



SAN DIEGO
HOUSING
COMMISSION

HOUSING AUTHORITY REPORT

DATE ISSUED: January 20, 2012

REPORT NO: HAR12-011

ATTENTION: Chair and Members of the Housing Authority of the City of San Diego
For the Agenda of February 14, 2012

SUBJECT: Otay Villas/Adaptable Housing Preservation Plan

COUNCIL DISTRICTS: 2, 3, 7 and 8

STAFF RECOMMENDATION:

That the Housing Authority of the City of San Diego ("Housing Authority"):

1. Ratify the submission of a Mixed Finance Rental Term Sheet to the California Department of Housing and Community Development ("State HCD") and to the Department of Housing and Urban Development ("HUD") for the rehabilitation and conversion of six (6) Housing Commission owned assets, known as the Otay Villas/Adaptable Housing properties, to public housing (2420 44th Street, 3222 Camulos Street, 3919 Mason Street, 605 Picador Boulevard, 5385 Trojan Avenue, and 4095 Valeta Street).
2. Authorize an amendment to the Housing Commission's Annual Contributions Contract with HUD to include these six properties as one public housing project.
3. Authorize the recordation of a HUD Declaration of Trust, with a term of 40 years, restricting these six properties at the rent and income levels required under the HUD public housing program.
4. Ratify the Community Development Block Grant ("CDBG") contract awarded for the rehabilitation of 605 Picador Boulevard in the amount of \$1,231,878.
5. Approve a three-phased Rehabilitation Plan with a total budget not to exceed \$10,337,012 for the six properties using CDBG funds of \$1,231,878, Public Housing Repositioning fees and excess Public Housing Reserves of \$2,515,541, Capital Replacement Housing Factor ("RHF") Funds of \$3,589,593 and a private bank loan of \$3,000,000.
6. Authorize Phase I of the Rehabilitation Plan using \$1,231,878 of CDBG funds and up to \$1,826,562 of Local Funds. Should items 1, 2, 3 & 5 not be approved, this property remains a State site and Local Funds are the only eligible source of funds for the rehabilitation.
7. Award a construction contract to Hugo Alonso, Inc. for Phase I of the Rehabilitation Plan in the amount of \$2,780,400 plus up to ten percent contingency (\$278,040), if necessary, for items not anticipated in the original scope of work.
8. Authorize the President & Chief Executive Officer ("CEO"), or designee, to execute the contract documents and any and all other necessary or convenient documents required to implement the

above actions in connection with the Otay Villas/Adaptable Housing Preservation Plan in a form approved by General Counsel, and further authorize the President & CEO, or designee, to take such actions as are necessary, convenient and/or appropriate to implement these approvals and to complete the project.

SUMMARY:

In early 1983, the Housing Commission developed 113 apartments at six scattered sites with funding from State HCD under the Rental Housing Construction Program (RHCP). The program provided 32-year, interest free, deferred payment loans to assist in the development of affordable multifamily housing. Balloon payments on the State HCD loans totaling approximately \$4,555,000, are due in 2013 and 2014.

Income restrictions and limited operating support from State HCD have made it difficult for the properties to produce enough cash flow to adequately fund reserve accounts for rehabilitation. Consequently, the properties have fallen into disrepair. The current balance of the reserve accounts is \$374,591 while the estimated rehabilitation cost for the properties is approximately \$6,900,000.

Over the past year, Housing Commission staff has been in discussions with HUD and State HCD regarding the transition of these properties into the Housing Commission's public housing program. The proposed transition would allow the Housing Commission to access funds specifically set aside for public housing to pay for the needed rehabilitation and qualify the property for ongoing operating support from HUD. The State HCD would be asked to defer payments for 55 years under its 2007 law permitting this for preservation transactions.

As an additional benefit, the use of the public housing funds in the proposed Rehabilitation Plan would enable the Housing Commission to qualify for a new increment of Rental Housing Factor ("RHF") funds totaling approximately \$7,500,000 from the HUD which could be used toward future public housing modernization.

DISCUSSION:

The Otay Villas/Adaptable Housing properties, commonly known as the "State Sites," were developed in 1983 at six scattered locations (See Attachment 1). The largest property, 605 Picador Boulevard, has 78 units and is located in the Otay Nestor area of Council District 8. The remaining 35 units are scattered over five properties in City Heights and Old Town in council districts 2, 3 and 7. The unit mix of each property is described in the chart below:

Unit Mix

Property Nickname	Property Address	2brs	3brs	Total	Percent
44 th Street	2420 44 th Street	8	0	8	7%
Mason	3919 Mason Street	8	0	8	7%
Camulos	3222 Camulos Street	8	4	12	11%
Valeta	4095 Valeta Street	4	0	4	4%
Trojan	5385 Trojan Avenue	3	0	3	3%
Picador	605 Picador Boulevard	<u>66</u>	<u>12</u>	<u>78</u>	<u>69%</u>
Total Units		97	16	113	100%
Percent		86%	14%	100%	

Affordability

Seventy-four of the 113 units are affordable to households earning up to 50 percent of Area Median Income (“AMI”). The remaining thirty-nine units are affordable to households earning up to 80 percent of AMI. The tenant’s portion of rent is based on 25 percent of the tenant’s income and State program regulations. Tenant rents currently range from \$119 to \$1,376 per month. Under the proposed plan, tenant’s rents would be transitioned to 30 percent of their income, which is consistent with the public housing regulations. Under the Public Housing regulations, tenant rents would range from \$14 to \$1,632 per month.

