

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
CITY/NON-PROFIT CAPITAL HOUSING PROJECT CONTRACT**

This Community Development Block Grant Program City/Non-profit Capital Housing Project Contract (the "Contract") is entered into pursuant to Title I of the Housing and Community Development Act of 1974 (Catalog of Federal Domestic Assistance Number 14.218) by and between the **CITY OF CUPERTINO**, a political subdivision of the State of California ("CITY"), and **[NAME]**, a non-profit public benefit corporation (the "CORPORATION"). The allocation of funds pursuant to this Contract will be a grant for the purposes of eligible CDBG capital housing project rehabilitation activities to be performed at the property located at **[ADDRESS]** as more particularly described in Exhibit I (the "Property"). CITY approved the allocation and disbursement of Community Development Block Grant ("CDBG") funds to CORPORATION on **[DATE]**.

**WITNESSETH**

WHEREAS, CITY has applied for and received CDBG Entitlement program funds from the United States Department of Housing and Urban Development ("HUD") as an entitlement jurisdiction pursuant to the provisions of Title I of the Housing and Community Development Act of 1974, as amended; and,

WHEREAS, CITY has granted CORPORATION a portion of its CDBG funds for eligible capital housing project rehabilitation activities benefitting the Project (as described below) to be operated within the City for the benefit of low and very low-income households and meeting at least one (1) of the National Objectives of the CDBG program as outlined in Title 24 of the Code of Federal Regulations, Section 570.208;

NOW, THEREFORE, the parties agree as follows:

**I. Project**

CITY agrees to allocate a portion of its current CDBG entitlement, and/or program income as defined in 24 CFR 570 Subpart J, "Grant Administration," to CORPORATION in the sum of **[DOLLARS (\$\_\_\_\_\_)]** (the "CDBG Funds") for the purpose of implementing the CORPORATION'S project, as more particularly described in Exhibits A-F to the Contract (the "Project"), and said Exhibits set forth below, as they may be amended or modified, are attached to this Contract and incorporated herein by reference.

Exhibit A: Project Description

Exhibit B: Project Work Plan

Exhibit C: Project Budget

Exhibit D: Basic Insurance and Bond Requirements For Non-Profit Contracts

Exhibit E: CDBG Regulations

Exhibit F: Project Scope of Work

The total budget for the Project and allocation of funds during the Term (as defined below) shall not exceed **[DOLLARS (\$\_\_\_\_\_)]**.

## II. TERM

The initial term of this Contract (the "Term") will begin on [DATE] and will end on [DATE], unless otherwise amended or terminated earlier pursuant to Section VI or Section VII of this Contract. The Term of this Contract may be extended two (2) times, each for an additional one (1) year period, for a total Term of up to three (3) years; provided, however, neither party is obligated to extend the initial Term. If the Term is extended, the subsequent Term shall commence on 12:00 am on the first day immediately following the last day of the current Term provided that the CITY and the CORPORATION have entered into a written amendment to this Contract providing for: (i) such extension of the Term, (ii) the amount of CDBG Funds allocated for such extended Term; and (iii) an update to the Project Budget, Project Workplan, and Project Scope of Work (as applicable), in accordance with Article XVI of this Contract. Notwithstanding anything to the contrary in this Contract, CORPORATION acknowledges that CITY has only committed the funding of CDBG Funds for the initial Term, and CITY's obligation to enter into an amendment extending the Term or to fund any subsequent CDBG funds to the CORPORATION in any subsequent year is wholly contingent on the satisfaction of the following conditions precedent for each subsequent year: (i) the allocation and appropriation by the City Council of the CITY for the funding of the Grant in any subsequent year, in accordance with the CITY's standard process and procedure for approving the annual budget of the CITY; and (ii) the allocation and delivery of funds by HUD to the CITY, pursuant to the CDBG Program, for the funding of the CDBG Funds. If either of such conditions precedent are not satisfied for any reason prior to the expiration of the then existing Term, then this Agreement shall automatically terminate upon the expiration of the Term. Upon such termination, CITY shall have no further obligation to fund any portion of the CDBG Funds, and the CORPORATION releases CITY for any and all claims related to such termination. In no event shall the failure to enter into any amendment extending the Term of this Contract, be considered a breach or default by CITY under this Contract. In the event of any conflict between the terms of this provision and any other provision in this Contract, the terms of this provision shall control.

## III. OBLIGATIONS OF CORPORATION

### A. Organization of CORPORATION. CORPORATION shall:

1. Provide CITY with copies of the following documents, evidencing filing with the appropriate governmental agency:

- (a) Its Articles of Incorporation under the laws of the State of California;
- (b) A copy of the current Bylaws of CORPORATION;
- (c) Documentation of its Internal Revenue Service non-profit status;
- (d) Names and addresses of the current Board of Directors of CORPORATION; and,

(e) An adopted copy of CORPORATION'S personnel policies and procedures.

2. During the Contract Term, immediately report any changes, subsequent to the date of this Contract, in CORPORATION'S Articles of Incorporation, Bylaws, Board of Directors, personnel policies and procedures, or tax exempt status to CITY.

3. Maintain no member of its Board of Directors as a paid employee, agent, independent contractor, or subcontractor under this Contract.

4. Open to the public meetings of its Board of Directors, if required by California's open meeting laws, except meetings, or portions thereof, dealing with personnel or litigation matters or as otherwise provided by law.

5. Keep minutes of all its regular and special meetings.

6. Comply with all provisions of California and Federal Non-Profit Corporation Laws.

7. Provide to the CITY a copy of a resolution authorizing the CORPORATION's execution of this Contract. The CORPORATION hereby warrants to the CITY that this Contract is a legal, valid, and binding obligation of the CORPORATION enforceable in accordance with its terms, and that the execution and delivery of this Contract and the performance of the CORPORATION's obligations have been duly authorized by the CORPORATION.

8. Comply with all requirements of California Business and Professions Code Section 10130 et seq. in connection with the Project. If the Property is owned by a limited partnership, limited liability company, or other third party owner and the CORPORATION is paid by the property owner for property management services, the CORPORATION must maintain a corporate real estate broker's license. If the CORPORATION is required to hold such real estate broker's license pursuant to California Business and Professions Code Section 10130 et seq., the CORPORATION shall provide a copy of the real estate broker's license to the CITY.

B. Project Performance by CORPORATION. CORPORATION shall:

1. Conduct the Project within the City of Cupertino, for the purpose of benefiting low and very low-income households and meeting at least one (1) of the National Objectives of the CDBG program as outlined in Title 24 of the Code of Federal Regulations, Section 570.208.

2. Comply with all applicable laws and regulations governing the use of the CDBG Funds as set forth in Exhibit F of this Contract (the "CDBG Regulations").

3. File quarterly reports on the type and number of services rendered through the operation of the Project, and a description of the beneficiaries of these services, and which

reports will evaluate the manner in which the Project is achieving its objectives and goals according to the standards established by CITY. The progress reports will be due ten (10) days after the close of each reporting period and must cover the three (3) months immediately preceding the date on which the report is filed.

4. Coordinate its services with other existing organizations providing similar services in order to foster community cooperation and to avoid unnecessary duplication of services.

