall comply with all Federal, State and City conflict of interest laws, regulations, and policies applicable to City contracts involving CDBG Funds, including each of the following: (a) the conflict of interest provisions in 24 C.F.R. section

570.611 and 2 C.F.R. section 200.318; (b) California Government Code sections 1090, et. seq.; and (c) California Government Code sections 81000, et. seq.

**14.1. Public Officer or Employee Economic Interests.** The Parties are unaware of any financial or economic interest of any public officer or employee of City or SDHC relating to this MOU. If SDHC becomes aware during the Term of any financial or economic interest of any public officer or employee of City or SDHC relating to this MOU, SDHC shall immediately Notify City. If such a financial or economic interest is determined by City to exist, City shall have the right to immediately terminate this MOU by giving Notice of termination to SDHC or City may take any other action for a breach or default under this MOU, including remedies set forth in Section 18 or 19.

**14.2. City Ethics Code Restrictions.** SDHC's commissioners, officers, employees and agents shall be subject to the provisions of City's Ethics Ordinance (SDMC sections 27.3501-27.3595), including the prohibition against lobbying City for one (1) year following the expiration or termination of this MOU. SDHC shall establish, and make known to its commissioners, officers, employees and agents, appropriate safeguards to prohibit them from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. SDHC's commissioners, officers, employees or agents shall not recommend or specify any product, supplier, or contractor with whom they have a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies. If any SDHC commissioner, officer, employee or agent violates any conflict of interest law, or any of the provisions of this Section 14, the violation shall be a material breach of this MOU and grounds for City's immediate termination of this MOU or City's exercise of other rights or remedies for a breach or default under this MOU. Further, any such violation shall subject SDHC to liability to City for attorney's fees and all damages sustained as a result of the violation.

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

## **16. CITY MUNICIPAL CODE AND POLICY COMPLIANCE.**

**16.1 Compliance with City's Equal Opportunity Contracting Program.** SDHC shall comply with City's EOCP Requirements. SDHC shall not discriminate against any employee or applicant for employment on any basis prohibited by law. SDHC shall provide equal opportunity in all employment practices. SDHC shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold SDHC liable for any discriminatory practice of its subcontractors

**16.2 Non-Discrimination in Contracting.** SDHC shall comply with City's Nondiscrimination in Contracting Ordinance, codified in the San Diego Municipal Code

(SDMC) sections 22.3501 – 22.3517. SDHC shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, familial status, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, or any subcontractors, vendors, or suppliers. SDHC shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. SDHC understands and agrees that violation of this clause shall be considered a material breach of the MOU and may result in MOU termination, debarment, or other sanctions. SDHC shall ensure that this language is included in contracts between SDHC and any subcontractors, vendors and suppliers.

**16.3 Compliance Investigations.** Within sixty (60) calendar days of a request by City, SDHC shall provide City a truthful and complete list of the names of all subcontractors, vendors, and suppliers that SDHC has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by SDHC for each subcontract or supply contract. SDHC shall fully cooperate in any investigation conducted by City, pursuant to City's Nondiscrimination in Contracting Ordinance, referenced above. Violation of any provision of this Section 15 shall constitute a material breach of this MOU and may result in City's exercise of rights or remedies regarding such breach, including immediate termination of this MOU, debarment, or other remedies.

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

**16.5 Americans with Disabilities Act.** SDHC shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, SDHC shall comply with the most restrictive requirement (i.e., that which provides the most access). SDHC also shall comply with City Council Policy 100-04, as adopted by City Council Resolution R-282153, relating to the Federally-mandated Americans with Disabilities Act (ADA), and incorporated into this MOU by this reference.

**16.6 Drug – Free Workplace.** SDHC shall comply with City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952. SDHC shall certify that it will provide a drug-free workplace, by submitting to City a “Certification for a Drug-Free Workplace” form signed by an authorized representative of SDHC. Delivery of this certification by SDHC shall be a condition precedent to this MOU. SDHC shall post in a prominent place at its offices a statement setting forth its drug-free workplace policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violating the policy. SDHC shall establish a drug-free awareness program to inform employees about each of the following: (a) the dangers of drug abuse in the workplace; (b) the policy of maintaining a drug-free workplace; (c) the

availability of drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations.

**16.7 Product Endorsement.** SDHC shall comply with Council Policy 000-41 and the provisions of City Administrative Regulation 95.65 regarding product endorsements or creating any advertisement or writing that identifies or refers to City as the user of a product or service, without obtaining the prior written approval of City.

