



EXECUTIVE SUMMARY

HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: May 5, 2022

HCR22-062

SUBJECT: Administration of First-Time Homebuyer Program for Neighboring Cities in San Diego County

COUNCIL DISTRICT(S): Citywide

ORIGINATING DEPARTMENT: Real Estate Division

CONTACT/PHONE NUMBER: Sujata Raman (619) 578-7406

REQUESTED ACTION:

Approve the administration of the First-Time Homebuyer Program for Neighboring Cities in San Diego County.

EXECUTIVE SUMMARY OF KEY FACTORS:

- The San Diego Housing Commission (Housing Commission) has administered the City of San Diego's First-Time Homebuyer (FTHB) Program for more than 30 years. The program has assisted more than 5,900 households since program inception.
- Over the years, the Housing Commission has entered into agreements with Southeastern Economic Development Corporation, Centre City Development Corporation, the City of La Mesa, and the County of San Diego to administer their FTHB Programs upon their request.
- The Housing Commission has established procedures, guidelines and processes that have proved effective when administering FTHB Programs for other agencies/jurisdictions.
- Only five cities in the County currently operate similar FTHB programs that the Housing Commission does not administer: Chula Vista, El Cajon, National City, Escondido and Oceanside. The Housing Commission has emerged as a leader in this area because of staff's knowledge and experience.
- Recently the City of Chula Vista and the City of El Cajon have contacted the Housing Commission about administering their respective FTHB programs.
- The City of Chula Vista and City of El Cajon obtained approval from their respective City Councils to enter into a contract agreement with the Housing Commission this fiscal year, subject to Housing Commission staff obtaining approval from the Housing Commission Board of Commissioners.
- Housing Commission staff are able to implement FTHB programs for the City of Chula Vista and City of El Cajon with existing underwriting procedures, processes and staffing.
- The Housing Commission will receive setup fees, underwriting and processing fees, and an annual fee from each partner City.
- The FTHB program loan funds for each approved buyer will be sent directly from the partner City to the escrow company handling the transaction. The Housing Commission will not manage program funds on behalf of the cities.
- There is no change to the Housing Commission's approved Fiscal Year 2022 budget with the requested action. The anticipated fee revenues from the two contracts will be taken into consideration during the Housing Commission Fiscal Year 2023 Budget process.



REPORT

DATE ISSUED: April 28, 2022

REPORT NO HCR22-062

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of May 5, 2022

SUBJECT: Administration of First-Time Homebuyer Program for Neighboring Cities in San Diego County

COUNCIL DISTRICT: Citywide

REQUESTED ACTION

Approve the administration of the First-Time Homebuyer Program for Neighboring Cities in San Diego County.

STAFF RECOMMENDATION

That the San Diego Housing Commission (Housing Commission) take the following actions:

- 1) Authorize the Housing Commission's Interim President and Chief Executive Officer (Interim President & CEO), or designee, to enter into agreements with the City of Chula Vista and the City of El Cajon for the administration of their respective First-Time Homebuyer Programs in a form and format approved by General Counsel, and to take such actions necessary and/or appropriate to implement these approvals, provided that a copy of the documents, signed as to form by General Counsel, are submitted to each Housing Commissioner in advance of approval for the designee to sign.
- 2) Authorize the Housing Commission's Interim President & CEO, or designee, to execute all 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, provided that a copy of the documents, signed as to form by General Counsel, are submitted to each Housing Commissioner in advance of approval for the designee to sign.

SUMMARY

The Housing Commission has administered the City of San Diego's First-Time Homebuyer (FTHB) Program for more than 30 years. The program has assisted more than 5,900 households since program inception. Over the years, the Housing Commission has entered into agreements with Southeastern Economic Development Corporation, Centre City Development Corporation, the City of La Mesa, and the County of San Diego to administer their FTHB Programs upon their request. The Housing Commission has established procedures, guidelines and processes that have proved effective when administering FTHB Programs for other agencies/jurisdictions.

The Housing Commission's partnership with the County of San Diego began in 2014. The County program serves the unincorporated areas of the County as well as the cities of Carlsbad, Coronado, Del Mar, Encinitas, Imperial Beach, La Mesa, Lemon Grove, Poway, San Marcos, Santee, Solana Beach and Vista. The Housing Commission's Single-Family Housing Finance staff has helped streamline the County's guidelines and application process and made the program more accessible to homebuyers with low income by significantly increasing the number of loan officers available to work with them.

Only five cities in the County currently operate similar FTHB programs that the Housing Commission does not administer: Chula Vista, El Cajon, National City, Escondido and Oceanside. The Housing Commission has emerged as a leader in this area because of staff's knowledge and experience.

Recently the City of Chula Vista and the City of El Cajon have contacted the Housing Commission about administering their respective FTHB programs. Both agencies have operated an FTHB program intermittently for several years, but recently decided to contract with outside agencies for program administration. The City of Chula Vista and City of El Cajon obtained approval from their respective City Councils to enter into a contract agreement with the Housing Commission this fiscal year, subject to Housing Commission staff obtaining approval from the Housing Commission Board of Commissioners. Staff is seeking Board approval to move forward with the partnership and to be granted authorization to enter into agreements, respectively, with the City of Chula Vista and City of El Cajon.

The City of Chula Vista and the City of El Cajon fund their FTHB programs using a combination of federal HOME funds, state CalHome funds, local Inclusionary funds and other funding sources. The Housing Commission also uses HOME, CalHome and Inclusionary funds for the City of San Diego FTHB program. As a result, Housing Commission staff are able to implement FTHB programs for the City of Chula Vista and City of El Cajon with existing underwriting procedures, processes and staffing. Eligibility parameters across the various FTHB programs are generally the same except for variances in the subsidy amount offered to homebuyers.

The Housing Commission will receive setup fees, underwriting and processing fees, and an annual fee from each partner City. The setup fee is a one-time payment, which includes the Housing Commission's legal costs to review the contracts, and staff expenses for lender trainings, outreach, website updates and updates to the Housing Commission's loan origination software. Underwriting and processing fees for pre-approvals, and for approved, canceled and declined applications will be charged to the partner City on a per application basis each month. The annual fee will be received at the beginning of year one and every subsequent year of the contract to cover ongoing program administration.

The FTHB program loan funds for each approved buyer will be sent directly from the partner City to the escrow company handling the transaction. The Housing Commission will not manage program funds on behalf of the cities.

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Administration of First-Time Homebuyer Program for Neighboring Cities in San Diego County.

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FISCAL CONSIDERATIONS

There is no change to the Housing Commission’s approved Fiscal Year 2022 budget with the requested action. The anticipated fee revenues from the two contracts will be taken into consideration during the Housing Commission Fiscal Year 2023 Budget process.

HOUSING COMMISSION STRATEGIC PLAN

This item relates to Strategic Priority Area No. 2 in the Housing Commission’s Strategic Plan for Fiscal Year (FY) 2022- 2024: Helping Families Increase Opportunities for Self Sufficiency and Quality of Life.

ENVIRONMENTAL REVIEW:

This activity is not a project pursuant to CEQA Guidelines Section 15378(b)(5), as it is an administrative activity of government that will not result in direct or indirect physical changes in the environment. As such, this activity is not subject to CEQA pursuant to CEQA guidelines Section 15060(c)(3). Processing under the National Environmental Policy Act is not required as no federal funds are involved in this action. The parties agree that the provision of any federal funds as the result of this action is conditioned on the City of San Diego’s final NEPA review and approval.

Respectfully submitted,

Sujata Raman

Sujata Raman
Vice President, Single-family Housing Finance
Real Estate Division

Approved by,

Jeff Davis

Jeff Davis
Interim President & Chief Executive Officer
San Diego Housing Commission

Attachments:

- 1) Draft agreement with City of Chula Vista
- 2) Draft agreement with City of El Cajon

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

**[CITY OF CHULA VISTA
CONSULTANT SERVICES AGREEMENT
WITH [SAN DIEGO HOUSING COMMISSION]
TO PROVIDE [MANAGEMENT OF A FIRST TIME HOMEBUYER PROGRAM]**

This Agreement is entered into effective as of [April 1, 2022] (“Effective Date”)¹ by and between the City of Chula Vista, a chartered municipal corporation (“City”) and San Diego Housing Commission, [a Public Housing Agency] (“Consultant”) (collectively, the “Parties” and, individually, a “Party”) with reference to the following facts:

RECITALS

WHEREAS, [the City of Chula Vista has set aside funding to assist First Time Homebuyers (“FTHB”) using Balanced Communities, HOME Investment Partnership Act, and Cal-Home Program funds]; and

WHEREAS, [the City of Chula Vista's 2021-2022 HUD Annual Action Plan included funds for a FTHB Program]; and

[WHEREAS, the Parties desire to assist FTHB with homebuyer assistance using City’s existing fund balance from Cal-Home, HOME Investment Partnership Act and Balanced Communities Programs; and

WHEREAS, the Consultant shall be subject to and be required to comply with all Federal, State, and local laws and regulations applicable with respect to its performance under this Agreement, including, but not limited to, HCD requirements, licensing, employment, purchasing practices, and wages, hours and conditions of employment, including non-discrimination; and

WHEREAS, it is the desire of the City that the Consultant assist the City in implementing a First Time Homebuyer; and

WHEREAS, Consultant, was selected due to its intimate knowledge of administering homebuyer programs and servicing loans, their extensive experience, and their ability to complete the services in a timely manner.]