5. Seek out and apply for other sources of revenue in support of its operation or services from local, state, federal and private sources and, in the event of receipt of such award, inform CITY within ten (10) days.

6. Include an acknowledgement of CITY funding and support on CORPORATION stationery and on all appropriate Project-related publicity and publications using words to the effect: "funded in whole or in part by the City of Cupertino through the Housing and Community Development Act of 1974, as amended."

7. CORPORATION will comply with Section 281 of the National Affordable Housing Act.

8. "Section 3" Clauses.

(a) Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Contract, shall be a condition of the federal financial assistance provided under this Contract and binding upon the CITY, the CORPORATION, and any sub-recipients. Failure to fulfill these requirements shall subject the CITY, the CORPORATION, and any sub-recipients, their successors and assigns, to those sanctions specified by the Contract through which federal assistance is provided. The CORPORATION certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The CORPORATION further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Contract (the "Section 3 Clause"):

"The work to be performed under the Contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project.

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.

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; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

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.

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.

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

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

The CORPORATION certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.

(b) Notifications. The CORPORATION agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training. 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; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(c) Subcontracts. The CORPORATION will include the Section 3 Clause found in Section III.B.8(a) of this Contract, in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the sub-subrecipient is in violation of regulations issued by CITY. The CORPORATION will not subcontract with any sub-subrecipient where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub-subrecipient has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

C. Fiscal Responsibilities of CORPORATION. CORPORATION shall:

1. Appoint and submit the name of a fiscal agent who will be responsible for the financial and accounting activities of CORPORATION, including the receipt and disbursement of CORPORATION funds. The CITY must immediately be notified in writing of the appointment of any new fiscal agent and that agent's name.

2. If the Term of this Contract is extended by an amendment for an additional fiscal year, submit a satisfactory audit within one hundred fifty (150) days of CORPORATION's fiscal year encompassed by the current year of this Contract.

3. Comply with the CDBG Regulations and all federal regulations and policies issued pursuant to these regulations and OMB Circulars Nos. A-87, A-102, revised, A-110, A-122, and A-133 (as codified in 2 C.F.R. Part 200).

4. Document all Project costs by maintaining records in accordance with Section III, Paragraph D below.

5. Submit to the CITY, based on an agreed upon schedule, a request for payment, together with all supporting documentation. Invoices requesting disbursements submitted after the expiration of the Contract will be honored only for eligible charges incurred during the Contract Term. All invoices must be submitted by the Contract expiration date or within such other time period specified by the CITY for this Contract Term. Funds not disbursed will be returned to the Competitive Housing Pool for future reallocation.

6. Certify current and continuous insurance coverage, subject to CITY approval and in accordance with requirements as outlined in Exhibit D, "Basic Insurance and

Bond Requirements for Non-Profit Contracts" and provide a current insurance certificate evidencing such coverage.

7. Deliver to the CITY a copy of the resolution authorizing CORPORATION's execution of this Contract.

8. Obtain all construction permits required to construct the Project.

9. Deliver to the CITY a copy of the real estate broker's license for the CORPORATION, if required pursuant to California Business and Professions Code Section 10130 et seq.

10. Items 5 through 10 above are express conditions precedent to disbursement of any CITY funding and failure to comply with these conditions will, at discretion of CITY, result in suspension of funding or termination of this Contract.

11. If CORPORATION does not use the CDBG Funds in accordance with the requirements of this Contract, CORPORATION is liable for repayment of all disallowed costs. Disallowed costs may be identified through audits, monitoring or other sources. CORPORATION is required to respond to any adverse findings which may lead to disallowed costs subject to provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations."

D. Establishment and Maintenance of Records. CORPORATION shall:

1. In compliance with all HUD records and accounting requirements, including but not limited to, those set forth in 24 C.F.R. 570.506 and 570.502, maintain complete and accurate records of all its transactions including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, client statistical records, personnel, property and all other pertinent records sufficient to reflect properly: (a) all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred to perform this Contract or to operate the Project; (b) each activity undertaken in connection with the Project meets at least one (1) of the National Objectives of CDBG program set forth in 24 C.F.R. 570.208; (c) compliance with fair housing and equal opportunity requirements; (d) compliance with Subpart K of 24 C.F.R. 570 and 24 C.F.R 508; (e) compliance with Section 3, and labor requirements, including certified payrolls from CORPORATION's general contractor evidencing that applicable prevailing wages have been paid; and (e) all other matters covered by this Contract.

2. Maintain client data demonstrating client eligibility for services provided for the Project. Such data will include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information will be made available to CITY monitors for review upon request.

E. Preservation of Records. CORPORATION will preserve and make available its records:

1. Until five (5) years following date of final payment under this Contract, or
2. For such longer period, if any as is required by applicable law; or
3. If this Contract is completely or partially terminated, the records relating to the work terminated will be preserved and made available for a period of five (5) years from the date of termination.

F. Examination of Records and Facilities. At any time during normal business hours, and as often as may be deemed necessary, CORPORATION agrees that HUD and the CITY, and/or any duly authorized representatives may until expiration of the later of: (a) five (5) years after final payment under this Contract, (b) five (5) years from the date of termination of this Contract, or (c) such longer period as may be described by applicable law, have access to and the right to examine its plants, offices and facilities used in the performance of this Contract or the operation of the Project, and all its records with respect to the Project and all matters covered by this Contract. CORPORATION also agrees that CITY or any duly authorized representatives will have the right to audit, examine, and make excerpts or transactions of and from, such records and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to the Project and matters covered by this Contract. CORPORATION will be notified in advance that an audit will be conducted. CORPORATION will be required to respond to any audit findings, and have the responses included in the final audit report. The cost of any such audit will be borne by CITY.

G. Compliance with Law. CORPORATION will become familiar and comply with and cause all its subcontractors, independent contractors, and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees including, but not limited to, those federal rules and regulations, executive orders, and statutes identified in Exhibit F.

H. Suspension and Termination. If CORPORATION materially fails to comply with any term of this Contract, CITY may suspend or terminate the Contract in whole or in part. In no event shall any payment by CITY hereunder constitute a waiver by CITY of any breach of this Contract or any default, which may then exist on the part of CORPORATION, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach or default. CITY expressly reserves the right to demand of CORPORATION the repayment to the CITY of any funds disbursed to CORPORATION under this Contract, which were not expended in accordance with the terms of this Contract, and CORPORATION agrees to promptly refund any such funds upon demand.

Notwithstanding the above, CORPORATION shall not be relieved of liability to CITY for damages sustained by CITY or others by virtue of any breach of the Contract by CORPORATION, and CITY may withhold any payments to the CORPORATION for the purpose of set off until such time as the exact amount of damages due CITY from CORPORATION is determined.



