CITY COUNCIL REGULAR MEETING

MAY 08, 2012
7:00 PM

AGENDA

Melody Carruth, Mayor
Joel Lautenschleger, Mayor Pro Tempore **Barbara Kogerman, Council Member**
Randal Bressette, Council Member **L. Allan Songstad, Jr., Council Member**

Location: City Council Chamber, 24035 El Toro Road, Laguna Hills, California 92653

Any person wishing to address the City Council/Planning Agency on any matter, whether or not it appears on this Agenda, is asked to complete a pink “Request to Speak” form available on the table at the back of the Chamber. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council/Planning Agency. Completion of the form is voluntary. All persons may attend the meeting regardless of whether this form is completed.

Members of the public wishing to address the City Council can do so during the Public Comments portion of the Agenda with a time limitation of three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes for Public Comments. If you are commenting on an Agenda item, your comments will be heard at the time that item is scheduled on the Agenda. If you are addressing the City Council on an item not listed on the Agenda, the City Council is prohibited by law from discussing or taking any action on that item.

CALL TO ORDER

Resolution No. 96-04-09-1 established rules of decorum for public meetings held by the City of Laguna Hills. Resolution No. 96-04-09-1 is available on the table at the back of the City Council Chamber.

PLEDGE OF ALLEGIANCE: COUNCIL MEMBER KOGERMAN

ROLL CALL OF CITY COUNCIL MEMBERS

1. PRESENTATIONS AND PROCLAMATIONS

1.1 PROCLAMATION, "WILDFIRE AWARENESS WEEK", MAY 6, 2012 THROUGH MAY 12, 2012

RECOMMENDATION: THAT MAYOR CARRUTH PRESENT A PROCLAMATION TO ORANGE COUNTY FIRE AUTHORITY BATTALION CHIEF ART NEVAREZ, RECOGNIZING MAY 6, 2012, THROUGH MAY 12, 2012, AS "WILDFIRE AWARENESS WEEK."

1.2 PROCLAMATION OF MAY 2012 AS WATER AWARENESS MONTH

RECOMMENDATION: THAT MAYOR CARRUTH PRESENT PROCLAMATIONS TO TED MARTIN, BOARD PRESIDENT OF THE EL TORO WATER DISTRICT, AND DONALD FROELICH, BOARD VICE PRESIDENT OF MOULTON NIGUEL WATER DISTRICT PROCLAIMING MAY 2012 AS WATER AWARENESS MONTH.

2. PUBLIC COMMENTS

This is the time to address the City Council on any matter not listed on this Agenda that is within the subject matter jurisdiction of the City Council. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

2.1 LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AN ORAL REPORT FROM LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON JEENA BONUTTO.

3. MINUTES

3.1 REGULAR MEETING, APRIL 24, 2012

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE MINUTES OF THE APRIL 24, 2012, REGULAR MEETING.

4. CONSENT CALENDAR

All matters listed under “CONSENT CALENDAR” are considered to be routine and will be enacted by one motion approving the recommendation listed on the Agenda. There will be no separate discussion unless Members of the City Council or Staff request specific items be removed from the Consent Calendar.

4.1 MOTION TO APPROVE THE READING BY TITLE OF ALL ORDINANCES AND RESOLUTIONS, SAID TITLES, WHICH APPEAR ON THE PUBLIC AGENDA, SHALL BE DETERMINED TO HAVE BEEN READ BY TITLE AND FURTHER READING WAIVED

RECOMMENDATION: THAT THE CITY COUNCIL WAIVE READING OF ORDINANCES AND RESOLUTIONS.

4.2 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED MAY 8, 2012

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $365,007.69.

4.3 THIRD QUARTER FINANCIAL AND TREASURER'S REPORT (FY2011/12)

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AND FILE THE THIRD QUARTER FINANCIAL AND TREASURER'S REPORT FOR FY2011/12.

4.4 CONTRACT WITH THE COUNTY OF ORANGE FOR $162,000 IN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR FISCAL YEAR 2012-2013 FOR RESIDENTIAL RENOVATION ACTIVITIES AT THE ALISO MEADOWS CONDOMINIUM COMPLEX

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE A CONTRACT WITH THE COUNTY OF ORANGE FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR THE 2012-2013 FISCAL YEAR AND AUTHORIZE THE MAYOR AND CITY MANAGER TO EXECUTE THE CONTRACT.

4.5 2012 FOURTH OF JULY CELEBRATION

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AND FILE THE REPORT.

4.6 PROGRESS PAYMENT NO. 5 FOR AVENIDA DE LA CARLOTA WIDENING PROJECT, CIP NO. 164

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 5, IN THE NET AMOUNT OF $233,510.97, TO HILLCREST CONTRACTING, INC., FOR THE AVENIDA DE LA CARLOTA WIDENING PROJECT, CIP NO. 164.