[End of Recitals. Next Page Starts Obligatory Provisions.]

OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Consultant hereby agree as follows:

1. SERVICES

1.1 Required Services. Consultant agrees to perform the services and deliver to City the “Deliverables” (if any) described in the attached Exhibit A, incorporated into the Agreement by this reference, within the time frames set forth therein, time being of the essence for this Agreement. The services and/or Deliverables described in Exhibit A shall be referred to herein as the “Required Services.”

1.2 Reductions in Scope of Work. City or Consultant may independently from time to time, reduce the Required Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.

1.3 Additional Services. Subject to compliance with the City’s Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, City may request Consultant provide additional services related to the Required Services (“Additional Services”). If so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once added to Exhibit A, “Additional Services” shall also become “Required Services” for purposes of this Agreement.

1.4 Standard of Care. Consultant expressly warrants and agrees that any and all Required Services hereunder shall be performed in accordance with the highest standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.

1.5 No Waiver of Standard of Care. Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

1.6 Compliance with Laws. In its performance of the Required Services, Consultant shall comply with any and all applicable federal, state and local laws.

1.7 Subcontractors. Prior to commencement of any work, Consultant shall submit for City’s information and approval a list of any and all subcontractors to be used by Consultant in the performance of the Required Services. Consultant agrees to take appropriate measures necessary to ensure that all subcontractors and personnel utilized by the Consultant to complete its obligations under this Agreement comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local. In addition, if any subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, Consultant shall ensure that each and every subcontractor carries out the Consultant’s responsibilities as set forth in this Agreement.

1.8 Term. This Agreement shall commence on the earlier to occur of the Effective Date or Consultant’s commencement of the Required Services hereunder and shall terminate when the Parties have complied with

all their obligations hereunder or terminated this Agreement pursuant to Section 6, below; provided, however, provisions which expressly survive termination shall remain in effect.

2. COMPENSATION

2.1 General. For satisfactory performance of the Required Services, City agrees to compensate Consultant in the amount(s) and on the terms set forth in Exhibit A, Section 4. Standard terms for billing and payment are set forth in this Section 2.

2.2 Detailed Invoicing. Consultant agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed, unless otherwise specified in Exhibit A. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line-item format with each task separately explained in reasonable detail. Each invoice shall include the current monthly amount being billed, the amount invoiced to date, and the remaining amount available under any approved budget. Consultant must obtain prior written authorization from City for any fees or expenses that exceed the estimated budget.

2.3 Payment to Consultant. Upon receipt of a properly prepared invoice and confirmation that the Required Services detailed in the invoice have been satisfactorily performed, City shall pay Consultant for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in Exhibit A and section 2.4, below[]

2.4 Reimbursement of Costs. City shall reimburse Consultant's out-of-pocket costs incurred by Consultant in the performance of the Required Services if negotiated in advance and included in Exhibit A. Unless specifically provided in Exhibit A, Consultant shall be responsible for any and all out-of-pocket costs incurred by Consultant in the performance of the Required Services.

2.5 Exclusions. City shall not be responsible for payment to Consultant for any fees or costs in excess of any agreed upon budget, rate or other maximum amount(s) provided for in Exhibit A. City shall also not be responsible for any cost: (a) incurred prior to the Effective Date; or (b) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of Consultant, its agents, employees, or subcontractors.

2.6 Payment Not Final Approval. Consultant understands and agrees that payment to the Consultant or reimbursement for any Consultant costs related to the performance of Required Services does not constitute a City final decision regarding whether such payment or cost reimbursement is allowable and eligible for payment under this Agreement, nor does it constitute a waiver of any violation by Consultant of the terms of this Agreement. If City determines that Consultant is not entitled to receive any amount of compensation already paid, City will notify Consultant in writing and Consultant shall promptly return such amount.

3. INSURANCE

3.1 Required Insurance. Consultant must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the "Required Insurance"). The Required Insurance shall also comply with all other terms of this Section.

3.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

3.3 Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. For Workers' Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

3.4 Subcontractors. Consultant must include all sub-consultants/sub-contractors as insureds under its policies and/or furnish separate certificates and endorsements demonstrating separate coverage for those not under its policies. Any separate coverage for sub-consultants must also comply with the terms of this Agreement.

3.5 Additional Insureds. City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Exhibit B or as may otherwise be specified by City's Risk Manager. The general liability additional insured coverage must be provided in the form of an endorsement to the Consultant's insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.

3.6 General Liability Coverage to be "Primary." Consultant's general liability coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance provided by Consultant and in no way relieves Consultant from its responsibility to provide insurance.

3.7 No Cancellation. No Required Insurance policy may be canceled by either Party during the required insured period under this Agreement, except after thirty days' prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Consultant must procure and put into effect equivalent coverage(s).

3.8 Waiver of Subrogation. Consultant's insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Consultant waives any right it may have or may obtain to subrogation for a claim against City.

3.9 Verification of Coverage. Prior to commencement of any work, Consultant shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that Consultant has obtained the Required Insurance in compliance with the terms of this Agreement. The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" or any similar language must be deleted from all certificates. The required certificates and endorsements should otherwise be on industry standard forms. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

3.10 Claims Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:

- a. The "Retro Date" must be shown and must be before the date of this Agreement or the beginning of the work required by this Agreement.
- b. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work required by this Agreement.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the effective date of this Agreement, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of the work required by this Agreement.

d. A copy of the claims reporting requirements must be submitted to the City for review.

3.11 Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Consultant’s obligations under this Agreement, including Indemnity.

3.12 Additional Coverage. To the extent that insurance coverage provided by Consultant maintains higher limits than the minimums appearing in Exhibit B, City requires and shall be entitled to coverage for higher limits maintained.

4. INDEMNIFICATION

4.1 Claims Arising from the Sole Acts or Omissions of a Party: Each party to this Agreement hereby agrees to defend and indemnify the other Party to this Agreement, their agents, officers, volunteers, and employees, from any claim, action or proceeding against the other Party, arising solely out of its own acts or omissions in the performance of this Agreement. At each Party's sole discretion, each Party may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve any Party of any obligation imposed by this Agreement. Parties shall notify each other promptly of any claim, action or proceeding and cooperate fully in the defense.

4.2 Claims Arising from Concurrent Acts or Omissions: The Parties hereby agree to defend themselves from any claim, action or proceeding arising out of the concurrent acts or omissions of the parties. In such cases Parties agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 4.3 below.

4.3 Joint Defense and Reimbursement and Reallocation: Notwithstanding paragraph 4.2 above in cases where the Parties agree in writing to a joint defense, the Parties may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of Parties. Joint defense counsel shall be selected by mutual agreement of Parties. Parties agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as follows:

4.3.1 Parties further agree that neither party may bind the other to a settlement agreement without the written consent of both parties. Where a trial verdict or arbitration award allocates or determines the comparative fault of parties, Parties may seek reimbursement and/or reallocation of defense costs, judgments, and awards, consistent with such comparative fault.

5. FINANCIAL INTERESTS OF CONSULTANT.

5.1 Form 700 Filing. The California Political Reform Act and the Chula Vista Conflict of Interest Code require certain government officials and consultants performing work for government agencies to publicly disclose certain of their personal assets and income using a Statement of Economic Interests form (Form 700). In order to assure compliance with these requirements, Consultant shall comply with the disclosure requirements identified in the attached Exhibit C, incorporated into the Agreement by this reference. Consultant may satisfy this requirement via the Form 700’s that have been filed with the City of San Diego. Said Form 700’s may be found at <https://www.sandiego.gov/city-clerk/economic-interests-forms-and-information>.

5.2 Disclosures; Prohibited Interests. Independent of whether Consultant is required to file a Form 700, Consultant warrants and represents that it has disclosed to City any economic interests held by Consultant, or its employees or subcontractors who will be performing the Required Services, in any real property or project which is the subject of this Agreement. Consultant warrants and represents that it has not employed or retained any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further warrants and represents that no officer or employee of City, has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds hereof, or in the business of Consultant or Consultant's subcontractors. Consultant further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement. For breach or violation of any of these warranties, City shall have the right to rescind this Agreement without liability.