**16.8 Equal Benefits Ordinance.** In accordance with City's Equal Benefits Ordinance, codified in SDMC sections 22.4301-22.4308 (EBO), SDHC shall provide and maintain equal benefits, as defined in SDMC section 22.4302 during the Term. Failure to maintain equal benefits consistent with the EBO is a material breach of this MOU (SDMC 22.4304(e)). SDHC shall notify its employees of the equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by its employees:

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

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

**16.9 Equal Pay Ordinance.** Unless an exception applies, SDHC shall comply with the Equal Pay Ordinance (EPO) codified in San Diego Municipal Code sections 22.4801 through 22.4809. SDHC shall certify in writing that it will comply with the requirements of the EPO. The EPO applies to any subcontractor who performs work on behalf of the SDHC to the same extent as it would apply to the SDHC. If subject to the EPO, SDHC shall require all of its subcontractors to certify compliance with the EPO in its written subcontracts.

**16.10 Living Wage Ordinance.** Unless an exception applies, SDHC shall comply with the City's Living Wage Ordinance (“LWO”), codified in SDMC sections 22.4201 through 22.4245. SDHC agrees to require all of its Subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

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

## **17. COMPLIANCE WITH FEDERAL LAWS, REGULATIONS, AND REQUIREMENTS.**

**17.1. Uniform Administrative Requirements.** SDHC shall comply with 2 C.F.R. Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” as modified by 24 C.F.R. section 570.502.

**17.2. General Federal CDBG Program Requirements.** SDHC shall comply with all Federal laws and regulations described in 24 C.F.R. section 570, including subpart K (sections 570.600-570.614), except that: (a) SDHC does not assume City’s environmental responsibilities described at 24 C.F.R. section 570.604; and (b) SDHC does not assume City’s responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52.

**17.3. Lobbying and Political Activities.** SDHC shall not use any of the CDBG Funds deposited in the Fund to pay any person for influencing or attempting to influence any decision or election by any electorate, legislative body, government agency, grantee, bureau, board, commission, district, or any other instrument of Federal, state, City or other local government. The phrase “influencing or attempting to influence” means making, with the intent to influence, any communication to, or appearance before, a board, body, officer, or employee of a governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election. SDHC shall comply with 31 USC 1352 and 24 C.F.R. Part 87. SDHC shall sign and deliver to City the certification set forth in 24 C.F.R. Part 87, Appendix A, prior to entering into this MOU, which certification shall be a condition precedent to this MOU. SDHC shall also require this same certification to be included in all Loan agreements for Loans made from the Fund. Additionally, SDHC shall disclose to City any funds from any other source paid by SDHC (or its principals or agents) to any person or entity, within the last year, for influencing or attempting to influence decisions of the Federal government, by completing, signing, and submitting to City, Standard Form LLL, “Disclosure of Lobbying Activities,” found at 24 C.F.R. Part 87, Appendix B. SDHC understands that the duty to disclose lobbying activities is a continuing requirement and, therefore, shall make such disclosures at the end of each calendar quarter during the Term in which any activity requiring disclosure occurs or more often, if required by applicable law.

**17.4. Recognition of Funding Source.** SDHC shall recognize, and require Loan recipients to recognize, the role of the Fund in financing Loans. All publications and Loan agreements relating to Loans made or available from the Fund shall include the following statement: “This loan is funded in whole or in part with Community Development Block Grant (CDBG) program funds provided by the U.S. Department of Housing and Urban Development (HUD) to the City of San Diego.”

**17.5. Playing by the Rules Handbook.** By entering into this MOU, SDHC acknowledges that SDHC has received, read, and understood the contents of the Playing by the Rules Handbook and shall fully comply with all of the administrative recommendations set forth therein.

**17.6. No Discrimination.** SDHC shall comply with Title VI of the Civil Rights Act of 1964 and the implementing regulations in 24 C.F.R. Part 1, Executive Order 11063, as amended



by Executive Order 12259, and the implementing regulations in 24 C.F.R. Part 107, the California Fair Employment Practices Act, and any other applicable Federal or State laws or regulations prohibiting discrimination on any basis enacted before or after the Effective Date. SDHC shall not discriminate on the basis of race, color, gender, religion, national origin, sexual orientation, age, familial status, or disability, in performing this MOU, including in employment opportunities, the provision of labor, services, privileges, facilities, advantages, or accommodations. SDHC's failure to comply with the requirements of this Section 17.6 shall be a material breach of this MOU and, in addition to all other rights or remedies of City regarding such breach, City shall have the right to: (a) immediately terminate this MOU; (b) debar SDHC; or (c) impose other sanctions on SDHC, including suspension from participating in future City contracts (as a grantee, sub-recipient, prime contractor or subcontractor). Failure to satisfy sanctions imposed on SDHC by City shall prohibit SDHC from participating in future City contracts, until all such sanctions have been satisfied.

**17.7. Copeland "Anti-Kickback" Act.** SDHC shall comply with the Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by the Department of Labor regulations at 29 C.F.R. Part 3.