I. Reversion of Assets. Upon expiration or termination of this Contract, or in the event HUD cancels the Project for any reason, the CORPORATION will transfer to the CITY any of the CDBG Funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG Funds. Any real property under the CORPORATION's control that was acquired or improved in whole or in part with CDBG Funds (including CDBG Funds provided to CORPORATION in the form of a loan) in excess of \$25,000 must be:

1. Used to meet one (1) of the National Objectives stated in Title 24 CFR part 570.208 for a period of five (5) years after expiration of this Contract, or for such longer period of time as required by the CITY; or,

2. Reimburse 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 acquisition of, or improvement to, the Property (reimbursement is not required after the period of time specified in I. 1. above).

J. Lobbying. CORPORATION certifies, to the best of CORPORATION's knowledge or belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

3. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

K. Prevailing Wages. CORPORATION is required to become familiar and comply with all local, state and federal laws and regulations pertaining to the Project. With respect to complying with prevailing wages, CORPORATION will pay, and shall cause any consultants or contractors to pay, prevailing wages in any construction work related to the Project as those wages are determined pursuant to California Labor Code section 1720 et seq. CORPORATION

will comply with all other applicable provisions of the California Labor Code Sections 1720 et seq. and with the implementing regulations of the Department of Industrial Relations (the "DIR"), including but not limited to:

1. require consultants or contractors to employ apprentices as required by California Labor Code Section 1777.5 et seq., and the implementing regulations of the DIR and to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR;

2. keep and retain, and cause consultants and contractors to keep and retain, such records as are necessary to determine if such prevailing wages have been paid as required pursuant to California Labor Code Section 1720 et seq., and apprentices have been employed as required by California Labor Code Section 1777.5 et seq.;

3. post at the Property, or cause the contractor to post at the Property, the applicable prevailing rates of per diem wages. Copies of the currently applicable current per diem prevailing wages are available from DIR;

4. cause contractors and subcontractors working on the Project to be registered as set forth in California Labor Code Section 1725.5;

5. cause contractors and subcontractors, in all calls for bids, bidding materials and construction contract documents to specify that:

- a. no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for construction related to this Project unless registered with the DIR pursuant to California Labor Code Sec. 1725.5; and

- b. any construction work related to this Project is subject to compliance monitoring and enforcement by the DIR.

6. provide the City all information required by California Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of any contract (<https://www.dir.ca.gov/pwc100ext/>);

7. cause contractors to post job site notices, as prescribed by regulation by the DIR; and

8. cause contractors to furnish payroll records required by California Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner.

CORPORATION agrees to indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including CORPORATION, its contractor and subcontractors) to pay prevailing wages as determined pursuant to California Labor Code Sections 1720 et seq., to employ apprentices pursuant to California Labor Code Sections 1777.5 et seq., to meet the conditions of California

Labor Code Section 1771.4, and implementing regulations of the DIR, or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and 1771.4, and the implementing regulations of the DIR, in connection with construction work related to the Project and subject Property. The requirements in this provision shall survive the termination of the Contract.

L. Conflict of Interest.

1. General Provision. In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 et seq., except for approved eligible administrative or personnel costs, no person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the CITY who exercises or has exercised any functions or responsibilities with respect to the activities funded by this Contract or who is in a position to participate in a decision-making process may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, during, or at any time after, such person's tenure. CORPORATION shall exercise due diligence to ensure that the prohibition in this Section is followed.

Further, no person who is a director, officer, partner, trustee or employee or consultant of CORPORATION, or immediate family member of any of the preceding, shall make or participate in a decision, made by the CITY or a CITY board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or CORPORATION.

Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 et seq., its implementing regulations manual and codes, and Government Code Section 1090.

2. CDBG Requirement. CORPORATION shall comply with the conflict of interest provisions set forth in 24 C.F.R. Section 570.611.

#### **IV. OBLIGATIONS OF CITY**

A. Method of Payment. During the Term of this Contract, CITY shall disburse the CDBG Funds to CORPORATION on a reimbursement basis unless otherwise provided herein for all allowable costs and expenses incurred in connection with the Project, not to exceed the total sum set forth in Article I. CITY may, at any time in its absolute discretion, elect to suspend or terminate payment to CORPORATION, in whole or in part, pursuant to this Contract based on CORPORATION'S non-compliance, including, but not limited to, incomplete documentation of expenses, failure to substantially meet goals and objectives as required in Exhibit B, ("Project Work Plan"), failure to submit adequate progress reports as required herein or other incidents of non-compliance as described in Section VI, Paragraph B of this Contract or based on the refusal by CORPORATION to accept any additional conditions that may be imposed by HUD at any time, or based on the suspension or termination of the grant to CITY made pursuant to the Housing and Community Development Act of 1974, as amended.

## V. PROJECT COORDINATION

A. CITY. The CITY has designated the Senior Housing Planner for CITY who will render overall supervision of the progress and performance of this Contract by CITY.

B. CORPORATION. As of the date hereof, CORPORATION has designated [NAME] to serve as EXECUTIVE DIRECTOR and to assume overall responsibility for the progress and execution of this Contract. The CITY will be immediately notified in writing of the appointment of a new EXECUTIVE DIRECTOR.

C. NOTICES. All notices or other correspondence required or contemplated by this Contract shall be sent to the parties at the following addresses:

CITY: Attention: Housing Manager  
Community Development Department  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014

CORPORATION: [ADDRESS]

All notices will either be hand delivered or sent by United States mail, registered or certified, postage prepaid. Notices given in such a manner will be deemed received when hand delivered or seventy-two (72) hours after deposit in the United States mail. Any party may change his or her address for the purpose of this section by giving five days written notice of such change to the other party in the manner provided in this section.

## VI. CONTRACT COMPLIANCE

A. Monitoring and Evaluation of Services. Evaluation and monitoring of the Project performance is the mutual responsibility of both CITY and CORPORATION. CORPORATION must furnish all data, statements, records, information and reports necessary for DIRECTOR to monitor, review and evaluate the performance of the Project and its components. CITY will have the right to request the services of an outside agent to assist in any such evaluation. Such services shall be paid for by CITY.

B. Contract Noncompliance. If CORPORATION fails to comply with any provision of this Contract; CITY will have the right to require corrective action to enforce compliance with such provision as well as the right to suspend or terminate this Contract. Examples of noncompliance include, but are not limited to:

1. If CORPORATION (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to CITY in connection with the Project.

2. If there is pending litigation with respect to the performance by CORPORATION if any of its duties or obligations under this Contract, which may materially jeopardize or adversely affect the undertaking of or the carrying out of the Project.

3. If CORPORATION has taken any action pertaining to the Project, which action required CITY approval, and such approval was not obtained.

4. If CORPORATION is in default under any provision of this Contract.

5. If CORPORATION makes illegal use of CITY funds.

6. If CORPORATION submits to CITY any report which is incorrect or incomplete in any material respect.

7. If CORPORATION fails to meet the stated objectives in the Project Work Plan attached as Exhibit B.

C. Corrective Action Procedure. CITY, in its absolute discretion and in lieu of immediately terminating this Contract upon occurrence or discovery of noncompliance by CORPORATION pursuant to this Contract, will have the right to give CORPORATION notice of CITY'S intention to consider corrective action to enforce compliance. Such notice must indicate the nature of the non-compliance and the procedure whereby CORPORATION will have the opportunity to participate in formulating any corrective action recommendation. CITY will have the right to require the presence of CORPORATION'S officer(s) and EXECUTIVE DIRECTOR at any hearing or meeting called for the purpose of considering corrective action.