6. REMEDIES

6.1 Termination for Cause. If for any reason whatsoever Consultant shall fail to perform the Required Services under this Agreement, in a proper or timely manner, or if Consultant shall violate any of the other covenants, agreements or conditions of this Agreement (each a "Default"), in addition to any and all other rights and remedies City may have under this Agreement, at law or in equity, City shall have the right to terminate this Agreement by giving five (5) days written notice to Consultant. Such notice shall identify the Default and the Agreement termination date. If Consultant notifies City of its intent to cure such Default prior to City's specified termination date, and City agrees that the specified Default is capable of being cured, City may grant Consultant up to ten (10) additional days after the designated termination date to effectuate such cure. In the event of a termination under this Section 6.1, Consultant shall immediately provide City any and all "Work Product" (defined in Section 7 below) prepared by Consultant as part of the Required Services. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant may be entitled to compensation for work satisfactorily performed prior to Consultant's receipt of the Default notice; provided, however, in no event shall such compensation exceed the amount that would have been payable under this Agreement for such work, and any such compensation shall be reduced by any costs incurred or projected to be incurred by City as a result of the Default. If for any reason whatsoever City shall fail to perform any of its required obligations under this Agreement, in a proper or timely manner, or if City shall violate any of the other covenants, agreements or conditions of this Agreement (each a "Default"), in addition to any and all other rights and remedies Consultant may have under this Agreement, at law or in equity, Consultant shall have the right to terminate this Agreement by giving five (5) days written notice to City. Such notice shall identify the Default and the Agreement termination date. If City notifies Consultant of its intent to cure such Default prior to Consultant's specified termination date, and Consultant agrees that the specified Default is capable of being cured, Consultant may grant City up to ten (10) additional days after the designated termination date to effectuate such cure.

6.2 Termination or Suspension for Convenience. City or Consultant may suspend or terminate this Agreement, or any portion of the Required Services, at any time and for any reason, with or without cause, by giving specific written notice to the other party of such termination or suspension at least fifteen (15) days prior to the effective date thereof. Upon receipt or delivery of such notice, Consultant shall immediately cease all work under the Agreement and promptly deliver copies of all "Work Product" (defined in Section 7 below) to City. Such copies of the Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant shall be entitled to receive just and equitable compensation for this Work Product in an amount equal to the amount due and payable under this Agreement for work satisfactorily performed as of

the date of the termination/suspension notice plus any additional remaining Required Services requested or approved by City in advance.

6.3 Waiver of Claims. In the event either party terminates the Agreement in accordance with the terms of this Section, such hereby expressly waives any and all claims for damages or compensation as a result of such termination except as expressly provided in this Section 6.

6.4 Reserved.

6.5 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.

6.6 Service of Process. The parties agree that each of them is subject to personal jurisdiction in California. If Consultant is a foreign corporation, limited liability company, or partnership that is not registered with the California Secretary of State, Consultant irrevocably consents to service of process on Consultant by first class mail directed to the individual and address listed under "For Legal Notice," in section 1.B. of Exhibit A to this Agreement, and that such service shall be effective five days after mailing.

7. OWNERSHIP AND USE OF WORK PRODUCT

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced in whole or in part under this Agreement in connection with the performance of the Required Services (collectively "Work Product") shall be the sole and exclusive property of City. No such Work Product shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express, prior written consent of City. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, copyright or patent, in whole or in part, any such Work Product, without requiring any permission of Consultant, except as may be limited by the provisions of the Public Records Act or expressly prohibited by other applicable laws. With respect to computer files containing data generated as Work Product, Consultant shall make available to City, upon reasonable written request by City, the necessary functional computer software and hardware for purposes of accessing, compiling, transferring and printing computer files. Consultant may retain Work Product in order to comply with legally required record retention laws and California Public Records Act requests and shall use said Work Product to meet said obligations. Consultant shall provide timely notice to City of any Public Records Act requests involving Work Product.

8. GENERAL PROVISIONS

8.1 Amendment. This Agreement may be amended, but only in writing signed by both Parties.

8.2 Assignment. Neither party shall not assign any of its rights or responsibilities under this Agreement, nor any part hereof, without the other party's prior written consent, which may be granted, conditioned or denied in such party's sole discretion.

8.3 Authority. The person(s) executing this Agreement warrants and represents that they have the authority to execute same on behalf of the party for which they are executing the agreement and to bind such party to its obligations hereunder without any further action or direction from such party or any board, principle or officer thereof.

8.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

8.5 Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

8.6 Record Retention. During the course of the Agreement and for three (3) years following completion of the Required Services, Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the performance of the Agreement, including accounting for costs and expenses charged to City, including such records in the possession of sub-contractors/sub-consultants.

8.7 Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

8.8 Independent Contractors. Consultant is and shall at all times remain as to City a wholly independent contractor. Neither party nor any of their officers, employees, agents or volunteers shall have control over the conduct of the other party or any of the other party's officers, employees, or agents ("Related Individuals"), except as set forth in this Agreement. No Related Individuals shall be deemed employees of the other party hereto, and none of them shall be entitled to any benefits to which such party's employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Furthermore, neither party will withhold state or federal income tax, social security tax or any other payroll tax with respect to any Related Individuals; instead, such party shall be solely responsible for the payment of same. Neither party shall at any time or in any manner represent that it or any of its Related Individuals are employees or agents of the other party hereto. Neither party shall incur or have the power to incur any debt, obligation or liability whatsoever against the other party, or bind the other party in any manner.

8.9 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such Party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.

8.10 Electronic Signatures. Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

(End of page. Next page is signature page.)

**SIGNATURE PAGE
CONSULTANT SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Consultant agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

SAN DIEGO HOUSING COMMISSION

CITY OF CHULA VISTA

BY: _____
[CEO]

BY: _____
[MARIA V. KACHADOORIAN
[CITY MANAGER]

]]

APPROVED AS TO FORM

BY: _____
Glen R. Googins
City Attorney

EXHIBIT A
SCOPE OF WORK AND PAYMENT TERMS

[Consultant shall provide management of the City's First Time Homebuyer Assistance Program in accordance with the City of Chula Vista First Time Homebuyer Guidelines, which is hereby fully incorporated into this Agreement by reference, and any applicable Local, State or Federal requirements.]

1. Contact People for Contract Administration and Legal Notice

A. City Contract Administration:

[Naader Ho, Management Analyst II]
[276 Fourth Avenue-Building A]
[Chula Vista, CA 91910]
[619-476-5375]

For Legal Notice Copy to:
City of Chula Vista
City Attorney
276 Fourth Avenue, Chula Vista, CA 91910
619-691-5037
CityAttorney@chulavistaca.gov

B. Consultant Contract Administration:

SAN DIEGO HOUSING COMMISSION

[Sujata Raman, Vice President, Single-Family Housing Finance

Real Estate Division
San Diego Housing Commission
1122 Broadway, Suite 300, San Diego, CA 92101
619-578-7406 (o) | 619-578-7387 (f) |

[
For Legal Notice Copy to:
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Christensen & Spath LLP
1 Columbia Place
401 West "A" Street
Suite 2250
San Diego, CA 92101
(619) 236-9343 ext. 102
cbc@candslaw.net]

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2. Required Services

A. General Description:

[Consultant agrees to provide the following services:

- Consultant shall utilize City funds to assist eligible borrowers earning no more than 80 percent of San Diego’s AMI. Borrowers may qualify for a deferred-payment, second trust deed loan based on the buyer’s need and shall not exceed 22% of the purchase price. Loan terms shall be three percent (3%) simple interest with City assistance not exceeding \$120,000 (\$100,000 for CalHome) and a deferred payment term of 30-years.
- In addition, the Consultant shall include materials on the Chula Vista program on their website and assist with marketing materials.
- Consultant shall continue to market any HUD approved Certified Home Buyer Education.
- Consultant shall administer the Chula Vista and Chula Vista homebuyer assistance programs according to the program guidelines, including, but not limited to, underwriting, loan document preparation and loan closing.
 - Consultant shall provide quarterly reports on implementation of this agreement.

City agrees to provide the following services:

- City shall complete the environmental reviews (NEPA/CEQA)
- City shall wire funds to escrow that includes any approved homebuyer assistance up to \$120,000 per loan.
- City shall provide the Program Guidelines (and future updated guidelines, as applicable) that Consultant will make available on its website.
- City shall provide ALL Loan Document templates, including, but not limited to, Promissory Note, Deed of Trust, Regulatory Agreement/CC&Rs etc.
- City shall provide Consultant with any program updates including updates to the City’s First Time Homebuyer Program Guidelines]

B. Detailed Description:

[]

Task	Description	Deliverables	Completion Date
1	Continue to assist borrowers who wish to become first-time homebuyers	Maintain SDHC's website that includes information for potential borrowers to apply for the City of Chula Vista.	On Going
2	Maintain a Certified Lender List	Continue to add Certified Lenders who can assist borrowers	On Going
3	Commit and Spend City funds	Assist the City to identify First Time Homebuyers expend City funds.	On Going (see #4 below)
4	Expenditures Requirements	Assist the City in meeting City's 2- Year expenditure requirements when using HOME Funds.	June 30, 2025

5	Provide Quarterly Reports to the City Staff to demonstrate program progress	Provide Quarterly Reports, 30 days after the end of the quarter. An annual Report summarizing all activities shall also be provided upon request.	Quarterly
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3. **Term:** In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin [May ____1, 2022] and end on [June 30, 2023, with options to extend for additional 4 years] for completion of all Required Services.