Property Nickname	Property Address	Council District	50% AMI Units	80% AMI Units	Total Units
44 th Street	2420 44 th Street	3	5	3	8
Mason	3919 Mason Street	2	7	1	8
Camulos	3222 Camulos Street	2	7	5	12
Valeta	4095 Valeta Street	2	3	1	4
Trojan	5385 Trojan Avenue	7	0	3	3
Picador	605 Picador Boulevard	8	<u>52</u>	<u>26</u>	<u>78</u>
TOTAL			74	39	113

Rehabilitation

Each property is in need of substantial rehabilitation. In March 2011, the Housing Commission’s Asset Management and Construction Services Departments jointly prepared a physical needs assessment (“PNA”) to estimate the rehabilitation needs of the properties. The report concluded that the total cost to rehabilitate the apartments would be \$6,929,103 (\$61,319 per unit). A summary of the PNA is included as Attachment 2 to this staff report. The proposed rehabilitation scope includes the following new or upgraded major building components:

- Complete kitchens and baths
- Energy efficient interior lighting and building-mounted exterior site lighting
- Low voltage communication cabling
- Electrical distribution panel servicing
- Exterior doors and frames (entry and utility)
- Energy efficient windows and window frames
- Window coverings
- Acoustical “popcorn” ceiling texture removal and refinishing
- Floor coverings
- Replacement of smoke detectors and fire extinguishers
- Installation of Carbon Monoxide detectors
- Interior and exterior paint
- Reconstruction of building exterior envelopes (including waterproofing, exterior siding, stucco, wood fascia/trim repairs)
- Replacement of gutters and downspouts
- New structural steel stairs and handrail systems
- Refinished upper level stair landing surfaces
- Fumigation of all existing structures
- Landscaping / Hardscape

- Concrete Walkways
- Paving
- Site accessibility improvements and paving

Summary of Estimated Rehabilitation Costs by Property:

Property Nickname	Units	Rehab Cost Per Site*	Rehab Cost Per Unit*
44th Street	8	\$519,991	\$64,999
Mason	8	\$536,434	\$67,054
Camulos	12	\$717,639	\$59,803
Valeta	4	\$326,328	\$81,582
Trojan	3	\$361,728	\$120,576
Picador	78	\$4,466,985	\$57,269
Totals	113	\$6,929,105	\$61,320

**Estimate includes Materials, Labor, General Contractor's Fee and General Conditions*

Proposed Delegation to President & CEO to Approve and Execute All Necessary Agreements Under this Plan

As a note of clarification, under this plan it is proposed that the Housing Authority delegate to the President & CEO approvals of all necessary, selection of and agreements with, all contractors and consultants who will perform work on the project under this plan. It is possible that these agreements may exceed the President and CEO's current approval authority but the costs will not exceed the \$10,337,012 proposed under this plan.

FISCAL CONSIDERATIONS:

The transition of the "State Sites" to public housing meets two significant Housing Commission objectives. First, it rehabilitates the properties and preserves their long term affordability for low-income San Diegans. Second, it enables the Housing Commission to secure future Rental Housing Factor ("RHF") funds from HUD to use toward future public housing modernization.

Modernization funds have been offered to the Housing Commission in two five-year increments. The Housing Commission has already qualified for its first five-year increment which totals approximately \$8,500,000. To obtain the second five-year increment of approximately \$7,500,000, the Housing Commission must meet specific HUD requirements.

First, the Housing Commission must add additional public housing units, or improve its current public housing stock using the current RHF increment. The proposed plan uses \$3,589,593 of current RHF funds and adds 113 public housing units. Second, the Housing Commission must meet HUD's mandatory RHF leveraging requirement by using non-federal sources to finance the Rehabilitation Plan. In this proposal, RHF funds will be leveraged with a private bank loan or line-of-credit of \$3,000,000.

The bank loan will be drawn down on an as-needed basis to fund development costs. It is proposed that the loan/line-of-credit will be paid back from remaining annual RHF payments from HUD which are expected to be received by October of 2013.

The Rehabilitation Plan will also use \$1,231,878 of CDBG funds which were previously awarded to the Housing Commission by the City of San Diego on March 21, 2011 for rehabilitation of the Picador site.

The Housing Commission plans to round out the project sources with \$2,515,541 of Public Housing Repositioning or Excess Public Housing Reserves. As a Move-to-Work Agency, the Housing Commission has flexibility to use these funds to acquire, develop or rehabilitate public housing.

Finally, the State HCD will be asked to defer payments for 55 years under its 2007 law permitting this for preservation transactions; subordinate its liens to public housing Declarations of Trust; and defer to federal public housing requirements where the remaining state requirements otherwise would be inconsistent with federal requirements. The Housing Commission and the State HCD have exchanged letters documenting this understanding, subject to HUD approval.

The estimated development budget is approximately \$10.3 million. The Housing Commission will receive the development fee and administration fee upon rehabilitation completion of the 133 units. A summary of the sources and uses are described below:

SOURCES:

Community Development Block Grant (CDBG)	\$1,231,878
Moving to Work: Federal Funds	\$2,515,541
Capital Fund Rental Housing Factor 501-10 (FY 10)	\$1,935,182
Capital Fund Rental Housing Factor 501-11 (FY 11)	\$1,654,411
Bridge Loan/Line of Credit	<u>\$3,000,000</u>
Total Sources	\$10,337,012

USES:

Hard Construction Costs	\$6,929,103
Soft Costs	\$2,232,409
Financing Costs	\$120,000
Reserves	\$155,500
Development Fee	\$630,000
Administration Fee	<u>\$270,000</u>
Total Uses	\$10,337,012

A Development Budget is attached (Attachment 3).

Construction Phasing

The Rehabilitation Plan will be completed in three phases. Phase I will address immediate needs of the apartment buildings at the Picador property.

Phase II will complete the balance of site work at Picador including landscape improvements, concrete and paving. Phase III will consist of site work and the rehabilitation of the apartment structures at the five remaining scattered sites. Phases II and III and are contingent upon approval of this public housing transition plan.

Should the larger public housing transition plan be rejected, it is requested that the Housing Commission be authorized to proceed with Phase I of the proposed Rehabilitation Plan using \$1,231,878 of CDBG

funds and \$1,826,562 of Local Funds. The CDBG contract requires that the funds be expended by mid-September 2012. In order to meet this CDBG expenditure milestone, rehabilitation must commence by early February 2012.

Estimated Schedule

MILESTONE	DATE
Application to HUD and State HCD for Public Housing Plan Approval	January 2012
Housing Commission Review of Plan	January 2012
Housing Authority Review of Plan	February 2012
Start of Picador Boulevard Rehabilitation Using CDBG Funds	February 2012
Execution of State-HCD Loan Extension & HUD Approval	May 2012
Rehabilitation Start on Five Scattered Sites and Non-CDBG Picador Work	May 2012
Phase I Picador Completion (CDBG)	September 2012
Phase II and II Rehabilitation Completion	September 2013

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

By a vote of 4-0 with Commissioners Granling, Spoon and Waring absent, this item was approved at the regular Housing Commission meeting of January 20, 2012.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On November 15, 2011, an Invitation for Bids ("IFB") was issued for the work associated with Phase I of the Picador project. Bid advertisements were placed in the *San Diego Daily Transcript*, *San Diego Union Tribune*, *Voice and Viewpoint* and *La Prensa*. The IFB was posted in the Onvia Demandstar system where 200 notifications were sent as outreach to general contractors, 41 of which were small and minority/women-owned businesses.

