

**FY 2025 HOME INVESTMENT PARTNERSHIPS GRANT (HOME)  
SUBRECIPIENT AGREEMENT BETWEEN  
THE CITY OF SAN DIEGO  
AND  
THE SAN DIEGO HOUSING COMMISSION**

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This FY 2025 HOME Investment Partnerships Grant (HOME) Subrecipient Agreement (“Agreement”) is made by and between the City of San Diego, a municipal corporation (“City”), and the San Diego Housing Commission (“SDHC”), a public agency, sometimes referred to each individually as a “Party” or collectively referred to as the “Parties.”

**RECITALS**

The City has entered or will enter into a grant agreement with the U.S. Department of Housing and Urban Development (“HUD”) to carry out the Fiscal Year 2025 HOME Investment Partnerships (“HOME”) Program, Catalog of Federal Domestic Assistance No. 14.239, within the City of San Diego, California; and

The City is the designated Grantee of the HOME entitlement funds and the City’s Economic Development Department (“EDD”) has oversight and program compliance responsibility for the City’s HOME entitlement grant (“HOME Program”); and

The City and SDHC entered into an MOU for the operation and administration of the City’s HOME program for fiscal years 2025 through 2029 pursuant to San Diego City Council Resolution R-315633, effective June 24, 2024 and Housing Authority Resolution HA-1819, effective June 24, 2024; and

The MOU provides that contingent on San Diego City Council approval of the annual HOME allocations, the City and SDHC shall enter into annual subrecipient agreements, which set forth the terms and conditions of the SDHC’s use of HOME funds on the City’s behalf and define the scope of services, annual budgets and monitoring obligations for HOME eligible activities; and

The San Diego City Council approved the FY 2025 HOME allocations with the adoption of San Diego Resolution R-315633, effective June 24, 2024; and

In consideration of the above recitals and the mutual covenants and conditions set forth in this Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I - INCORPORATION OF RECITALS**

- 1.1 The Recitals set forth above are true and correct and are hereby incorporated in full and made a part of this Agreement by this reference.

## ARTICLE II – DEFINITIONS

For the purposes of this Agreement, the terms listed below are defined as follows:

- 2.1 Action Plan – the annual report submitted to HUD on or about May 15<sup>th</sup> of each year.
- 2.2 C.F.R. – Code of Federal Regulations.
- 2.3 Commitment – refers to a commitment of HOME Funds through a legally binding written agreement with a contractor, project owner, property owner, purchaser, landlord, or tenant consistent with the definition of “commitment” in 24 C.F.R. section 92.2.
- 2.4 Developer – a for-profit or nonprofit entity that receives HOME Funds to acquire, rehabilitate and/or construct affordable housing units as a HOME eligible activity.
- 2.5 Fiscal Year – the City’s fiscal year starting July 1, 2024, and ending June 30, 2025, and subsequent fiscal years starting on July 1 and ending on June 30 during any extensions of this Agreement.
- 2.6 HOME Funds – funds allocated to the City by HUD and allocated by the City to SDHC for the performance of services in connection with the City’s HOME Program, and any Program Income directly generated from the SDHC’s use of such funds.
- 2.7 HOME-Related Project Records –all administrative and/or financial records directly, reasonably, and specifically required in connection with any project or activity utilizing HOME Funds that are prepared and/or gathered by SDHC, including but not limited to, all HOME project-related: books, papers, invoices, receipts, accounting records, designs, plans, reports, financial disclosures, audits, disclosures, certifications, investigations, and/or records reasonably necessary for project review by the City.
- 2.8 HUD – U.S. Department of Housing and Urban Development.
- 2.9 MOU – the current Memorandum of Understanding between the Parties regarding the City’s HOME Program, as described in the recitals to this Agreement.
- 2.10 P.L. – United States Public Law.
- 2.11 Project – SDHC's project, as described in Article IV of this Agreement.
- 2.12 Program Income – means gross income received by the SDHC directly generated from the use of HOME Funds under this Agreement as further described in 24 C.F.R. section 92.2.
- 2.13 Project Budget – the total amount of HOME Funds available to fund this Agreement, as

described in Article V of this Agreement, which may be adjusted in accordance with the terms of this Agreement by the SDHC's periodic receipts of Program Income.

- 2.14 Reporting Period – fiscal year in which any work under the Scope of Services was conducted under this Agreement.
- 2.15 Stat. – United States Statutes at Large.
- 2.16 Subcontractor – an entity that is procured to provide supplies, goods and/or services to the SDHC in conjunction with this Agreement. An entity that receives HOME Funds solely as a loan recipient or grant recipient (developer or owner of housing) is not a Subcontractor.
- 2.17 U.S.C. – United States Code.

### ARTICLE III – TERM OF AGREEMENT

- 3.1 The term of this Agreement is for one (1) Fiscal Year beginning July 1, 2024, and ending June 30, 2025.
- 3.2 Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

### ARTICLE IV - OBLIGATIONS OF SDHC

- 4.1 **ANNUAL SCOPE OF SERVICES.** The scope of services (“Scope of Services”) for each Fiscal Year shall be agreed upon by the Parties and confirmed in the annual submission of the fiscal year Action Plan to HUD and shall be incorporated into this Agreement by this reference and attached as Exhibit “A”. SDHC shall perform the services described in the Scope of Services, in accordance with the Project Budget (which Project Budget may be adjusted by the SDHC's periodic receipts of Program Income) and all other terms and conditions of this Agreement.
- 4.2 **SERVICES PROVIDED BY THE SDHC.** The SDHC shall provide the services necessary to accomplish the activities described in the Scope of Services. SDHC may provide the services described in the Scope of Services directly or through a Developer or Subcontractor, or both, subject to the terms and conditions of this Agreement. SDHC shall not use, or allow to be used, any donated or volunteered labor to perform any services under this Agreement, except as permitted by federal law and HUD regulations.
- 4.3 **HOME PROGRAM REQUIREMENTS.** The SDHC shall comply with all HOME regulations which include, but are not limited to, 24 C.F.R. part 92 (HOME Program Final Rule) and any amendments thereto, and 2 C.F.R. part 200 as applicable.
  - 4.3.1 SDHC shall follow the HUD's underwriting and subsidy layering guidelines and

requirements, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability requirements.

- 4.3.2 For each Fiscal Year, SDHC shall expend up to the amount indicated in the Project Budget for that Fiscal Year for eligible HOME programs which may include Owner Occupied Rehabilitation, Tenant Based Rental Assistance, Rental Housing, and Homeownership, and for SDHC's eligible administrative costs. The Project Budget for each Fiscal Year shall consist of the City's HOME Entitlement funds for that Fiscal Year, Program Income and HOME Funds from prior fiscal years. SDHC shall complete the tasks outlined in the Scope of Services during the term of this Agreement.
- 4.3.3 SDHC may retain all Program Income received for additional eligible activities described in the Scope of Services.
- 4.3.4 SDHC shall comply with all HUD, State, and City environmental review requirements including but not limited to those requirements necessary to ensure compliance with 24 C.F.R. part 58. SDHC shall prepare or cause the Developers or Subcontractors to prepare all environmental documentation necessary for each HOME activity and submit documentation to the City's Responsible Entity for approval before HOME Funds are committed to a project.
- 4.3.5 SDHC shall ensure all HOME Funds received from the City's Fiscal Year annual entitlement allocations are placed under a binding Commitment as set forth by HUD's commitment deadlines after the last day of the month in which such funds are deposited in the City's HOME Investment Trust Fund, before the City's right to draw such funds from the HOME Investment Trust Fund shall expire. SDHC shall also ensure that HOME Funds received on behalf of the City from prior fiscal years entitlement allocations comply with the corresponding Commitment deadlines associated with each year's funding.
- 4.3.6 SDHC shall ensure all City HOME Funds are expended within HUD's expenditure deadlines after the last day of the month in which HUD notifies the City of HUD's execution of the HOME Investment Partnerships Agreement.
- 4.3.7 SDHC shall ensure the annual HOME entitlement grant matching funds requirements (i.e., 25% match) are met for the total HOME Funds drawn from the HOME Investment Trust Fund Treasury account in a fiscal year as detailed at 24 C.F.R. sections 92.218-92.221 and subject to the exceptions in 24 C.F.R. section 92.218(c).
- 4.3.8 SDHC shall examine, calculate and make income determinations for all HOME-beneficiary households in accordance with 24 C.F.R. section 92.203 utilizing the definition of "annual income" as defined in 24 C.F.R. section 5.609, referred to as the "Part 5 annual income" definition.