4. **Compensation:** [

A. Form of Compensation

[
 Fixed Fee Paid in Increments. For the completion of each Deliverable of the Required Services, as identified in section 2.B., above, City shall pay the fixed fee associated with each Deliverable, in the amounts set forth below:

Task No.	Deliverable	Amount
Assist up to eligible First Time Homebuyers using up to \$120,000 of First Time Homebuyer Assistance	Close on each loan	Up to \$3,177,621.65 using City’s HOME, Balanced Communities, or Cal-Home funds
Set-Up Fee	One time set-up fee	\$15,000 (prorated for year 1)
Annual Fee	Annual Fee	\$5,000
Loan Charges	Loan closings	If loan is approved \$1,800 and \$1,000 if declined or cancelled by lender. For pre-approvals, \$1,000.

AND

Notwithstanding the foregoing, the maximum amount to be paid to the Consultant for services performed through June 30, 2025, shall not exceed \$150,000. If the City exercises its option to extend the Agreement (up to 4 additional years), the amount to be paid to the Consultant for services provided during the initial term. If the City exercises all additional options to extend the Agreement, the total amount to be paid to the Consultant for services provided during the initial and optional extension periods shall not exceed \$150,000.]

B. Reimbursement of Costs

[
 None, the compensation includes all costs

OR

Invoiced or agreed-upon amounts as follows:

Enter or Attach And Reference Any Agreed-Upon Cost Reimbursements |

Notwithstanding the foregoing, the maximum amount to be paid to the Consultant for services performed through [Enter End of Contract Date] shall not exceed [Enter Amount].

5. Special Provisions: [“NONE,”]

Permitted Sub-Consultants: [“None”]

Security for Performance: [“None”]

Notwithstanding the completion date set forth in Section 3 above, City has option to extend this Agreement for [up to four] additional terms, defined as a one-year increment. The City Manager or Director of Finance/Treasurer shall be authorized to exercise the extensions on behalf of the City. If the City exercises an option to extend, each extension shall be on the same terms and conditions contained herein, provided that the amounts specified in Section 4 above may be increased by up to [five percent (5%)] for each extension. The City shall give written notice to Consultant of the City’s election to exercise the extension via the Notice of Exercise of Option to Extend document.

**EXHIBIT B
INSURANCE REQUIREMENTS**

Consultant shall adhere to all terms and conditions of Section 3 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x).

	Type of Insurance	Minimum Amount	Form
<input checked="" type="checkbox"/>	General Liability: Including products and completed operations, personal and advertising injury	\$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit Additional Insured Endorsement or Blanket AI Endorsement for City* Waiver of Recovery Endorsement	Insurance Services Office Form CG 00 01 <i>*Must be primary and must not exclude Products/Completed Operations</i>
<input checked="" type="checkbox"/>	Automobile Liability	\$1,000,000 per accident for bodily injury, including death, and property damage	Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non-Owned
<input checked="" type="checkbox"/>	Workers' Compensation Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement	
<input type="checkbox"/>	Professional Liability (Errors & Omissions)	\$1,000,000 each occurrence \$2,000,000 aggregate	

Other Negotiated Insurance Terms: ["NONE"]

EXHIBIT C
CONSULTANT CONFLICT OF INTEREST DESIGNATION

The Political Reform Act² and the Chula Vista Conflict of Interest Code³ (“Code”) require designated state and local government officials, including some consultants, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, consultants designated to file the Form 700 are also required to comply with certain ethics training requirements.^{4]}

- A. Consultant IS a corporation or limited liability company and is therefore EXCLUDED⁵ from disclosure.
- B. Consultant NOT a corporation or limited liability company and disclosure designation is as follows:
- C. Consultant has filed Form 700’s with the City of San Diego and said Form 700’s may be found at <https://www.sandiego.gov/city-clerk/economic-interests-forms-and-information>. Consultant shall provide the names or persons assigned to provide services below and their email addresses:

APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES
(Category descriptions available at www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code.)

<i>Name</i>	<i>Email Address</i>	<i>Applicable Designation</i>
Delia Abeling Robert Berry Ileana Terrones Carrie Tapia Sujata Raman	deliaa@sdhc.org robertr@sdhc.org ileanat@sdhc.org carriet@sdhc.org sujatar@sdhc.org	<input type="checkbox"/> A. Full Disclosure <input type="checkbox"/> B. Limited Disclosure (select one or more of the categories under which the consultant shall file): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification: <input type="checkbox"/> C. Excluded from Disclosure

1. Required Filers

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of “Consultant,” pursuant to FPPC Regulation 18700.3, must file a Form 700.

2. Required Filing Deadlines

Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

3. Filing Designation

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Consultant will provide. Notwithstanding this designation or anything in the Agreement, the Consultant is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 *2.

2 Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

3 Chula Vista Municipal Code §§2.02.010-2.02.040.

4 Cal. Gov. Code §§53234, *et seq.*

5 CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261; FPPC Reg. 18700.3 (Consultant defined as an “individual” who participates in making a governmental decision; “individual” does not include corporation or limited liability company).

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the consultant's requirement to comply with the disclosure requirements set forth in the Code.

Completed by: Stacey Kurz, Housing Manager

**SUBRECIPIENT AGREEMENT BETWEEN
THE CITY OF EL CAJON
AND
SAN DIEGO HOUSING COMMISSION
FOR
FIRST TIME HOMEBUYERS PROGRAM SERVICES**

THIS SUBRECIPIENT AGREEMENT (the “Agreement” or “Contract”), is entered this _____ day of _____, 2022 by and between the City of El Cajon, a California charter city and municipal corporation, hereinafter referred to as “City,” and San Diego Housing Commission, a public agency (the “Subrecipient”).

WHEREAS, there has been enacted into law the HOME Act, Title II of the Cranston-Gonzalez National Affordable Housing Act, creating the HOME Investment Partnerships Program (“HOME Program”) that provides funds (“HOME Funds”) to expand the supply of affordable housing for very low-income and low-income persons; and

WHEREAS, the City is authorized to apply for and accept HOME Funds; and

WHEREAS, on February 22, 2022 the El Cajon City Council, by its Resolution Number 014-22, incorporated the “First Time Homebuyer Downpayment Assistance Program” (“FTHB Program”), described in the City’s adopted First Time Homebuyer Program Manual (“2013 Manual”), attached hereto as Exhibit “A,” into the City’s First Amendment to FY 2021-22 One Year Action Plan (“One Year Action Plan”), and approved funding for administration and implementation of the FTHB Program to Subrecipient; and

WHEREAS, it is the desire of the Subrecipient and the City that the FTHB Program be implemented and administered by the Subrecipient;

WHEREAS, the Subrecipient shall undertake the same obligations of the City with respect to the FTHB Program in the One Year Action Plan for participation in the HOME Program; and

WHEREAS, the Subrecipient shall administer the CalHome funds in accordance with the most recent CalHome Program Guidelines prepared by the Department of Housing and Community Development.

NOW, THEREFORE, it is agreed between the parties hereto as follows:

1. City Review:

The City reserves the right to review and approve actions and decisions taken by the Subrecipient with respect to the implementation of the FTHB Program for compliance with all applicable regulations.

2. Subrecipient Status:

The City recognizes the Subrecipient as an independent public agency.

3. Service Area:

The Service area is the territorial jurisdiction of the City of El Cajon.

4. Scope of Service:

The Subrecipient shall implement the City’s FTHB Program as described in the 2013 Manual and Scope of Work and Budget (attached hereto as Exhibit “B”), fully and in accordance with the terms of the One Year Action Plan approved by the City and submitted to the United States Department of Housing and Urban Development (HUD), and those certifications in the List of Certifications and Assurances

included as Appendix D to City's Applications for Federal Assistance SF-424 for both CDBG Program and HOME Program funds, and submitted to HUD (the "Certifications", attached hereto as Exhibit "D").

