



EXECUTIVE SUMMARY

HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: February 19, 2021

HCR21-033

SUBJECT: Approval of a Memorandum of Understanding between the City of San Diego and the San Diego Housing Commission for Oversight and Administration of the City of San Diego's COVID-19 Housing Stability Assistance Program; Authorization for the San Diego Housing Commission to Accept and expend Federal and State Coronavirus Relief Funds and Coronavirus Aid, Relief and Economic Security (CARES) Act Community Development Block Grant Funds to Support the Program; and Approval of Related Actions

COUNCIL DISTRICT(S): Citywide

ORIGINATING DEPARTMENT: Rental Assistance Division

CONTACT/PHONE NUMBER: Azucena Valladolid / 619-578-7604

REQUESTED ACTION:

Authorize a Memorandum of Understanding between the San Diego Housing Commission (Housing Commission) and the City of San Diego (City) for the Housing Commission to oversee and administer the City's COVID-19 Housing Stability Assistance Program and authorize the Housing Commission to accept and expend federal and state Coronavirus Relief Funds and federal CARES Act Community Development Block Grant funds to administer the program.

EXECUTIVE SUMMARY OF KEY FACTORS:

- The City of San Diego COVID-19 Housing Stability Assistance Program will help pay past-due, unpaid rent and utilities for households with low income experiencing financial hardship due to the COVID-19 pandemic.
- The Housing Commission will administer the program pursuant to the proposed MOU between the Housing Commission and the City of San Diego and federal and state regulations.
- Funding sources include \$42,333,563 in federal Coronavirus Relief Funds allocated directly to the City of San Diego; \$44,877,753.57 in federal funds allocated by the State of California to the City of San Diego, and \$5,000,000 from federal Coronavirus Aid, Relief, and Economic Security (CARES) Act Community Development Block Grant (CDBG) funds awarded to the City of San Diego.
- California State Senate Bill 91 allows landlords to receive 80 percent of their tenants' arrears for the period of April 1, 2020, to March 31, 2021, if they agree to forgo the remaining 20 percent, and 25 percent of prospective rent for the months of April through June 2021. If a landlord declines this provision, the program can pay 25 percent of the tenants' arrears and up to 25 percent of the tenant's upcoming monthly rent for the three months of April through June 2021.
- In addition to rental assistance, the program will include assistance to pay for past-due, unpaid utilities, such as electricity, gas, water and sewer, trash removal and energy costs.



REPORT

DATE ISSUED: February 17, 2021

REPORT NO: HCR21-033

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of February 19, 2021

SUBJECT: Approval of a Memorandum of Understanding between the City of San Diego and the San Diego Housing Commission for Oversight and Administration of the City of San Diego's COVID-19 Housing Stability Assistance Program; Authorization for the San Diego Housing Commission to Accept and expend Federal and State Coronavirus Relief Funds and Coronavirus Aid, Relief and Economic Security (CARES) Act Community Development Block Grant Funds to Support the Program; and Approval of Related Actions

COUNCIL DISTRICT: Citywide

REQUESTED ACTION

Authorize a Memorandum of Understanding between the San Diego Housing Commission (Housing Commission) and the City of San Diego (City) for the Housing Commission to oversee and administer the City's COVID-19 Housing Stability Assistance Program and authorize the Housing Commission to accept and expend federal and state Coronavirus Relief Funds and federal CARES Act Community Development Block Grant funds to administer the program.

STAFF RECOMMENDATION

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

- 1) Authorize the Housing Commission to enter into a Memorandum of Understanding (MOU) with the City of San Diego for the Housing Commission to oversee and administer the City of San Diego's COVID-19 Housing Stability Assistance Program to provide emergency rental assistance and/or utility assistance to households with low income in the City of San Diego that experience financial hardship due to the COVID-19 pandemic;
- 2) Authorize the Housing Commission to amend its Fiscal Year 2021 budget in the amount of \$92,211,316.57 which consists of \$42,333,563 in federal Coronavirus Relief Funds allocated directly to the City of San Diego; \$44,877,753.57 in federal funds allocated by the State of California to the City of San Diego, and \$5,000,000 from federal Coronavirus Aid, Relief, and Economic Security (CARES) Act Community Development Block Grant (CDBG) funds awarded to the City of San Diego, to be administered by the Housing Commission to provide emergency rental assistance and/or utility assistance to households with low income in the City of San Diego that experience financial hardship due to the COVID-19 pandemic and to cover administrative expenses in accordance with federal and state funding requirements;

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- 3) Authorize the Housing Commission's President & CEO, or designee, to modify the COVID-19 Housing Stability and Assistance Program, if necessary, without further action by the Housing Commission's Board of Commissioners (Board) or the Housing Authority, but only if and to the extent that such changes comply with the terms of the executed MOU and are necessary to fulfill federal and state funding requirements;
- 4) Authorize the Housing Commission's President & CEO, or designee, to substitute approved funding sources with any other available funds as deemed appropriate, contingent upon budget availability, and further authorize the President & CEO, or designee, to take such actions as are necessary, convenient and/or appropriate to implement this approval and delegation of authority by the Housing Commission upon advice of the General Counsel; and
- 5) Authorize the Housing Commission's President & CEO, or designee, to execute all necessary documents and instruments that are necessary and/or appropriate to implement these approvals, in a form and format approved by General Counsel, and to take such actions necessary and/or appropriate to implement these approvals.

SUMMARY

In response to the ongoing COVID-19 pandemic, the federal Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA), signed into law on December 27, 2020, included \$25 billion for emergency rental assistance program funds for state, local and tribal governments throughout the United States. These funds included \$2.6 billion for the State of California, of which \$42,333,563 was allocated directly to the City of San Diego through the Coronavirus Relief Fund from the U.S. Department of Treasury and \$45,561,171.14 was allocated to the City of San Diego through the State of California's Coronavirus Relief Fund, as approved in State Senate Bill (SB) 91, signed into law on January 29, 2021. Combined, these funds provide the City of San Diego \$87,894,734.14 to assist low income households in the City of San Diego that have experienced financial hardship due to COVID-19. The State is retaining \$683,417.57 for administrative expenses.