- 4.3.9 SDHC shall comply with HOME regulatory requirements for establishing and following written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with 24 C.F.R. section 92.504 to ensure the requirements of 24 C.F.R. part 92 are met. SDHC shall provide a copy of its written policies to the City for review and comment annually.
- 4.3.10 Before SDHC provides HOME Funds to for-profit owners or developers, nonprofit owners or developers or sponsors, subrecipients, homeowners, homebuyers, tenants (or landlords) receiving tenant-based rental assistance, or contractors, the SDHC must have a written agreement that meets the requirement of 24 C.F.R. section 92.504. Any repayment of HOME Funds or recaptured HOME Funds received under such arrangements must be reported to the City but may be retained by the SDHC for additional eligible activities described in the Scope of Services.
- 4.3.11 SDHC shall not charge servicing, origination, or other fees for the purpose of covering costs of administering the HOME program, except as permitted by 24 C.F.R. section 92.214(b)(1).
- 4.3.12 SDHC shall establish and follow affirmative marketing procedures and requirements in accordance with 24 C.F.R. section 92.351(a) for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements also apply to all HOME-funded programs, including, but not limited to, tenant-based rental assistance and down payment assistance programs.
- 4.3.13 SDHC shall establish procedures acceptable to the City to implement and oversee a minority employment and contracting outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women in accordance with 24 C.F.R section 92.351(b).

## **ARTICLE V – BUDGET; PAYMENTS; PROGRAM INCOME**

- 5.1 **ANNUAL BUDGET.** The Project Budget for each Fiscal Year shall be agreed upon by the Parties and confirmed in the annual submission of the fiscal year Action Plan to HUD and shall be incorporated into this Agreement by this reference and attached as Exhibit “B”.
- 5.2 **BUDGET.** The total payment to be paid to SDHC under this Agreement for each Fiscal Year shall not exceed the total Project Budget for such Fiscal Year agreed to by the Parties in accordance with Section 5.1 of this Agreement above. Subject to the limitations set forth in section 5.2.3 of this Agreement, the Project Budget shall be adjusted by the SDHC in response to its periodic receipt of Program Income which shall allow the SDHC to increase/revise the Project Budget to meet HUD commitment and

expenditure deadlines. It is expressly understood that any expenditures by SDHC which are not within the prescribed limitations of this paragraph, the MOU, the Project Budget agreed to by the Parties in accordance with Section 5.1 of this Agreement above, and applicable laws, rules, and regulations governing this Agreement, are not chargeable to the Project and shall be borne solely by SDHC.

- 5.2.1 SDHC may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. Any such request for disbursement must be limited to the amount needed for each transaction.
- 5.2.2 As defined in 24 C.F.R. section 92.207, the City may use up to 10 percent of its HOME entitlement grant for the payment of administrative and planning costs related to the HOME Program. The City will retain 40 percent of the HOME entitlement grant administrative set aside to cover the City's administrative costs associated with the oversight, management and monitoring of this Agreement, preparation of the City's Annual Action Plan and CAPER and other associated HOME activities. SDHC's Project Budget will include all HOME entitlement funds, less this 40 percent of the administrative fund set aside. This leaves 60 percent of the HOME entitlement grant administrative set aside available to the SDHC for SDHC's administrative costs related to the planning, implementation, monitoring, and execution of HOME activities.
- 5.2.3 With the exception of a Substantial Amendment (defined below) which must be approved by City, the Project Budget may be adjusted by the SDHC via its periodic receipts of Program Income which shall allow the SDHC to increase/revise the Project Budget. For this purpose, a "Substantial Amendment" means a change to the Project Budget that: (a) increases or decreases by 25 percent the amount allocated to a category of funding within the Project Budget; (b) makes a significant change to an activity's proposed beneficiaries or persons served; or (c) funds a new activity not previously described in the Project Budget. Periodic adjustments of the Project Budget by SDHC necessitated by SDHC's receipt of Program Income do not require City approval unless such adjustments result in a Substantial Amendment.
- 5.2.4 SDHC may retain all Program Income; however, SDHC shall commit any and all Program Income prior to requesting a drawdown of HOME entitlement funds. SDHC shall keep records indicating the amount of all Program Income generated and shall provide the City with a detailed accounting of Program Income received with each reimbursement request.

### 5.3 **PAYMENT SCHEDULE.**

- 5.3.1 SDHC shall make quarterly, or more frequently as needed, complete requests for reimbursement, as required by the forms and instructions issued by the City and as agreed to by the SDHC.

- 5. 3.2 The City will reimburse SDHC for eligible expenditures no later than 30 days after receipt of a complete request for reimbursement, provided that all reports required under this Agreement are received by the City (on such forms as the City may require). A sample of the City-required form for reimbursement shall be provided by City to SDHC at the time of execution of this Agreement.
- 5. 3.3 The final payment to SDHC for each Fiscal Year shall be withheld by the City until all reports required under this Agreement have been received by the City for such Fiscal Year. A sample of the required reports shall be provided by City to SDHC at the time of execution of this Agreement.

#### 5.4 **PAYMENT REQUIREMENTS AND RESTRICTIONS.**

- 5. 4.1 SDHC shall not be reimbursed for any expenditure and/or service provided without proper and sufficient proof and documentation that each expenditure is a HOME-eligible expense as defined in HUD's HOME regulations. In addition to providing such proof and documentation, SDHC shall complete the forms specifically summarized above in section 5.3.2 of this Agreement, which may be updated periodically by the City.
  - 5. 4.1.1 SDHC assumes all responsibility for taking the appropriate action to properly and timely submit requests for reimbursement to the City. In practice, the SDHC advances funds for eligible HOME draws and receives reimbursement through periodic HOME IDIS draw requests.
  - 5. 4.1.2 SDHC shall provide authentic, accurate, and legible written documentation including, but not limited to, invoices for all services provided and/or expenses incurred in accordance with this Agreement directly to the City on an as-needed basis. Written invoices from any of SDHC's contractors, Subcontractors, or other vendors shall be provided to the City in the form originally provided to the SDHC with no alterations or other markings on such invoices. SDHC shall make original invoices available as soon as possible to the City upon written request. The documentation provided by SDHC to the City shall include an itemized description of the completed service, the date such service was performed, and all supporting invoices and documentation sufficient for the City to adequately determine eligibility for reimbursement of each and every expenditure. Invoices approved by the City in accordance with the Agreement will be paid by the City in a timely manner within 30 business days. Partial payments may be made for invoices that receive only partial approval.
  - 5. 4.1.3 SDHC acknowledges and understands that the City reserves the right to deny reimbursement for any request that is not properly submitted, including but not limited to SDHC's failure to obtain the required signature certifications or to accurately complete the forms required by



the City for reimbursement.

