

AGREEMENT FOR SERVICES FOR CDBG PROGRAM

This Agreement for Services for CDBG Program (“this Agreement”) is entered into in the County of Ventura, State of California, on this [Day] day of [Month], 20[Year], by and between the City of Oxnard (“Grantee”) and [Name of Subrecipient] (“Subrecipient”).

WHEREAS, Grantee has received Community Development Block Grant funds (“CDBG funds”) from the federal Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974, as amended, to be used to provide services in accordance with Title 24 of the Code of Federal Regulations (“CFR”), Part 570, concerning CDBG funds; and

WHEREAS, Grantee wishes to engage Subrecipient to provide services in accordance with such regulations and to pay Subrecipient for such services with CDBG funds.

NOW, THEREFORE, Grantee and Subrecipient agree as follows:

1. Scope of Services

a. Activities

Subrecipient shall provide the services, referred to herein as “the Program,” described in Exhibit A, at the times set out in the schedule attached hereto as Exhibit B, and in accordance with the budget attached hereto as Exhibit C. Exhibits A, B and C are attached hereto and incorporated herein by reference.

b. Administration

Subrecipient shall oversee and administer the Program, including hiring and supervising staff, supervising and monitoring the Program, advertising the Program to the public, providing supplies for the Program, and [List other administrative duties under the program].

c. Levels of Accomplishment

Subrecipient shall achieve at least the following levels of accomplishment for the Program, measured as of the end of the term of this Agreement:

[List levels of accomplishment for the Program]

2. Performance

a. In performing the Program, Subrecipient shall comply with all applicable federal, State and local laws and regulations, including Title 24 CFR Part 570. Certain applicable federal regulations, policies, guidelines, and requirements are attached as Exhibit D and incorporated herein by reference.

b. Subrecipient shall carry out each activity of the Program in compliance with all federal laws and regulations described in subpart K of 24 CFR Part 540, except that Subrecipient does not assume Grantee's environmental responsibilities described at 24 CFR Part 540.604, and Subrecipient does not assume Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

c. If Subrecipient is a religious organization, the conditions prescribed by HUD for the use of CDBG funds by religious organizations are incorporated by reference into this Agreement.

d. Subrecipient shall obtain, at Subrecipient's expense, all permits, licenses and certificates required in connection with performance of the Program, including a City of Oxnard business tax certificate for services performed within the City of Oxnard.

e. Subject to the terms and conditions of this Agreement and applicable laws and regulations, Subrecipient shall determine the method, details, and means of performing the Program.

f. Grantee shall monitor the Program and notify Subrecipient of any substandard performance. If Subrecipient does not correct the substandard performance as and within the time required by Grantee, Grantee may terminate this Agreement as provided in Section 4.

g. Subrecipient shall perform the Program within the term of the Agreement set out in Section 3.

3. Term of Agreement

a. This Agreement shall begin on [Start Date], and shall expire on [End Date].

b. Notwithstanding the expiration of the Agreement, Subrecipient shall remain subject thereto as long as Subrecipient remains in control of CDBG funds, Program income, or assets obtained with such funds or income, and the close-out period has not ended. During the close-out period, Subrecipient shall make final payments, dispose of Program assets (including returning to Grantee unused materials and equipment, unspent cash advances, Program income balances and receivable accounts), and determine the custodianship of records.

4. Termination

a. In accordance with 24 CFR Part 85.43, Grantee may suspend or terminate this Agreement if Subrecipient materially fails to comply with any term of this Agreement or the grant award.

b. In accordance with 24 CFR Part 85.44, Grantee may terminate this Agreement or the grant award for convenience.

5. Compensation

a. Grantee shall pay Subrecipient in an amount not to exceed \$[Amount] for Program services provided under this Agreement and for reimbursement of costs and expenses that Subrecipient necessarily incurs for the Program and that are eligible for reimbursement under applicable regulations.

b. Subrecipient's acceptance of the final payment made under this Agreement shall constitute a release of Grantee from all claims and liabilities for compensation to Subrecipient for anything relating to Subrecipient's services.

c. Subrecipient agrees that payment by Grantee shall not constitute or be deemed a release of responsibility or liability of Subrecipient for the accuracy and competency of the services performed under this Agreement, nor shall such payment be deemed an assumption of responsibility or liability by Grantee for any defect or error in the services provided by Subrecipient.

d. Subrecipient shall provide Grantee with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

e. If any sales tax is due for services performed by Subrecipient, or materials provided by Subrecipient, Subrecipient shall pay the sales tax. Grantee shall reimburse Subrecipient for sales tax paid by Subrecipient that is eligible for reimbursement under applicable law and regulations.