SB91 includes three options for how cities and counties can access and administer these funds:

- A. **State Program:** The City of San Diego would transfer its federal allocation to the State for the administration of one program at the State level. Landlords and tenants would access funds through the partnership with Local Initiatives Support Corporation (LISC). This option requires using the state model of paying 80 percent of past-due rent to landlords and 25 percent of upcoming rent to tenants. If landlord refuses 80 percent as payment in full for arrears, the tenant may be issued 25 percent of arrears and prospective rent.
- B. **Local Program:** The City of San Diego could receive a block grant from the State and administer funds directly. These funds would be combined with the federal allocation and would require using the same State model of 80 percent to landlords/25 percent to tenants.
- C. **Hybrid Program:** The City of San Diego would administer a local program with the \$42,333,563 received directly from the federal government. The State would administer the \$45,561,171 allocated by the State for City of San Diego landlords and tenants. The local program would not have to follow the State's 80 percent/25 percent model. The State would require the City to prevent duplication of benefits between program participants, placing liability on the local jurisdiction administering the funds

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Staff recommend Option B to serve San Diego residents most at risk of eviction and displacement and prioritize rental arrears payments to landlords. This option provides for local administration of the funds, helps to ensure timely distribution of funds, and limits potential confusion for at-risk households because the funds are available through one program.

Pursuant to state funding requirements, the City of San Diego must obligate at least 65 percent of the State-allocated funds no later than June 1, 2021, or must have a plan to expend all of the State-allocated funds no later than August 1, 2021, unless the City of San Diego can demonstrate a plan to allocate all funds within the federal timeline.

Pursuant to federal funding requirements, 65 percent of the federal-allocated funds must be obligated no later than September 30, 2021, and all of the federal-allocated funds must be expended no later than December 31, 2021.

In addition, the San Diego City Council on October 13, 2020, authorized the allocation of \$5,000,000 in federal CARES Act CDBG funds for rental assistance (Resolution R-313256). These funds must be expended by December 31, 2021, per the proposed MOU for the Housing Stability Assistance Program, unless an extension is provided per the MOU.

The proposed City of San Diego Housing Stability Assistance Program would help pay rent and utilities for households with low income (up to 80 percent of San Diego's Area Median Income [AMI]). Under the State's requirement, the program would prioritize below 50 percent of AMI or unemployed for 90 days. Rental arrears must be prioritized prior to paying prospective rent.

SB91 allows landlords to receive 80 percent of their tenants' arrears for the period of April 1, 2020, to March 31, 2021, if they agree to forgo the remaining 20 percent plus 25 percent of prospective rent for the months of April through June 2021. If a landlord declines this provision, the program can pay 25 percent of the tenants' arrears and up to 25 percent of the tenant's upcoming monthly rent for the three months of April through June 2021.

In addition to rental assistance, the COVID-19 Housing Stability Assistance Program will include assistance to pay for past-due, unpaid utilities, such as electricity, gas, water and sewer, trash removal and energy costs, such as fuel oil. Telephone, cable and internet service are not eligible for utility assistance, and utilities paid by the landlord are considered rent.

To be eligible for assistance through the City of San Diego COVID-19 Housing Stability Assistance Program, households must meet the following criteria:

- Tenant has a City of San Diego address.
- Household income is at or below 80 percent of AMI, with priority for households at or below 50 percent of AMI. (The U.S. Department of Housing and Urban Development establishes the AMI levels each year; 80 percent of AMI is currently \$92,400 per year for a family of four.)
- Household has an obligation to pay rent.
- Household does not currently receive any rental subsidies.
- At least one member of the household has a reduction of income or other financial hardship due to COVID-19.
- Household experienced or is at risk of experiencing homelessness or housing instability.

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The Housing Commission will administer the Housing Stability Assistance Program pursuant to the proposed MOU between the Housing Commission and the City of San Diego and federal and state regulations. An online application portal will be available on the Housing Commission's website for residents to apply and submit required documents. The Housing Commission will also be contracting with community-based organizations to help with community outreach and to assist households with their applications, especially those without internet access. The Housing Commission anticipates contracting with 211 San Diego to provide customer service and application assistance to households seeking information or assistance from the Housing Stability Assistance Program.

In addition, on February 4, 2021, the Housing Commission launched on its website a portal for City residents to state their interest in being notified about the proposed COVID-19 Housing Stability Assistance Program when it launches, if the City Council and Housing Authority approve the staff-recommended actions.

A January 19, 2021, report from the State of California's nonpartisan Legislative Analyst's Office estimated that renters statewide owe \$400 million in unpaid rent as of December 2020, with the average of \$4,500 of unpaid rent per household. The report also identified that the unemployment rate for households with annual income of \$50,000 or less was 15.1 percent, and that 80 percent of households in this income group are renters. San Diego-specific data were not included in the report.

According to the Housing Commission's May 28, 2020, report "Preserving Affordable Housing in the City of San Diego," approximately half of the housing units in the City of San Diego (273,050) are occupied by renters. Before COVID-19, approximately 54 percent of these renter households spent more than 30 percent of their income on rent. Of the rental housing units in the City, 46,850 are unrestricted but have rents affordable to households with income up to 60 percent of San Diego's Area Median Income (AMI). An additional 23,450 units have restrictions recorded on the properties that require their rents to remain affordable for specific income levels.

Currently, City of San Diego renters cannot be evicted for nonpayment of rent due to COVID-19. The State of California's temporary ban on evictions was signed into law on January 29, 2021, and remains in effect until June 30, 2021. The City of San Diego's temporary ban on evictions, proposed by Mayor Todd Gloria and approved by the City Council on January 26, 2021, will take effect on July 1, 2021, and remain in effect until 60 days after the City of San Diego's COVID-19 State of Emergency ends.

During the development of the COVID-19 Housing Stability Assistance Program, the Housing Commission has engaged in extensive community outreach to educate and inform City of San Diego residents about the eviction protections in place and the interest list portal for the proposed program, including updating the Housing Commission web page <https://sdhc.org/evictionban> and producing informational flyers in English and Spanish. The Housing Commission distributed these flyers to the offices of the Mayor and City Council, community-based organizations, Promise Zone partners, Section 8 Housing Choice Voucher Rental Assistance participants, and households on the waiting list for Section 8 Housing Choice Voucher Rental Assistance. The Housing Commission also contracted with nine community-based organizations to conduct additional community outreach, including translation of the informational flyers into additional languages. In addition, public service ads featuring Mayor Gloria and Councilmember Vivian Moreno will be airing on local radio and television stations, in English and Spanish to further raise awareness of the eviction moratorium.

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Previously, the Housing Commission administered the City of San Diego's COVID-19 Emergency Rental Assistance Program, which disbursed more than \$13.7 million in previously allocated federal funds to provide one-time payments of up to \$4,000 per qualifying household to help more than 3,700 low-income households in the City of San Diego pay their rent.

AFFORDABLE HOUSING IMPACT

With the authorization to expend \$92,211,316.58 in federal funds, the City of San Diego's COVID-19 Housing Stability Assistance Program will help prevent housing displacement among low-income households affected by COVID-19. This program will help eligible households pay past-due, unpaid and prospective rent and past due utilities due to financial hardship related to the COVID-19 pandemic.