- 5.4.1.2 Any expenditure by SDHC that is not within the prescribed limitations set forth in the applicable laws, rules, and regulations governing the HOME program, is not chargeable to the Project and shall be borne solely by SDHC.
- 5.4.3 SDHC acknowledges and understands that the City must comply with HUD's requirement that funds allocated for the Project be expended in a timely manner and further understands that the City must timely and properly monitor and administer all HOME contracts.
- 5.4.4 SDHC shall submit to the City any and all final requests for reimbursement for each Fiscal Year, including, but not limited to, any documentation substantiating this request within forty-five (45) calendar days of the expiration or termination of this Agreement or the end of the Fiscal Year for which the SDHC's expenditure was made, whichever is sooner.
- 5.4.5 Upon the determination of the City (with such determination subject to the informal dispute resolution procedures in Article XII of this Agreement) and/or HUD that any reimbursement has been provided to the SDHC for an ineligible expenditure or based on a fraudulent or other illegal submittal of a request for reimbursement by the SDHC, SDHC shall return such funds to the City within fourteen (14) calendar days upon written request to the SDHC. In addition to the remedies set forth in Article XI of the Agreement, if SDHC fails to timely return such funds, the City reserves the right to deduct such amounts from any future reimbursement owed to the SDHC. The SDHC shall have the right to dispute any such City and/or HUD determinations of ineligible expenditures, and/or fraudulent, and/or illegal requests for payments.
- 5.4.6 Upon the determination of the City (with such determination subject to the informal dispute resolution procedures in Article XII of this Agreement) and/or HUD that any reimbursement has been provided to the SDHC based on an inadequate or improper submittal of a request for reimbursement by the SDHC including, but not limited to, the provision of inadequate supporting documentation for expenditures or services provided and/or the failure to properly complete required forms, SDHC shall provide any and all documentation required by the City and/or HUD in order to fully remedy such concern(s). SDHC shall provide such documentation within thirty (30) calendar days of any written request to the SDHC. In the event that the SDHC is unable or unwilling to remedy such concern(s), SDHC shall return such funds to the City within thirty (30) calendar days of any written determination by the City and/or HUD that such submittal remains inadequate or improper. In addition to the remedies set forth in Article XI of the Agreement, if SDHC fails to timely return such funds, the City reserves the right to deduct such amounts from any future reimbursement owed to the SDHC. The SDHC shall have the right to dispute any such City and/or HUD



determinations of ineligible expenditures, and/or fraudulent, and/or illegal requests for payments.

## **ARTICLE VI – INSURANCE**

### **6.1 PREREQUISITES TO COMMENCEMENT OF WORK.**

- 6.1.1 Prior to SDHC’s performance of any work, SDHC shall obtain and maintain, to protect the City Parties against all insurance claims relating to this Agreement, at the sole cost and expense of SDHC, all insurance coverage required in the MOU and deliver written certificates or policies of insurance evidencing all required insurance coverage to the City. SDHC shall require and ensure that any and all Subcontractors obtain and maintain all of the insurance coverage required by the MOU. Neither SDHC nor any Subcontractor shall commence any work, unless and until written evidence of all insurance required to be carried by SDHC and such Subcontractor under the MOU has been submitted to and approved by City.

## **ARTICLE VII – REPORTS, FINANCIAL STATEMENTS, AND AUDITS**

- 7.1 **PERIODIC REPORTS.** SDHC shall submit to City a fiscal and programmatic report on a Reporting Period basis summarizing SDHC’s expenditures in pursuing the Activity and the elements of the Activity completed during the applicable Reporting Period, along with any and all invoices and other documentation required by City. Such a report shall be submitted within thirty (30) calendar days after the end of each Reporting Period. Upon City’s request, SDHC shall participate in one or more annual reporting workshops regarding use of HOME Funds.
- 7.2 **END OF AGREEMENT REPORT.** SDHC shall submit to City a report containing a narrative summary of the elements of the Activity completed as of the date of the report, a financial summary of Activity expenditures claimed to and reimbursed by City under this Agreement, and a list of any real property acquired or improved, in whole or in part, with HOME Funds provided under this Agreement exceeding \$25,000, all within forty-five (45) calendar days after the earlier of: (a) completion of the Activity; (b) expiration of the term; or (c) termination of this Agreement.
- 7.3 **SDHC FINANCIAL STATEMENTS.** For each fiscal year that SDHC receives HOME Funds pursuant to this Agreement, SDHC shall have audited financial statements prepared by an independent certified public accountant, in accordance with GAAP and GAGAS. Except as otherwise provided in Section 7.4, below, SDHC shall provide City a copy of SDHC’s audited financial statements within six (6) months after the end of SDHC’s fiscal year. Audited financial statements shall include all of the following: (a) a balance sheet, income statement, and cash flow statement showing use of revenues and expenditures for all HOME Funds received by SDHC pursuant to this Agreement; (b) a statement certifying compliance with all terms and conditions of this Agreement signed

by the SDHC Representative; and (c) a statement certifying that all reports and disclosures required from SDHC under this Agreement have been completed, signed, and submitted by the SDHC Representative.

- 7.4 **SDHC AUDIT.** If SDHC is expending \$750,000 or more (or the current Federal threshold) in total Federal funding from all sources in a year, SDHC shall have an audit conducted in accordance with 2 C.F.R. Subpart F (sections 200.500 – 200.520) within nine (9) months after the end of SDHC’s fiscal year. SDHC shall electronically submit a copy of the audit to the Federal Audit Clearinghouse, including the required data collection and reporting package described in 2 C.F.R. § 200.512, within the earlier of thirty (30) calendar days after SDHC’s receipt of the audit or nine (9) months after the end of SDHC’s fiscal year. SDHC must submit a copy of any management letters issued by the auditor for the audit to City within nine (9) months after the end of SDHC’s fiscal year.
- 7.5 **CITY AND FEDERAL GOVERNMENT ACCESS TO AUDIT INFORMATION.** SDHC shall provide in any agreement SDHC enters into with an audit firm that: (a) the audit firm shall provide access for City or the Federal government to the working papers of the auditor(s) who prepare(s) the audit(s) for SDHC; and (b) SDHC waives any claim of privilege or confidentiality regarding, and consents to and authorizes the audit firm to release to City or the Federal government, any and all information obtained and utilized by such audit firm as the basis of any audit report issued by the audit firm and relating to SDHC.
- 7.6 **OTHER AUDITS.** If SDHC is subject to an audit from a source other than City, SDHC shall provide a copy of the audit to City within thirty (30) calendar days after SDHC’s receipt of the audit. City, in its sole and absolute discretion, may conduct a review of any such third person audit(s). SDHC shall fully cooperate with any such review by City, including providing any and all documentation associated with any such third person audit(s) within fourteen (14) calendar days after notice from City.
- 7.7 **ADVERSE AUDIT FINDINGS.** If any type of audit or monitoring review reveals any pattern of suspicious or questionable requests for reimbursement by SDHC under this Agreement, City shall have the right, in its sole and absolute discretion, to take remedial action under Article XI. If an independent audit identifies any concerns about SDHC’s accounting practices or internal controls that results in an independent auditor’s opinion other than an unqualified opinion, City shall have the right to suspend or terminate this Agreement, effective immediately upon notice to SDHC. On any such termination, City shall have the right to reprogram any and all unexpended HOME Funds allocated to the Project Budget under this Agreement.
- 7.8 **SDHC COOPERATION.** SDHC shall fully cooperate with City and any other auditors in any review or investigation of SDHC’s conduct or action(s) relating to this Agreement. Failure by SDHC to so cooperate shall be a material breach by SDHC under this Agreement.