**17.8. Energy Policy and Conservation Act.** SDHC shall comply with the mandatory standards and policies relating to energy efficiency, contained in the State's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

**17.9. Clean Air Act and Federal Water Pollution Control Act.** SDHC shall comply with all applicable standards, orders or regulations issued pursuant to Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387), for contracts in excess of \$150,000.

**17.10. Religious Activities.** SDHC shall comply with all applicable HUD requirements governing the use of CDBG Funds by religious organizations, including 24 C.F.R. section 570.200(j), referring to 24 C.F.R. section 5.109, and Executive Order 11245, as amended by Executive Order 13279.

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

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

B. The Parties to this MOU agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this

MOU, the Parties to this MOU certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. SDHC agrees to send to each labor organization or representative of workers with which SDHC has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of SDHC's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the person(s) taking applications for each of the positions and the anticipated date the work shall begin.

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

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

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

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

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

**17.12. Reversion of Assets.** Upon the expiration or termination of this MOU, SDHC shall transfer to City any CDBG Funds on hand at the time of such expiration or termination and relating to the Fund and any accounts receivable of the Fund. As applicable, SDHC shall comply with the requirements of 24 C.F.R. section 70.503(b)(7) regarding the use or disposition of any real property acquired or improved with CDBG Funds in excess of \$25,000. If SDHC does not use the real property to meet one of the national objectives in 24 C.F.R. section 570.208 for at least five (5) years after the expiration or termination of this MOU, SDHC shall pay City an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of funds other than CDBG Funds for the acquisition of, or improvement to, the property, which payment shall be deemed Program Income to City.

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

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

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

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

**18. REMEDIES FOR DEFAULT.** Notwithstanding any provision of this MOU to the contrary, if SDHC fails to comply with any term or condition of this MOU, City may exercise any or all of the following remedies: (a) immediately terminating this MOU; (b) those remedies set forth in 24 C.F.R. section 570.910, pursuant to 24 C.F.R. section 570.501(b); (c) deeming SDHC ineligible from consideration for any future CDBG funding from City; (d) any other remedy specified in this MOU; or (e) any remedy available at law or in equity. The rights and remedies of City under this MOU are cumulative and exercise of any one or more of such rights

or remedies shall not limit, waive, or deny any of City's other rights or remedies under this MOU, at law or in equity, existing as of the Effective Date or later enacted or established, that may be available to City against SDHC.

## **19. TERMINATION.**

**19.1. Convenience.** Notwithstanding the Term of this MOU or any provision of this MOU to the contrary, City or SDHC may terminate this MOU for any reason, at any time, upon sixty (60) calendar days' Notice of termination to the other Party.

**19.2. Curable Default.** Notwithstanding any provision of this MOU to the contrary, City, at its sole discretion, may terminate this MOU upon thirty (30) calendar days' Notice to SDHC, if SDHC fails to comply with (i.e., defaults on) any term or condition of this MOU. The Notice shall include a description of SDHC's default. If SDHC fails to cure the default within thirty (30) calendar days after the date SDHC receives Notice of the default, City may immediately terminate this MOU.

**19.3. Incurable Default.** Notwithstanding any provision of this MOU to the contrary, City, at its sole discretion, may immediately terminate this MOU upon Notice to SDHC if:

**19.3.1.** SDHC made or makes a material misrepresentation to City relating to this MOU, regardless of whether SDHC had knowledge or intent with respect to the misrepresentation;

**19.3.2.** SDHC violates any term or condition of this MOU for which immediate termination is authorized;

**19.3.3.** SDHC, or any of its officers or commissioners, becomes subject to any court action or proceeding relating to the performance of SDHC's obligations under this MOU that materially and adversely affects SDHC's performance of its obligations under this MOU;

**19.3.4.** SDHC misappropriates any funds under this MOU (or any other agreement with City);

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

**19.3.6.** HUD requires or the City elects, in the City's sole and absolute discretion, to terminate or dissolve the Fund; or

**19.3.7.** SDHC is unable or unwilling to comply with any additional terms or conditions governing the Fund or the making or servicing of Loans from the Fund that may be required by newly enacted (or amended) Federal, State, City or other local laws, statutes, rules, regulations, orders, ordinances, resolutions, permits, requirements, policies, or directives.

**19.4. Effect of Termination.** City's termination of this MOU shall terminate each and every right of SDHC, and any person claiming any rights by or through SDHC, under this MOU, except SDHC's right to fair and reasonable compensation under Section 20.

**20. SDHC RESPONSIBILITIES ON EXPIRATION OR TERMINATION OF THIS MOU.** If this MOU expires or is terminated, SDHC shall complete any and all additional work necessary for the orderly filing of documents and closing of SDHC's performance of its obligations under this MOU. SDHC shall be entitled to fair and reasonable compensation for work performed by SDHC before the effective date of expiration or termination of this MOU. Upon the expiration or earlier termination of this MOU, SDHC shall comply with Section 4.2 and transfer to the City any and all CDBG Funds (including Program Income) held by SDHC at the time of such expiration or termination and any accounts receivable of the Fund.