On November 29, 2011, a pre-bid conference was conducted with thirteen (13) contractors in attendance. During the bid period, bid packages were provided to a total of eleven (11) plan rooms.

At bid closing on December 14, 2011, three (3) bids were received. Information on the submitted bids is outlined below:

Bidder	Amount	Responsive Bidder	Disadvantaged Business Enterprise
Hugo Alonso, Inc.	\$2,780,400	Yes	MBE, SBE, HUB Zone SB*
Vasquez Company	\$3,545,028	Yes	DBE, SBE*
Richard & Richard Construction	\$3,990,993	Yes	N/A

* MBE = minority business enterprise, SBE = small business enterprise, HUB Zone SB = historically underutilized business zone (small business)

Immediately following the bid opening, bids were evaluated for responsiveness by the Housing Commission's Procurement department. The bid submitted by Hugo Alonso, Inc., was found to be responsive and responsible and within an acceptable range of the pre-determined in-house project valuation of \$2,601,425. A draft Construction Contract is included as Attachment 4.

Phases II and III will follow the same public outreach guidelines.

EQUAL OPPORTUNITY/CONTRACTING:

Hugo Alonso, Inc. is a certified Disadvantaged and Minority Business Enterprise. A Certificate of Compliance and a Workforce Analysis has been provided and shows this vendor is in compliance with the San Diego Housing Commission Equal Opportunity Program. Information on the Workforce Analysis indicates that 77 percent of the company's workforce is disadvantaged.

ENVIRONMENTAL REVIEW:

This activity is categorically exempt under the California Environmental Quality Act (CEQA) pursuant to Section 15301 (existing facilities) of the State CEQA Guidelines. This activity is also determined to be categorically excluded under the National Environmental Policy Act pursuant to 24 CFR 58.35 (a)(3)(ii).

Respectfully submitted,



Ann E. Kern
Interim Director Housing Development & Finance
Real Estate Department

Approved by,



Deborah N. Ruane
Senior Vice President
Real Estate Department

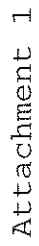
Attachments:

- 1) Property Location Map
- 2) Physical Needs Assessment Summary
- 3) Development Budget
- 4) Draft Construction Contract with Hugo Alonso, Inc

Hard copies are available for review during business hours in the main lobby of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials on the San Diego Housing Commission website at www.sdhc.org.

Attachment 1

- Attachment 1



OTAY VILLAS/ADAPTABLE HOUSING PHYSICAL NEEDS ASSESSMENT SUMMARY

SUMMARY			
Site	Unit Count	Total Rehab Estimate	
		\$ Per Site	\$ Per Unit
44th Street	8	\$519,991	\$64,999
Camulos	12	\$717,639	\$59,803
Mason	8	\$536,434	\$67,054
Picador	78	\$4,466,985	\$57,269
Trojan	3	\$361,728	\$120,576
Valeta	4	\$326,328	\$81,582
Totals	113	\$6,929,105	\$61,320

Site	CONSTRUCTION					GRAND TOTAL
	Residential Rehabilitation	Builder's General Requirements	Builder's Overhead	Builder's Profit	Site Improvements	
44th Street	280,781.00	27,368.12	9,122.71	27,368.12	175,351.00	519,990.94
Camulos	434,645.00	37,770.71	12,590.24	37,770.71	194,862.00	717,638.65
Mason	328,509.00	28,233.18	9,411.06	28,233.18	142,048.00	536,434.41
Picador	2,694,667.00	235,104.35	78,368.12	235,104.35	1,223,741.00	4,466,984.82
Trojan	225,804.00	20,013.88	6,671.29	20,013.88	89,225.00	361,728.06
Valeta	163,894.00	18,055.06	6,018.35	18,055.06	120,306.00	326,328.47
Subtotal	4,128,299.00	366,545.00	122,182.00	366,545.00	1,945,532.00	6,929,105.00

NOTE: This document was prepared by the SDHC Construction Services Division and constitutes an Opinion of Probable cost. An Opinion of Probable Cost shall be construed as an indefinite evaluation of cost based upon historical cost data derived from similar projects and produced from written or drawn information available at the time. Since there is no control over: the cost of labor, materials or equipment; or over the contractor's method of determining his prices; or over competitive

EXHIBIT F
SUMMARY BUDGET -- CURRENT PHASE ONLY (CONSTRUCTION PERIOD)

Grantee or Applicant HA: **[Housing Authority of the City of San Diego]**

Development Name and Phase: **Otay Villas/Adaptable Housing Public Housing Development**

Unit Type:	Rental Public Housing	Rental non-PH	HO w/PH Assistance	HO w/o PH Assistance	Total Units this Phase
Number of Units (entered on Unit Mix worksheet):	113	-	-	-	113

Part A: Development Sources	Loan/Grant/Equity	PH Capital Assist.	Private Funds	Other Public Funds	Total
Community Development Block Grant (CDBG)		\$ -	\$ -	\$ 1,231,878	\$ 1,231,878
Public Housing Capital Assistance: Grant		\$ -	\$ -	\$ -	\$ -
Moving to Work: Federal Funds	Equity	\$ -	\$ -	\$ 2,515,541	\$ 2,515,541
Other: Insert Label		\$ -	\$ -	\$ -	\$ -
Other: Capital Fund RHF 501-10	Grant - RHF	\$ 1,935,182	\$ -	\$ -	\$ 1,935,182
Other: Capital Fund RHF 501-11	Grant - RHF	\$ 1,654,411	\$ -	\$ -	\$ 1,654,411
Bank Loan	Loan	\$ -	\$ 3,000,000	\$ -	\$ 3,000,000
Other: Insert Label		\$ -	\$ -	\$ -	\$ -
Other: Insert Label		\$ -	\$ -	\$ -	\$ -
Other: Insert Label		\$ -	\$ -	\$ -	\$ -
Other: Insert Label		\$ -	\$ -	\$ -	\$ -
Total Development Sources (Part A)		\$ 3,589,593	\$ 3,000,000	\$ 3,747,419	\$ 10,337,012