## ARTICLE VIII – PROJECT RECORDS

- 8.1 **GENERAL.** SDHC shall maintain, all HOME-Related Project Records during the term of this Agreement to the extent required by HUD, including those required by the Federal regulations specified in 24 C.F.R. § 92.508.
- 8.2 **ACCOUNTING RECORDS.** SDHC shall maintain, complete and accurate accounting records, in accordance with Generally Accepted Accounting Principles [GAAP] in the industry. SDHC shall also comply with all applicable HUD requirements, including 2 C.F.R. part 200 as applicable to governmental entities.
- 8.3 **INSPECTION AND PHOTOCOPYING.** At any time during normal business hours and as often as requested, SDHC shall permit, and require its Subcontractors to permit, the City, HUD, the Comptroller General of the United States [Comptroller General], or any of their duly authorized representatives, to inspect and photocopy, at a reasonable location within the County of San Diego (e.g., the offices of SDHC), all HOME-Related Project Records for the purposes of making audits, examinations, excerpts, and/or transcriptions, as well as monitoring and/or evaluating SDHC's performance of its obligations and/or duties under this Agreement. The City, HUD, and Comptroller General may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the City, HUD, or Comptroller General in its sole discretion.
- 8.4 **DUPLICATES OF RECORDS.** Upon any request by the City, HUD, Comptroller General, or any of their duly authorized representatives, for any HOME-Related Project Records, SDHC shall submit, and require its Subcontractors to submit, exact duplicates of the originals of the requested HOME-Related Project Records to the requesting party for the purposes described in Section 8.3 above.
- 8.5 **USE OF RECORDS.** All HOME-Related Project Records obtained by the City, HUD, Comptroller General, or any of their duly authorized representatives, may be used by such parties in accordance with applicable HUD requirements and federal, state, and local laws.
- 8.6 **STORAGE PERIOD.** SDHC shall store, and require its Subcontractors to store, all HOME-Related Project Records in accordance with HUD HOME retention requirements (including but not limited to 24 C.F.R. section 92.508) and SDHC's retention schedules (but only to the extent SDHC's retention schedule does not conflict with HUD's HOME retention requirements). SDHC shall submit any and all record destruction lists to the City prior to the destruction of any HOME-Related Project Records.

## ARTICLE IX – COMPLIANCE WITH LAWS AND POLICIES

- 9.1 **GENERAL.** SDHC shall comply, and require its Subcontractors, if any, to comply, with all applicable laws, statutes, rules, regulations, orders, ordinances, resolutions, permits,

requirements, and policies of the federal, state, and local governments, as they pertain to this Agreement. However, failure of a Subcontractor to comply with the requirements in this paragraph shall not be deemed a material breach by the SDHC if the SDHC has made reasonable efforts to obtain Subcontractor compliance of such requirements.

## **9.2 CONFLICT OF INTEREST.**

9.2.1 SDHC shall comply, and require its Subcontractors to comply, with all applicable federal, state, and local conflict of interest laws and regulations, including, but not limited to, each of the following:

(a) the conflict-of-interest provisions in 24 C.F.R. section 92.356 and 2 C.F.R. sections 200.112, 200.318; and

(b) California Government Code sections 1090 et. seq., and 81000 et. seq.

9.2.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City or SDHC relating to this Agreement. If the City or SDHC becomes aware at any time during the term of this Agreement of any financial or economic interest, the City or SDHC, as applicable, shall immediately disclose in writing such interest to the other party. If such a financial and/or economic interest is determined to exist, the City or SDHC may immediately terminate this Agreement by giving written notice thereof or to take any action deemed appropriate under Article XI of this Agreement.

9.2.3 If SDHC or City violates any conflict-of-interest law, or any of the provisions of Section 9.2 of this Agreement, the violation shall be grounds for immediate termination of this Agreement, and/or the imposition of other remedies available under the law. Further, any such violation shall subject the City or SDHC, as applicable, to liability to the other party's for attorneys' fees and all damages sustained as a result of the violation.

9.3 **EMPLOYMENT OF CITY STAFF.** Pursuant to City Council Policy 300-11, the City, at its sole discretion, may unilaterally and immediately terminate this Agreement if SDHC employs an individual, who, within twelve months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council in connection with the selection of SDHC for the award of HOME Program funding.

## **9.4 EQUAL EMPLOYMENT OPPORTUNITY.**

9.4.1 SDHC shall require its Subcontractors to comply with the City's Equal Employment Opportunity [EEO] Outreach Program, codified in San Diego Municipal Code sections 22.2701 – 22.2707. SDHC's Subcontractors are individually responsible for abiding by its contents.

- 9.4.2 SDHC shall comply, and shall require its Subcontractors to comply, with Title VII of the Civil Rights Act of 1964 (as amended by Executive Orders 11246, 11375, and 12086; as supplemented by 41 C.F.R. chapter 60), the California Fair Employment Practices Act, and any other applicable federal and state laws and/or regulations hereinafter enacted to the extent the same are applicable to the SDHC or its Subcontractors.
- 9.4.3 SDHC shall not discriminate, and shall require its Subcontractors not to discriminate, as it relates to this Agreement, on the basis of race, color, gender, religion, national origin, sexual orientation, age, familial status, or disability, in performing any obligation or duty in connection with this Agreement, including, but not limited to, the provision of services, privileges, facilities, advantages, and accommodations.
- 9.4.4 SDHC shall require its Subcontractors to provide equal opportunity in all employment practices.
- 9.4.5 If requested by City, SDHC shall require its Subcontractors to submit to the City a current Work Force Report, and/or an Equal Employment Opportunity Plan, as required by San Diego Municipal Code section 22.2705.
- 9.4.6 SDHC shall inform its Subcontractor that compliance with the EEO provisions shall be monitored and reviewed by the City's EOC staff.
- 9.4.7 SDHC shall require its Subcontractors to acknowledge that their failure to comply with the above requirements, or their submittal of false information in response to these requirements, fully authorizes the City and/or SDHC to take any of the following action: the withholding of reimbursement payments until Subcontractor complies with the above; immediate termination of their Agreement; debarment; and/or other sanctions, including suspension from participating in future City contracts (as a prime or Subcontractor) for a period of not less than one year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this Section shall prohibit Subcontractors from participating in future City contracts, until all penalties have been satisfied.
- 9.4.8 Nothing in this Section shall be interpreted to hold SDHC liable for any discriminatory practice of its Subcontractors.
- 9.4.9 Nothing contained within this Agreement shall preclude the SDHC from imposing stricter equal employment opportunity provisions that are in compliance with SDHC's rules and regulations for its Subcontractors and others receiving benefits under the terms of this Agreement.