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

**22. MANDATORY ASSISTANCE.** If a third party dispute or litigation, or both, to which City is a party arises out of, or relates in any way to, this MOU, upon City's request, SDHC, its agents, officers, and employees shall fully assist City in resolving the dispute or litigation. SDHC's assistance to City, hereinafter referred to as "Mandatory Assistance," includes providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute or litigation. In providing City with Mandatory Assistance, if SDHC, its commissioners, agents, officers, or employees incur costs, City will compensate SDHC for such costs. However, if it is determined through resolution of the third party dispute or litigation, or both, that such third party dispute or litigation was attributable, in whole or in part, to one or more acts or omissions of SDHC, its commissioners, agents, officers, or employees, SDHC shall fully reimburse City for all funds paid to SDHC, its commissioners, agents, officers, or employees for Mandatory Assistance. Any attorney's fees SDHC may incur as a result of providing Mandatory Assistance are not reimbursable.

**23. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** 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, representatives, and agents ("Indemnified Parties") from and against any and all claims, losses, costs (including reasonable attorney's 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.

**24. 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 24. 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 24. 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 24.

**25. CITY REPRESENTATIVE.** City's Economic Development Department is City's contract administrator for this MOU. The person identified in **Exhibit A** as City Notice recipient is City's representative for all purposes of this MOU (City Representative). The City Representative shall communicate with SDHC on all matters related to this MOU and the Fund. 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 Mayor or his or her designee, unless this MOU specifies otherwise. City, at its sole discretion, may change the identity of the City Representative at any time by Notice to SDHC.

**26. SDHC REPRESENTATIVE.** The person identified in **Exhibit A** as SDHC 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 and the Fund. SDHC may change the identity of the SDHC Representative by Notice to City at least ten (10) calendar days in advance of the effective date of such change.

**27. INDEPENDENT CONTRACTOR.** SDHC acknowledges that SDHC is an independent contractor and not an agent or employee of City. Any provision of this MOU that may appear to give City a right to direct SDHC concerning the details of performing its obligations under this MOU, or to exercise any control over such performance, shall mean only that SDHC shall follow the direction of City concerning the end results of the performance. SDHC shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind, on

behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this MOU or is otherwise expressly conferred in writing by City.

**28. NO ASSIGNMENT.** Because this MOU is entered into by City in reliance upon SDHC's qualifications, experience, and personnel, SDHC shall not assign or subcontract any of its rights, obligations, or duties under this MOU, without the prior written consent of City, which may be given, withheld or conditioned in City's sole discretion. Any putative assignment of SDHC's rights, obligations, or duties under this MOU shall not create a contractual relationship between City and any putative assignee, and any such assignment shall be ineffective, null and void. Any assignment in violation of this Section 28 is grounds for immediate termination of this MOU, at the sole discretion of City.

**29. CONFIDENTIALITY OF INFORMATION.** All information provided by City to SDHC in connection with this MOU or the Fund is for the sole use of SDHC. SDHC shall not release any of this information to any third party, without the prior written consent of City, except information that: (a) was publicly known, or otherwise known to SDHC, at the time the information was provided to SDHC by City; (b) subsequently becomes publicly known, through no act or omission of SDHC; (c) becomes known to SDHC from a source or means other than City; or (d) is considered a "public record," pursuant to the California Public Records Act (California Government Code sections 6250 – 6276.48), as determined by the City Attorney and SDHC General Counsel.

**30. INTELLECTUAL PROPERTY.** All rights to discoveries or inventions that arise or are developed in the course of performance of this MOU shall be the property of City and may be disposed of in accordance with City policy. City, at its sole discretion, may file for patents in connection with all rights to any such discoveries or inventions. SDHC acknowledges that all Works shall constitute a "work for hire," as that term is defined in the Copyright Act of 1976, as amended. Accordingly, all right, title, and interest in and to all Works shall be the exclusive property of City, including all copyrights and other intellectual property rights in any and all Works. If for any reason a Work is not deemed to be a "work for hire," SDHC hereby grants, transfers, sells, and assigns, exclusively to City, all right, title, and interest in and to said Work, including all copyrights and other intellectual property rights in such Work. SDHC shall execute and deliver to City a confirming grant and assignment of all rights in and to all Works, and shall execute any other proper document City deems necessary to ensure the complete and effective transfer of all right, title, and interest in and to such Works to City. SDHC shall deliver all Works to City within thirty (30) calendar days following the expiration or termination of this MOU. If SDHC fails to deliver all Works to City and City desires to use such Works, SDHC shall provide City with equivalent materials, at its own expense, or reimburse City, in full, for the cost of developing equivalent materials. SDHC represents and warrants that any materials or deliverables, including all Works, provided under this MOU are original, not encumbered, and do not infringe upon the copyright, trademark, patent, or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials, or Works provided under this MOU become the subject of a claim, suit, or allegation of copyright, trademark, or patent infringement, City shall have the right, in its sole discretion, to require SDHC to produce, at SDHC's own expense, new non-infringing materials, deliverables, or Works as a means of remedying any claim of infringement, in addition to any other remedy available to City at law or in equity. SDHC shall indemnify and hold harmless City, its elected officials, officers,