In the event that CORPORATION does not implement the corrective action recommendations in accordance with the corrective action timetable, CITY may suspend payments hereunder or terminate this Contract as set forth in Section VII below.

## **VII. TERMINATION**

A. Termination for Cause. CITY may terminate this Contract by providing written notice to CORPORATION, for any of the following reasons: uncorrected Contract non-compliance as defined in Section VI, Paragraph B; CORPORATION is insolvent or in bankruptcy or receivership; a member of the CORPORATION'S Board of Directors or the executive director is found to have committed fraud or; there is reliable evidence that CORPORATION is unable to complete the Project as described in the attached Exhibits. The date of termination will be as specified in the notice.

B. Termination for Convenience. In addition to the CITY'S right to terminate for cause set forth in Section VI, either CITY or CORPORATION may suspend or terminate this Contract for any reason by giving thirty (30) days prior written notice to the other party. Upon receipt of such notice, performance of the services hereunder will be immediately discontinued, and CITY shall have no further obligation to fund any portion of the CDBG Funds, other than any amount incurred by CORPORATION, in accordance with this Contract, prior to such written

notice. Upon such termination, CITY shall have no further obligation to fund any portion of the CDBG Funds (other than for costs incurred by the CORPORATION prior to such notice), and the CORPORATION releases CITY for any and all claims related to such termination. In no event shall CITY's early termination of this Contract, be considered a breach or default by CITY under this Contract. In the event of any conflict between the terms of this provision and any other provision in this Contract, the terms of this provision shall control.

C. Return of Funds. In the event that this Contract is terminated, CORPORATON may be required to return funds according to HUD regulations.

D. Access to Records. Upon termination of this Contract, CORPORATION must immediately provide CITY access to all documents, records, payroll, minutes of meetings, correspondence and all other data pertaining to the CDBG Funds granted to CORPORATION pursuant to this Contract.

## **VIII. PURCHASING REAL OR PERSONAL PROPERTY**

CORPORATION and CITY will comply with all applicable Federal Regulations as detailed by 24 CFR Part 570, Subpart J, i.e. 570.500 (Definitions), 570.503 (Agreements with Subrecipients), 570.504 (Project Income), and 570.505 (Use of Real Property), with regards to the use and disposal of Real or Personal Property purchased in whole, or in part, with CDBG Funds.

In addition, 24 CFR Part 85 (the Common Rule) includes definitions which apply to CDBG Real Property, however, the Common Rule section governing Real Property (CFR 85.31) DOES NOT APPLY TO CDBG ACTIVITIES.

A. The following definitions apply to this Contract pursuant to 24 CFR, Part 85 (Common Rule) 85.3:

1. **Equipment** means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

2. **Title** as defined in detail in 24 CFR, Part 85.32 (a).

3. **Use** as defined in detail in 24 CFR, Part 85.32 (c) (1).

4. **Supplies** as defined in detail in 24 CFR, Part 85.33.

5. **Procurement, Use and Disposition** of Real Property as defined in detail by 24 CFR 570.503 (Agreements with Subrecipients), 570.505 (Use of Real Property), and 570.504 (Program Income).

B. Security Document. As a condition precedent to CITY loaning funds for the purchase of real property or an option to purchase real property, CORPORATION will prepare and execute a Loan Agreement, Promissory Note, Deed of Trust, Regulatory Agreement and

such other Contracts restricting the use of said real property for purposes consistent with this Contract, HUD and CDBG Regulations.

C. Grants. If a grant is provided for the acquisition of real property, CORPORATION will continually operate its Project for a minimum period of six (6) years from the effective date of this Contract. This obligation will survive the term of this Contract, the assignment or assumption of this Contract and the sale of the property prior to expiration of the obligation period as set forth in this paragraph. If this obligation is not fully met, CORPORATION may be required to reimburse the CITY. The CITY may consider, but will not be limited by, the following factors in calculating the reimbursement obligation: initial grant sum; the duration of the initial contractual obligation to operate the Project versus the actual duration of operation; and the appreciated value.

D. Relocation, Acquisition, and Displacement. CORPORATION agrees to comply with 24 CFR 570.606 relating to the acquisition and disposition of all real property utilizing CDBG funds, and to the displacement of persons, businesses, and non-profit organizations as a direct result of any acquisition of real property utilizing CDBG funds. CORPORATION agrees to comply with applicable state laws, City Ordinances, Resolutions, and Policies concerning displacement of individuals from their residences.

#### **IV. PROGRAM INCOME**

Income generated by the Project, is program income and shall be regulated by all provisions of Title 24 CFR 570 Subpart J "Grant Administration," 570.503 "Agreements with Subrecipients," and 570.504 "Program Income." CORPORATION will annually report all program income generated by activities carried out with CDBG funds made available under this Contract. By way of further limitations, CORPORATION may use such income during the Contract period for activities permitted under this Contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to the CITY at the end of the Contract period.

#### **X. INDEPENDENT CONTRACTOR**

This is a Contract by and between independent contractors and is not intended and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between CORPORATION and CITY. CORPORATION, including its officers, employees, agents or independent contractors or subcontractors, shall not have any claim under this Contract or otherwise against CITY for any Social Security, Worker's Compensation, or employee benefits extended to employees of CITY.

#### **XI. ASSIGNABILITY**

A. None of the work or services to be performed hereunder may be assigned, delegated or subcontracted to third parties without the prior written approval of CITY, which the CITY may withhold in its sole discretion. Copies of all third party contracts shall be submitted to CITY at least ten (10) days prior to the proposed effective date. In the event CITY approves of any such assignment, delegation or subcontract, CORPORATION shall remain fully liable for all

obligations and requirements under this Contract including the performance and any liabilities attaching to the assignees' actions or omissions.

B. This Contract may not be assumed nor assigned to another corporation, person, partnership or any other entity without the prior written approval of CITY.

## **XII. DISCLOSURE OF CONFIDENTIAL CLIENT INFORMATION**

CITY and CORPORATION agree to maintain the confidentiality of any information regarding applicants for services offered by the Project pursuant to this Contract or their immediate families which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Without the written permission of the applicant, such information will be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Contract, and then only to persons having responsibilities under this Contract, including those furnishing services under the Project through approved subcontracts.

## **XIII. HOLD HARMLESS**

In addition to the indemnity obligations set forth in Exhibit D, "Basic Insurance and Bond Requirements for Non-Profit Contracts", and Section III.K. of this Contract, CORPORATION will indemnify and hold harmless the CITY, its employees, agents, and officials, members of boards and commissions, from any and all claims, actions, suits, charges and judgments whatsoever, with respect to any damages, including attorney's fees and court costs, arising out of the failure of the CORPORATION's Project to comply with applicable laws, ordinances, codes, regulations and decrees, including without limitation those set forth in Exhibit F.