Part B: Additional Sources	PH Capital Assist.	Private Funds	Other Public Funds	Total
Public Housing Capital Assistance:	\$ -	\$ -	\$ -	\$ -
Other: Insert Label	\$ -	\$ -	\$ -	\$ -
Other: Insert Label	\$ -	\$ -	\$ -	\$ -
Total Additional Sources (Part B)	\$ -	\$ -	\$ -	\$ -
Total Sources this Phase (Parts A and B)	\$ 3,589,593	\$ 3,000,000	\$ 3,747,419	\$ 10,337,012

Part A: Development Uses	HUD Bdgt Line Item	PH Capital Assist.	Private Funds	Other Public Funds	Total
Development Construction Costs					
Residential Construction	1460	\$ -	\$ -	\$ -	\$ -
Residential Rehabilitation	1460	\$ 3,589,593	\$ 538,706	\$ -	\$ 4,128,299
Builder's General Requirements	1460	\$ -	\$ -	\$ 366,545	\$ 366,545
Builder's Overhead	1460	\$ -	\$ -	\$ 122,182	\$ 122,182
Builder's Profit	1460	\$ -	\$ -	\$ 366,545	\$ 366,545
Site Improvement	1450	\$ -	\$ 983,451	\$ 962,080	\$ 1,945,531
Other: Community Facility	1470	\$ -	\$ -	\$ -	\$ -
Subtotal: Development Construction Costs		\$ 3,589,593	\$ 1,522,157	\$ 1,817,352	\$ 6,929,102

Development Soft Costs	HUD Bdgt Line Item	PH Capital Assist.	Private Funds	Other Public Funds	Total
Acquisition of Site(s)	1440	\$ -	\$ -	\$ -	\$ -
Accounting and Cost Certification	1430	\$ -	\$ -	\$ -	\$ -
Appraisal Expense	1430	\$ -	\$ -	\$ 7,500	\$ 7,500
Architect & Engineer Fees	1430	\$ -	\$ -	\$ 782,362	\$ 782,362
Environmental Assessment, Testing & Cleanup	1430	\$ -	\$ 8,433	\$ 1,567	\$ 10,000
Financing & Application Exp., Lender	1430	\$ -	\$ -	\$ 10,000	\$ 10,000
Financing & Application Expense, Tax Credit	1430	\$ -	\$ -	\$ -	\$ -
Insurance, Construction Period	1430	\$ -	\$ -	\$ 183,273	\$ 183,273
Interest, Construction & Bridge Loan(s)	1430	\$ -	\$ -	\$ 85,000	\$ 85,000
Legal Expense, Developer & Lender(s)	1430	\$ -	\$ -	\$ 25,000	\$ 25,000
Marketing & Lease-up Expense	1430	\$ -	\$ -	\$ -	\$ -
Permits, Construction & Utility Hookup	1430	\$ -	\$ -	\$ 123,056	\$ 123,056
PILOT & Taxes, Construction Period	1430	\$ -	\$ -	\$ -	\$ -
Survey	1430	\$ -	\$ -	\$ 10,000	\$ 10,000
Title & Recording Fees	1430	\$ -	\$ -	\$ 10,000	\$ 10,000
Initial Operating Deficit (Construction Period)	1430	\$ -	\$ 42,500	\$ -	\$ 42,500
Other: Civil Engineer & Subs	1430	\$ -	\$ -	\$ -	\$ -
Other: Market Study	1430	\$ -	\$ -	\$ 3,000	\$ 3,000
Other:	1430	\$ -	\$ -	\$ -	\$ -
Other: Bank Inspection Fees	1430	\$ -	\$ -	\$ 15,000	\$ 15,000
Other: Capital Replacement Reserves	1430	\$ -	\$ 113,000	\$ -	\$ 113,000
Other: (Construction Contingency)	1430	\$ -	\$ 361,772	\$ 361,772	\$ 723,543
Other: (Soft Cost Contingency)	1430	\$ -	\$ 52,138	\$ 52,138	\$ 104,276
Other: Developer Fee	1430	\$ -	\$ 630,000	\$ -	\$ 630,000
Subtotal: Development Soft Costs		\$ -	\$ 1,207,843	\$ 1,669,668	\$ 2,877,510

Total Uses for Development (Part A) \$ 3,589,593 \$ 2,730,000 \$ 3,487,020 \$ 9,806,612

Part B: Additional Uses	HUD Bdgt Line Item	PH Capital Assist.	Private Funds	Other Public Funds	Total
Community & Supportive Services (HOPE VI only)	1408	\$ -	\$ -	\$ -	\$ -
Management Improvements, PHA	1408	\$ -	\$ -	\$ -	\$ -
Administration, PHA	1410	\$ -	\$ 270,000	\$ -	\$ 270,000
Fees & Costs	1430	\$ -	\$ -	\$ -	\$ -
Site Acquisition	1440	\$ -	\$ -	\$ -	\$ -
Site Improvement	1450	\$ -	\$ -	\$ -	\$ -
Non-Dwelling Structures	1470	\$ -	\$ -	\$ -	\$ -
Non-Dwelling Equipment	1475	\$ -	\$ -	\$ -	\$ -
Demolition (and associated remediation)	1485	\$ -	\$ -	\$ -	\$ -
Relocation Expense	1495	\$ -	\$ -	\$ 260,400	\$ 260,400
Total Additional Uses (Part B)		\$ -	\$ 270,000	\$ 260,400	\$ 530,400

Total Uses this Phase (Parts A and B) \$ 3,589,593 \$ 3,000,000 \$ 3,747,420 \$ 10,337,012

SAN DIEGO HOUSING COMMISSION
AGREEMENT FOR
REHABILITATION OF PICADOR BOULEVARD APARTMENTS
WITH
HUGO ALONSO INC.
Contract No. CI-12-05

THIS AGREEMENT "Contract", entered into the ____ day of _____ 201____.

between the Commission:

SAN DIEGO HOUSING COMMISSION
1122 Broadway, Suite 300
San Diego, California 92101
Tel: (619) 231-9400

and the Contractor:

HUGO ALONSO INC.
1480 W. Frontage Road
Chula Vista, California 91911
Tel: (619) 660-6255

WITNESSETH, that the Contractor and the Commission for the consideration stated herein mutually agree as follows:

ARTICLE 1. Statement of Work: The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for the rehabilitation of the 78-unit multifamily residential rental development known as Picador Boulevard Apartments, located at 605-695 Picador Boulevard, San Diego, California, 92154, herein called "the Project", in strict accordance with the Specifications dated November 15, 2011, Addendum number (1) dated December 1, 2011, Addendum number (2) dated December 7, 2011, and Addendum number (3) dated December 8, 2011. Specifications, Addenda and drawings are incorporated herein by reference and made a part hereof.