employees, representatives, and agents from and against any and all claims, actions, costs, judgments, or damages of any type, alleging or threatening that any materials, deliverables, supplies, equipment, services, or Works provided under this MOU infringe the copyright, trademark, patent, or other intellectual property or proprietary rights of any third party.

### **31. MISCELLANEOUS PROVISIONS.**

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

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

**31.3. Jurisdiction and Venue.** The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this MOU, subject to the requirements of Sections 21 and 22.

**31.4. 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 laws affecting this MOU or the Fund.

**31.5. 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.

**31.6. 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.

**31.7. 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.

**31.8. Conflicts between Terms.** If an apparent conflict or inconsistency exists between the main body of this MOU and any exhibit attached to this MOU, the main body of this MOU



shall control. If a conflict exists between an applicable Federal, State, City, or other 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 immediately upon the identification of any apparent conflict or inconsistency concerning this MOU.

**31.9. 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 clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this MOU refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

**31.10. 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.

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

**31.12. Exhibits Incorporated.** All exhibits referenced in this MOU are incorporated into this MOU.

**31.13. 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.

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

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

**31.16. 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.

**[Signatures on following page.]**

**SIGNATURE PAGE  
TO  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
CITY OF SAN DIEGO AND  
THE SAN DIEGO HOUSING COMMISSION  
REGARDING THE COMMUNITY DEVELOPMENT BLOCK GRANT AFFORDABLE  
HOUSING REVOLVING LOAN FUND**

IN WITNESS WHEREOF, this MOU is entered into by the City of San Diego, acting by and through its Mayor or designee, pursuant to City Council Resolution R-312442, authorizing entry into this MOU, and by SDHC, by and through the signature of SDHC's authorized representative(s), all as set forth below.

**CITY OF SAN DIEGO,**  
a municipal corporation

**SAN DIEGO HOUSING COMMISSION,**  
a public agency

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

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

Jeff Davis  
Executive Vice President, Chief of Staff

APPROVED AS TO FORM:

APPROVED AS TO FORM:

MARA W. ELLIOTT  
City Attorney

CHRISTENSEN & SPATH, LLP,  
a California limited liability partnership

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

Marguerite E. Middaugh  
Deputy City Attorney

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

Charles B. Christensen  
General Counsel

**EXHIBIT A**  
**CDBG Affordable Housing Revolving Loan Fund MOU**  
**(San Diego Housing Commission)**

**Notice Addresses**

**CITY:**

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

Email: [SMaduliWilli@sandiego.gov](mailto: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

Email: [jeffd@sdhc.org](mailto:jeffd@sdhc.org)  
(619)578-7606

Copy to:  
Christensen & Spath LLP  
550 West C Street, Suite 1660  
San Diego, CA 92101  
(619) 236-9343  
[cbc@candslaw.net](mailto:cbc@candslaw.net)

**EXHIBIT B**  
**CDBG Affordable Housing Revolving Loan Fund MOU**  
**(San Diego Housing Commission)**

**Insurance Requirements**

1. **General Requirements.** SDHC shall not begin any performance under this MOU until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and endorsements required and described in this Exhibit B; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required in this Exhibit B. SDHC's liabilities, including SDHC's indemnity obligations, under this MOU, shall not be deemed limited in any way to the insurance coverage required in this Exhibit B. Maintenance of the insurance coverage specified in this Exhibit B is a material element of this MOU, and SDHC's failure to maintain or renew coverage or to provide evidence of renewal during the Term of this MOU may be treated by City as a material breach of this MOU by SDHC.

2. **Specific 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 SDHC's performance under this MOU and performance by any agents, representatives, employees or subcontractors of SDHC. SDHC shall provide, at a minimum, the following insurance coverage:

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

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

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

2.4. Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to the profession, with liability limits no less than \$1,000,000 per occurrence or claim and \$2,000,000 aggregate. If SDHC maintains broader coverage and/or higher liability limits than the minimum liability amounts required by this MOU, City shall be entitled to the broader coverage and/or the higher liability limits maintained by SDHC. Any available insurance proceeds in excess of the minimum liability limits of insurance coverage required by this MOU shall be available to City.

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

2.5.1. *Additional Insured Status.* The City, its officers, officials, employees, and volunteers are to be covered as additional insureds 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).

2.5.2. *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, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of SDHC's insurance and shall not contribute with it.