**9.5 NON-DISCRIMINATION IN CONTRACTING.**

- 9.5.1 SDHC shall require its Subcontractors to comply with the City's Nondiscrimination in Contracting Ordinance, codified in San Diego Municipal Code sections 22.3501 – 22.3517.
- 9.5.2 SDHC shall not discriminate, and shall require its Subcontractors not to discriminate, as it relates to this Agreement, on the basis of race, color, gender, religion, national origin, ethnicity, sexual orientation, age, familial status, or disability, in the solicitation, selection, hiring, or treatment of its employees, any applicants for employment, any subcontractors, vendors, or suppliers.
- 9.5.3 Within sixty (60) calendar days of a request by the City, SDHC shall require its Subcontractors to provide the City a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Subcontractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Subcontractor for each subcontract or supply contract. SDHC shall ensure its Subcontractors fully cooperate in any investigation conducted by the City, pursuant to the City's Nondiscrimination in Contracting Ordinance, referenced above.
- 9.5.4 Violation of any provision of Section 9.5 by a Subcontractor shall be considered a material breach of their agreement with SDHC and may result in remedies being ordered against Subcontractor up to, and including, immediate termination of their agreement, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance.
- 9.6 Intentionally omitted.
- 9.7 **AMERICANS WITH DISABILITIES ACT.** SDHC shall comply, and shall require its Subcontractors to comply, with City Council Policy 100-04, as adopted by City Council Resolution R-282153, relating to the federally mandated Americans with Disabilities Act [ADA], as incorporated into this Agreement by this reference. SDHC, and its Subcontractors, shall be individually responsible for their own ADA program.
- 9.8 **DRUG-FREE WORKPLACE.** SDHC shall comply, and shall require its Subcontractors to comply, with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into this Agreement by this reference.
- 9.9 **LOBBYING AND POLITICAL ACTIVITIES.** SDHC acknowledges that funds received for the Project have been provided pursuant to a federal grant and shall comply with all applicable laws set forth at 31 U.S.C. 1352 and 24 C.F.R. part 87.
- 9.10 **PRODUCT ENDORSEMENT.** SDHC shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. SDHC shall not create any advertisement or writing that identifies or refers to the City as the user of a product or service, without obtaining the prior written approval of the City.



- 9.11 **RECOGNITION OF FUNDING SOURCE.** SDHC shall ensure and require its Subcontractors to ensure recognition of the role of the federal HOME Program in funding SDHC's services under this Agreement. All activities performed, facilities and items utilized, and publications prepared, in connection with this Agreement shall be prominently labeled to reference the use of HOME Funds from HUD as a funding source. The reference shall be worded as follows: "This project is funded in whole or in part with HOME Investment Partnerships Grant (HOME) funds provided to the City of San Diego by the U.S. Department of Housing and Urban Development (HUD), and administered by the San Diego Housing Commission."
- 9.12 **EQUAL BENEFITS ORDINANCE.** Unless an exception applies, SDHC shall require its Subcontractors to comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code. Failure to notify Subcontractors of their compliance requirements under the EBO is a material breach of this Agreement.
- 9.13 Intentionally omitted.
- 9.14 **LOCAL BUSINESS AND EMPLOYMENT.** Subrecipient acknowledges that City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Subrecipient shall, to the extent reasonably possible and allowed by law, solicit applications for employment and bids and proposals for subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Subrecipient shall hire qualified local residents and firms, whenever feasible and allowed by law.

#### **ARTICLE X – COMPLIANCE WITH OTHER FEDERAL LAWS, REGULATIONS AND REQUIREMENTS**

- 10.1 **UNIFORM ADMINISTRATIVE REQUIREMENTS.** SDHC shall comply, and require its Subcontractors to comply, with all applicable uniform administrative requirements set forth in 24 C.F.R. section 92.505, including, but not limited to, the requirements of 2 C.F.R. part 200, as applicable for governmental entities. These federal documents are on file at the City's Economic Development Department, located at 1200 Third Avenue, Suite 1400, San Diego, CA 92101.
- 10.2 Intentionally omitted.
- 10.3 **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** SDHC shall comply, and require its Subcontractors to comply, with 40 U.S.C 3702 and 3704 of the Contract Work Hours and Safety Standards Act, as supplemented by Department of Labor regulations (29 C.F.R. part 5), if and to the extent applicable.
- 10.4 **ENERGY POLICY AND CONSERVATION ACT.** SDHC shall comply, and require its Subcontractors to comply, with the mandatory standards and policies relating to energy efficiency, which are contained in California's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871), if



and to the extent applicable.

- 10.5 **VARIOUS ENVIRONMENTAL LAWS AND REGULATIONS.** SDHC shall comply, and require its Subcontractors to comply, with all applicable standards, orders or regulations issued pursuant to Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) - for contracts in excess of \$150,000, and all applicable environmental review regulations, including but not limited to 24 C.F.R. parts 50 and 58, if and to the extent applicable. SDHC does not assume City's responsibilities for environmental review under 24 C.F.R. section 92.352 and the intergovernmental review process in section 92.357 does not apply.
- 10.6 **COPELAND "ANTI-KICKBACK" ACT.** SDHC shall comply, and require its Subcontractors to comply, with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. part 3), if and to the extent applicable.
- 10.7 **RELIGIOUS ACTIVITIES.** SDHC shall comply with and require its Subcontractors to comply with all applicable HUD requirements governing the use of HOME Funds by religious organizations, including those set forth in Executive Order 11245 (as amended by Executive Order 13279) and 24 C.F.R. section 92.257.
- 10.8 **SECTION 3.** The Parties to this Agreement agree to comply 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, SDHC and its subcontractors 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 provided in the order of priority set forth at 24 C.F.R. § 75.9 and § 75.19.
- 10.9 **REVERSION OF ASSETS.** Upon written request from the City, the SDHC shall after the expiration or termination of this Agreement, and within 30 days after completion of an Audit, transfer, and require its Subcontractors to transfer, to the City any HOME Funds transferred under this Agreement on hand at the time of expiration and any accounts receivables attributable to the use of HOME Funds. Upon a reversion of assets, which includes all HOME Funds, the City will assume all loan monitoring and loan servicing of all HOME Funds through the later of remaining HOME affordability term or repayment of the loan, as and to the extent required by applicable law. Upon the reversion of assets, the SDHC shall have no further obligation concerning the HOME funds.

- 10.10 **FAIR HOUSING ACT.** SDHC shall comply, and require its Subcontractors to comply, with Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, if and to the extent applicable. In addition, SDHC shall comply with the regulations issued following Title VI of the 1964 Civil Rights Act (as amended by Executive Orders 11246, 11375, and 12086) and Section 109 of the 1975 Housing and Community Development Act, if and to the extent applicable.
- 10.10.1 SDHC shall post in a prominent place at its main business office, the Equal Housing Opportunity Logo provided by the City upon contract execution.
- 10.10.2 SDHC shall post in a prominent place at the Program Site(s) any other Fair Housing materials provided by the City upon contract execution and/or throughout the term of this Agreement.
- 10.11 **SECTION 504.** SDHC shall comply, and require its Subcontractors to comply, with any Federal regulations issued pursuant Section 504 of the Rehabilitation Act of 1973, if and to the extent applicable, which prohibits discrimination against persons with disabilities in any federally assisted program. The City shall provide the SDHC with any guidelines necessary for compliance with that portion of the regulations applicable during the term of this Agreement.
- 10.12 **LIMITED ENGLISH PROFICIENCY.** SDHC shall comply with Executive Order 12166 enacted on August 11, 2000, which mandates that any recipient of HUD assistance funds reduce barriers to access for limited English proficiency (LEP) persons if and to the extent applicable. SDHC shall comply with Executive Order 12166 relating to “Improving Access to Services by Persons with Limited English Proficiency,” if and to the extent applicable.
- 10.13 **LEAD-BASED PAINT.** SDHC shall comply, and require its Subcontractors to comply, with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.), and implementing regulations at part 35, subparts A, B, J, K, M and R, if and to the extent applicable.
- 10.14 **UNIFORM RELOCATION.** SDHC shall comply, and require its Subcontractors to comply, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC 4601) and implementing regulations at 49 C.F.R. part 24, if and to the extent applicable.
- 10.14.1 SDHC shall take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as the result of a project assisted with HOME Funds and provide relocation assistance in accordance with the requirements set forth in 24 C.F.R. section 92.353.
- 10.15. **MARKETING AND OUTREACH REGULATIONS.** SDHC shall comply, and require its Subcontractors to comply, as applicable, with the Affirmative Marketing and

Minority Outreach requirements at 24 C.F.R. section 92.351, if and to the extent applicable.