5. Work To Be Performed:

Subrecipient shall undertake the same obligations to the City that the City has undertaken to HUD pursuant to the Certifications. The obligations undertaken by the Subrecipient include, but are not limited to, the obligation to comply with the current and most up-to-date version of each of the following, where applicable:

- A. Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. § 12704);
- B. Regulations of the Department of Housing and Urban Development relating to HOME Investment Partnerships program (24 C.F.R. §§ 92.1, *et seq.*);
- C. HUD Regulations relating to environmental review procedures for the HOME Investment Partnerships program (24 C.F.R. § 92.352);
- D. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); Title VII of the Civil Rights Act of 1968 (Public Law 88-352); Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*); section 109 of the Housing and Community Development Act of 1974; Executive Order 11246 (equal employment opportunity); Executive Order 11063 (non-discrimination), as amended by Executive Order 12259; and any HUD regulations heretofore issued or to be issued to implement these authorities relating to civil rights;
- E. All Section 3 (as defined in clause (i) of this subsection (E), below) covered contracts shall include the following clause (referred to as the "Section 3 clause"):

The parties to this contract agree to comply with and effectuate the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. § 1701u) (Section 3), implemented at 24 C.F.R. part 75. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which federal assistance is spent. Consistent with existing federal, state and local laws and regulations, Contractor shall ensure that training and employment opportunities generated by HUD financial assistance or arising in connection with housing rehabilitation, housing construction, or other public construction projects are provided to Section 3 workers, and in the order of priority set forth at 24 C.F.R. parts 75.9 and 75.19;
- F. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, *et seq.*, and regulations adopted to implement that Act in 49 C.F.R. part 24;
- G. Cost principles have been established for non-profits through 2 C.F.R. part 200, subpart E, entitled "Cost Principles for Non-Profit Organizations"; 2 C.F.R. part 230, entitled "Cost Principles for Non-Profit Organizations" (Circular A-122); and 2 C.F.R. part 225, entitled "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87). These parts establish principles for determining costs of grants, contracts and other agreements with non-profit organizations. The principles are designed to provide that the federal government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on

grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by federal agencies;

- H. 24 C.F.R. § 92.503, concerning program income, repayments, and recaptured funds of the HOME Regulations. Any program income earned by Subrecipient in carrying out the activities of this Contract shall be returned to the City. Upon expiration of this Contract, Subrecipient shall transfer to the City any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds;
- I. 24 C.F.R. §§ 92.252 or 92.254, as applicable, concerning affordability provisions of the HUD regulations relating to the HOME Investment Partnerships Program. Repayment of any funds to the City is required if the housing does not meet the affordability requirements for the specified time period;
- J. The following laws and regulations relating to preservation of historic places: the National Historic Preservation Act of 1966 (Public Law 89-665); the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291); and Executive Order 11593;
- K. The Labor Standards Regulations set forth in 24 C.F.R. § 92.354;
- L. Prevailing wage requirements as set forth in California Labor Code section 1720;
- M. The Hatch Act relating to the conduct of political activities (5 U.S.C. §§ 1502, *et seq.*);
- N. The Flood Disaster Protection Act of 1974 (42 U.S.C. § 4106 and the implementing regulations in 44 C.F.R. parts 59-79);
- O. The Rehabilitation Act of 1973 (Public Law 92-112) as amended, including section 504 which relates to nondiscrimination in federal programs and HUD Regulations set forth in 24 C.F.R. Part 8;
- P. The Clean Air Act (42 U.S.C. § 7401, *et seq.*) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, *et seq.*) and the regulations adopted pursuant thereto (40 C.F.R. 6.100, *et seq.*);
- Q. The Drug-Free Workplace Act of 1988 (Public Law 100-690);
- R. The Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and implementing regulations at 24 C.F.R. § 35.80, *et seq.*;
- S. No member, officer or employee of the Subrecipient, or its designee or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the program assisted under the grant; and Subrecipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this certification;
- T. The Subrecipient certifies that in accordance with section 319 of Public Law 101-

121, to the best of its knowledge and belief that:

(i) No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an officer or employee of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.

(ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

U. The Subrecipient will adopt an affirmative marketing plan in accordance with 24 C.F.R. § 92.351 if the housing being funded contains five or more units; and

V. The Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151, *et seq.*);

6. Compliance with Laws:

Subrecipient shall comply with all applicable local, state, and federal laws, regulations, and ordinances when performing the work required by this Contract.

7. Time of Performance:

Services of the Subrecipient shall commence when the Contract is fully executed by the parties, or May 1, 2022, whichever occurs later, and shall continue in effect until terminated as provided herein, until Subrecipient has carried out all its obligations under this Contract, or until June 30, 2023, whichever occurs first. Subject to approval by City, the term of this Agreement and the provisions herein shall be extended to cover any additional time period needed to expend the project HOME Funds.

8. Compensation and Method of Payment:

City shall reimburse Subrecipient for allowable costs incurred in the management and implementation of the FTHB program and in accordance with applicable federal regulations, including costs for administration and down payment assistance incurred under this Contract, not to exceed a maximum reimbursement of \$1,164,588.00 (consisting of \$1,100,000 in HOME funds and \$64,588 in CalHome funds).

Costs for down payment assistance awarded to borrower households shall be paid by City directly to an authorized escrow prior to closing once a borrower is approved and appropriate documentation is received. Costs for administration shall be invoiced monthly by Subrecipient according to the following approved amounts:

Set-up fee (one time at initial set-up): \$15,000

Annual fee: \$5,000

Per loan charges:

If approved: \$1,800

If declined or canceled by lender: \$1,000

For pre-approvals: \$1,000

Ad-hoc tasks: \$120/hr

City shall pay Subrecipient monthly progress payments upon certification and submittal by Subrecipient of a statement of actual expenditures incurred. Subrecipient shall not submit claims to the City nor

shall City reimburse Subrecipient for costs for which Subrecipient is reimbursed from a source other than the funds allocated for work under this Contract. No equipment purchases have been approved as part of this Contract. No other expenditures are approved as part of this Contract except as specified in this Section 8.

Indirect costs may not be charged without prior written consent of the City and must be consistent with the conditions of this Contract. In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to this budget must be approved in writing by the City and the Subrecipient.

9. Records Retention:

The Subrecipient shall maintain and retain all financial records, supporting documents, statistical records and all other records pertaining to the use of the funds provided under this Agreement for a period of four (4) years at a minimum, and in the event of litigation, claim or audit, the records shall be retained until all litigation, claims, and audit findings involving the records have been fully resolved. Records for non-expendable property acquired with federal funds provided under this Agreement shall be retained for four (4) years after the final disposition of such property.

10. Monitoring:

The City will conduct periodic program monitoring reviews. These reviews will focus on the extent to which the planned FTHB Program has been implemented, measurable goals achieved, effectiveness of program management, and impact of the program. Authorized representatives of the City and HUD shall have the right of access to all activities and facilities operated by the Subrecipient under this Contract. Facilities include all files, records, and other documents related to the performance of this Contract. Activities include attendance at staff, board of directors, advisory committee, and advisory board meetings and inspection by City and HUD representatives, and to ensure that its employees and board members furnish such information, as in the judgment of City and HUD representatives, may be relevant to the question of compliance with contractual conditions and HUD directives, or the effectiveness, legality and achievements of the FTHB Program.

11. FTHB Program Reporting:

Documentation of benefit to low-income persons is required for all HOME- and other City-funded FTHB loans. The Subrecipient agrees to prepare and submit financial, program progress, evaluations, and other reports as required by HUD or the City. The Subrecipient shall maintain such FTHB Program, property, personnel, financial and other records and accounts as are considered necessary by HUD or the City to assure proper accounting for all Contract funds. Subrecipient shall submit a "Request for Payment" form, attached hereto as part of Exhibit "C," along with each monthly invoice. All of the Subrecipient's records, with the exception of confidential client information, shall be made available to representatives of the City and the appropriate Federal agencies. When submitting a request for payment, the Subrecipient is required to submit data necessary to complete the "Homebuyer Set Up and Completion Form," attached hereto as part of Exhibit "C," or similar form for the HOME Program and other federal documents in accordance with HUD regulations and in the format and at the time designated by the City.

12. Accounting:

The Subrecipient must establish and maintain on a current basis, an adequate accrual and accounting system in accordance with generally accepted accounting principles and standards. The City, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Subrecipient which directly pertain to the above project for the purpose of audit, examination, excerpts and transcriptions.

13. Audits:

The Subrecipient is required to arrange for an independent financial and compliance audit annually for each fiscal year federal funds are received under this Contract. Audits must be in compliance with 2

C.F.R. part 200, subpart F, and Subrecipient shall submit a "Certificate of Compliance," attached hereto as Exhibit "E," for each fiscal year in which Subrecipient expends the HOME Funds. The Subrecipient shall forward a copy of the independent audit to the City for review within thirty (30) days of its completion. Additionally, an audit may be conducted by federal, state, or local funding source agencies as part of the City's audit responsibilities. Subrecipient shall cooperate fully with any such audit as required by any such agency. However, the City shall reimburse Subrecipient for the actual costs and expenses of such cooperation in accordance with the Scope of Work and Budget.