FISCAL CONSIDERATIONS

The funding proposed by this action was not included in the Housing Commission's Housing Authority-approved Fiscal Year 2021 Budget. Approving this action will authorize the Housing Commission to expend up to \$92,894,734 of federal funds allocated to the City of San Diego to oversee and administer the City of San Diego's COVID-19 Housing Stability Assistance Program.

Funding Sources

Coronavirus Relief Fund – Federal Allocation to the City of San Diego:	\$42,333,563.00
Coronavirus Relief Fund – State Allocation to the City of San Diego:	\$44,877,753.57
CARES Act CDBG Funds – Federal Allocation to the City of San Diego:	\$ 5,000,000.00
Total:	\$92,211,316.57

Funding Uses

COVID-19 Housing Stability Assistance Program Payments:	\$83,705,260.75
COVID-19 Housing Stability Assistance Program Administration:	\$ 8,506,055.82
Total:	\$92,211,316.57

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION

On October 13, 2020, the San Diego City Council unanimously approved the allocation of \$5,000,000 in CARES Act CDBG funds to support the City of San Diego's (City) COVID-19 Emergency Rental Assistance Program (Resolution No. R-313256).

On December 8, 2020, due to technical difficulties, the San Diego City Council and the Housing Authority continued to December 15, 2020, a report requesting authorization to execute an amended MOU between the Housing Commission and the City of San Diego (City) to continue the oversight and administration of the City's COVID-19 Emergency Rental Assistance Program and to take related actions.

On December 15, 2020, the San Diego City Council and the Housing Authority returned to staff a report requesting authorization to execute an amended MOU between the Housing Commission and the City of San Diego (City) to continue the oversight and administration of the City's COVID-19 Emergency Rental Assistance Program and to take related actions.

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KEY STAKEHOLDERS and PROJECTED IMPACTS

Stakeholders for this project include households with low income in the City of San Diego experiencing financial hardship due to the COVID-19 pandemic, landlords and property owners for these households, and the Housing Commission. This action is expected to have a positive impact on the community by helping qualifying households pay past-due or upcoming rent and utilities to assist with preventing housing displacement.

ENVIRONMENTAL REVIEW

This activity is not a project as defined by the California Environmental Quality Act (CEQA) Section 21065 and CEQA Guidelines Section 15378(b)(5), as it is an organizational or administrative activity of government 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.

The activities contemplated herein are categorically excluded from the National Environmental Policy Act and not subject to Section 58.5 pursuant to Section 58.35(b): Supportive services such as health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent, mortgage, or utilities, assistance in gaining access to government benefits.

Respectfully submitted,

Azucena Valladolid

Azucena Valladolid
Senior Vice President
Rental Assistance & Workforce Development
Rental Assistance Division

Approved by,

Jeff Davis

Jeff Davis
Deputy Chief Executive Officer
San Diego Housing Commission

Attachment: Draft Memorandum of Understanding

Docket materials are available in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at www.sdhc.org.

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SAN DIEGO
AND
THE SAN DIEGO HOUSING COMMISSION
FOR THE ADMINISTRATION OF THE COVID-19 HOUSING STABILITY
ASSISTANCE PROGRAM**

This Memorandum of Understanding (“HSAP MOU”) is dated as of _____ (the “Effective Date”) by and between the SAN DIEGO HOUSING COMMISSION, a public agency (“Commission”) and the CITY OF SAN DIEGO, a municipal corporation (“City”), hereinafter referred to as the “Parties” and each, as a “Party.”

RECITALS

WHEREAS, the State of California’s temporary ban on evictions was signed into law on January 29, 2021, and remains in effect until June 30, 2021. The City of San Diego’s temporary ban on evictions, proposed by Mayor Todd Gloria and approved by the City Council on January 26, 2021, will take effect on July 1, 2021, and remain in effect until 60 days after the City of San Diego’s COVID-19 State of Emergency ends.

WHEREAS, the City received Community Development Block Grant funding through the CARES Act (“CDBG-CV”) for relief efforts related to the COVID-19 pandemic. Funds must be expended on efforts directly related to prevent, prepare for or respond to COVID-19 in accordance with the CDBG-CV Grant Agreement.

WHEREAS, on October 13, 2020, the San Diego City Council (“City Council”) unanimously approved R-313256 which provided for the allocation of an additional \$5,000,000 in CARES Act CDBG funds to expand the City’s COVID-19 Emergency Rental Assistance Program.

WHEREAS, on or about December 27, 2020 the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (“CRRSAA”) was signed into law - \$42,333,563 were allocated to the City of San Diego through the Coronavirus Relief Fund.

WHEREAS, the State of California allocated \$45,561,171 in federal funds to the City through the State of California’s Coronavirus Relief Fund as approved in State Senate Bill (SB) 91, signed into law on January 29, 2021.

WHEREAS, on or about February 22, 2021, the City Council and the Housing Authority approved resolutions HA- _____ and R- _____ which authorized the City and Commission to enter into this HSAP MOU; authorized the transfer of \$92,894,734 which consists of \$42,333,563 in Coronavirus Relief Funds allocated directly to the City, \$45,561,171 in federal funds allocated by the State of California to the City, and \$5,000,000 of CDBG-CV funds from the City to the Commission; and authorized the Commission to accept and expend those funds to administer the COVID-19 Housing Stability Assistance Program (“HSAP Program”).

WHEREAS, now the City and Commission wish to enter into this HSAP MOU to provide for the administration of the HSAP Program to provide emergency rental and utility assistance for persons experiencing hardships due to the COVID-19 pandemic.

NOW, THEREFORE, the City and Commission agree as follows:

- A. Incorporation of Recitals. The Recitals set forth above are incorporated herein by this reference.
- B. Commission Responsibilities. The Commission shall be responsible for the general management, administration, and oversight of the HSAP Program in compliance with the terms of any applicable funding source as set forth in Section E of this HSAP MOU. Commission responsibilities include the following:
 1. Administration, Operation and Oversight of the HSAP Program. Commission shall develop and implement the HSAP Program in compliance with the HSAP Program Guidelines which are attached hereto as Exhibit A. Commission shall work with the City and develop a Coronavirus Relief Fund Implementation Plan and a CDBG-CV Implementation Plan (together “Implementation Plans”) which will set forth program administration, policy and reporting guidelines for the operation of the HSAP Program depending on the applicable funding source. The Implementation Plans are incorporated herein by this reference. Changes to the Implementation Plans may be made by mutual written agreement of the City Representative and Commission Representative (defined below) and do not necessitate an amendment to this HSAP MOU as set forth in Section H(5) herein.

The Commission will provide HSAP Program oversight and administration as set forth in the Implementation Plans.