6. Method of Payment

a. Grantee shall pay Subrecipient monthly upon satisfactory completion of services and upon submittal by Subrecipient and approval by Grantee of an invoice delineating services performed and expenses incurred, in a form satisfactory to Grantee.

b. Subrecipient shall comply with the accounting principles and procedures contained in OMB Circular A-122, implement adequate internal controls, and maintain source documentation for all costs incurred.

7. Uniform Administrative Requirements

If Subrecipient is not a governmental agency, Subrecipient shall comply with the requirements and standards of the OMB circulars and CDBG provisions set out in subsection (b) of 24 CFR Part 570.502. If Subrecipient is a governmental agency, Subrecipient shall comply

with the requirements and standards of the OMB circulars and CDBG provisions set out in subsection (a) of 24 CFR Part 570.502.

8. Records

a. Subrecipient shall maintain all records required by 24 CFR Part 570.506 that are pertinent to the Program. Such records include, but are not limited to:

- (i) Records fully describing each activity undertaken.
- (ii) Records demonstrating that each activity undertaken meets one of the national objectives of the CDBG program.
- (iii) Records required to determine the eligibility of activities.
- (iv) Records require to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG funds.
- (v) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program.
- (vi) Financial records required by 24 CFR Part 570.502
- (vii) Records documenting compliance with 24 CFR Part 570, Subpart K.

b. Subrecipient shall retain all records pertinent to expenditures made under this Agreement for three years after the termination of all activities funded by this Agreement, or after the resolution of federal audit findings, whichever occurs later. Subrecipient shall retain records of nonexpendable property acquired with CDBG funds for three years after the final disposition of such property. Subrecipient shall retain records for any displaced person for three years after such person has received final payment.

c. Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, the client's name, address, income level or other basis for determining eligibility, and a description of the services provided to the client. Subrecipient shall maintain the confidentiality of client data and shall not disclose client data, except as required by law or as required by the administration of Grantee's and Subrecipient's duties under this Agreement.

d. At any time during normal business hours, Subrecipient shall make its records pertaining to this Agreement available to Grantee, the State of California, the federal government the Comptroller General of the United States, or any of their duly authorized representatives, as often as such agencies deem necessary, to audit, examine, copy, excerpt or transcribe. Within 30 days of Subrecipient's receipt of an audit report that notes deficiencies in such records, Subrecipient shall fully correct such deficiencies. Failure to do so will constitute a violation of this Agreement and may result in Grantee's withholding payment.

e. Subrecipient shall obtain an annual audit that complies with Grantee's policies concerning subrecipient audits.

9. Program Income; Reversion of Assets; Indirect Costs

a. Subrecipient shall report to Grantee all Program income, as defined in 24 CFR Part 570.500(a), generated by Program activities carried out with CDBG funds. Subrecipient may retain and use Program income in accordance with 24 CFR Part 570.504. Subrecipient shall use Program income during the term of the Agreement for activities permitted by the Agreement, and transfers of grant funds to Subrecipient under this Agreement shall be adjusted according to the principles described in paragraphs (b)(2)(i) and (ii) of 24 CFR Part 570.504. All of the provisions of this Agreement shall apply to activities for which Subrecipient uses Program income.

b. At the end of the term of this Agreement, Subrecipient shall pay to Grantee in accordance with 24 CFR Part 570.503(b)(8) any Program income (including investments thereof) held by Subrecipient or received by Subrecipient after such date, except as needed for Subrecipient's immediate needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for Section 108 loan guarantee security needs. Subrecipient shall also transfer to Grantee any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds.

c. Before requesting reimbursement for indirect costs, Subrecipient shall adopt and obtain Grantee's approval of an indirect cost allocation plan for determining the share of such costs to be reimbursed by Grantee.