The City's authorized representatives shall, at all reasonable times and upon reasonable notice, during normal business hours, have access for the purpose of audit or inspection, to any and all books, documents, papers, records, property and premises of the Subrecipient. Subrecipient staff will cooperate fully with authorized auditors when they conduct audits and examinations of the Subrecipient's services under the FTHB Program. If indications of misappropriation or misapplication of the funds of this Agreement cause the City to require a special audit, the cost of the audit will be reserved and retained from Subrecipient's HOME award. Should the special audit confirm misappropriation or misapplication of funds, the Subrecipient shall reimburse the City the amount of the misapplication or misappropriation. Should the special audit fail to confirm misappropriation or misapplication of funds, the funds retained from Subrecipient's HOME award shall be released, the City shall reimburse Subrecipient for its actual costs and expenses related to the special audit in accordance with Exhibit B, and the City shall bear the full cost of the special audit charged by the auditor. In the event the City uses the judicial system to recover misappropriated or misapplied funds, the prevailing party shall be entitled to recover its attorneys' fees and court costs in addition to any award of damages.

14. Beneficiary Qualification:

The Subrecipient agrees to guarantee that one hundred percent (100%) of the beneficiaries of the FTHB Program identified in the Scope of Work and Budget are low-income persons or households earning at or below eighty percent (80%) of area median income as determined by HUD ("AMI"). Beneficiaries qualifying on the basis of income shall have an annual income equal to or less than the current applicable income limits schedule published by HUD for the San Diego metropolitan statistical area, which defines the maximum income for low- and moderate-income households. The Subrecipient is responsible for obtaining the current applicable HUD income limits schedule for each year of the Agreement term identified in Section 7, Time of Performance. The Subrecipient shall retain these schedules for three (3) years after conclusion of this Agreement.

15. Assignment:

This Agreement is not assignable by the Subrecipient without the express prior written consent of the City's City Council. Consent shall be given at the sole discretion of the City's City Council. Any attempt by the Subrecipient to assign any performance of the terms of this Agreement shall be null and void and shall constitute a material breach of this Agreement upon which the City may, among other remedies, and without limitation, cancel, terminate, or suspend this Agreement.

16. Termination and Termination Costs:

This Agreement may be terminated in whole or in part at any time by either party upon giving thirty (30) days written notice to the other party. Agreement must be reached by both parties as to reasons and conditions for termination in compliance with the provisions of 2 C.F.R. part 200. The City's City Manager is hereby empowered to give said notice subject to ratification by the City's City Council.

The City may immediately terminate this Agreement upon the termination, suspension, discontinuation, or substantial reduction in HOME funding for the Contract activity or if for any reason the timely completion of the work under this Agreement is rendered improbable, infeasible, or impossible. If the Subrecipient materially fails to comply with any term of this Agreement, the City may take one or more of the actions provided under 2 C.F.R. part 200, which includes temporarily withholding cash, disallowing, noncompliance costs, wholly or partially terminating the award, withholding future awards, and other remedies that are legally available. In such event, the Subrecipient shall be compensated for all services rendered and all necessarily incurred costs performed in good faith in accordance with the terms of this Agreement that have been previously reimbursed, to the date of said termination to the extent that HOME funds are available from HUD.

17. Program Income:

“Program Income” is defined as any money generated from the use of HOME or other City funds that is received by Subrecipient in the course of, or as a result of, administering the FTHB Program on behalf of the City. Program Income is not contemplated under this Agreement. If Program Income (as defined herein) is received by Subrecipient, Subrecipient shall contact the City for further instructions and the funds shall be returned to the City for disposition, unless otherwise instructed by the City.

18. Reversion of Assets:

Upon the expiration or termination of this Agreement, for any reason whatsoever, the Subrecipient shall forthwith transfer to the City, any HOME Funds on hand at the time of such expiration or termination and any accounts receivable attributable to the use of HOME Funds including without limitation, Program Income.

19. Independent Contractor:

The parties hereto in the performance of this Contract will be acting in an independent capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

20. Insurance:

The Subrecipient shall neither commence work under this Contract until it has obtained all insurance required hereunder in a company or companies acceptable to the City nor shall the Subrecipient allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained.

The Subrecipient shall agree to provide an acceptable certificate of insurance and endorsements evidencing the coverage as specified in El Cajon City Council Policy D-3, Insurance Requirements, which is attached hereto as Exhibit “F” and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content.

Subrecipient shall furnish properly executed certificates of insurance to City prior to commencement of services under this Agreement. Such certificate shall:

- A. Clearly evidence all coverages required above, including specific evidence of a separate endorsement naming City and its elected and appointed officers, officials, agents and employees as additional insureds;
- B. Indicate whether coverage provided is on a claims-made or occurrence basis;
- C. Provide that such insurance shall not be materially changed, terminated, or allowed to expire except on thirty (30) days prior written notice to City via first class mail; and

Subrecipient agrees to provide City with copies of all required policies upon request.

Subrecipient shall also maintain workers’ compensation insurance” with statutory limits and employer’s liability insurance with limits of not less than \$2,000,000 per claim. Subrecipient shall complete and submit to the City the “Worker’s Compensation Insurance Certificate,” attached hereto as Exhibit “G.”

21. No Benefit to Arise to Local Employee:

No member, officer, or employee of the City, or its designees or agents, no member of the governing body of the City, and no other public official who exercises any functions or responsibilities with respect to the FTHB Program during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the FTHB Program assisted under this Agreement.

22. Certification Regarding Lobbying:

The Subrecipient certifies to the best of its knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an officer or employee of Congress in connection with the awarding of any federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Subrecipient shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontractors, sub-grantees, and contracts under grants, loans, and cooperative agreements), and that all such other subrecipients shall certify and disclose accordingly.

23. Conflict of Interest:

- A. Subrecipient covenants that neither it, nor any of its officers or principals, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Subrecipient's performance of services under this Agreement. Subrecipient further covenants that in the performance of this Agreement no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of City's City Manager. Subrecipient agrees at all times to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement. Subrecipient shall complete and submit to the City the "Declaration of Economic Interests," attached hereto as Exhibit "H."
- B. City understands and acknowledges that Subrecipient is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Subrecipient is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

24. Use of Funds for Entertainment or Gifts:

The Subrecipient certifies and agrees that it will not use funds provided through this Agreement to pay for entertainment or gifts.

25. Joint Funding:

For programs in which there are sources of funds in addition to HOME funds, the Subrecipient shall provide proof of such funding. The City shall not pay for any services provided by the Subrecipient which are funded by other sources. All restrictions and/or requirements provided in this Agreement relative to accounting, budgeting, and reporting applies to the total program regardless of funding sources.

26. Changes in Grant Allocation:

The City reserves the right to reduce the grant allocation when the City's fiscal monitoring indicates that the Subrecipient's rate of expenditure will result in unspent funds at the end of the program year. Changes in the grant allocation will be made only after consultation with the Subrecipient and approval by the City's City Council. Such changes shall be incorporated into this Agreement by written amendments agreed upon by both parties.

27. Fiscal Limitations:

The United States of America through HUD may, in the future, place programmatic or fiscal limitations on HOME funds not presently anticipated. Accordingly, the City reserves the right to revise this Contract upon three (3) days written notice in order to comply with actions affecting HUD program funding. In the event of funding reduction, the City may reduce the budget of the Contract as a whole or as to cost category, may at its sole discretion limit the Subrecipient's authority to commit and spend funds, and may restrict the Subrecipient's use of both its uncommitted and unspent funds. Where HUD directs or requests the City to implement a reduction in funding allocated to this Contract, the City Manager or his/her designee may act for the City in implementing and effecting such a reduction and revising the Contract for such purpose. The City Manager or his/her designee may act for the City in suspending the operation of the Contract for up to sixty (60) days, upon three (3) days written notice to the Subrecipient of his/her intention to so act. In no event, however, shall any revision made by the City effect expenditures and legally binding commitments made by the Subrecipient before it received notice of such revision, provided that such amounts have been committed in good faith and are otherwise allowable and that such commitments are consistent with HUD cash withdrawal guidelines.

28. Purchase and Invoice Deadlines:

Purchase of equipment or property must be completed before the last three (3) months of the initial performance period and all equipment bills are to be paid before the last two (2) months of this period. No expendable or non-expendable property or equipment is to be purchased during the final three (3) months of the initial performance period unless approved by the City in writing. Invoices for all obligations incurred under this Agreement must be submitted to the Community Development-Housing Department within sixty (60) days after the initial performance period termination date or they may not be honored. Exceptions to the preceding limitations require prior written approval by the City.

Invoices will not be honored unless all data necessary to complete associated Homebuyer Set Up and Completion Forms have been submitted and are current.