ARTICLE 2. The Contract Price: The Commission shall pay the Contractor for all performance of the Contract, in current funds, subject to additions and deductions as provided in the Specifications, the sum of TWO MILLION SEVEN HUNDRED EIGHTY THOUSAND FOUR HUNDRED DOLLARS AND NO/100 (\$2,780,400.00).

ARTICLE 3. Indemnity: Subject to only the limitations of the applicable statutes of limitations as contained within applicable State and Federal law, Contractor agrees to indemnify, hold harmless and defend the City of San Diego ("the City"), the Commission and the Housing Authority of the City of San Diego ("the Housing Authority"), and all commissioners, council members, officers, employees, agents, and each of them (hereinafter collectively referred to as "Indemnatee") against any and all liability, claims, fines, penalties, judgments, complaints, causes of action, actions, or demands, including demands arising from injuries to or death of persons (Contractor's employees included) and damage to property, or any other loss, damage or expense, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor including those in part due to the negligence of Indemnatee save and except liability, claims, judgments or demands arising through the sole negligence or sole willful misconduct of Indemnatee or resulting from defects in design furnished by Indemnatee and Contractor will, if requested by Indemnatee, defend any such suits against the Commission, the City and/or the Housing Authority, at the sole cost and expense of Contractor, with counsel of Indemnatee's choosing. This defense and indemnity provision shall not be interpreted as an agreement allowing the prevailing party in litigation concerning this Contract to receive attorneys' fees. Further, therefore, the provisions of Civil Code Section 1717 shall not be applicable to this Contract.

ARTICLE 4. Governing Law: This Contract and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of California.

ARTICLE 5. Entire Agreement: This Contract contains the entire agreement between the parties. No variations, modifications, or changes hereto shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party. All prior negotiations, representations and/or agreements between the parties relative to the subject matters hereof shall be superseded hereby and of no further force and effect unless specifically incorporated herein.

ARTICLE 6. Waiver: No consent or waiver, expressed or implied by either party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of such other party hereunder. Failure on the part of either party to complain of any such act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

ARTICLE 7. Severability: If any provision of this Contract or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

ARTICLE 8. Terminology: All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of paragraphs are for convenience only, and neither limits nor amplifies the provisions of the Contract itself, and all references herein to paragraphs thereof are to this Contract unless specific reference is made to such paragraphs of another document or instrument.

ARTICLE 9. Binding Agreement: Subject to any restrictions on the assignment of this Contract or rights thereto, this Contract shall inure to the benefit of and be binding upon Commission and Contractor and their respective successors, assigns or transferees.

ARTICLE 10. Procedure for Resolving Disputes: In the event of a dispute concerning this Contract, the same shall be resolved in San Diego Superior Court, Central District. In any dispute between Commission and Contractor pertaining to the City's agreement with Commission, the City of San Diego shall not be made a party to any judicial or administrative proceeding to resolve the dispute.

ARTICLE 11. Time is of the Essence: Time is of the essence in this Contract, as per the schedule submitted by Contractor and agreed upon by Commission.

ARTICLE 12. Liquidated Damages: As actual damages for any delay in completion are impossible to determine, the Contractor and his sureties shall be liable for and shall pay to the Commission monies in accordance with Clause 33 of General Conditions, and the Special Conditions at pages 125 and 143 as fixed, agreed and liquidated damages for each calendar day of delay until the work is completed and accepted by the Commission.

ARTICLE 13. Incentive Bonus for Early Completion: In addition to the compensation to be paid the Contractor under the terms of this Contract, the Contractor shall be entitled to, and the Commission shall pay to the Contractor, the sum of Five Hundred Dollars (\$500.00) per day, for each day, up to five (5) days in aggregate, that the Project is completed and accepted by the Commission in advance of the specified date of completion.

ARTICLE 14. Contract Documents:

This contract shall consist of the following component parts:

- a. This Instrument,
- b. Contract Attachment No. 1 "CDBG Special Conditions – Requirements"
- c. General Conditions
- d. Special Conditions
- e. Prevailing Wage Scales
- f. Technical Specifications
- g. Drawings
- h. Addenda to the Specifications and/or Drawings

This instrument, together with the other documents enumerated in Article 14, form the Contract and are as fully a part of the Contract as if hereto attached or herein repeated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

ARTICLE 15. Drug-Free Workplace: Contractor shall comply with the City's Drug-Free Workplace requirements and certify to the Commission that it will provide a drug-free workplace as set forth in Contract Attachment No. 1 "CDBG Special Conditions-Requirements".

ARTICLE 16. Equal Opportunity Programs: During the performance of this Contract, Contractor shall comply with all applicable Equal Opportunity Programs as set forth in Contract Attachment No. 1 "CDBG Special Conditions-Requirements" and with the applicable State and Federal law and with the City's Equal Employment Opportunity [EEO] Outreach Program, codified in San Diego Municipal Code sections 22.2701- 22.2707.

ARTICLE 17. Non-Discrimination in Contracting. Contractor shall comply, and require its subcontractors to comply, with the City's Nondiscrimination in Contracting Ordinance, codified in San Diego Municipal Code sections 22.3501 - 22.3517, and as set forth in Contract Attachment No. 1 "CDBG Special Conditions-Requirements".

ARTICLE 18. Lobbying Provisions: Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the Contract, that Contractor acknowledges that funds received for the project have been provided pursuant to a federal grant, and shall comply with the laws set forth at 31 U.S.C. 1352 and 24 C.F.R. 87. Contractor shall, and shall require its subcontractors to, comply with the City's lobbying and political activity regulations set forth in Contract Attachment No. 1.

ARTICLE 19. CDBG Provisions and Other Applicable Provisions:

A. CDBG Provisions. This Contract is funded in part, by federal Community Development Block Grant (CDBG) Funds. The Contractor shall comply with, and shall require all subcontractors to comply with, any and all federal Community Block Grant regulations applicable to the performance of the work, whether or not such provisions are expressly set forth within this Contract, Contract Attachment No. 1 "CDBG Special Conditions-Requirements" and/or any other attachments hereto.