## **XIV. WAIVER OF RIGHTS AND REMEDIES**

In no event will any payment by CITY constitute or be construed to be a waiver by CITY of any breach of the covenants or conditions of this Contract or any default which may then exist on the part of CORPORATION, and the making of any such payment while any such breach or default will in no way impair or prejudice any right or remedy available to CITY with respect to such breach or default. In no event will payment to CORPORATION by CITY in any way constitute a waiver by CITY of its rights to recover from CORPORATION the amount of money paid to CORPORATION on any item, which is not eligible for payment under the Project or this Contract.

## **XV. NON-DISCRIMINATION**

CORPORATION will comply with all applicable Federal, State and local laws and regulations including the City of Cupertino's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights



Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. CORPORATION will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay, or other forms of compensation. Nor shall CORPORATION discriminate in provision of services provided in this Contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

This non-discrimination provision must be included in CORPORATION's contracts with sub-contractors and vendors when utilizing the CDBG Funds disbursed for this Project.

## **XVI. AMENDMENTS**

Amendments to the terms or conditions of this Contract must be requested in writing by a duly authorized representative of the party desiring such amendments, and any such amendment shall be effective only upon the mutual agreement in writing of the parties hereto. Amendments will not invalidate this Contract, nor relieve or release the CITY or the CORPORATION from its obligations under this Contract.

## **XVII. INTEGRATED DOCUMENT**

This Contract contains the entire agreement between CITY and CORPORATION with respect to the subject matter hereof. No written or oral agreements with any officer, agent or employee of CITY prior to execution of this Contract shall affect or modify any of the terms of obligations contained in any documents comprising this Contract.

## **XIII. MISCELLANEOUS**

A. Captions. The captions and section headings used in this Contract are for convenience of reference only, and the words contained herein will, in no way, be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Contract.

B. Discretion Retained By CITY. CITY's execution of this Contract in no way limits the discretion of the CITY in the permit and approval process in connection with the Project.

C. Exhibits. All Exhibits attached hereto and referred to in this Contract are incorporated herein by this reference as if set forth fully herein. Exhibits are as follows: Exhibit A (Project Description), Exhibit B (Project Work Plan), Exhibit C (Proposed Implementation Time Schedule), Exhibit D (Project Budget), Exhibit D (Basic Insurance and Bond Requirements

for Non-Profit Contracts), Exhibit F (CDBG Regulations), and Exhibit G (Project Scope of Work).

D. Interpretation. Each party to this Contract has had an opportunity to review the Contract, confer with legal counsel regarding the meaning of the Contract, and negotiate revisions to the Contract. This Contract shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. The parties have read and reviewed this Contract and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time, or any other state law, or common law principle) shall not apply to the interpretation of this Contract.

E. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Contract.

F. Choice of Law and Venue. This Contract shall be governed by and construed in accordance with California law. Venue shall be Santa Clara County.

G. Parties Bound. Except as otherwise limited herein, the provisions of this Contract shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

H. Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Contract, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

I. Severability. If any term of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

J. Authorization. The persons signing below are duly authorized to execute this Contract.

K. Multiple Originals; Counterpart. This Contract may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Contract the day and year above written.

**CORPORATION:**

**CITY:**

**CITY OF CUPERTINO, a municipal corporation**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
**NAME** DATE  
Executive Director

\_\_\_\_\_  
Timm Borden DATE  
Interim City Manager

**APPROVED AS TO FORM AND LEGALITY:**

**ATTEST:**

\_\_\_\_\_  
Heather Minner DATE  
City Attorney

\_\_\_\_\_  
Grace Schmidt DATE  
City Clerk

**EXHIBIT A**  
**PROJECT DESCRIPTION**  
**FY 2019-20**

Agency Name: NAME		DUNS #:	
Chief Financial Officer: XXX	Project Manager: XXX	Project # (For Office Use Only) XXX	
Street Address: XXX	City: XXX	State: CA	Zip Code: XXX
Telephone number: XXX	Fax Number: XXX	Project Manager E-mail Address:	

Name of Project: xxx
Project Location: City-wide

Project Description:

**EXHIBIT B  
PROJECT WORK PLAN  
FY 2019-20**

**AGENCY NAME:** NAME  
**PROGRAM NAME:** XXX

**HUD National Objectives:**  
**Low/Mod Income Type:**

Objectives	Benchmarks for Each Quarter				
	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	TOTAL

**EXHIBIT C  
PROJECT BUDGET  
FY 2019-20**

**AGENCY NAME:** NAME  
**PROGRAM NAME:** XXX

<b>Proposed Program Expenses</b>	<b>FY 2019-20</b>
Salaries/Benefits/Payroll/Taxes	\$xxx
Office Expenses (Occupancy, Telephone, Insurance, Supplies, Equipment, etc...)	\$xxx
<b>Total Expenses</b>	<b>\$xxx</b>

**EXHIBIT D**  
**BASIC INSURANCE AND BOND REQUIREMENTS FOR**  
**NON-PROFIT CONTRACTS**

**Definition of Contractor:** The "**Contractor**" as the word is used herein is the party contracting with the City of Cupertino for the direct distribution of CDBG funds. If your organization will be contracting for construction work (such as general contractors building rental apartments) to undertake a Project (as defined in this Non-Profit/City Contract) then the requirements set forth herein shall be complied with by the party contracted with for construction work protecting both the non-profit and the City.

**Indemnity**

The Contractor shall indemnify, defend, and hold harmless the City of Cupertino (hereinafter "City"), its officers, agents and employees from any loss, liability, claim, injury or damage arising out of, or in connection with performance of this Contract by Contractor and/or its agents, employees or subcontractors, excepting only loss, injury or damage caused solely by the acts or omissions of personnel employed by the City. It is the intent of the parties to this Contract to provide the broadest possible coverage for the City. The Contractor shall reimburse the City for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the City under this Contract.

**Insurance**

Without limiting the Contractor's indemnification of the City, the Contractor shall provide and maintain at its own expense, during the Term of this Contract, or as may be further required herein, the following insurance coverages and provisions:

A. **Evidence of Coverage**

Prior to commencement of this Contract, the Contractor shall provide on the City's own form or a form approved by the City's Insurance Manager an original plus one copy of a Certificate of Insurance certifying that coverage as required herein has been obtained and remains in force for the period required by this Contract. **The contract number and project name must be stated on the Certificate of Insurance.** The City's Special Endorsement form shall accompany the certificate. Individual endorsements executed by the insurance carrier may be substituted for the City's Special Endorsement form if they provide the coverage as required. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the address as shown on the City's Certificate of Insurance form and to the Housing and Community Development Program at the address set forth in this Contract at Section VI. PROJECT COORDINATION, Paragraph C., NOTICES. The Contractor shall not issue a Notice to Proceed with the work under this Contract until it has obtained all insurance required and such insurance has been approved by the City. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Notice of Cancellation or Reduction of Coverage

All policies shall contain a special provision for thirty (30) days prior written notice of any cancellation or reduction in coverage to be sent to the Community Development Department, 10300 Torre Avenue, Cupertino, CA 95014.

C. Qualifying Insurers

All policies shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII, according to the current Best's Key Rating Guide, unless otherwise approved by the City's Insurance Manager.