2. Procurement, Management and Monitoring of Contracts. The Commission shall procure, manage and monitor any agreements relating to the operation of the HSAP Program and pursuant to this HSAP MOU in compliance with the Commission’s Procurement Policy. It is anticipated that all agreements funded by this HSAP MOU will not exceed the approval authority of the President and CEO of the Commission. To the extent an agreement is in excess of the approval authority of the President and CEO of the Commission, that agreement will be presented to the Commission’s Board and/or the Housing Authority for approval, where necessary.

For agreements funded by CDBG-CV funds, the Commission shall ensure all subcontractors will comply with the applicable terms of the CDBG-CV Grant Agreement and the terms set forth in Exhibit B.

3. Reversion. Any remaining funds which may exist at the conclusion of the HSAP Program shall be returned to City.

C. City Responsibilities. City responsibilities including the following:

1. Payment of Funds for the Operation of the HSAP Program. The City shall provide the following funding for the administration of the HSAP Program as set forth herein:

HSAP FUNDING	
<u>Coronavirus Relief Fund – Federal Allocation to the City of San Diego</u>	<u>\$42,333,563.00</u>
<u>Coronavirus Relief Fund – State Allocation to the City of San Diego</u>	<u>\$45,561,171.00</u>
<u>CARES Act CDBG Funds – Federal Allocation to the City of San Diego</u>	<u>\$ 5,000,000.00</u>
Total HSAP Funds	<u>\$92,894,734.00</u>

- a. If the City commits reduced funding in amounts less than the amounts identified herein, the City acknowledges that the services will be reduced accordingly.
 - b. City shall provide funds set forth herein in one lump sum payment within 10 days of the effective date of this HSAP MOU.
 - c. Administrative Costs. Total dollars allocated to administrative costs will not exceed the permissible amounts per federal and state Coronavirus Relief Fund regulations and guidelines or CDBG-CV guidelines. The Parties agree that any funds allocated as administrative dollars may be reallocated for rental or utility assistance payments upon agreement of City Representative and Commission Representative.
2. Approval of Implementation Plans. The City shall work with the Commission to finalize the Implementation Plans according to funding compliance requirements. The Implementation Plans must be approved and signed by both the City Representative and the Commission Representative, or designee, to be effective. City shall not unreasonably withhold approval of the Implementation Plans.

D. Term and Termination of HSAP MOU.

1. **Term of HSAP MOU.** The term of this HSAP MOU is from the Effective Date of this HSAP MOU through December 31, 2021, with two (2) additional one (1) year options to extend. Only one option may be exercised at a time.

2. **Termination of HSAP MOU.** Either Commission or the City may terminate this HSAP MOU and all obligations assigned thereunder for any reason by providing thirty (30) days written notice to the other. Upon termination or expiration of this HSAP MOU, any unexpended funds received by Commission shall be returned to City within thirty (30) days of the notice of termination.
- E. Acknowledgment of Funding Source. This HSAP MOU is controlled by applicable, Treasury Department guidelines; applicable State of California Coronavirus Relief Fund guidelines; federal Coronavirus Relief Fund guidelines; regulations relating to the Coronavirus Relief Fund, SB 91, CRRSAA; and the CDBG-CV Grant Agreement which are incorporated herein by this reference. The Parties agree and acknowledge that future guidance relating to the expenditure of the funds may be provided by the state or federal government. The Parties hereby agree that any applicable future guidance will be incorporated in the Implementation Plans.
- F. City Representative. The person identified below is the City’s representative for all purposes of this HSAP MOU (“City Representative”). The City Representative shall communicate with Commission on all matters related to the administration of this HSAP MOU and Commission’s performance of its obligations under this HSAP MOU. When this HSAP MOU refers to communications to or with City, those communications shall be with the City Representative, unless this HSAP MOU or the City Representative specifies otherwise. When this HSAP MOU refers to an act or approval to be performed by City, that act or approval shall be performed by the City Representative, unless this HSAP MOU specifies otherwise. The City may change the identity of the City Representative at any time by Notice to Commission at least ten (10) days in advance of the effective date of such change.
Christina Bibler, Director, Economic Development
City of San Diego
cbibler@sandiego.gov
(619) 236-6421
- G. Commission Representative. The person identified below is the Commission’s representative for all purposes of this HSAP MOU (“Commission Representative”). The Commission Representative shall communicate with City on all matters related to this HSAP MOU. When this HSAP MOU refers to communications to or with Commission, those communications shall be with the Commission Representative, unless this HSAP MOU or the Commission Representative specifies otherwise. When this HSAP MOU refers to any act or approval to be performed by Commission, that act or approval shall be performed by the Commission Representative, unless this HSAP MOU specifies otherwise. The Commission may change the identity of the Commission Representative at any time by Notice to City at least ten (10) days in advance of the effective date of such

change.

Jeff Davis, Deputy Chief Executive Officer
Commission
jeffd@sdhc.org
(619) 578-7606;

H. General Provisions

1. **Governing Law.** The terms and conditions of this HSAP MOU shall be construed and interpreted in accordance with the laws of the State of California.
2. **Jurisdiction and Venue.** The City and Commission agree to submit to the personal jurisdiction of, and that venue shall be in, any State of California court within the City of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this HSAP MOU.
3. **Indemnification.** To the fullest extent provided by law, the City and the Commission, each respectively, agree to indemnify, protect, and hold harmless one another, including their elected officials, officers, agents, representatives, departments, subcontractors, and employees, from and against any and all claims, demands, actions, proceedings, suits, liabilities, damages, costs (including reasonable attorneys' fees) or expenses for, including damage to property, the loss or use thereof, or injury or death to any person, caused by, arising out of, or related to the performance of services under this HSAP MOU by the City or the Commission, their elected officials, officers, agents, representatives, departments, subcontractors and employees. The City's and Commission's duty to indemnify and hold harmless one another shall not include any claim or liability arising from the established sole negligence or willful misconduct of the other, or the other's elected officials, officers, agents, representatives, departments, subcontractors, and employees.
4. **Insurance.** City certifies that it is self-insured and will maintain the same level of insurance throughout the duration of this HSAP MOU. Commission certifies it has obtained insurance as set forth herein:
 - i. Commission shall obtain a single limit general liability insurance and automobile liability insurance in the minimum amount checked and initialed below. If nothing is checked or indicated below, the limit shall be One Million Dollars (\$1,000,000.00):

<input checked="" type="checkbox"/>	General Liability \$1,000,000.00
<input checked="" type="checkbox"/>	Workers Compensation \$1,000,000.00
<input checked="" type="checkbox"/>	Automobile Liability \$500,000.00