B. General. Contractor shall comply, and require its subcontractors 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 Contract. In addition, Contractor shall immediately comply, and require its subcontractors to immediately comply, with all directives issued by the City, or its duly authorized representatives, under authority of any law, statute, rule, regulation, order, ordinance, resolution, permit, requirement, or policy of the federal, state, or local governments.

C. Use of Ineligible Subcontractors. Contractor shall not use CDBG Funds directly or indirectly in its operations, or to employ, award contracts to, or otherwise engage the services of, or fund any subcontractor during any period of debarment, suspension, or placement in an ineligible status of the Contractor or such subcontractor under the provisions of 24 CFR Part 24.

D. Lead-Based Paint. Contractor shall apply, and shall require its subcontractors to apply, standards set forth under 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 24 C.F.R. Part 35, subparts A, B, J, K, and R.

ARTICLE 20. Conflict of Interest. Contractor shall comply and require its subcontractors to comply, with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including those set forth in Contract Attachment No. 1.

ARTICLE 21. Independent Contractor: Contractor and any subcontractor employed by the Contractor shall be independent contractors and not agents of the City or Commission. Any provision of this Contract that may appear to give the City and/or Commission any right to direct the Contractor concerning details performing the scope of services, or to exercise any control over such performance, shall mean only that the Contractor shall follow the direction of the City and/or Commission concerning the end results of the performance.

ARTICLE 22. Product Endorsement: Contractor shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements. Contractor shall not create any advertisement or writing that identifies or refers to the City, Housing Authority or Commission as the user of a product or service, without obtaining the prior written approval of the City, Housing Authority and Commission.

[Space Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in original counterparts as of the day and year first above written.

HUGO ALONSO INC.

By:

Signature

Darrel Calipo

Print Name

Title:

Vice-President

814970

License Number

Business Address

Hugo Alonso Inc.

1480 W. Frontage Road

Chula Vista, CA 91911-3912

SAN DIEGO HOUSING COMMISSION

By:

Signature

Print Name

Title:

Business Address

San Diego Housing Commission

1122 Broadway, Suite 300

San Diego, CA 92101

APPROVED AS TO FORM
CHRISTENSEN & SPATH LLP

By:

Charles B. Christensen, Esq.

General Counsel

San Diego Housing Commission

Date:

CONTRACT ATTACHMENT NO. 1

Subcontractors – Community Development Block Grant (CDBG) Special Conditions

Contractor and its subcontractors shall comply with the following CDBG Special Conditions and shall include the following language in all subcontracts entered into in connection with this Project. Furthermore, Contractor shall provide, and shall require its subcontractors to provide, any and all documentation to Commission and/or City, upon demand, demonstrating compliance with these Special Conditions.

ARTICLE I – PROJECT RECORDS

1. **General.** Contractor shall maintain, and require its subcontractors to maintain, all Project Records during the term of this Agreement including those required by the federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities funded under this Contract. "Project Records" consist of all administrative and/or financial records required in connection with the Project that are prepared and/or gathered by the Contractor or any subcontractor, including by not limited to, all books, papers, invoices, receipts, accounting records, payroll records, personnel records, designs, plans, reports, financial disclosures, audits, other disclosures, certifications investigative videos, work product, and any other documents, data, and/or records pertaining to all matters covered by this Contract, or required by the Operating Manual and Playing by the Rules Handbook provided by the City or HUD.

2. **Accounting Records.** Contractor shall maintain, and require its subcontractors to maintain, complete and accurate accounting records, in accordance with General Accepted Accounting Principles [GAAP].

3. **Inspection and Photocopying.** At any time during normal business hours and as often as requested, Contractor shall permit, and require its subcontractors to permit, the Commission, 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 Contractor), all Project Records for the purposes of making audits, examinations, excerpts, and/or transcriptions, as well as monitoring and/or evaluating Contractor's performance of its obligations and/or duties under this Contract. The Commission, the City, HUD, and Comptroller General may retain copies of the same, with appropriate safeguards, if such retention is deemed necessary by the Commission, the City, HUD, or Comptroller General in its sole discretion. The City and Commission will keep all copies of Project Records in the strictest confidence required by law. If Contractor is unable to make any Project Records available for inspection within the County of San Diego, then Contractor shall pay all of the Commission's and the City's travel-related costs to inspect and/or audit the Project Records at the location where the Project Records are maintained. Any refusal by Contractor to fully comply with the provisions of this section shall be deemed a material breach of this Contract and shall be grounds for immediate termination.

4. **Duplicates of Records.** Upon any request by the Commission, the City, HUD, Comptroller General, or any of their duly authorized representatives, for any Project Records, Contractor shall submit, and require its subcontractors to submit, exact duplicates of the originals of the requested Project Records to the requesting party for the purposes described in Article I, Section 3 of this Contract Attachment.

5. **Ownership of Records.** Once Contractor has received any reimbursement from the Commission for Agency's performance of its obligations and/or duties under this Contract, all Project Records shall be the property of the City. The City's ownership of the Project Records includes the use, reproduction, and/or reuse of the Project Records, as well as all incidental rights, whether or not the work for which the Project Records were prepared has been performed. No Project Records shall be shown to any other public or private person or entity, except as authorized by the Commission and the City in writing, or unless such Project Records are subject to the California Public Records Act.

6. **Storage Period.** Contractor shall store, and require its subcontractors to store, all Project Records for a period of not less than five years after Contractor's final submission of all required reports under this Contract, or five years after the Commission and Contractor make all final payments, or until all pending matters (including audit findings) have been resolved, whichever is longest. All Project Records shall be kept at Contractor's (or relevant subcontractor's) regular place of business. At any time during the storage period, Contractor shall permit, and require its subcontractors to permit, the Commission, the City, HUD, Comptroller General, or any of their duly authorized representatives, to inspect and photocopy all Project Records for the purposes described in Article I, Section 3 of this Contract Attachment. After the storage period has expired, Contractor shall provide the City and the Commission with thirty calendar days written notice of its intent to dispose of any Project Records. During this time period, the Contractor shall provide any and all Project Records to the City and the Commission upon request of the City.

ARTICLE II – COMPLIANCE WITH LAWS AND POLICIES

1. **General.** Contractor shall comply, and require its subcontractors 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 Contract. In addition, Contractor shall immediately comply, and require its subcontractors to immediately comply, with all directives issued by the City, the Commission, or either of its duly authorized representatives, under authority of any law, statute, rule, regulation, order, ordinance, resolution, permit, requirement, or policy of the federal, state, or local governments. Failure by the Contractor to accept or comply with rules, regulations, and procedures which affect the terms of this Contract, and which the Commission shall present in writing, shall be deemed a material breach of this Contract and shall be grounds for immediate termination.