29. Non-expendable Property:

A record shall be maintained by the Subrecipient for each item of non-expendable property acquired with HOME funds. This record shall be provided to the City as well as being available for inspection and audit by the City upon reasonable notice. Non-expendable property means tangible personal property having a useful life of more than one (1) year and an acquisition cost of one thousand dollars (\$1,000.00) or more per unit. The Subrecipient shall not purchase or agree to purchase non-expendable property without the prior written approval of the City. Upon completion or early termination of this Agreement, the City reserves the right to determine the final disposition of said non-expendable property acquired for this program using HOME funds in compliance with applicable laws and regulations. Disposition may include, but is not limited to, the City taking possession of said non-expendable property.

30. Expendable Personal Property:

Expendable personal property refers to all tangible personal property other than non-expendable personal property. The Subrecipient shall not purchase or agree to purchase expendable personal property with a unit value of one thousand dollars (\$1,000.00) or more per unit without the prior written approval of the City.

31. Travel and Conference Restrictions:

The Subrecipient certifies and agrees that travel and conference expenses will not be paid for by funds provided through this Agreement.

32. Provision of FTHB Program Services

- A. The Subrecipient shall not on the ground of race, color, national origin, sex, sexual orientation, disability or familial status exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination under any program or activity funded in whole or in part with HOME Funds.

- B. The Subrecipient shall not under any program or activity funded in whole or in part with HOME Funds (a "HOME Activity"), on the ground of race, color, national origin, sex, sexual orientation, disability, or familial status:
 - 1. Deny any facilities, services, financial aid or other benefits provided under the FTHB Program or a HOME Activity;
 - 2. Provide any facilities, services, financial aid or other benefits which are different or are provided in a different form from that provided to others under the FTHB Program or a HOME Activity;
 - 3. Subject to segregated or separate treatment in any facility in, or in any manner or process related to, receipt of any service or benefit under the FTHB Program or a HOME Activity;
 - 4. Restrict in any way access to, or the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid, or other benefits under the FTHB Program or a HOME Activity;
 - 5. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition, which the individual must meet in order to be provided any facilities, services, or other benefits provided under the FTHB Program or a HOME Activity; or
 - 6. Deny an opportunity to participate in an FTHB Program or a HOME Activity as an employee.
- C. The Subrecipient may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, national origin, sex, sexual orientation, disability, or familial status or have the effect of defeating or substantially impairing accomplishment of the objectives of the FTHB Program or a HOME Activity with respect to individuals of a particular race, color, national origin, sex, sexual orientation, disability, or familial status.
- D. The Subrecipient, in determining the site or location of housing or facilities provided in whole or in part with HOME Funds, may not make the selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the basis of race, color, national origin, sex, sexual orientation, disability, or familial status or which have the purpose or the effect of defeating or substantially impairing the accomplishment of the objectives of the Civil Rights Act of 1964 and amendments thereto.
- E.
 - 1. In administering a HOME Activity regarding which the Subrecipient has previously discriminated against persons on the grounds of race, color, national origin, sex, sexual orientation, disability, or familial status, the Subrecipient must take affirmative actions to overcome the effects of prior discrimination.
 - 2. Even in the absence of such prior discrimination, the Subrecipient, in administering a HOME Activity, should take affirmative action to overcome the effects of conditions which would otherwise result in limiting participation by persons of a particular race, color, national origin, sex, sexual orientation, disability, or familial status. Where previous discriminatory practice or usage tends, on the grounds of race, color, national origin, sex, sexual orientation, disability, or familial status, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any HOME Activity, the Subrecipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Civil Rights Act of 1964 and amendments thereto.
 - 3. The Subrecipient shall not be prohibited by this part from taking any eligible action to ameliorate an imbalance in services or facilities provided to any geographic area or

specific group of persons within its jurisdiction where the purpose of such action is to overcome prior discriminatory practice or usage.

- F. Notwithstanding anything to the contrary in Sections A(i)-(v), nothing contained herein shall be construed to prohibit the Subrecipient from maintaining or constructing separate living facilities or restroom facilities for the different sexes. Furthermore, selection on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

33. Employment Discrimination

- A. The Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, disability, or familial status. The Subrecipient shall take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, national origin, sex, sexual orientation, disability, or familial status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training including apprenticeship. The Subrecipient agrees to post in a conspicuous place available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, sex, sexual orientation, disability, or familial status.
- C. The Subrecipient shall send to each labor union or representative of workers with whom it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City's contracting officers advising the labor union or workers' representative of the Subrecipient's commitments under section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Subrecipient shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the U.S. Secretary of Labor.
- E. The Subrecipient shall furnish to the City all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the related rules, regulations, and orders.
- F. In the event of the Subrecipient's failure to comply with any rules, regulations, or orders required to be complied with pursuant to this Agreement, the City may cancel, terminate, or suspend in whole or in part its performance and the Subrecipient may be declared ineligible for further government contracts in accordance with the procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.
- G. The Subrecipient shall include the provisions of the "Affirmative Action Policy," Paragraphs B(i) through (vi), above, in every subcontract or purchase order unless exempted by rules, regulations, or order of the Secretary of Labor, issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

The Subrecipient shall take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Subrecipient becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

- H. The Subrecipient shall not discriminate on the basis of age in violation of any provision of the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*) or with respect to any otherwise qualified disabled individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). The Subrecipient shall also provide ready access to and use of all HOME funds assisted buildings to physically disabled persons in compliance with the standards established in the Architectural Barriers Act of 1968 (42 U.S.C. § 4151 *et seq.*) and the Americans with Disabilities Act of 1992.

34. Religious Proselytizing or Political Activities:

The Subrecipient agrees that it will not perform or permit any religious proselytizing or political activities in connection with the performance of this Agreement. Funds under this Agreement will be used exclusively for performance of the services required under this Agreement and no funds shall be used to promote any religious or political activities. Further in accordance with 24 C.F.R. § 570.200(j), *et seq.*, the Subrecipient shall not:

- A. Engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under 24 C.F.R. § 570.200. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under 24 C.F.R. § 570.200, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services;
- B. Use direct HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization;
- C. Discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious beliefs; or
- D. Use HOME funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities,

35. Faith Based Organizations:

Notwithstanding Section 34 above, if Subrecipient is a "Faith Based Organization," Subrecipient agrees to abide by Executive Order 13279, as promulgated at 24 C.F.R. § 5.109, *et seq.*

36. Alterations, Encumbrances, Mechanics' Liens:

The Subrecipient agrees that it will not make, or suffer to be made, any alterations to the HOME-funded improvements, the property containing said improvements, or any part thereof, without the prior written consent of the City. The Subrecipient shall keep the property free from any encumbrances or liens arising out of any work performed, material furnished, or obligations incurred by the Subrecipient. The Subrecipient agrees to submit performance and labor and materials bonds on any improvements over \$5,000.00.

37. Notices:

All notices, memoranda, reports, drafts, and communications shall be served in writing. The notices shall be sent to the following addresses:

City
City of El Cajon
Community Development–Housing
Attn: Housing Manager
200 Civic Center Way
El Cajon, CA 92020

Subrecipient
San Diego Housing Commission
Attn: Sujata Raman
VP, Single-family Housing Finance
1122 Broadway, Ste 300
San Diego, CA 92101

38. Amendments; Variations:

This writing with all attachments and exhibits embodies the whole of the Contract of the parties hereto. There are no oral agreements not contained herein, and except as herein provided, addition or variation

of the terms of this Contract shall not be valid unless made in the form of a written amendment to this Contract formally approved and executed by the City's City Council and upon required approvals of the Subrecipient.

39. Savings Clause:

If any provision of this Contract is found to be invalid, void, or unenforceable, the remaining provisions shall, insofar as reasonably possible, continue in full force in effect without being impaired or invalidated in any way.

40. Exhibit(s):

The Exhibits to this Contract are an integral part of this Contract and have each been incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

ATTEST:

City Clerk

CITY OF EL CAJON, a municipal corporation,

By _____
Graham Mitchell, City Manager

SAN DIEGO HOUSING COMMISSION, a public agency

By _____
Name, Title

APPROVED AS TO FORM:

City Attorney or designee

APPROVED AS TO FORM:

Charles B. Christensen, General Counsel
San Diego Housing Commission

Exhibit "B"
SCOPE OF WORK AND BUDGET

Capitalized terms used herein but not defined herein shall have the meanings ascribed thereto by the main body of the Contract to which this Exhibit "B" is attached.

First Time Homebuyer Program

I. Scope of Work – Work Description, Program Goals and Timeline

- A. Subrecipient agrees to use \$1,100,000 in HOME Funds and \$64,588 in CalHome Program funds allocated to it by the City of El Cajon to administer the FTHB Program in the City. Subrecipient will provide full-cycle-lending to locate and assist **a minimum of ten (10) eligible, low-income first time homebuyers** earning up to 80% of AMI. Said services will be provided for the term specified in Section 7 of the Contract. Extensions of the term, if any, will be determined in accordance with Section 7 of the Contract.
- B. Subrecipient will perform full-service administration of the FTHB program in accordance with the terms, conditions, and qualification parameters outlined in the 2013 Manual, this Contract, and the HOME Program regulations at 24 C.F.R. part 92 for those loans utilizing the HOME Funds.