D. Insurance Required

1. Comprehensive General Liability Insurance - for bodily injury (including death) and property damage which provides limits of not less than one million dollars (\$1,000,000) combined single limit (CSL) per occurrence.

OR

2. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. General limit per occurrence - \$1,000,000
- b. General limit aggregate - \$2,000,000
- c. Products/Completed Operations- \$1,000,000 aggregate
- d. Personal Injury limit - \$1,000,000

If coverage is provided under a Commercial General Liability Insurance form, the carrier shall provide the City Insurance Manager with a quarterly report of the amount of aggregate limits expended to that date. If over 50% of the aggregate limits have been paid or reserved, the City may require additional coverage to be purchased by the Contractor to restore the required limits.

3. For either type of insurance, coverage shall include:

- a. Premises and Operations
- b. Products/Completed Operations with limits of one million dollars (\$1,000,000) per occurrence/ aggregate to be maintained for two (2) years following acceptance of the work by the City or completion of such work.

c. Contractual Liability expressly including liability assumed under this Contract.



- d. Personal Injury liability.
- e. Independent Contractors' (Protective) liability.
- f. Severability of Interest clause providing that the coverage applies separately to each insured except with respect to the limits of liability.

4. For either type of insurance, coverage shall include the following endorsements, copies of which shall be provided to the City:

a. Additional Insured Endorsement:

Such insurance as is afforded by this policy shall also apply to the City of Cupertino, and members of the City Council, and the officers, agents and employees of the City of Cupertino, individually and collectively, as additional insureds.

b. Primary Insurance Endorsement:

Such insurance as is afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the City of Cupertino, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

c. Notice of Cancellation or Change of Coverage Endorsement:

This policy may not be cancelled nor the coverage reduced by the Company without 30 days prior written notice of such cancellation or reduction in coverage to the City of Cupertino at the address shown on the Certificate of Insurance.

d. Contractual Liability Endorsement:

This policy shall apply to liability assumed by the insured under written contract with the City of Cupertino.

e. Personal Injury Endorsement:

The provisions of this policy shall provide Personal Injury coverage.

f. Severability of Interest Endorsement:

The insurance afforded by this policy shall apply separately to each insured that is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.

5. Comprehensive Automobile Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

6. Workers' Compensation and Employer's Liability Insurance for:

a. Statutory California Workers' Compensation coverage including a broad form all-states endorsement.

b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence for all employees engaged in services or operations under this Contract.

c. Inclusion of the City and its governing board(s), officers, representatives, agents, and employees as additional insureds, or a waiver of subrogation.

7. Professional Errors and Omissions Liability Insurance

This type of insurance should be provided by persons/entities you contract with to provide you with professional services.

a. Limits of not less than one million dollars (\$1,000,000).

b. If this policy contains a self retention limit, it shall not be greater than ten thousand dollars (\$10,000) per occurrence/event.

c. This coverage shall be maintained for a minimum of two (2) years following termination of this Contract.

The City must first approve any exceptions to the above requirements.

8. Bond Requirements

Fidelity Bond - Before receiving compensation under this Contract, Contractor will furnish City with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Contract, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the City cited herein. If such bond is cancelled or reduced, Contractor will notify City immediately, and City may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Contract, at the option of the City.

9. Special Provisions

The following provisions shall apply to this Contract:

a. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the City or its insurance

consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Contract, including but not limited to the provisions concerning indemnification.

b. The City acknowledges that some insurance requirements contained in this Contract may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Contract. The City shall approve any self-insurance in writing.

c. The City reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

d. If the Contractor fails to maintain such insurance as is called for herein, the City must order the Contractor to immediately suspend work at Contractor's expense until a new policy of insurance is in effect.

**ADDENDUM TO EXHIBIT D  
BASIC INSURANCE AND BOND REQUIREMENTS  
FOR CONSTRUCTION PROJECTS USING CITY FUNDS**

If your organization will be contracting for construction work (such as general contractors building rental apartments) to undertake a Project (as defined in this Non-Profit/City Contract) then the requirements set forth in this Addendum to Exhibit "D" shall be complied with by the party contracted with for construction work protecting both the non-profit and the City.

**Indemnity**

The General Contractor (hereinafter referred to as "General") shall indemnify, defend, and hold harmless the City of Cupertino (hereinafter "City"), its officers, agents and employees, and the Contractor, its officers, agents and employees from any loss, liability, claim, injury or damage arising out of, or in connection with performance of this Contract by General and/or its agents, employees or subcontractors, excepting only loss, injury or damage caused solely by the acts or omissions of personnel employed by the City or the Contractor. It is the intent of the parties to this Contract to provide the broadest possible coverage for the City and the Contractor. The General shall reimburse the City and the Contractor for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the General is obligated to indemnify, defend and hold harmless the City and the Contractor under this Contract.

**Insurance**

Without limiting the General's indemnification of the City and the Contractor, the General shall provide and maintain at its own expense, during the Term of this Contract, or as may be further required herein, the following insurance coverages and provisions:

A. **Evidence of Coverage**

Prior to commencement of this Contract, the General shall provide an original plus one copy of a Certificate of Insurance certifying that coverage as required herein has been obtained and remains in force for the period required by this Contract. The contract number and project name must be stated on the Certificate of Insurance. Individual endorsements executed by the insurance carrier shall accompany the Certificate.

This verification of coverage shall be sent to the Contractor at the address stated below and to the Community Development Department, 10300 Torre Avenue, Cupertino, CA 95014. The Contractor shall not issue a Notice to Proceed with the work under this Contract until it has obtained all insurance required and such insurance has been approved by the Contractor and final approval by the City. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. **Notice of Cancellation or Reduction of Coverage**

All policies shall contain a special provision for thirty (30) days prior written notice of any cancellation or reduction in coverage to be sent to the Community Development Department as stated above, and the Contractor at the following address:

[ADDRESS]

C. Qualifying Insurers

1. All policies shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII, according to the current Best's Key Rating Guide, unless otherwise approved by the City.

2. Surety coverage (including bid, performance and payment bonds) shall be required as follows:

a. For projects in excess of \$100,000:

1. Either a California Admitted Surety OR a current Treasury Listed Surety (Federal Register); and either a current A.M. Best A IV rated Surety OR a current Standard and Poors (S&P) rating of A;

2. An admitted surety insurer which complies with the provisions of the Code of Civil Procedure, Section 995.660\*;

OR

3. In lieu of 1 & 2, a company of equal financial size and stability that is approved by the City's Insurance/Risk Manager.

b. For projects between \$25,000 and not exceeding \$100,000:

1. A California Admitted Surety and either a current A.M. Best B rated Surety OR a current Standard and Poors (S&P) rating of B B;

OR

2. An admitted surety insurer which complies with the provisions of the Code of Civil Procedure, Section 995.660\*;

OR

3. In lieu of 1 & 2, a company of equal financial size and stability that is approved by the City's Insurance/Risk Manager.