- 10.16 **COMPENSATION OF CONSULTANTS.** SDHC shall comply, and require its Subcontractors to comply, with the provisions of 24 C.F.R. section 92.358 regarding consultant activities, if and to the extent applicable.

## **ARTICLE XI – SUSPENSION AND TERMINATION**

### **11.1 AVAILABLE REMEDIES.**

11.1.1 Other provisions of this Agreement notwithstanding, if SDHC fails to comply with any term or condition of this Agreement, the City’s remedies include, but are not limited to, each of the following:

- (a) suspending one or more payments to SDHC, pending correction of the activity or action not in compliance;
- (b) disallowing funds for all or part of the cost of the activity or action not in compliance;
- (c) wholly or partly suspending the current award for the Project;
- (d) terminating the current award for the Project;
- (e) terminating this Agreement;
- (f) deeming the SDHC ineligible from consideration for any future HOME funding; and/or
- (g) any other remedy specified in this Agreement.

11.1.2 If the City notifies SDHC that the City has suspended payments or disallowed funds, or that the City has partly suspended the current award for the Project, SDHC shall not expend any funds related to, or connected with, any area of controversy or conflict that resulted in the suspension, disallowance, or partial suspension of funding. If the City wholly suspends or terminates the current award for the Project, SDHC shall cease expending funds in connection with the Project.

- 11.2 **TERMINATION FOR CONVENIENCE.** Notwithstanding the term of this Agreement as specified in Section 3.1 above, the City and/or the SDHC may terminate this Agreement with 90 days written notice for convenience, in which case the Parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated.

### 11.3 **TERMINATION FOR CURABLE DEFAULT.**

11.3.1 Except as provided in Section 11.4 below, the City, at its sole discretion, may terminate this Agreement upon ninety (90) calendar days written notice to SDHC (delivered in accordance with the provisions of Article XV), if SDHC fails to comply with (i.e., defaults on) any term or condition of this Agreement. The written notice shall include a description of SDHC's default. If SDHC fails to cure the default within ninety (90) calendar days of the date SDHC receives the written notice, the City may immediately terminate this Agreement.

11.3.2 The City reserves the right to suspend payments to SDHC during the ninety (90) calendar day notice period described in Section 11.3.1 above.

### 11.4 **TERMINATION FOR INCURABLE DEFAULT.** The City, at its sole discretion, may immediately terminate this Agreement upon written notice to SDHC (delivered in accordance with the provisions of Article XV) if:

- (a) SDHC makes a material misrepresentation in regard to information furnished to the City under the Project or otherwise pursuant to this Agreement, regardless of whether SDHC had knowledge or intent with respect to the misrepresentation;
- (b) SDHC violates any term or condition of this Agreement for which immediate termination is authorized (e.g., under Sections 7.7, 9.2.2, 9.2.3, 9.3, 9.4.7, 9.5.4, and 17.3 herein);
- (c) SDHC misappropriates any funds under this Agreement (or any prior agreement with the City);
- (d) SDHC files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors;
- (e) Any or all of the HOME Funds allocated to the City by HUD are suspended or terminated; and/or
- (f) SDHC is unable or unwilling to comply with any additional terms or conditions governing the Project that may be required by newly enacted (or amended) federal, state, and/or local laws, statutes, rules, regulations, orders, ordinances, resolutions, permits, requirements, policies, and/or directives.

### 11.5 **TERMINATION OF AWARD.** In accordance with 2 C.F.R. section 200.338, the City may suspend payments, suspend the current award for the Project, and/or terminate this Agreement if SDHC materially fails to comply with any term of the award and may terminate the award for convenience in accordance with Section 11.2 of this Agreement.

### 11.6 **RIGHTS AND REMEDIES.** The rights and remedies of the City enumerated in this Article shall not limit, waive, or deny any of the City's rights under any other provision of

this Agreement; nor does this Article otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against SDHC.

## **11.7 CONTINUING RESPONSIBILITIES.**

11.7.1 In the event this Agreement is terminated, SDHC shall complete any and all additional work necessary for the orderly filing of documents and closing of SDHC's performance of its obligations and duties under this Agreement. For services rendered in completing the work, SDHC shall be entitled to fair and reasonable compensation for the services performed by SDHC before the effective date of termination. By accepting payment for completion, SDHC discharges the City of all of the City's payment obligations and liabilities under this Agreement.

11.7.2 Upon the termination of this Agreement, SDHC shall deliver to the City the originals of all HOME-Related Project Records within thirty (30) calendar days of the termination date of this Agreement.

11.7.3 Upon the expiration this Agreement, the City may request that SDHC deliver, and SDHC shall deliver, within thirty (30) calendar days of any such request by the City, the originals of all or any specified HOME-Related Project Records to the City.

## **ARTICLE XII – INFORMAL DISPUTE RESOLUTION; MANDATORY ASSISTANCE**

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

## **12.2 MANDATORY ASSISTANCE.**

12.2.1 If a third-party dispute or litigation, or both, arises out of, or relates in any way to this Agreement, the Parties, including their officers, and employees, shall fully assist one another in resolving the dispute or litigation ("Mandatory

Assistance”). The Mandatory Assistance includes, but is not limited to, conferring with one another, attending mediations, arbitrations, depositions, trials, and/or any event related to the dispute resolution and/or litigation to the extent reasonably necessary.

- 12.2.2 If a party hereto, or its officers or employees, that is not directly involved in a dispute, incur any costs in providing Mandatory Assistance to the other party, the party directly involved in the dispute will compensate the other party for such costs. However, if it is finally determined by a judge or arbitrator in binding arbitration in a lawsuit or arbitration in which both the SDHC and City are parties, that such third party dispute or litigation was attributable, in whole, to the acts or omissions of the party that received a reimbursement under this section 12.2.2, or its agents, officers, and/or employees, such party shall fully reimburse the other party for all funds paid under this section 12.2.2 for Mandatory Assistance.
- 12.2.3 Any attorney’s fees incurred by any person as a result of providing Mandatory Assistance are not reimbursable.

### **ARTICLE XIII – INDEMNIFICATION**

- 13.1 **INDEMNIFICATION AND HOLD HARMLESS AGREEMENT.** The City and SDHC shall defend, indemnify, protect, and hold harmless one another and their elected officials, appointed officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property, including, but not limited to, injury to either of their officers, employees, invitees, guests, agents, and/or Subcontractors, which arise from, or are connected with, or are caused, or claimed to be caused, by this Agreement, or by the acts or omissions of the other party hereto or any of their elected officials, appointed officials, officers, employees, representatives, agents, and/or Subcontractors in performing the work or services required or authorized herein, and all expenses of investigating and defending against same, including, without limitation, attorneys’ fees and costs. However, any party’s duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the other party or its elected officials, appointed officials, elected officials, departments, officers, employees, representatives, and/or agents. Any defense of any person referenced in this Section 13.1 shall be at the indemnifying party’s sole cost and expense and by counsel selected by the indemnifying party, subject to the reasonable approval of the indemnified person, which counsel may, without limiting the rights of any of the indemnified person pursuant to the next succeeding sentence of this Section 13.1, also represent the indemnifying party in such investigation, action or proceeding. If any indemnified person determines reasonably and in good faith that its defense by the indemnifying party is reasonably likely to cause a conflict of interest or is being conducted in a manner which is prejudicial to such persons interests, such indemnified

person may elect to conduct its own defense through counsel of its own choosing, subject to the reasonable approval of the indemnifying party, and at the expense of the indemnifying party.