- ii. This coverage is in addition to workers compensation insurance and other insurance coverages required by law. The policies shall provide that coverage on all policies may not be canceled, amended, terminated or otherwise modified without thirty (30) days advance written notice to the City. Coverage shall remain in full force and effect during the entire term of the policy.
5. **Amendment.** No change, alteration, amendment, or modification of the terms or conditions of this HSAP 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 HSAP MOU signed by both Parties. Commission's President and Chief Executive Officer, or designee, and the Mayor, or designee, shall have the authority to execute amendments to this HSAP MOU, which do not otherwise require City Council or Housing Authority approval. Modifications to the Implementation Plans shall not require amendment to this HSAP MOU.
6. **No Waiver.** No failure of either City or the Commission to insist upon the strict performance by the other of any term, covenant, or condition of this HSAP MOU, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this HSAP 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 HSAP MOU, and each and every term, covenant, and condition in this HSAP MOU shall continue in full force and effect regarding any existing or subsequent breach.
7. **Assignability.** Neither Party shall assign any interest in this HSAP MOU and shall not transfer any interest in the same (whether by assignment or novation).
8. **Severability.** The unenforceability, invalidity, or illegality of any provision of this HSAP MOU shall not render any other provision of this HSAP MOU unenforceable, invalid, or illegal.
9. **Counterparts.** This HSAP MOU may be executed in one or more counterparts, each of which shall be deemed an original. The Parties agree that in order to expedite the execution process, facsimile or electronically conveyed signatures will be considered and accepted as legally binding.
10. **Entire Agreement; No Novation.** This HSAP MOU represents the entire understanding between the Parties about the subject matter of this HSAP MOU. This HSAP MOU is not a novation of and does not amend or otherwise revise any other agreement, memorandum of agreement or understanding of the Parties.
11. **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 HSAP MOU.

The Parties have participated substantially in the negotiation, drafting, and revision of this HSAP MOU, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this HSAP 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 HSAP MOU. The words “include” and “including” in this HSAP MOU shall be construed to be followed by the words: “without limitation.” Each collective noun in this HSAP 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 HSAP MOU, refers to such document, as modified from time to time (excepting any modification that violates this HSAP MOU), and includes all exhibits, schedules, addenda and riders to such document. The word “or” in this HSAP 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 HSAP MOU refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

12. **No Other Representations or Warranties.** Except as expressly set forth in this HSAP MOU, no Party makes any representation or warranty material to this HSAP MOU to any other Party.

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

**SIGNATURE PAGE
TO
MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SAN DIEGO AND
THE SAN DIEGO HOUSING COMMISSION
FOR THE ADMINISTRATION OF THE COVID-19 HOUSING STABILITY
ASSISTANCE PROGRAM**

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

SAN DIEGO HOUSING COMMISSION,
a public agency

CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Jeff Davis
Deputy Chief Executive Officer

By: _____
Print Name: _____
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CHRISTENSEN & SPATH LLP

MARA W. ELLIOTT
CITY ATTORNEY

By: _____
Charles B. Christensen
General Counsel

By: _____
Deputy City Attorney

Exhibit A: HSAP Program Guidelines

The HSAP Program will help pay rent and utilities for households with low income (up to 80 percent of San Diego's Area Median Income [AMI]). Under the State's requirement, the HSAP Program would prioritize: below 50 percent of AMI or unemployed for 90 days. Rental arrears must be prioritized.

SB91 allows landlords to receive 80 percent of their tenants' arrears for the period of April 1, 2020, to March 31, 2021, if they agree to forgo the remaining 20 percent plus 25 percent of prospective rent for the months of April through June 2021. If a landlord declines this provision, the HSAP Program can pay 25 percent of the tenants' arrears and up to 25 percent of the tenant's upcoming monthly rent for the three months of April through June 2021.

In addition to rental assistance, the HSAP Program will include assistance to pay for past-due, unpaid utilities, such as electricity, gas, water and sewer, trash removal and energy costs, such as fuel oil. Telephone, cable and internet service are not eligible for utility assistance, and utilities paid by the landlord are considered rent.

To be eligible for assistance through HSAP Program, households must meet the following criteria:

- Tenant has a City of San Diego address.
- Household income is at or below 80 percent of AMI, with priority for households at or below 50 percent of AMI. (The U.S. Department of Housing and Urban Development establishes the AMI levels each year; 80 percent of AMI is currently \$92,400 per year for a family of four.)
- Household has an obligation to pay rent.
- Household does not currently receive any rental subsidies.
- At least one member of the household has a reduction of income or other financial hardship due to COVID-19.
- Household experienced or is at risk of experiencing homelessness or housing instability.

The Commission will administer HSAP Program pursuant to this HSAP MOU between the Commission and the City, the Implementation Plans as agreed to by both Parties, and federal and state regulations.

The Implementation Plans are incorporated herein by this reference and made part hereof.

An online application portal will be available on the Commission's website for residents to apply and submit required documents. The Commission will also be contracting with community-based organizations to help with community outreach and to assist households with their applications, especially those without internet access. The Commission anticipates contracting with 211 San Diego to provide customer service and application assistance to households seeking information or assistance from the HSAP Program.

Exhibit B: CDBG Requirements and Restrictions

ARTICLE 1 – CDBG PAYMENTS

1.1 CDBG PAYMENT SCHEDULE.

- 1.1.1 Commission shall make timely, complete requests for reimbursements, as required by the forms and instructions issued by the City. However, in view of Section 1.1.2, it not anticipated that there will be any requests for reimbursement.
- 1.1.2 The City shall provide CDBG-CV Fund Allocations under this HSAP MOU in one lump sum payment in accordance with the terms and conditions of this HSAP MOU within 10 days of the effective dates of this HSAP MOU. To the extent that this provision is inconsistent with the payment requirements set forth below, this requirement shall prevail.
- 1.1.3 In the event there are supplemental payments allocated to the Commission, the final payment to Commission, shall be withheld by the City until all reports required under this Agreement have been received by the City.

1.2 PAYMENT REQUIREMENTS AND RESTRICTIONS.

- 1.2.1 Commission shall not be reimbursed for any expenditure and/or service provided without proper and sufficient proof and documentation that each expenditure is an eligible reimbursement and that such eligible expenditure has been paid in full by Commission or that each service provided has been done in accordance with the Agreement and any and all applicable laws and regulations. In addition to providing such proof and documentation, Commission shall complete all of the necessary forms provided by the City in order to properly submit a request for reimbursement.
 - 1.2.1.1 Commission assumes all responsibility for taking the reasonably appropriate action to properly and timely submit requests for reimbursement to the City.
 - 1.2.1.2 Commission shall provide authentic, accurate, and legible written documentation including, but not limited to, invoices for all services provided and/or expenses incurred in accordance with this Agreement directly to the City on a monthly basis. Written invoices from any of Commission's Contractors, Subcontractors, or other vendors shall be provided to the City in the form originally provided to the Commission with no alterations or other markings on such invoices. Commission shall make original invoices immediately available to the City upon request. The documentation provided by Commission to the City shall include an

itemized description of the completed service, the date such service was performed, and all supporting invoices and documentation sufficient for the City to adequately determine eligibility for reimbursement of each and every expenditure and that such expenditure has already been paid in full by the Commission. Invoices approved by the City in accordance with the Agreement will be paid in a timely manner. Partial payments may be made for invoices that receive only partial approval.