2. Conflict of Interest

2.1 Contractor shall comply, and require its subcontractors to comply with all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, each of the following:

- (a) the conflict of interest provisions in 24 C.F.R. 570.611, and in OMB Circular No. A-110;
- (b) California Government Code sections 1090 et seq., and 81000 et seq.;
- (c) California Corporations Code sections 7230 – 7238 (applicable to nonprofit mutual benefit corporations) and sections 5230 – 5240 (applicable to nonprofit public benefit corporations);
- (d) the City's Ethics Ordinance, codified in San Diego Municipal Code sections 27.3501 – 27.3595; and
- (e) the "Conflict of Interest and Procurement Policy for Non-profit Corporations Contracting with the City of San Diego" [Exhibit C].

2.2 The Parties are unaware of any financial or economic interest of any public officer or employee of the City or the Commission relating to this Contract. If Contractor becomes aware at any time during the term of this Contract of any financial or economic interest, Contractor shall immediately disclose in writing such interest to the Project Manager. If such a financial and/or economic interest is determined to exist, the Commission is authorized to immediately terminate this Agreement by giving written notice thereof or to take any action deemed appropriate under this Contract.

2.3 If, in performing its obligations and duties set forth in this Contract, Contractor makes, or participates in, a "governmental decision," as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same (or substantially all the same) duties for the City or the Commission that would otherwise be performed by a City or Commission employee holding a position specified in the City's conflict of interest regulations, Contractor shall be subject to the City's conflict of interest regulations and Commission's conflict of interest policies, requiring the completion of one or more statements of economic interests, disclosing Contractor's relevant financial interests.

2.3.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. Contractor shall file a Form 700 [Assuming Office Statement] within thirty calendar days of the City's determination that Contractor is subject to the City's conflict of interest regulations. Contractor shall also file a Form 700 [Annual Statement] on or before April 1, disclosing any financial interests held during the previous calendar year for which Contractor was subject to the City's conflict of interest regulations.

2.3.2 If the City requires Contractor to file a statement of economic interests as a result of the obligations and duties performed, Contractor shall be considered a "City Official," subject to the provisions of the City's Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Contract.

2.4 Contractor shall establish, and make known to its agents and employees, appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, and/or other relationships.

2.5 Contractor's personnel, employed in performing the obligations and duties under this Contract, shall not accept gratuities, or any other favors, from any subcontractor or potential subcontractor. Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

2.6 If Contractor violates any conflict of interest law, or any of the provisions of Article II, Section 2 of this Contract Attachment, the violation shall be grounds for immediate termination of this Contract, and/or the imposition of other remedies available under the law. Further, any such violation shall subject Contractor to liability to the Commission and the City for attorney's fees and all damages sustained as a result of the violation.

3. Equal Employment Opportunity.

3.1 Contractor shall comply, and 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. Contractor and all of its subcontractors are individually responsible for abiding by its contents.

3.2 Contractor shall comply, and 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.

3.3 Contractor shall not discriminate, and shall require its subcontractors not to discriminate, 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 Contract, including, but not limited to, the provision of services, privileges, facilities, advantages, and accommodations.

3.4 Contractor, and its subcontractors, shall provide equal opportunity in all employment practices.

3.5 Contractor shall submit to the Commission and the City, a current Work Force Report, and if requested by the Equal Opportunity Contracting [EOC] staff, an Equal Employment Opportunity Plan, as required by San Diego Municipal Code section 22.2705.

3.6 Contractor understands that compliance with the EEO provisions shall be monitored and reviewed by the Commission's staff and the City's EOC staff.

3.7 Contractor acknowledges that its failure to comply with the above requirements, or its submittal of false information in response to these requirements fully authorizes the City and/or the Commission to take any of the following actions: the withholding of reimbursement payments until Contractor complies with the above; immediate termination of this Contract; debarment; and/or other sanctions, including suspension from participating in future City or Commission 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 Contractor from participating in future City and/or Commission contracts, until all penalties have been satisfied.

3.8 Nothing in this Section shall be interpreted to hold Contractor liable for any discriminatory practice of its subcontractors.

4. Non-Discrimination in Contracting.

4.1 Contractor shall comply, and 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.

4.2 Contractor shall not discriminate, and require its subcontractors not to discriminate, 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.

4.3 Within sixty calendar days of a request by the City or the Commission, Contractor shall provide the City and the Commission a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor 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 Contractor for each subcontract or supply contract. Contractor shall fully cooperate in any investigation conducted by the City, pursuant to the City's Nondiscrimination in Contracting Ordinance, referenced above.

4.4 Violation of any provision of Article II, Section 4 shall be considered a material breach of this Contract, and may result in remedies being ordered against Contractor up to, and including, immediate termination of this Contract, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance.

5. **Local Business and Employment.** Contractor acknowledges that the City seeks to promote employment and business opportunities for local residents and firms on all City contracts and that this Contract is funded with federal CDBG Funds provided by and through, the City. Contractor shall, to the extent reasonably possible, solicit applications for employment, as well as bids and proposals for subcontracts for work associated with this Contract, from local residents and firms, as opportunities occur. Contractor shall hire qualified local residents and firms, whenever feasible.

6. **Living Wage Ordinance.** Contractor shall comply, and require its subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201 et seq., in performing its obligations and/or duties under this Contract.

7. **Americans with Disabilities Act.** Contractor hereby certifies that it agrees to comply, and 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 Contract by this reference. Contractor, and its subcontractors, shall be individually responsible for their own ADA program.

8. **Drug – Free Workplace.**

8.1. Contractor shall comply, and require its subcontractors to comply, with the City's Drug Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952. Contractor shall certify, and require its subcontractors to certify, that it shall provide a drug-free workplace, by submitting to the City and the Commission, a "Contractor Certification for a Drug-Free Workplace" form. This certification shall be a condition precedent to this Contract and shall be delivered to the Commission prior to execution of this Contract.

8.2. Contractor shall post in a prominent place at the Project site a statement setting forth its drug-free policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that shall be taken against employees for violating the prohibition.