D. Insurance Required

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\* California Code of Civil Procedure Section 995.660 in summary, states that an admitted surety must provide: 1) the original, or a certified copy of instrument authorizing the person who executed the bond to do so; 2) a certified copy of the Certificate of Authority issued by the Insurance Commissioner; 3) a certificate from City Clerk of Cupertino City that Certificate of Authority has not been surrendered, revoked, canceled, annulled or suspended; 4) a financial statement showing the assets and liabilities of the insurer at the end of the quarter calendar year, prior to 30 days next preceding the date of the execution of the bond.

1. Comprehensive General Liability Insurance - for bodily injury (including death) and property damage which provides limits of not less than one million dollars (\$1,000,000) combined single limit (CSL) per occurrence.

OR

2. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. General limit per occurrence - \$1,000,000
- b. General limit aggregate - \$2,000,000
- c. Products/Completed Operations- \$1,000,000 aggregate
- d. Personal Injury limit - \$1,000,000

If coverage is provided under a Commercial General Liability Insurance form, the carrier shall provide the City Insurance Manager with a quarterly report of the amount of aggregate limits expended to that date. If over 50% of the aggregate limits have been paid or reserved, the City may require additional coverage to be purchased by the General to restore the required limits.

3. For either type of insurance, coverage shall include:

- a. Premises and Operations
- b. Products/Completed Operations with limits of one million dollars (\$1,000,000) per occurrence/aggregate to be maintained for two (2) years following acceptance of the work by the City.
- c. Contractual Liability expressly including liability assumed under this Contract.
- d. Personal Injury liability.
- e. Independent Contractors' (Protective) liability
- f. Severability of Interest clause providing that the coverage applies separately to each insured except with respect to the limits of liability.

4. For either type of insurance, coverage shall include the following endorsements, copies of which shall be provided to the City and the Contractor:

- a. Additional Insured Endorsement:

Insurance afforded by this policy shall also apply to the City of Cupertino and Contractor as additional insureds.

b. Primary Insurance Endorsement:

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the City of Cupertino and the Contractor shall be excess only and not contributing with insurance provided under this policy.

c. Notice of Cancellation or Change of Coverage Endorsement:

This policy may not be canceled nor the coverage reduced by the Company without 30 days prior written notice of such cancellation or reduction in coverage to the City of Cupertino CDBG Project, and the Contractor at the addresses set forth on page 10 of this Addendum.

d. Severability of Interest Endorsement:

The insurance afforded by this policy shall apply separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the Company's limit of liability.

5. Comprehensive Automobile Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

6. Workers' Compensation and Employer's Liability Insurance for:

a. Statutory California Workers' Compensation coverage including a broad form all-states endorsement.

b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence for all employees engaged in services or operations under this Contract.

7. Work and Materials Insurance (including but not limited to Builder's Risk, Course of Construction, Installation Floater or similar first party property insurance for covering the interest of the Contractor and the City) shall be provided by the Contractor.

The Contractor's coverage shall provide the following:

a. Coverage shall be provided on an "all-risk" basis.

b. Coverage shall be provided on the work and materials which are the subject of this Contract, whether in process or manufacture or finished, including "in transit" coverage to the final agreed upon destination of delivery, and including loading and unloading operations, and such coverage shall be in force until the work and materials are accepted by the City.

c. City and non-profit shall be named as additional insured as its interests may appear at the time of loss.

d. Coverage shall be in an amount no less than the full replacement value of the property at the time of loss.

e. The deductible shall not exceed \$1,000 per occurrence unless otherwise approved by the City and shall be borne by the Contractor.

f. If the construction contractor fails to maintain such insurance as is called for herein, the City shall have cause to terminate this Contract in accordance with Section VI, paragraph B.

#### 8. Bond Requirements

The following bond requirements apply:

a. Contract Bonds - Prior to execution of the Contract, Contractor shall file with the City on the approved forms, the two surety bonds in the amounts and for the purposes noted below, duly executed by a reputable surety company satisfactory to City, and Contractor shall pay all premiums and costs thereof and incidental thereto. Both Contractor and the sureties shall sign each bond.

b. The "payment bond for public works" shall be in an amount of one hundred percent (100%) of the Contract price, as determined from the prices in the bid form, and shall insure to the benefit of persons performing labor or furnishing materials in connection with the work of the proposed Contract. This bond shall be maintained in full force and effect until all work under the Contract is completed and accepted by the City, and until all claims for materials and labor have been paid.

c. The "performance bond" shall be in an amount of one hundred percent (100%) of the Contract price as determined from the prices in the bid form. and shall insure the faithful performance by Contractor of all work under the Contract. It shall also insure the replacing of, or making acceptable, any defective materials or faulty workmanship.

Should any surety or sureties be deemed unsatisfactory at any time by the City notice will be given Contractor to that effect, and Contractor shall forthwith substitute a new surety or sureties satisfactory to the City. No further payment shall be deemed due or will be made under the Contract until the new sureties qualify and are accepted by the City.

All alterations, time extensions, extra and additional work, and other changes authorized by the Specifications, or any part of the Contract, may be made without securing consent of the surety or sureties on the contract bonds.

#### 9. Special Provisions

The following provisions shall apply to this Contract:

a. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the General and any approval of said insurance by the City or the



Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the General pursuant to this Contract, including but not limited to the provisions concerning indemnification.

b. The Contractor reserves the right to withhold payments to the General in the event of material noncompliance with the insurance requirements outlined above.

c. The Contractor shall notify the City Community Development Department promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any products/completed operations loss or claim against the contractor resulting from any of the contractor's work.

SAMPLE

## **EXHIBIT E**

### **CDBG REGULATIONS**

CORPORATION hereby assures and certifies that it will comply with all regulations, policies, guidelines and requirements applicable to the acceptance and use of Federal funds for this Federally-assisted project and will be responsible for implementing and complying with all relevant future changes to Federal Regulations or OMB Circulars. Specifically, CORPORATION gives assurances and certifies with respect to the Project that it is in compliance with the following CDBG regulations set forth in 24 CFR Part 570 (the "CDBG Regulations"), including all subsections set forth below.

1. **570.601. Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.** The Project shall be conducted and administered in conformity with the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964, as amended; Title VIII of the Civil Rights Act of 1968, as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794 *et seq.*); the Age Discrimination Act of 1975 (42 USC 6101 *et seq.*); Executive Order 11063, as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246, as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608; and Executive Order 13672 concerning gender identity.
2. **570.602. Section 109 of the Act.**
3. **570.603. Labor Standards.**
4. **570.604. Environmental Standards.**
5. **570.605. National Flood Insurance Program.**
6. **570.606. Relocation, Displacement and Acquisition.**
7. **570.607. Employment and Contracting Opportunities.**
8. **570.608. Lead-Based Paint.**
9. **570.609. Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients.**
10. **570.610. Uniform Administrative Requirement and Cost Principles.** The CITY, its Subrecipients, agencies or instrumentalities, shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 (Common Rule), and OMB Circulars A-110 (Grants and Agreements with Non-Profit Organizations), A-122 (Cost Principles for Non-Profits), A-128 (Audits of State and Local Governments-implemented at 24 CFR, Part 24), and A-133 (Audits of Institutions of Higher Education and Other Non-Profit

Institutions), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR, Part 85 and OMB Circular A-100 are set forth at 570.502.