2.5.3. *Notice of Cancellation.* Each insurance policy required above shall provide that coverage shall not be canceled, except with thirty (30) calendar days' Notice to City.

2.5.4. *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.

2.5.5. *Claims Made Policies (applicable only to professional liability).* The retroactive date must be shown in each policy of professional liability insurance and must be before the Effective Date of this MOU or the beginning of performance under this MOU. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of all performance under this MOU. If coverage is canceled or non-renewed and not replaced with another claims-made policy of professional liability insurance with a retroactive date prior to the Effective Date of this MOU or the beginning of performance under this MOU, SDHC must purchase "extended reporting" coverage for a minimum of five (5) years after completion of performance under this MOU.

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

2.7. 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 of this MOU applicable to insurance policies provided by admitted carriers.

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

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

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

2.11. 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.

2.12. Subcontractors. SDHC shall require and verify that all subcontractors maintain insurance meeting all the insurance requirements of this MOU. SDHC shall also ensure that City is an additional insured on 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.

**EXHIBIT C**  
**CDBG Affordable Housing Revolving Loan Fund MOU**  
**(San Diego Housing Commission)**

**Fiscal Year 2020 Scope of Services**  
**Affordable Housing Revolving Loan Fund MOU**  
**(San Diego Housing Commission)**

1. PROJECT SITE LOCATION

The San Diego Housing Commission (SDHC) shall maintain a project office at 1122 Broadway, Suite 300, San Diego, CA 92101. The main hours of operation are Monday through Friday, 8:00 am to 6:00 pm, closed every other Friday.

2. ADMINISTRATIVE OFFICE LOCATION

SDHC shall maintain their administrative office at 1122 Broadway, Suite 300, San Diego, CA 92101. The main hours of operation are Monday through Friday, 8:00 am to 6:00 pm, closed every other Friday.

3. TARGET POPULATION/GEOGRAPHICAL AREA

The project target population consists of low to moderate income (LMI) households residing within the City of San Diego. The project will be managed from the SDHC project site location, located in census tract 52.00, where 69 percent of the households earn less than \$60,000. The office is centrally located at “Smart Corner” in downtown San Diego adjacent to major transportation lines served by MTS buses and trolleys, and conveniently suited to the targeted population of low-income individuals, wage-earners and households that rely on public transportation. The Affordable Housing Revolving Loan Fund will benefit households earning no more than 80% Area Median Income.

4. PROJECT DESCRIPTION

In Fiscal Year 2020, an Affordable Housing Revolving Loan Fund will be maintained to provide loans for the following programs currently administered by SDHC:

**Affordable Multifamily Housing Acquisition and/or Rehabilitation – Permanent Supportive Housing**

This program will contribute to the creation and preservation of affordable rental housing opportunities for LMI households, with a focus on permanent supportive housing options, by providing gap financing loans for the acquisition and/or rehabilitation of multifamily housing units.

**Affordable Multifamily Housing Acquisition and/or Rehabilitation - Homeless Shelters and/or Transitional Housing**

This program will contribute to the creation and preservation of affordable housing and/or shelter/transitional housing opportunities for LMI households experiencing or formerly experiencing homelessness, by providing forgivable loans for the acquisition and/or rehabilitation of multifamily housing units or homeless shelters.



5. PROJECT OUTCOME MEASURES

Pursuant to federal requirements, the project objective, outcome and indicator are defined below:

**Affordable Multifamily Housing Acquisition and/or Rehabilitation – Permanent Supportive Housing**

**Affordable Multifamily Housing Acquisition and/or Rehabilitation - Homeless Shelters and/or Transitional Housing**

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

Outcome Category: ☒ Availability/Accessibility  
☐ Affordability  
☐ Sustainability

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

6. PROJECT OUTCOME

**Affordable Multifamily Housing Acquisition and/or Rehabilitation – Permanent Supportive Housing**

A total of 91 LMI households will benefit from the rehabilitation of multifamily residential units with a focus on providing permanent supportive housing.

**Affordable Multifamily Housing Acquisition and/or Rehabilitation - Homeless Shelters and/or Transitional Housing**

A total of 45 LMI households will benefit from the rehabilitation of affordable housing and/or shelter/transitional housing opportunities with a focus on individuals/households experiencing homelessness and/or formerly experiencing homelessness.

7. PROJECT SERVICES

**Affordable Multifamily Housing Acquisition and/or Rehabilitation – Permanent Supportive Housing**

This project will set-aside funding to be invested along with other funding sources/programs offered by the Housing Commission. These funds will increase permanent supportive housing units in the City of San Diego and will be offered as a loan. Eligible projects will have at least 25% of the units designated as permanent

supportive affordable units. Supportive services, appropriate to the target population, will be provided on-site or in partnership agreements for all permanent supportive affordable unit residents. It is anticipated the minimum period of rental housing affordability will be 15 years. The services provided under this category will follow the Housing Commission's Rental Housing Production Guidelines detailed in section 10.