- 13.2 **ENFORCEMENT COSTS.** The indemnifying party shall pay the indemnified party any and all costs the indemnified party incurs enforcing the indemnity and defense provisions set forth in Section 13.1 above.
- 13.3 **NOT LIMITED BY INSURANCE.** The provisions of this Article are not limited by the requirements of Article VI.

## **ARTICLE XIV – SUBCONTRACTORS**

### **14.1 SUBCONTRACTS AND SUBCONTRACTORS LIST.**

- 14.1.1 As of the date this Agreement is executed by the Parties the SDHC has not identified any Subcontractors.
- 14.1.2 If, during the term of this Agreement, SDHC identifies a need for Subcontractor services, SDHC shall, within ten (10) calendar days of the date of any subcontract for such services, provide to the City a copy of the subcontract, including the scope of work, along with a written statement describing the justification for the additional Subcontractor services, and an itemization of all costs for the additional Subcontractor services.
- 14.1.3 Within ten (10) calendar days of any request by the City, SDHC shall provide to the City a complete and updated Subcontractors List, listing the names and contact information of all Subcontractors it has hired or retained, or intends to hire or retain, in connection with this Agreement.
- 14.1.4 SDHC shall procure the services of all Subcontractors, and require its Subcontractors to use procurement procedures and standards, in conformance with the procedures set forth in 2 C.F.R part 200, as applicable.
- 14.1.5 SDHC shall monitor all subcontracted services on a regular basis to ensure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions to correct areas of noncompliance and shall be made available to the City during monitoring reviews or upon request by the City.
- 14.1.6 SDHC shall comply 2 C.F.R part 200 as applicable to governmental agencies.
- 14.2 **REQUIRED LANGUAGE.** SDHC shall ensure that all subcontracts entered into in connection with this Agreement contain the information required by any applicable statutes, regulations, and this Agreement.



- 14.2.1 In any dispute between SDHC and Subcontractor pertaining to the City's Agreement with SDHC, the SDHC shall not take any action to make the City a party to any judicial or administrative proceeding to resolve the dispute. SDHC shall defend and indemnify the City (as described in Section 13.1 of the City's Agreement with SDHC) in any dispute between SDHC and Subcontractor, should the City be made a party to any judicial or administrative proceeding to resolve the dispute.
- 14.3 **CONTRACT ACTIVITY REPORT.** Within ten (10) calendar days of a written request by the City, SDHC shall provide the City:
- (a) statistical information (as described in the City's Contract Activity Report) including the amount of subcontracting provided by firms during the period covered by the Contract Activity Report; and
  - (b) an invoice from each Subcontractor listed in the Contract Activity Report.
- 14.4 **PROHIBITION ON USE OF CERTAIN SUBCONTRACTORS.** SDHC shall not employ, award any contract to, engage the services of, or fund any Subcontractor, during any period of federal, state, or local debarment, suspension, or ineligibility of Subcontractor, when SDHC has notice (actual, constructive, or implied) of such debarment, suspension, or ineligibility. A contract award must not be made to parties listed on the governmentwide Excluded Parties List System in the System Award Management (SAM), in accordance with 2 C.F.R. part 180.

## **ARTICLE XV – NOTICE**

- 15.1 In all cases where written notice is required under this Agreement, service of such notice shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement.
- 15.2 For the purposes of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to:

City of San Diego  
Economic Development Department  
Christina Bibler, Director  
1200 Third Avenue, Suite 1400  
San Diego, CA 92101  
(619) 236-6421  
CBibler@sandiego.gov

Copy to:  
City Attorney Heather Ferbert  
1200 Third Ave., Suite 1620

San Diego, CA 92101  
Phone: 619-236-6220  
Fax: 619-236-7215  
[cityattorney@sandiego.gov](mailto:cityattorney@sandiego.gov)

Notice to SDHC shall be addressed to:  
San Diego Housing Commission  
Attn: Lisa Jones  
President and Chief Executive Officer  
1122 Broadway, Suite 300  
San Diego, CA 92101  
(619) 578-7606  
[lisaj@sdhc.org](mailto:lisaj@sdhc.org)

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

#### **ARTICLE XVI – CONTRACT ADMINISTRATOR; CITY’S DESIGNATED REPRESENTATIVE**

- 16.1 The City’s Economic Development Department [EDD] is the contract administrator for this Agreement. The City will identify a designated representative for the purposes of this Agreement.
- 16.2 The City’s designated representative shall communicate with SDHC on all matters related to the administration of this Agreement and SDHC’s performance of its obligations and duties rendered hereunder. SDHC shall work solely under the direction of the City’s designated representative in performing SDHC’s obligations and duties under this Agreement.
- 16.3 When this Agreement refers to communications to or with the City, those communications shall be with the City’s designated representative, unless this Agreement or the City’s designated representative specifies otherwise. When this Agreement refers to an act or approval to be performed by the City, that act or approval shall be performed by the Mayor or his designee, unless this Agreement specifies otherwise.
- 16.4 The City, at its sole discretion, may change its designated representative at any time and shall inform SDHC of any change of its designated representative within ten (10) calendar days of the date of such change.

**ARTICLE XVII – INDEPENDENT CONTRACTOR; NO ASSIGNMENT;  
SDHC’S DESIGNATED REPRESENTATIVE**

- 17.1 SDHC acknowledges, and shall require its Subcontractors to acknowledge, that SDHC and its Subcontractors are independent contractors, and not agents or employees of the City. Any provision of this Agreement that may appear to give the City a right to direct SDHC concerning the details of performing its obligations and/or duties under this Agreement, or to exercise any control over such performance, shall mean only that SDHC shall follow the direction of the City concerning the end results of the performance.
- 17.2 SDHC shall have no authority to bind the City in any manner, or to incur any obligation, debt, or liability of any kind, on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City.
- 17.3 Because this Agreement is entered into by the City in reliance upon SDHC’s qualifications, experience, and personnel identified, SDHC shall not assign or subcontract any of its rights, obligations, and/or duties under this Agreement, without first obtaining the written consent of the City. Any putative assignment of SDHC’s rights, obligations, and/or duties under this Agreement shall not create a contractual relationship between the City and any putative assignee, and any such assignment shall be ineffective, null and void. Any assignment in violation of this Section is grounds for immediate termination of this Agreement, at the sole discretion of the City.
- 17.4 SDHC shall identify a designated representative for the purposes of this Agreement. In the event SDHC changes its designated representative for the purposes of this Agreement, SDHC shall notify the City of the new designated representative within ten (10) calendar days of the date of such change.

**ARTICLE XVIII – CONFIDENTIALITY OF INFORMATION**

- 18.1 All information provided by either party hereto to the other party hereto in connection with this Agreement is for the sole use of such party. Neither party shall release any of this information to any third party, without the prior written consent of the other party hereto.
- 18.2 Section 18.1 above does not apply to information that:
- (a) was publicly known, or otherwise known to SDHC, at the time the information was provided to SDHC by the City;
  - (b) subsequently becomes publicly known, through no act or omission of SDHC;
  - (c) becomes known to SDHC from a source or means other than the City;

- (d) is considered a “public record,” pursuant to the California Public Records Act (California Government Code sections 7920-7931) (CPRA) and does not qualify for an exemption pursuant to the CPRA;
- (e) is requested from, or required to be provided to, HUD; or
- (f) is required to be disclosed pursuant to law or a court order.