- 1.2.1.3 Commission submittals shall be authorized by an individual authorized by the Commission to legally bind the Commission and authorized individual shall attest to its truthfulness and accuracy under penalty of perjury.
- 1.2.1.4 Commission acknowledges and understands that the City reserves the right to deny reimbursement for any request that is not properly submitted, including but not limited to Commission's failure to obtain the required signature certifications or to accurately complete the forms required by the City for reimbursement.
- 1.2.2 Commission shall not be reimbursed for travel, meals, lodging, or entertainment expenses. However, certain of these types of expenses may be reimbursed, if they are part of the core purpose of the Project (such as a shelter, nutrition program, at-risk youth program, or other eligible program) and pre-approved, in writing, by the City. Commission shall not be reimbursed for alcoholic beverages, under any circumstances.
- 1.2.3 Commission shall not be reimbursed for any costs incurred in its operations, directly or indirectly, during any period of federal, state, or local debarment, suspension, or ineligibility of Commission, when Commission has notice (actual, constructive, or implied) of such debarment, suspension, or ineligibility.
- 1.2.4 Any expenditure by Commission that is not within the prescribed limitations set forth in this Agreement and the FY 2021 CDBG Operating Manual, is not chargeable to the Project and shall be borne solely by Commission.
- 1.2.5 If Commission receives (or has received) additional funding for the Project from a source or sources other than the City, the use of which requires that Commission make an accounting to, or be subject to, an audit by such other source, then Commission shall charge Project expenditures to the appropriate funding source at the time incurred. Any cost incurred in connection with the Project which is properly chargeable to, and actually claimed for compensation under, a funding source other than the City, shall not be allowed as a chargeable cost under this Agreement.
- 1.2.6 Commission acknowledges and understands that the City must comply with HUD's requirement that funds allocated for the Project be expended in a timely manner and further understands that the City must timely and properly monitor and administer to

all CDBG contracts.

- 1.2.6.1 Commission shall timely and properly submit a minimum of one request for reimbursement per month, unless the Commission otherwise seeks and obtains a written exception to this requirement from the City. Commission shall submit such request for reimbursement within thirty (30) calendar days after the end of the month. Each request for reimbursement must be accompanied with all supporting invoices and documentation sufficient for the City to determine eligibility for reimbursement. Any failure to do so may be deemed a waiver of the Commission's right to reimbursement for such services or work performed, salary payment, or other Project expenditures incurred. However, Section 1.1.2 shall supersede this provision because of the one time disbursement of funds to the Commission.
- 1.2.6.2 Commission shall submit to the City any and all final requests for reimbursement for each Fiscal Year, including, but not limited to, any documentation substantiating this request within forty-five (45) calendar days of the expiration or termination of this Agreement or the end of the Fiscal Year for which the Commission's expenditure was made, whichever is sooner. Commission completely waives any and all rights to submit any further documentation of expenditures and to receive any reimbursement for any submissions of documentation beyond this time period. Furthermore, any such remaining fund balances in the Project for which a request for reimbursement has not been properly and timely submitted to the City shall be automatically subject to reprogramming.
- 1.2.7 Upon the determination of the City and/or HUD that any reimbursement has been provided to the Commission for an ineligible expenditure or based on a fraudulent or other illegal submittal of a request for reimbursement by the Commission, Commission shall return such funds to the City within fourteen (14) calendar days upon written request to the Commission. In addition to the remedies set forth in the Agreement, if Commission fails to timely return such funds, the City reserves the right to deduct such amounts from any future reimbursement owed to the Commission.
- 1.2.8 Upon the determination of the City and/or HUD that any reimbursement has been provided to the Commission based on an inadequate or improper submittal of a request for reimbursement by the Commission including, but not limited to, the provision of inadequate support documentation for expenditures or services provided and/or the failure to properly complete required forms, Commission shall provide any and all documentation required by the City and/or HUD in order to fully remedy such concern(s). Commission shall provide such documentation within fourteen (14) calendar days of any written request to the Commission. In the event that the Commission is unable or unwilling to remedy such concern(s), Commission shall return such funds to the City within fourteen (14) calendar days of any written

determination by the City and/or HUD that such submittal remains inadequate or improper. In addition to the remedies set forth in the Agreement, if Commission fails to timely return such funds, the City reserves the right to deduct such amounts from any future reimbursement owed to the Commission.

ARTICLE II – REPORTS; DISCLOSURES; AUDITS

- 2.1 **MONTHLY REPORTS.** Commission shall submit to the City a fiscal and programmatic report on a monthly basis that summarizes the Project expenditures and Project goals accomplished during the month, along with all invoices and documentation required by the City. Each report shall be submitted within thirty (30) calendar days of the end of each month. Commission shall submit timely, complete and accurate reports, as follows:

CDBG-CV data elements:

- 2.1.1. Number of unduplicated households assisted
- 2.1.2. Of households assisted, number of female head of households
- 2.1.3. Number of unduplicated clients assisted (extrapolated from the number of people in the household)
- 2.1.4. Ethnicity and race for head of household
- 2.1.5. Ethnicity and race of unduplicated clients (extrapolated from number of people in the household)
- 2.1.6. Household income Extremely Low (0-30% of AMI); Very Low (31-50% AMI); Low/Moderate (51-80% AMI)
- 2.1.7. Additional data elements for all:
 - Reasons for disqualifications and #
 - Number of applications funded
 - How many households include minor children
 - How many households include at least one person aged 62 or older
 - Is there an unmet need

- 2.2 **YEAR-END REPORTS.** Commission shall submit to the City a narrative report that summarizes the Project goals accomplished during the term of this Agreement, as required by the format and instructions issued by the City. This report shall be submitted within forty-five (45) calendar days of the expiration or termination of this Agreement or within forty-five (45) calendar days of the end of each Fiscal Year, whichever is sooner. Commission shall also submit to the City a financial summary report for each Fiscal Year that provides confirmation of project expenditures claimed to and reimbursed by the City for costs incurred during the term of this Agreement and paid by Commission.

