

MEMORANDUM OF UNDERSTANDING
FOR USE OF CDBG FUNDS
BETWEEN
CITY OF CHULA VISTA
DEVELOPMENT SERVICES-HOUSING DIVISION
AND
DEPARTMENT OF _____

This Memorandum of Understanding (MOU) is entered into this **1st day of July, 2016** between the Development Services Department Housing Division (DSD-HD) and the Department of _____ to work together toward the mutual goal of developing community facilities and programs in the City of Chula Vista by completing the _____ Project/Program.

DSD-HD is the Grantee administrator for the City of Chula Vista receipt of federal Community Development Block Grant (CDBG) program funds. The City Council allocated CDBG program funds for a City project as described in “Work to be Performed” (the Project). This Grant is made pursuant to Title I of the Housing and Community Development Act of 1974 (41 U.S.C. 5301-5320) as amended, the primary objective of which is the development of viable urban communities by providing federal assistance for community development activities in urban areas.

This MOU will establish the working parameters for the Project activities to be accomplished with these funds. This CDBG funded activity has been incorporated into the City’s annual Action Plan which was submitted and accepted by the U.S. Department of Housing and Urban Development (HUD). The Action Plan requires PW and all its subrecipients and contractors to meet certain obligations and certifications to the federal government including environmental review, anti-discrimination, and timely expenditure of funds. This Project will be implemented compliant with CDBG regulations and related federal laws.

IT IS AGREED AS FOLLOWS:

WORK TO BE PERFORMED: _____ will implement the Project described as follows: [Enter project/program description here]. The Project will use \$000,000 of CDBG funds from FY 2016-2017, further detailed in Attachment “A” - Budget.

PERFORMANCE MEASUREMENT A total of X,XXX low/moderate income residents, will benefit from the program/project (further detailed below) and Attachment “B” [Attach Service Area Map, if applicable].

TIMELY COMPLETION AND EXPENDITURE: Timely completion of the Project is the highest priority of this agreement. To ensure timely completion and expenditures, _____ will demonstrate reasonable progress in implementation of a Project by completing and expending allocated CDBG Project funds by **June 30, 2017**, further detailed in Attachment “C” – Project Timeline.

QUARTERLY REPORTS: In order to more closely monitor Project completion and expenditures, the _____ Project Manager will provide the DSD-HD Project Manager with quarterly reports, submitted no later than 15 days after the last day of the previous quarter, which includes a narrative of the activities, and/or progress towards meeting the timeline goals. Report due dates are: October 15, January 15, April 15, and July 15.

PROJECT REVIEW CONFERENCE: In the event that quarterly reports indicate funds will not be expended by June 30, 2016, or within the agreed upon schedule, _____ will notify DSD-HD of the completion deficiencies and PW will have 45 calendar days to provide its plan for meeting time and expenditure agreements. Failure to correct the deficiency within 45 calendar days will require DSD-HD to schedule a Project Review Conference.

Upon failure to develop a plan for meeting completion and expenditure requirements, the DSD-HD Housing Manager will schedule a Project Review Conference. Either or both Directors may assign a designee to represent their respective department during a Project Review Conference. The Project Review Conference will serve to identify reasons for delayed performance and weaknesses in the project implementation plan. Based on the Project Review Conference discussions both DSD-HD and PW will generate a remedial plan that may include but is not limited to re-design of the Project, amendments to the Project, extending the term of the Project, or re-allocation of the funds to an alternate Project.

CDBG PROGRAMMATIC REQUIREMENTS: Project will be implemented in accordance with Community Development Block Grant requirements as well as all other additional Federal Requirements detailed below and all bid documents shall contain the following clauses:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
2. *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to HUD.
3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-

Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
5. *Rights to Inventions Made Under a Contract or Agreement*— Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.
6. *Clean Air Act (42 U.S.C. 7401 et seq.)* and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to 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.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).
7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*— Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any

agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, “Debarment and Suspension,” as set forth at 24 CFR part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.
9. *Drug-Free Workplace Requirements*—The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.
10. *Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u*. All section 3 covered contracts shall include the following clause (referred to as the “section 3 clause”):
 - a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
 - c. The Sub-recipient agrees to send to each labor organization or representative of workers with which the Sub-recipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Sub-recipient's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number

and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. The Sub-recipient agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the sub-Sub-recipient is in violation of the regulations in 24 CFR part 135. The Sub-recipient will not subcontract with any sub-Sub-recipient where the Sub-recipient has notice or knowledge that the sub-Sub-recipient has been found in violation of the regulations in 24 CFR part 135.
 - e. The Sub-recipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Sub-recipient is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Sub-recipient's obligations under 24 CFR part 135.
 - f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
 - g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
11. The Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*);
12. The Rehabilitation Act of 1973 (Public Law 93-112) as amended, including section 504 which related to nondiscrimination in federal programs and HUD regulations set forth in 24 CFR 8. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against persons with disabilities in the operation of programs receiving federal financial assistance. HUD regulations implementing Section 504 contain accessibility requirements for new construction and rehabilitation of housing as well as requirements for ensuring that the programs themselves are operated in a manner that is accessible to and usable by persons with disabilities. Both individual units and the common areas of buildings must be accessible under Section 504. Section 504 states that "no qualified individuals with a disability in the United States shall be excluded from, denied the benefits of, or be

subject to discrimination under" any program or activity that receives Federal financial assistance. Requirements common to these regulations include program accessibility; effective communication with people who have hearing or vision disabilities; and accessible new construction and alterations (See 24 CFR Part 8).

13. The Americans with Disabilities Act (42 U.S.C. § 12101);
14. The bonding requirements described in 24 CFR Part 85.36 required for construction or facility improvement contracts or subcontracts that exceed the simplified acquisition threshold (defined at 41 U.S.C. 403(11)); and
15. Comply with and make good faith and reasonable efforts to carry out the purposes of Executive Orders 12432 and 11625 related to participation in federal programs by Minority Business Enterprises ("MBE") and Executive Order 12138 related to participation in federal programs by Women's Business Enterprises ("WBE").

ACKNOWLEDGEMENT OF FUNDING: _____ shall identify the City of Chula Vista and the Department of Housing and Urban Development (HUD) Community Development Block Grant Program as the source of funding, or, if applicable, one of the sources of funding in public announcements that are made regarding the Project. Acknowledgement of the City's funding roles, for example, should be included in publicity materials related to the Project. In addition, DSD-HD agrees that it shall be apprised of any special events linked to the Project so that a review can be made on what role, if any, the City and HUD would assume.

TERM: This MOU will commence when executed by both parties and shall remain in effect until terminated by either party with a 30 day written notice.

IN WITNESS WHEREOF, this Memorandum of Understanding is hereby executed on the day and the year first above written.

<p>Department of _____</p> <p>Date: _____</p> <p>By: _____</p> <p>[Enter Director Name], Director of _____</p>
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<p>Department of Development Services</p> <p>Date: _____</p> <p>By: _____</p> <p>Kelly Broughton, Director of Development Services</p>
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