10. Real and Personal Property

a. (Awards Prior to December 26, 2014): Subrecipient shall procure, use, manage and dispose of personal property in accordance with 24 CFR 85.32 through 85.36. (Awards After December 26, 2014): Subrecipient shall procure, use, manage and dispose of personal property in accordance with 2 CFR 200.310 and 2 CFR 200.312 through 2 CFR 200.316.

b. Subrecipient shall comply with Grantee's policies concerning the purchase of personal property and shall maintain an inventory record of all nonexpendable personal property, as defined by such policy, that Subrecipient procures with CDBG funds.

c. At the end of the term of this Agreement, all personal property procured by Subrecipient with CDBG funds shall become the property of Grantee.

d. At the end of the term of this Agreement, with regard to any real property under Subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to Subrecipient in the form of a loan) in excess of \$25,000, Grantee shall determine whether:

- (i) The real property shall be used to meet one of the national objectives set out in 24 CFR Part 570.208 until five years after expiration of this Agreement, or for such longer period of time as Grantee determines to be appropriate; or

- (ii) Subrecipient shall pay Grantee an amount equal to the current market value of the real property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the real property; provided, however, that such payment shall not be required after the period of time specified in paragraph (b)(8)(i) of 24 CFR Part 570.503.

11. Travel

Subrecipient shall obtain prior Grantee's written approval to use CDBG funds for travel outside the City of Oxnard.

12. Reports

Subrecipient shall submit to Grantee semi-annual reports concerning the Program, in the form and with the content specified by Grantee.

13. Indemnity

a. Subrecipient agrees to indemnify, hold harmless and defend the City of Oxnard ("City"), its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Subrecipient or its agents, employees, subconsultants, consultants and other persons acting on Subrecipient's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which Subrecipient or its agents, employees, subconsultants, consultants and other persons acting on Subrecipient's behalf would be held strictly liable.

b. Subrecipient's obligation to defend shall arise when a claim, demand or action is made or filed, whether or not such claim, demand or action results in a determination of liability or damages as to which Subrecipient is obligated to indemnify and hold harmless.

14. Insurance

a. Subrecipient shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit INS-A, attached hereto and incorporated herein by this reference, issued by a company satisfactory to Grantee's Risk Manager, unless the Risk Manager waives, in writing, the requirement that Subrecipient obtain and maintain such insurance coverages.

b. Subrecipient shall, prior to performance of any services, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-A. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit INS-A.

c. Maintenance of proper insurance coverages by Subrecipient is a material element of this Agreement. Subrecipient's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

15. CDBG Program Recognition

When publishing material that concerns this Agreement, Subrecipient shall ensure recognition of the CDBG program by including a reference to CDBG funds.

16. Independent Contractor

a. In the performance of services under this Agreement, Subrecipient shall be, and is, an independent contractor. Subrecipient and its employees are not employees of Grantee. Subrecipient has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Subrecipient.

b. Subrecipient shall be solely responsible for, and shall save Grantee harmless from, all matters relating to the payment of Subrecipient's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other laws and regulations governing employer-employee relations.

c. Subrecipient acknowledges that Subrecipient and Subrecipient's employees are not entitled to receive from Grantee any of the benefits or rights afforded employees of Grantee, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability, and workers' compensation insurance benefits.

17. Subrecipient Not Agent

Except as Grantee may specify in writing, Subrecipient and its agents, employees, subcontractors and subconsultants shall have no authority, expressed or implied, to act on behalf of Grantee in any capacity, as agents or otherwise, or to bind Grantee to any obligation.

18. Conflict of Interest

a. Subrecipient shall promptly inform Grantee of any contract, agreement, arrangement, or interest that Subrecipient may enter into or have

during the performance of this Agreement that may conflict with Grantee's interests. This requirement includes contracts, agreements and arrangements with manufacturers, suppliers, contractors or other clients whose interests might be served by the services performed under this Agreement and Subrecipient's or Subrecipient's clients' interest in land that might be affected by the services. Subrecipient shall take such measures as are necessary in the performance of this Agreement to prevent actual or appearances of conflicts of interest.

b. Subrecipient shall comply with 24 CFR Part 570.611 with respect to conflicts of interest, and covenants that Subrecipient now has no financial interest and shall not during the term of this Agreement acquire any financial interest, direct or indirect, that would conflict in any manner or degree with the performance of services under this Agreement. Subrecipient further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by Subrecipient.