**Affordable Multifamily Housing Acquisition and/or Rehabilitation - Homeless Shelters and/or Transitional Housing**

These funds will increase and/or rehabilitate existing transitional housing units or homeless shelter/transitional housing facilities in the City of San Diego and may be offered as a Forgivable Loan. Supportive services, appropriate to the target population, will be provided on-site or in partnership agreements for all transitional housing unit and/or homeless shelter residents. The services provided under this category will follow the forgivable loan recommendations detailed in section 11.

8. PROJECT RECORDS

The Housing Commission shall maintain all records required by federal regulations specified in 24 C.F.R. 570.506, as applicable to the activities funded under the MOU. The Housing Commission shall make available to the City, the U.S. Government or their authorized agents all project-related records, documents, and any other financial data or records for review. Such records shall include, but are not limited to:

<b>L/M Income Housing Activities (LMH)</b>
In order to demonstrate compliance, <b>ALL</b> of the following records must be maintained:
<ul style="list-style-type: none"><li>• Total cost of the activity, including both CDBG and non-CDBG funds.</li><li>• For each unit claimed to be occupied by an L/M income household, the size and combined income of the household.</li></ul>

Low and moderate income household eligibility determinations shall be based on the most current CDBG Income Limits issued by HUD. All Housing Commission files pertaining to personal client information must remain confidential and kept in a locked file cabinet and/or password protected electronic format.

The Housing Commission is required to obtain documentation regarding the income of all persons over 18 living in the home. Documentation of income must be obtained for each client prior to providing services utilizing CDBG funds. Income includes gross wages, social security payments, retirement, disability, alimony, child support, and unemployment. Income does not include food stamp assistance or lump sum payments such as insurance settlements. Occasional overtime is excluded, but regular overtime is included. Presumed Benefit does not apply to L/M Income Housing Activities.

Program staff will track and document program activity expenditures in a Yardi database. Information on clients served will be tracked using Microsoft Excel.

9. CLOSEOUTS

The Housing Commission shall be responsible for completing and submitting a fiscal

year and contract term close-out report(s) to include: total number of clients served, program accomplishments and summary, client demographics, financial summary and fiscal audit reports. Close-out information shall be submitted to the City concurrently with Consolidated Annual Performance and Evaluation Report (CAPER) process.

10. SAN DIEGO HOUSING COMMISSION RENTAL HOUSING PRODUCTION GUIDELINES

The mission of the San Diego Housing Commission (Housing Commission) is to provide affordable, safe quality homes for low- and moderate-income families and individuals in the City of San Diego and to provide opportunities to improve the quality of life for the families that the Housing Commission serves. In achieving this goal, the Housing Commission seeks to forge partnerships among public, nonprofit and private entities.

The Housing Commission may participate in housing development, acquisition, and/or rehabilitation as a sponsor, lender or guarantor, grantor, lessor or seller of land or in a combination of these capacities. All participation must further the Housing Commission's goal of providing affordable housing to very low and low income households.

Very low income is defined as below 50% of the area median income; low income is defined as between 51 % and 80% of the area median income. Affordable housing is defined as housing for which a lower income household spends no more than 30% of standardized income.

The Housing Commission's Housing Finance Unit provides advantageous financing to affordable housing developers. This includes forgivable loans, deferred loans, interest write-downs, and matching funds for State, Federal, and private financing. Activities within this program are subject to community planning group review.

Housing Commission loan terms are outlined in the open Affordable Housing Notice of Funding Availability (NOFA) and may change from time to time to meet market demands. All loans must conform to Housing Commission underwriting, as outlined in the current NOFA, and Housing Commission loan policies.

11. FORGIVABLE LOANS

Forgivable loans issued under this MOU shall be pursuant to the following terms. Additional terms may be agreed upon in a subsequent document by mutual written agreement of the Parties.

Forgivable loans may be issued for rehabilitation of shelter/transitional housing facilities.

The term of any forgivable loans issued under this MOU will be for a term of five (5) years following the completion of rehabilitation and shall have a sliding scale of forgiveness (20% forgiven each year) over the five year term with 100% of the loan

forgiven at year five if the use of the property remains, and the program participant outcomes are met as required by the loan documents.

Applications for forgivable loans shall be through modified non-competitive application review.

Forgivable loan recommendations will be presented to the SDHC Board of Commissioners for consideration and approval.

All CDBG Affordable Housing Revolving Loan Fund requirements will be documented in a project specific CDBG agreement.