## **ARTICLE IX – MISCELLANEOUS PROVISIONS**

- 19.1 **MUNICIPAL POWERS.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 19.2 **GOVERNING LAW.** The terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State of California. In addition, the terms and conditions of this Agreement are subject to HUD rules and regulations in effect on the effective date of this Agreement. Any newly adopted rules and regulations or changes to existing rules and regulations shall become effective for the administration of this Agreement as required by law.
- 19.3 **JURISDICTION AND VENUE.** The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State Court within the County of San Diego, State of California, for any dispute, claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Article XII above.
- 19.4 **INTEGRATED AGREEMENT.** This Agreement, and the Exhibits and references incorporated into this Agreement, fully express all understandings of the Parties concerning the matters covered in this Agreement. All prior negotiations and agreements are merged into this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid, unless made in the form of a written change agreed to in writing by both Parties.
- 19.5 **CHANGES OR AMENDMENTS TO AGREEMENT.** SDHC acknowledges and agrees to fully perform the entire Scope of Services. In the event that SDHC is unable to perform any portion of the Scope of Services, SDHC agrees to immediately inform the City in writing of such inability to perform. Within thirty (30) calendar days of failing to perform any required portion of the Scope of Services, the SDHC shall provide the City with a proposal regarding how the SDHC intends to address this inability to perform. SDHC agrees that the City retains full and complete discretion regarding any request to amend any portion of the Scope of Services under the Agreement. Should circumstances require and the Parties agree that any of the terms or conditions of this Agreement be changed or amended, such changes or amendments shall only be accomplished by a written amendment or writing signed by the authorized representatives of the City and SDHC.

- 19.6 **COVENANTS AND CONDITIONS.** All provisions herein, expressed as either covenants or conditions on the part of the City or SDHC to be performed or observed, shall be deemed to be both covenants and conditions.
- 19.7 **NO WAIVER.** No failure of either the City or SDHC to insist upon the strict performance by the other of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any term, covenant, or condition of this Agreement, shall constitute a waiver of any such breach of such term, covenant, or condition. No waiver of any breach shall affect or alter this Agreement, and each and every term, covenant, and condition, herein shall continue in full force and effect to any existing or subsequent breach.
- 19.8 **SUCCESSORS IN INTEREST.** This Agreement, and all rights, obligations, and/or duties under this Agreement, shall be in full force and effect, whether or not any party to the Agreement has been succeeded by another entity, and all rights, obligations, and/or duties under this Agreement shall be vested and binding on any party's successor in interest.
- 19.9 **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 19.10 **CONFLICTS BETWEEN TERMS.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits and references incorporated into this Agreement, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, then the law, rule, regulation, order, or code shall control. If a conflict exists between this Agreement and the MOU, then the MOU shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits and references incorporated into this Agreement, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 19.11 **DRAFTING AMBIGUITIES.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, covenants, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.
- 19.12 **SIGNING AUTHORITY.** Each individual executing this Agreement on behalf of a legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles,

charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such entity in accordance with its terms.

- 19.13 **COUNTERPARTS.** This Agreement may be executed in counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had executed the same page.
- 19.14 **HEADINGS.** All headings in this Agreement are for convenience only, and shall not affect the interpretation of this Agreement.
- 19.15 **EXHIBITS INCORPORATED.** All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

*(Signatures on following page.)*

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, and by SDHC, by and through the signature of SDHC's authorized representative(s), all as set forth below.

SAN DIEGO HOUSING COMMISSION,  
a public agency

CITY OF SAN DIEGO,  
a California municipal corporation

By: \_\_\_\_\_  
Print Name: Lisa Jones  
Title: President and Chief Executive  
Officer

By: \_\_\_\_\_  
Print Name: Christina Bibler  
Title: Economic Development Department,  
Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
Christensen & Spath LLP  
A California limited liability partnership

APPROVED AS TO FORM:  
Heather Ferbert  
City Attorney

By: \_\_\_\_\_  
Walter F. Spath III  
SDHC General Counsel

By: \_\_\_\_\_  
Andrew J. Alfonso  
Deputy City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**FY 2025**  
**HOME Program - Scope of Services**  
**Exhibit “A”**

HOME INVESTMENT PARTNERSHIPS GRANT (HOME)  
SAN DIEGO HOUSING COMMISSION

1. PROJECT SITE LOCATION

SDHC shall maintain a project office at 1122 Broadway, Suite 300, San Diego, CA 92101.

2. NOTICE TO THE AGENCY

For the purposes of this Agreement, notices in writing to SDHC should be addressed to:

San Diego Housing Commission  
Rental Housing Finance Unit  
Attn: Lisa Jones  
President and Chief Executive Officer  
1122 Broadway, Suite 300  
San Diego, CA 92101

3. ADMINISTRATIVE OFFICE LOCATION

SDHC shall maintain their administrative office at 1122 Broadway, Suite 300, San Diego, CA 92101. The main office hours of operation are Monday to Friday, 7:00 AM to 6:00 PM, closed every other Friday.

4. TARGET POPULATION/GEOGRAPHIC AREA

HOME Program funds serve households within the City of San Diego earning no more than 80% Area Median Income.

5. PROJECT DESCRIPTION

HOME Program funds are provided for first-time homebuyer down payment financial assistance, multifamily rental housing new construction, acquisition and rehabilitation, owner occupied housing rehabilitation, and tenant based rental assistance.

6. PROJECT OUTCOMES

HOME activities will contribute to the creation and preservation of affordable rental and homeownership opportunities. Multifamily Rental Housing Program: Twenty-six (26) HOME designated rental housing units will be constructed or rehabilitated for low-to-moderate income households. Homebuyer Program: Six (6) households will receive down payment and/or closing costs financial assistance towards homeownership.

7. PROJECT SERVICES

Services provided during the contract period include down-payment loans, closing cost assistance grants, deferred interest loans for owner occupied units, rental assistance and security deposits, and gap financing loans for new construction and rehabilitation of multi-family units.

8. PROJECT RECORDS

SDHC shall maintain and require Subcontractors to maintain, all records required by the Federal regulations pertinent to the activities completed with HOME funds. SDHC shall make available to the City, the U.S. Government, or their authorized agents all project-related records, documents and any other financial data or records for review.

All SDHC and Subcontractor files pertaining to personal client information must remain confidential and kept in a locked file cabinet and/or password protected electronic format.

9. CLOSE-OUTS

SDHC shall be responsible for completing and submitting a fiscal year and contract term close-out report(s) to include total number of clients served, program accomplishments and summary, client demographics and financial summary and fiscal audit reports.

**FY 2025  
HOME Program Budget  
Exhibit B**

HOME Fiscal Year 2025 Annual Budgetary Priorities		
FY 2025 Budget	\$27,207,893	
FY 2025 Allocation	\$4,933,182	
Anticipated Program Income	\$1,154,120	
Prior Year Grant Allocation	\$20,120,591	
Prior Year Program Income	\$1,000,000	
Administration	10%	\$2,673,595
SDHC Portion of Admin (FY 2025, P.I. and Prior Years)		\$1,615,118
City of San Diego Portion of Admin (FY 2025 and Prior Years)		\$1,058,477
Owner Occupied Rehab	0%	\$0
Tenant-based Rental Assistance	0%	\$0
Rental Housing	86%	\$23,534,298
SDHC Portion of Rental Housing		\$23,534,298
Homeownership	4%	\$1,000,000
Total	100%	\$27,207,893