19. Assignability of Agreement

Subrecipient may not assign or transfer the rights or obligations of this Agreement without the express written consent of Grantee, which consent may be withheld for any reason; provided, however, that claims for money due or to become due to Subrecipient from Grantee under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Subrecipient shall promptly give Grantee notice of any such assignment or transfer.

20. Equal Employment Opportunity

a. Subrecipient agrees that all persons employed by Subrecipient shall be treated equally by Subrecipient without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United State of America, the State of California, and City.

b. Subrecipient and any other parties with whom Subrecipient subcontracts for the performance of this Agreement shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Subrecipient shall state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Subrecipient shall provide City staff with access to and, on request by City, provide copies to City staff of all of Subrecipient's records pertaining or relating to Subrecipient's employment practices, to the extent such records are not confidential or privileged under State or federal law.

21. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Subrecipient and Grantee.

22. Subcontracts

a. Subrecipient shall not subcontract any part of the performance of this Agreement without the prior written consent of Grantee.

b. If Subrecipient obtains the prior written consent of Grantee to subcontract any part of the performance of this Agreement, Subrecipient shall award subcontracts after fair and open competition and shall comply with City's Minority and Women's Business Enterprise Plan in awarding subcontracts.

c. Subrecipient shall regularly monitor subcontracted services to ensure compliance with the Agreement. Subrecipient shall provide Grantee with reports, in the frequency and form required by Grantee, of the results of such monitoring, supported by documentation of Subrecipient's action to correct any noncompliance by a subcontractor.

d. Subrecipient shall include in any subcontract made under this Agreement all of the provisions of this Agreement that impose obligations and duties on Subrecipient, and shall require the subcontractor to comply therewith.

e. Subrecipient shall provide Grantee with executed copies of all subcontracts, along with documentation of the award process.

23. Copyright

If Subrecipient produces any copyrightable material under this Agreement, Grantee reserves the right to a royalty-free, nonexclusive and irrevocable license to produce, publish or otherwise use and authorize others to use the work for governmental purposes.

24. Force Majeure

Neither Subrecipient nor Grantee shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental laws and regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

25. Time of Essence

Time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

26. Covenants and Conditions

Each term and each provision of this Agreement to be performed by Subrecipient shall be construed to be both a covenant and a condition.

27. Governing Law

The construction and interpretation of this Agreement and the rights and duties of Grantee and Subrecipient shall be governed by the laws of the State of California.

28. Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

29. Waiver

No waiver of a breach of any provision of this Agreement by either Grantee or Subrecipient shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either Grantee or Subrecipient to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

30. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

31. Arbitration

If any dispute arises with regard to the provisions of this Agreement, the services rendered or the amount of Subrecipient's compensation, the dispute may be submitted to arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

32. Expenses of Enforcement

The prevailing party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney's Program) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

33. Authority to Execute

a. Grantee acknowledges that the person executing this Agreement has been duly authorized by the Oxnard City Council to do so on behalf of Grantee.

b. Subrecipient acknowledges that the person executing this Agreement has been duly authorized by Subrecipient to do so on behalf of Subrecipient.

34. Notices

a. Any notices to Subrecipient may be delivered personally or by mail addressed to [Enter name of Subrecipient], [Enter Subrecipient's address], [Enter City], [Enter State and Zip], Attention: [Contact Person].

b. Any notices to Grantee may be delivered personally or by mail addressed to City of Oxnard, [Enter Department or Division Name], [Enter Address], Oxnard, California 93030, Attention: [Enter Project Manager].

35. Amendment

a. The terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed to in writing by the duly authorized representatives of both Grantee and Subrecipient.

b. Notwithstanding subsection A of this section, Grantee may amend this Agreement without the consent of Subrecipient if amendment is necessary to conform to federal, State or local laws, regulations, guidelines, policies and available CDBG funds; provided, however, that no amendment made without the consent of Subrecipient shall change the scope or schedule of services to be provided by Subrecipient or the compensation to be paid to Subrecipient.

36. Entire Agreement

This Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF OXNARD

(Name of Organization)

(Name and Title)

(Name and Title)

Fed. ID No: Enter Federal ID No.

APPROVED AS TO FORM:

Stephen M. Fischer, Interim City Attorney

APPROVED AS TO INSURANCE:

James Cameron, Risk Manager

APPROVED AS TO CONTENT AND FUNDS AVAILABILITY:

[Enter Name and Position Title]