**EXHIBIT D**  
**CDBG Affordable Housing Revolving Loan Fund MOU**  
**(San Diego Housing Commission)**

**FY 2020 Budget**  
**Affordable Housing Revolving Loan Fund MOU**  
**(San Diego Housing Commission)**

AGENCY SAN DIEGO HOUSING COMMISSION

PROJECT AFFORDABLE HOUSING REVOLVING LOAN FUND

SALARIES & WAGES \_\_\_\_\_  
FRINGE BENEFITS \_\_\_\_\_

TOTAL PERSONNEL 0

FEDERALLY APPROVED INDIRECT COST  
RATE \_\_\_\_\_

SUPPLIES-ADMIN USE \_\_\_\_\_

SUPPLIES-CLIENT USE \_\_\_\_\_

PUBLICATIONS/PRINTING \_\_\_\_\_

RENT/LEASE (PROJECT OPERATIONS) \_\_\_\_\_

INSURANCE \_\_\_\_\_

UTILITIES \_\_\_\_\_

COMMUNICATIONS \_\_\_\_\_

OTHER EXPENSES (SPECIFY):

MULTI-FAMILY REHAB –  
HOMELESS  
SHELTERS/TRANSITIONAL  
HOUSING 5,000,000

MULTI-FAMILY REHAB - PSH 5,000,000

TOTAL NON-PERSONNEL 10,000,000

TOTAL CDBG PROJECT BUDGET 10,000,000

**EXHIBIT E**  
**CDBG Affordable Housing Revolving Loan Fund MOU**  
**(San Diego Housing Commission)**

**Fee Schedule**

<b>Program</b>	<b>Fee Type</b>	<b>Fee</b>	<b>Notes</b>
First Time Homebuyer	Application	\$ 1,500.00	included in loan/grant applicant does not pay
First Time Homebuyer	MCC Application	\$ 620.00	paid at the time of application to SDHC by applicant
First Time Homebuyer	Property Inspection	\$325 - \$480	included in loan/grant applicant does not pay
Single Family Servicing	Subordination - 1st Loan	\$ 200.00	included as part of refinance, paid by borrower
Single Family Servicing	Subordination - Each Additional Loan	\$ 50.00	included as part of refinance, paid by borrower
Single Family Servicing	Loan Reconveyance	\$ 45.00	included as part of refinance, paid by borrower
Single Family Servicing	Payoff Demand	\$ 30.00	included as part of the payoff, paid by borrower
Multi Family Servicing	Subordination - 1st Loan	\$ 500.00	included as part of refinance, paid by borrower
Multi Family Servicing	Subordination - Each Additional Loan	\$ 100.00	included as part of refinance, paid by borrower
Multi Family Housing	Application	\$ 60,000.00	paid at close of escrow
Multi Family Housing	Legal	\$ 25,000.00	paid at close of escrow
Multi Family Housing	Asset Management	\$ 15,000.00	paid at close of escrow
Multi Family Housing	Compliance Monitoring	\$ 155.00	per unit fee charged annually for occupancy and rent monitoring
Multi Family Housing	Third Party Construction Review	\$ 12,500.00	paid at close of escrow

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 COMMUNITY DEVELOPMENT BLOCK GRANT AFFORDABLE HOUSING REVOLVING LOAN FUND AND AUTHORIZING THE SAN DIEGO HOUSING COMMISSION'S SIGNATURE OF THE MOU AND RELATED AMENDMENTS.

WHEREAS, the United States Department of Housing and Urban Development (HUD) annually awards Community Development Block Grant (CDBG) program funds to the City of San Diego (City); and

WHEREAS, the City and the former Redevelopment Agency of the City of San Diego (Former RDA) previously entered into that certain Loan Agreement (Long-Term Debt), dated March 1, 2011, and that certain Repayment Agreement (CDBG Debt), dated June 30, 2010, evidencing the Former RDA's obligations to repay the City CDBG funds loaned to the Former RDA; and

WHEREAS, pursuant to the law dissolving California redevelopment agencies, the City, acting solely in its capacity as the successor agency to the Former RDA (Successor Agency), is repaying the Former RDA's CDBG obligations to the City with property tax increment revenue previously allocated to the Former RDA, resulting in the City receiving "Program Income" (defined in the federal CDBG program regulations at Title 24 Code of Federal Regulations section 570.500); and

WHEREAS, the City Council approved Resolution R-310407 on May 4, 2016, establishing a new CDBG Affordable Housing Revolving Loan Fund (Fund) to increase affordable housing opportunities in the City and approving the City's entry into an agreement to provide for the San Diego Housing Commission's (Housing Commission) administration, operation, and implementation of all loan, accounting, and reporting activities and actions regarding the Fund (2016 MOU); 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, so that the SDHC will continue to administer, operate, and implement all loan, accounting, reporting and other actions regarding the Fund, from July 1, 2019 through June 30, 2024; and

WHEREAS, the City and the Housing Commission now propose to enter into the new MOU, a copy of which is included in the backup materials accompanying this Resolution; 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 amendments.
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. 2007579



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 Community Development Block Grant Affordable Housing Revolving Loan Fund.

<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