2.3 **AUDITS.**

- 2.3.1 For each fiscal year in which Commission receives CDBG Funds, Commission shall have Financial Statement Audits prepared in accordance with Generally Accepted

Accounting Principles (GAAP) and audited by an independent Certified Public Accountant, in accordance with Generally Accepted Auditing Standards (GAAS). This audit shall include the following statements:

- (a) an audited financial statement to include a Balance Sheet, Income Statement, and Cash Flow Statement showing use of revenues and expenditures of all funds received by Commission;
- (b) a statement certifying compliance with all terms and conditions of the City's contract with Commission, and that all required reports and disclosures have been completed, signed, and submitted by an executive officer of Commission; and

Commission shall provide the City a copy of the Financial Statement Audit within nine (9) months of the end of Commission's fiscal year. Extensions of up to thirty (30) calendar days to this deadline may be granted by the City, upon written request by Commission.

2.3.2 If the Commission is expending \$750,000 or more (or the current federal threshold) in total federal funding from all sources in a year shall, pursuant to the Single Audit Act of 1984 (P.L. 98-502), the Commission shall have an Annual Single Audit conducted in accordance with 2 C.F.R. 200 subpart F. Commission shall ensure that the Single Audit is completed within nine (9) months of the end of Commission's fiscal year. If the Commission is completing audits by calendar year (rather than fiscal year), the Commission shall ensure that the Single Audit is completed within nine (9) months of December 31st. Commission shall electronically submit to the Federal Audit Clearinghouse (FAC) a copy of the Single Audit that includes the required data collection and reporting package described in 2 C.F.R. 200.512 within thirty (30) calendar days of Commission's receipt of the audit or nine (9) months of the end of Commission's audit period.

2.3.2.1 Commission must submit a copy of any management letters issued by the auditor for the Single Audit to the City within nine (9) months of the end of Commission's fiscal year.

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

- 2.3.4 If Commission is subject to an audit from a source other than the City, Commission shall provide a copy of the audit to the City within thirty (30) calendar days of completion of the audit. The City, at its sole discretion, may conduct an annual review of any such third-party audit(s). Commission shall fully cooperate with any such annual review by providing the City with any and all documentation associated with any such third-party audit(s) within fourteen (14) calendar days of request by the City unless otherwise specified by the City.
- 2.3.5 In the event that any type of audit or monitoring review reveals any pattern of suspicious or questionable request for reimbursement submittals to the City, the City in its sole reasonable discretion reserves the right to take action as provided under the Agreement including, but not limited to, immediately suspending the Agreement in whole or in part to further investigate such matters upon provision of written notice to the Commission.
- 2.3.6 In the event that an independent audit outlines any concerns about the Commission's accounting practices or internal controls which results in an opinion other than an unqualified opinion, the City reserves the right to immediately suspend or terminate this Agreement as well as any and all other active contracts between the City and the Commission involving the use of CDBG Funds effective immediately upon written notice to the Commission. Furthermore, the City reserves the right not to execute future contracts with the Commission until such times as an independent auditor can attest to an unqualified opinion that demonstrates the Commission's accounting practices and internal controls fully comply with GAAP. If the Commission is unable to obtain an unqualified opinion by an independent auditor within ninety (90) calendar days of the issuance of the initial independent auditor's opinion, the City further reserves the right to reprogram any and all pending CDBG Funds allocated to the Commission.
- 2.3.7 Commission shall fully cooperate with the City and any other auditors related to any review or investigation of Commission's conduct or action(s) relating to this Agreement. Such cooperation shall include, but is not limited to, the timely provision of responses and documentation requested in any such review or investigation. Failure by the Commission to do so shall constitute a material breach of the Agreement, which shall subject the Commission to immediate termination of the Agreement.
- 2.3.8 Commission's failure to provide the required financial statements, audits and other information, notwithstanding expiration or other termination of this Agreement, shall render Commission ineligible for future CDBG Funds.

ARTICLE III – PROJECT RECORDS

- 3.1 **GENERAL.** Commission shall maintain, and require its Subcontractors to maintain, all

Project Records during the term of this Agreement, including those required by the Federal regulations specified in 24 C.F.R. 570.506 and 24 C.F.R. 576.500, and those required by the FY 2021 Operating Manual that are pertinent to the activities to be funded under this Agreement.

- 3.2 **ACCOUNTING RECORDS.** Commission shall maintain, and require its Subcontractors to maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Principles (GAAP) in the industry. Commission shall also comply with 24 C.F.R. part 200 regarding accounting principles and procedures therein, utilizing internal controls, and maintaining necessary source documentation for all costs incurred.
- 3.3 **INSPECTION AND PHOTOCOPYING.** At any time during normal business hours and as often as requested, Commission shall permit, and require its Subcontractors to permit, the City, HUD, the Comptroller General of the United States (Comptroller General), or any of their duly authorized representatives, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of Commission), all Project Records for the purposes of making audits, examinations, excerpts, and/or transcriptions, as well as monitoring and/or evaluating Commission's performance of its obligations and/or duties under this Agreement. The City, HUD, and Comptroller General may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City, HUD, or Comptroller General in its sole discretion. The City will keep all copies of Project Records in the strictest confidence required by law. If Commission is unable to make any Project Records available for inspection within the County of San Diego, then Commission shall pay all of the City's travel-related costs to inspect and/or audit the Project Records at the location where the Project Records are maintained. Any refusal by Commission to fully comply with the provisions of this section shall be deemed a material breach of this Agreement and shall be grounds for immediate termination.
- 3.4 **DUPLICATES OF RECORDS.** Upon any request by the City, HUD, Comptroller General, or any of their duly authorized representatives, for any Project Records, Commission shall submit, and require its Subcontractors to submit, exact duplicates of the originals of the requested Project Records to the requesting party for the purposes described herein.
- 3.5 **OWNERSHIP OF RECORDS.** Once Commission has received any reimbursement from the City for Commission's performance of its obligations and/or duties under this Agreement, all Project Records shall be the property of the City. The City's ownership of the Project Records includes the use, reproduction, and/or reuse of the Project Records, as well as all incidental rights, whether or not the work for which the Project Records were prepared has been performed. No Project Records shall be shown to any other public or private person or entity, except as authorized by the City in writing, or unless such Project Records are subject to the California Public Records Act.
- 3.6 **STORAGE PERIOD.** Except where longer retention periods are required pursuant to 24 C.F.R. 576.500(y), Commission shall store, and require its Subcontractors to store, all Project Records for a period of not less than five (5) years after Commission's final

submission of all required reports under this Agreement, or five (5) years after the City and Commission make all final payments, or until all pending matters (including audit findings) have been resolved, whichever is longest. All Project Records shall be kept at Commission's (or relevant Subcontractor's) regular place of business. At any time during the storage period, Commission shall permit, and require its Subcontractors to permit, the City, HUD, Comptroller General, or any of their duly authorized representatives, to inspect and photocopy all Project Records for the purposes described above. After the storage period has expired, Commission shall provide the City with thirty (30) calendar days written notice of its intent to dispose of any Project Records. During this time period, the Commission shall provide any and all Project Records to the City upon the request of the City.