8.3. Contractor shall establish a drug-free awareness program to inform employees about each of the following:

- (a) the dangers of drug abuse in the workplace;
- (b) the policy of maintaining a drug-free workplace;
- (c) the availability of drug counseling, rehabilitation, and employee assistance programs; and
- (d) the penalties that may be imposed upon employees for drug abuse violations.

8.4. Contractor shall ensure that all subcontracts in connection with this Contract shall contain language that binds the subcontractor to comply with the provisions of Article II, Section 8 of this Contract Attachment, as required by City Council Policy 100-17.

8.5. Contractor, and its subcontractors, shall be individually responsible for their own drug-free workplace program.

9. **Lobbying and Political Activities.**

9.1. Contractor shall not use, and shall require its subcontractors not to use, any of the funds, personnel, or materials received in connection with this Contract, to influence, or attempt to influence, any governmental decision or election in any manner whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of federal, state, or local government. The term, "influence or attempt to influence," shall mean the making, with the intent to influence, any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.

9.2. Contractor acknowledges that funds received for the Project have been provided pursuant to a federal grant, and shall comply with the laws set forth at 31 U.S.C. 1352 and 24 C.F.R. 87.

9.3. Contractor shall complete and sign a certification form, certifying Contractor's knowledge of, and promise to comply with, each of the provisions set forth in Article II, Section 9 of this Contract Attachment. This certification shall be a condition precedent to this Contract and shall be delivered to the Commission and the City prior to execution of this Contract. Contractor shall also require this same certification to be included in all subcontracts, subgrants, and cooperative agreements exceeding \$100,000.

9.4. Contractor shall disclose to the Commission and the City any funds from any other source which have been paid by Contractor (or its principals or agents), within the last year, to influence or attempt to influence decisions of the federal government, by completing, signing, and submitting to the City, Form LLL, "Disclosure of Lobbying Activities," found at 24 C.F.R. 87, Appendix B.

9.5. Contractor understands that the duty to disclose lobbying activities is a continuing requirement, and therefore, shall make such disclosures at the end of each calendar quarter in which there occurs any event requiring disclosure.

10. **Storm Water Pollution Prevention.** Contractor shall comply, and require its subcontractors to comply, with the City's Storm Water Management and Discharge Control Ordinance, codified in San Diego Municipal Code sections 43.0301 et seq., in performing its obligations and/or duties under this Contract.

11. **Recognition of Funding Source.** Contractor shall ensure, and require its subcontractors to ensure recognition of the role of the federal CDBG Program in funding Contractor's services under this Contract. All activities performed, facilities and items utilized, and publications prepared, in connection with this Contract shall be prominently labeled to reference the use of CDBG Funds from HUD as a funding source. The reference shall be worded as follows: "This project is funded in whole or in part with Community Development Block Grant (CDBG) Program funds provided by the U.S. Department of Housing and Urban Development (HUD)."

12. **Operating Manual.** Contractor acknowledges receipt of, and shall comply with, and require its subcontractors to comply with the Operating Manual, including, but not limited to, those provisions related to fiscal accountability, eligible and ineligible project expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions. Any desired changes by Contractor to the procedures set forth in the Operating Manual must be requested by Contractor in writing and approved by the City in writing before such changes may be implemented.

13. **Playing by the Rules Handbook.** By executing this Contract, Contractor acknowledges, and shall require its subcontractors to acknowledge, that it has received, read, and understood the contents of the Playing by the Rules Handbook and shall fully comply with all of the administrative requirements set forth therein.

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

1. **Uniform Administrative Requirements.** Contractor shall comply, and require its subcontractors to comply, with all applicable uniform administrative requirements set forth in 24 C.F.R. 570.502, including, but not limited to, federal CDBG financial and contractual procedures, as well as OMB Circular Nos. A-87 and A-128 for governmental entities, and OMB Circular Nos. A-122, A-21, A-133, and A-110 for non-governmental entities. These federal documents are on file at the City's Economic Development Division, located at 1200 Third Avenue, Suite 1400, San Diego, California 92101.

2. **Other Program Requirements.** Contractor shall comply, and require its subcontractors to comply, with all federal laws and regulations described in 24 C.F.R. 570 subpart K (Sections 570.600 through 570.614), except that:

(a) Neither Commission nor Contract assumes the City's environmental responsibilities described in 24 C.F.R. 570.604; and

(b) Neither Commission nor Contractor assumes the City's responsibility for initiating the review process described in 24 C.F.R. part 52.

3. **Davis-Bacon Act.** Contractor shall comply, and require its subcontractors to comply, with the Davis-Bacon Act (40 U.S.C. 276a – 276a-7), as supplemented by Department of Labor regulations (29 C.F.R. part 5) – for construction contracts in excess of \$2000.

4. **Contract Work Hours and Safety Standards Act.** Contractor shall comply, and require its subcontractors to comply, with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330), as supplemented by Department of Labor regulations (29 C.F.R. part 5) – for construction contracts in excess of \$2000, and other contracts that involve the employment of mechanics or laborers in excess of \$2500.

5. **Energy Policy and Conservation Act.** Contractor 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).

6. **Various Environmental Laws and Regulations.** Contractor shall comply, and require its subcontractors to comply, with Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. part 15) – for contracts in excess of \$100,000.

7. **Copeland "Anti-Kickback" Act.** Contractor shall comply, and require its subcontractors to comply, with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R. part 3) – for contracts involving construction or repair.

8. **Religious Activities.** Contractor shall comply, and require its subcontractors to comply, with all applicable HUD requirements governing the use of CDBG Funds by religious organizations, set forth in 24 C.F.R. 570.200(j), as well as Executive Order 11245 (as amended by Executive Order 13279).

9. **Section 3 Clause.**

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

A. The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u [section 3]. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The Parties to this Contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this agreement for default, and debarment or suspension from future HUD assisted agreements.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450e] also applies to the work to be performed under this agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

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

10. **Reversion Of Assets.** Upon expiration of this Contract, Contractor shall transfer to the City any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Contractor shall comply with the requirements of 24 C.F.R. 570.503(b)(7) with regard to the use of any real property under the Contractor's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000. In the event that Contractor does not use the real property to meet one of the national objectives in 24 C.F.R. 570.208 for at least five years after the expiration of this Contract, Contractor shall pay the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment shall be deemed program income to the City.

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

12. **Section 504.** Contractor shall comply, and require its subcontractors to comply, with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against persons with disabilities in any Federally assisted program. The City and the Commission shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulations applicable during the term of this Contract.