The 2013 Manual currently includes the American Dream FTHB Program (utilizing HOME Funds and CalHome Funds, as available). The California Dream FTHB Program is also authorized whenever low and moderate-income housing asset funds ("LMIHAF") become available due to the repayment of prior loans made by the El Cajon Housing Authority (ECHA). Such funds may be awarded to Subrecipient in the future pursuant to an amendment to this Contract for administration of new California Dream FTHB loans. Subrecipient agrees to use other federal, state or local funds awarded to it by the City for the same purpose, as those funds become available, in accordance with the regulations governing those funds and with terms approved by the City.

- C. Subrecipient responsibilities include, but are not limited to:

Administration of FTHB loan funds: Subrecipient will take loan applications from approved "Participating Lenders," as defined in the 2013 Manual, and conduct income eligibility determinations for the FTHB Program. Subrecipient will underwrite all applications to the terms and conditions approved in the 2013 Manual, provide pre-qualification and/or loan reservation letters as requested, provide required loan disclosures, ensure inspections are completed and required repairs are cleared, and oversee loan document preparation and loan closing, taking all approved transactions through closing. Requests for exception to one or more terms or conditions must be submitted to the City. Exceptions will be approved or denied by the City Manager. Subrecipient shall not fund a first mortgage and provide the City's loan assistance for the same client under the FTHB Program within the same homebuyer transaction.

Outreach: City staff will provide continuous outreach about the FTHB program through its networks, and in both English and Spanish, via flyers and social media, in coordination with Subrecipient. Subrecipient will maintain information about the City's FTHB Program on its FTHB webpage. City will provide direct links to Subrecipient's webpage from its own webpage. Subrecipient may also participate in community events as a form of outreach. The outreach performed, if any, will be reported on a quarterly basis to the City.

Duplicate checking: Upon receipt of a new application, Subrecipient will work with City staff to check if the applicant previously received loans from the City which may have been lost to foreclosure or other adverse outcomes. Applicants with prior loans from the City will be processed in accordance with the 2013 Manual.

Borrower Eligibility: For those loans utilizing both HOME Funds and CalHome Funds, annual family income shall be calculated and eligibility determined in accordance with 24 C.F.R. § 509 and HUD's most current Technical Guide for Determining Income and Allowances. For California Dream FTHB Program loans utilizing LMIHAF only, annual family income shall be calculated eligibility determined in accordance with 25 C.C.R § 6914.

Exhibit "B"
SCOPE OF WORK AND BUDGET

Policies and Procedures: Subrecipient must submit its FTHB Program Policies, Procedures, forms and process guidelines to City for approval prior to implementation of the City's FTHB Program.

Loan Documents: Subrecipient must submit a set of proposed loan and related documents (including proposed regulatory documents) to the City for approval prior to implementation of the City's FTHB Program. Once approved, any subsequent modifications to the loan and related documents proposed must be reviewed and approved by City prior to use.

Homebuyer Education: Subrecipient will ensure that loan applicants attend eight (8) hours or more of HUD Certified Home Buyer Education (HBE) prior to purchase. Applicants must provide a "Certificate of Completion" of the HBE, dated within 6 months of purchase as required in the 2013 Manual.

HQS Inspections: Subrecipient will work with the City to request housing quality standards (HQS) inspections and clearance for eligible properties with a loan reservation. Inspections may be requested by calling the City's Building Division at (619) 441-1726 or emailing building@elcajon.gov. Inspections will normally be completed within 5 workdays of a request. All repair items must be completed and clearance received from the City inspector prior to close.

NEPA Environmental Review: Subrecipient will work with the City to request environmental review and clearance for eligible properties prior to funding a loan reservation, as required by the National Environmental Policy Act (NEPA). Requests for NEPA review may be requested by emailing the City's Planning division at planning@elcajon.gov. Subrecipient must provide City with information sufficient to complete the review on a form acceptable to the City. Environmental reviews will normally be completed within 10 workdays.

Affirmative Fair Housing Marketing Plan: Subrecipient must prepare and submit an Affirmative Fair Housing Marketing Plan as required by for single-family housing activities it will undertake in the City of El Cajon, prior to implementation of the City's FTHB Program.

Records and Reporting: Documentation of benefit to low/moderate-income persons is required for all HOME- and City-funded FTHB projects, including those data elements necessary to complete an Affirmative Fair Housing Marketing Plan in accordance with 24 C.F.R. part 200 as required. Client, program, and financial data must be tracked, collected, and reported as required by Section 11 of this Contract. The Subrecipient shall submit reports as specified by the Contract and in Section III below, monthly or quarterly as agreed, on forms as approved by the City and outlined in Exhibit "C" to the Agreement.

- D. Following funding and closing of an FTHB loan pursuant to this Agreement, Subrecipient must follow loan close-out procedures that include ensuring the following documents are returned to the City:
- a. Original signed disclosures
 - b. Original promissory note and copies of all loan documents (both recorded and unrecorded)
 - c. Title insurance
 - d. Completed loan file set-up forms
 - e. Other documents and forms as specified by City.
- E. During the term of this Contract, Subrecipient may propose modifications to the terms and conditions outlined in the 2013 Manual by submitting a request addressed to the Housing Manager or Director of Community Development, with sufficient detail to explain the modifications requested, and with an analysis of the risks and benefits of such proposed modifications\.

Exhibit "B"
SCOPE OF WORK AND BUDGET

II. Program Budget, Compensation, and Payment

- A. Per the agreement, the City will provide the Subrecipient with ONE MILLION, ONE HUNDRED THOUSAND, AND NO/100 CENTS (\$1,100,000.00) of HOME Funds, and SIXTY-FOUR THOUSAND, FIVE HUNDRED EIGHTY-EIGHT AND NO/100 CENTS (\$64,588.00) in CalHome Funds. The maximum amount of each loan shall be as outlined in the 2013 Manual, as duly amended from time to time. The CalHome Funds may be used to assist one (1) homebuyer with deeper assistance, and the funds may be layered with HOME Funds necessary to fund any gap in the homebuyer's financing, in accordance with the 2013 Manual. In the alternative, Subrecipient may propose another combination or singular use of the funds to assist one or more qualified homebuyer households with approval from the City. The loans shall only be made to families at or below 80% of the AMI. The loans shall only be used to assist such families with the purchase of homes through down payment assistance in conjunction with affordable first mortgages.
- B. Subrecipient shall be responsible for all research and reviews related to the work and shall not rely on personnel of the City for such services, except as authorized in advance by the City. The Subrecipient shall attend FTHB Program-related meetings whenever possible and provide reports as cited in this Exhibit "B."
- C. Costs for down payment assistance awarded to borrower households shall be paid by City directly to an authorized escrow prior to closing once a borrower is approved and appropriate documentation is received. Costs for administration shall be invoiced by Subrecipient according to the following approved amounts:
- Set-up fee (one time at initial set-up): \$15,000
 - Annual fee: \$5,000
 - Per loan charges:
 - If approved: \$1,800
 - If declined or canceled by lender: \$1,000
 - For pre-approvals: \$1,000
 - Ad-hoc tasks: \$120/hr

III. Budget and Invoicing

The City agrees to pay Subrecipient the amounts listed in this Agreement and in Sections I.A and II above for administration of the FTHB Program. It is further agreed that no funding shall be disbursed unless the Subrecipient is in full compliance with the provisions of this Agreement. The City shall make payment of these funds on a reimbursement basis contingent upon receipt of a written request and adequate documentation from Subrecipient, including receipts and appropriate proof of payment. Payments will not be paid unless and until periodic reports are current. Payments may be made on monthly or quarterly basis, as mutually agreed by Subrecipient and the City. City agrees to wire funds directly to escrow prior to closing for all approved loans upon submittal of a request from Subrecipient with full documentation as specified below.

- A. Invoices for project administration services will be submitted for payment monthly or quarterly, as agreed. Invoices should be submitted with the following documentation:
- a. Numbered invoice from SDHC;
 - b. City Request for Payment form; and
 - c. Appropriate receipts, proof of payment, and other back-up documentation as required by the City.
- B. Loan funds will be wired directly to escrow prior to closing of an FTHB loan, within 72 hours of receipt of a request from Subrecipient, with the following documentation:
- a. Request for Wiring of Funds
 - b. City Request for Payment form
 - c. Confirmation of all closing conditions met;

Exhibit "B"
SCOPE OF WORK AND BUDGET

- d. Estimated Closing Statement from escrow (formerly HUD-1 Settlement Statement);
- e. Homebuyer Set-up and Completion form