11. **570.611. Conflict of Interest.**
12. **570.612. Executive Order 12372.** Permits states to establish its own process for review and comment on proposed Federal financial assistance programs, specifically the use of CDBG funds for the construction or planning of water or sewer facilities.
13. **570.613. Eligibility restrictions for certain resident aliens.**
14. **570.614. Architectural Barriers Act and the Americans with Disabilities Act.** Federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 *et seq.*), the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto.
15. **Drug Free Work Place.** The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 C.F.R. Part 24.
16. **Religious Organizations.** If the CORPORATION is a religious organization, as defined by the CDBG program, all conditions prescribed by HUD for the use of CDBG Funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. Section 570.200(j).
17. **Flood Disaster Protection.** The Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of said Act. The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the national flood insurance program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act. Any contract or Agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement is to contain certain provisions. These provisions will apply if such land is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* These provisions obligate the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section

102(s) of the Flood Disaster Protection Act of 1973. Such provisions are required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

18. **Environmental and Historic Preservation.** 24 C.F.R. Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361), and the additional laws and authorities listed at 24 C.F.R. 58.5.
19. **Violence Against Women Act.** The requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs.
20. **Anti-Lobbying; Disclosure Requirements.** The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 C.F.R. Part 87.
21. **HUD Regulations.** Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the CDBG grant funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

#### **ADDITIONAL FEDERAL REGULATIONS, REQUIREMENTS, PROVISIONS AND CITATIONS**

<b>Provisions</b>	<b>Federal Regulations*</b>	<b>OMB Circulars for Non Gov't. Subrecipients</b>	<b>OMB Circulars for Gov't. Subrecipients</b>	<b>Other Federal Regulations**</b>
1. National Objective Compliance/Eligibility	570.200(a)(1)+(2), 570.201-570.209, 570.506			
2. Scope of Work	570.503			
3. Time of Performance	570.503			
4. Compensations and Method of Payment	570.502, 570.513	A-122, A-21	A-87	24 CFR Part 85
5. Program Income	570.500(a), 570.503(b)(3), 570.504			
6. Record-Keeping Requirements	570.502, 570.503(b)(2), 570.506			24 CFR Parts 84 and 85
7. Reporting Requirements	570.502, 570.507			24 CFR Parts 84 and 85
8. Public Access to Program Records	570.502, 570.508			24 CFR Parts 84 and 85
9. Grant Closeout Procedures	570.502, 570.509			
10. Uniform Administrative and Program Management Standards	570.502, 570.503(b)(4), 570.610	A-122, A-21, A-133	A-87, A-133	24 CFR Parts 84 and 85
11. Reversion of Assets	570.502, 570.503, 570.505			

12. Real Property	570.502, 570.503(b)(7), 570.505			
13. Other Program Requirements	570.503(b)(5), 570.600-603, 570.605-614			
14. Termination	570.502, 570.503			24 CFR Part 84.43
15. Compliance with Laws/Regulations	570.501	A-122		24 CFR Parts 84 and 85
16. Antidiscrimination/ Affirmative Action and EEO	570.601, 570.602, 570.607			
17. Financial Management	570.502, 570.610			24 CFR Parts 84.20 and 85.20 and Treasury Cir. 1075
18. Audits	570.502, 570.610	A-133	A-133	24 CFR Parts 84.26 and 85.26
19. Religious and Political Activities	570.200(j), 570.207			
20. Budget Modifications	570.502, 570.503(b)(1)			
21. Monitoring	570.501(b), 570.502(b)(vii), 570.503(b)(1)			24 CFR Parts 84 and 85
22. Conflict of Interest	570.611			24 CFR Parts 84 and 85
23. Procurement Methods	570.502			24 CFR Parts 84.40-48 and 85.36
24. Budget	570.503			
25. Project Schedule/Milestones	570.503			
26. Environmental Review	570.503(b)(3)(1)			

\* Unless otherwise noted, citations are from Title 24 of the Code of Federal Regulations (CFR).

\*\* *Part 84 applies to institutions of higher education, hospitals, and other non-profit organizations; Part 85 applies to state, local, and federally recognized Tribal governments.*

Requirements	Federal Regulations	Other References
1. Federal Labor Standards 1. Davis-Bacon 2. Copeland Act (Anti-kickback) 3. Contract Work Hours and Safety Standards	24 CFR 570.603; 29 CFR Parts 1, 3, and 5	Section 110, Housing and Community Development Act of 1974 (HCDA); 40 U.S.C. 276a-276a-5; 40 U.S.C. 276c; 40 U.S.C. 327 <i>et seq.</i>
2. Equal Employment Opportunity	24 CFR 570.601-602, 24 CFR 570.607, 41 CFR 60	Executive Orders 11246 and 12086, 12 U.S.C. 1701u
3. List of Debarred or Ineligible Contractors	24 CFR 570.609, 24 CFR 24	
4. Non-Discrimination	24 CFR Part 8, 24 CFR 570.601, 24 CFR 570.602	Section 504 of Rehab. Act of 1973, Americans with Disabilities Act of 1990, Exec. Order 11063
5. Fire Safety Codes		Local
6. Building, Housing, and Zoning Codes; Housing Quality Standards	24 CFR 570.208(b)(1)(iv) and (b)(2)	Local
7. Lead-Based Paint	24 CFR 570.608, 24 CFR 35	42 U.S.C. 4821 <i>et seq.</i>
8. Lump Sum Drawdowns	24 CFR 570.513	
9. Environmental/Historic Preservation/National Environmental Policy Act/Flood Insurance Requirements	24 CFR 570.503(b)(5)(i), 24 CFR 570.604, 570.202, 24 CFR 58	Sec. 104(g), HCDA

<ol style="list-style-type: none"> <li>1. Siting Near Airports and Coastal Barrier Resources</li> <li>2. Fish and Wildlife Protection</li> <li>3. Flood Plain</li> <li>4. National Historic Preservation</li> <li>5. Noise Abatement &amp; Control</li> <li>6. Wetlands</li> <li>7. Air Quality</li> <li>8. Coastal Zones</li> <li>9. Endangered Species</li> <li>10. Thermal/Explosive Hazards</li> <li>11. Flood Insurance</li> </ol>	<p>Ref. At 24 CFR 58.6</p> <p>See reference at 24 CFR 58.5570.605, 58.6</p>	<p>42 U.S.C. 4001 <i>et seq.</i></p>
<ol style="list-style-type: none"> <li>10. Relocation, Real Property Acquisition, and One-For-One Housing Replacement               <ol style="list-style-type: none"> <li>C. Uniform Relocation Act</li> <li>D. Residential anti-displacement and relocation assistance</li> <li>E. One-For-One Replacement</li> </ol> </li> </ol>	<p>24 CFR 570.201(i), 570.606, 49 CFR 24,</p> <p>24 CFR 570.606(c)(1)</p>	<p>Sect. 104(d) and 105(a)(11) of HCDA, <a href="http://www.hud.gov/relocation">www.hud.gov/relocation</a></p>

**EXHIBIT F**  
**PROJECT SCOPE OF WORK**  
**FY 2019-20**

SAMPLE