ARTICLE IV – MISCELLANEOUS PROVISIONS

- 4.1 **RECOGNITION OF FUNDING SOURCE.** Commission shall ensure, and require its Subcontractors to ensure recognition of the role of the federal CDBG Program in funding Commission's services under this Agreement. All activities performed, facilities and items utilized, and publications prepared, using CDBG funding in connection with this Agreement shall be prominently labeled to reference the use of CDBG Funds from HUD as a funding source. The reference shall be worded as follows: "This project is funded in whole or in part with Community Development Block Grant (CDBG) Program funds provided by the U.S. Department of Housing and Urban Development (HUD) to the City of San Diego."
- 4.2 **OPERATING MANUAL.** Commission acknowledges receipt of, and shall comply with, and require its Subcontractors to comply with the FY 2021 Operating Manual, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible project expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. Any desired changes by Commission to the procedures set forth in the FY 2021 Operating Manual must be requested by Commission, in writing, and approved by the City, in writing, before such changes may be implemented.
- 4.3 **PLAYING BY THE RULES HANDBOOK.** By executing this Agreement, Commission acknowledges, and shall require its Subcontractors receiving CDBG funding to acknowledge, that it has received, read, and understood the contents of the Playing by the Rules Handbook and shall fully comply with all of the administrative recommendations set forth therein.

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

- 5.1 **UNIFORM ADMINISTRATIVE REQUIREMENTS.** Commission shall comply, and require its Subcontractors to comply, with all applicable uniform administrative requirements set forth in 24 C.F.R. 570.502 and 576.407, including, but not limited to, federal CDBG financial and contractual procedures as applicable, as well as 2 C.F.R. 200 subparts B through D. These federal documents are on file at the City's Economic Development Department, located at 1200 Third Avenue, Suite 1400, San Diego, CA 92101.

- 5.2 **OTHER PROGRAM REQUIREMENTS.** Commission shall comply, and require its Subcontractors to comply, with all federal laws and regulations described in 24 C.F.R. 570 subpart K (sections 570.600 through 570.614) and 24 C.F.R. 576 subpart E (sections 576.400 through 576.408), except that:
- (a) Commission does not assume the City’s environmental responsibilities described in 24 C.F.R. 570.604 or 576.407; and
 - (b) Commission does not assume the City’s responsibility for initiating the review process described in 24 C.F.R. part 52.
- 5.3 **DAVIS-BACON ACT.** Commission agrees that in performing its obligations and duties under this Agreement, Commission shall solely perform those services described in the Scope of Services and shall not perform any construction work, alteration, demolition, repair or maintenance work or otherwise enter into a Federally Assisted Construction Contract, as defined in 41 C.F.R. part 60-1.3. Therefore, the Project is exempt from the Davis-Bacon Act.
- 5.4 **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** Commission shall comply, and require its Subcontractors to comply, with 40 U.S.C. 3702 of the Contract Work Hours and Safety Standards Act (as supplemented by Department of Labor regulations (29 C.F.R. part 5) – for construction contracts in excess of \$2000, and other contracts that involve the employment of mechanics or laborers in excess of \$2500.
- 5.5 **ENERGY POLICY AND CONSERVATION ACT.** Commission shall comply, and require its Subcontractors to comply, with the mandatory standards and policies relating to energy efficiency, which are contained in California’s energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).
- 5.6 **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.** Commission shall comply, and require its Subcontractors to comply, with all applicable standards, orders or regulations issued pursuant to Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) – for contracts in excess of \$150,000.
- 5.7 **COPELAND “ANTI-KICKBACK” ACT.** Commission shall comply, and require its Subcontractors to comply, with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. part 3) – for contracts involving construction or repair.
- 5.8 **RELIGIOUS ACTIVITIES.** Commission shall comply, and require its Subcontractors to comply, with all applicable HUD requirements governing the use of CDBG Funds by religious organizations, including those set forth in 24 C.F.R. 570.200(j), as well as Executive Order 11245 (as amended by Executive Order 13279).

5.9 SECTION 3 CLAUSE.

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

- A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The Parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Commission agrees to send to each labor organization or representative of workers with which the Commission has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The Commission agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The Commission will not subcontract with any Subcontractor where the Commission has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.
- E. The Commission will certify that any vacant employment positions, including training positions, that are filled (1) after the Commission is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Commission's obligations under 24 C.F.R. part 135.

- F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) (Section 7(b)) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian- owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

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

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

5.11 **FAIR HOUSING ACT.** Commission shall comply, and require its Subcontractors to comply, with Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, which prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and disability. In addition, Commission shall comply with the regulations issued following Title VI of the 1964 Civil Rights Act (as amended by Executive Orders 11246, 11375, and 12086) and Section 109 of the 1975 Housing and Community Development Act that prohibits discrimination in HUD programs based on sex, race, color, national origin, and religion and administer all programs and activities in a manner to affirmatively further the policies of the Fair Housing Act.

5.11.1 Commission shall post in a prominent place at the program site(s) the Equal Housing Opportunity Logo provided by the City.

5.11.2 Commission shall post in a prominent place at the program site(s) any other Fair Housing materials provided by the City upon contract execution and/or throughout the term of this Agreement.

- 5.12 **SECTION 504.** Commission shall comply, and require its Subcontractors to comply, with any Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities in any federally assisted program. The City shall provide the Commission with any guidelines necessary for compliance with that portion of the regulations applicable during the term of this Agreement.
- 5.13 **LIMITED ENGLISH PROFICIENCY.** Commission shall comply with Executive Order 12166 enacted on August 11, 2000, which mandates that any recipient of HUD assistance funds reduce barriers to access for limited English proficiency (LEP) persons. Commission 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”. Commission acknowledges that failure to ensure LEP access to HUD benefits may violate Title VI civil rights protections based upon national origin.
- 5.14 **LEAD-BASED PAINT.** Commission shall comply, and require its Subcontractors to comply, with 24 C.F.R. 570.608 regarding the requirement to comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part.
- 5.15 **RESOURCE CONSERVATION AND RECOVERY ACT.** Commission shall comply, and require its Subcontractors to comply, with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Commission (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 5.16 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** Commission shall not employ, award any contract to, engage the services of, or fund any Subcontractor, during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when Commission has notice (actual, constructive, or implied) of such debarment, suspension, or ineligibility. A contract award must not be made to parties listed on the governmentwide Excluded Parties List System in the System Award Management (SAM), in accordance with 2 C.F.R. part 180.