4.7 CONTRACTS WITH COUNTY OF ORANGE AND AGE WELL SENIOR SERVICES FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR FISCAL YEAR 2012/2013

RECOMMENDATION: THAT THE CITY COUNCIL: (1) APPROVE INDIVIDUAL CONTRACTS WITH THE COUNTY OF ORANGE AND AGE WELL SENIOR SERVICES FOR UTILIZATION OF COMMUNITY DEVELOPMENT BLOCK

GRANT (CDBG) FUNDS FOR FISCAL YEAR 2012/2013; AND (2) AUTHORIZE THE MAYOR AND CITY MANAGER TO EXECUTE THE CONTRACTS.

4.8 LEASE AGREEMENT WITH THE LAW OFFICES OF FAY BLIX FOR 24031 EL TORO ROAD, SUITE 301, LAGUNA HILLS, CALIFORNIA

RECOMMENDATION: THAT THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO EXECUTE LEASE DOCUMENTS WITH THE LAW OFFICES OF FAY BLIX FOR 24031 EL TORO ROAD, SUITE 301, LAGUNA HILLS, CALIFORNIA.

ITEMS REMOVED FROM THE CONSENT CALENDAR

5. PLANNING AGENCY

5.1 ROLL CALL OF PLANNING AGENCY MEMBERS

5.2 PUBLIC COMMENTS

This is the time to address the Planning Agency on any matter not listed on this Agenda that is within the subject matter jurisdiction of the Planning Agency. Public Comments are limited to three minutes per person, an overall time limit of ten minutes for any one subject, and a total time limit of thirty minutes.

5.3 MINUTES

5.3.1 REGULAR MEETING, APRIL 24, 2012

RECOMMENDATION: THAT THE PLANNING AGENCY APPROVE THE MINUTES OF THE APRIL 24, 2012, REGULAR MEETING.

5.4 PLANNING AGENCY PUBLIC HEARINGS

PLANNING AGENCY ADJOURNMENT

6. CITY COUNCIL PUBLIC HEARINGS

6.1 ZONING TEXT AMENDMENT NO. 01-12-2163, AMENDING TITLE 9 "ZONING AND SUBDIVISIONS" OF THE LAGUNA HILLS MUNICIPAL CODE TO ESTABLISH A PROCEDURE FOR PROVIDING REASONABLE ACCOMMODATION IN THE CITY'S ZONING AND LAND USE REGULATIONS, POLICIES, AND PRACTICES FOR PERSONS WITH DISABILITIES.

RECOMMENDATION: THAT THE CITY COUNCIL: (1) CONDUCT A PUBLIC HEARING; AND (2) INTRODUCE AN ORDINANCE ENTITLED: "AN

ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADDING CHAPTER 9-93, ENTITLED 'REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES,' TO THE LAGUNA HILLS MUNICIPAL CODE, PROVIDING A PROCEDURE FOR GRANTING REASONABLE ACCOMMODATIONS IN THE CITY'S ZONING AND LAND USE REGULATIONS, POLICIES, AND PRACTICES PURSUANT TO FEDERAL AND STATE FAIR HOUSING LAWS."

7. ADMINISTRATIVE REPORTS

7.1 City Manager

8. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS AND MAYOR

9. CITY COUNCIL MEMBER COMMENTS

10. CLOSED SESSION

The City Council shall convene in Closed Session, in the City Hall Conference Room, to consider the following matters:

10.1 CONFERENCE WITH LABOR NEGOTIATOR (CONTINUED)

Pursuant to Government Code Section 54957.6
Agency Negotiator: Daniel C. Cassidy, Special Labor Counsel
Unrepresented Employee: City Manager
Under Negotiation: Terms and conditions of employment

Reconvene in regular session in the City Council Chamber.

Report on whether any reportable action was taken on matters considered during Closed Session.

ADJOURNMENT

The next Regular Meeting of the City Council will be May 22, 2012, at 7:00 PM, in the City Council Chamber, located at 24035 El Toro Road, Laguna Hills, California.

CERTIFICATION

I, PEGGY J. JOHNS, City Clerk of the City of Laguna Hills, do hereby certify that a copy of the foregoing Agenda was posted at Laguna Hills City Hall, Laguna Hills Community Center, and La Paz Center by May 4, 2012, at 5:00 PM.

Peggy J. Johns

PEGGY J. JOHNS, CITY CLERK

May 4, 2012

DATE

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the office of the City Clerk at (949) 707-2635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office at 24035 El Toro Road, Laguna Hills, California, during normal business hours.

CITY OF LAGUNA HILLS

AGENDA REPORT
CITY CLERK

ISSUE: **PROCLAMATION, "WILDFIRE AWARENESS WEEK", MAY 6, 2012 THROUGH MAY 12, 2012**

SUMMARY:

The City has received a request from the Orange County Fire Authority, asking for the City to issue a Proclamation recognizing the Authority's "Wildfire Awareness Week." This year's theme of "Ready, Set, Go!" emphasizes the importance of striving to be fire safe and taking personal responsibility to protect life, property, and our natural resources from wildfires. Battalion Chief Art Nevarez from the Orange County Fire Authority will be present at the meeting to receive the Proclamation.

RECOMMENDATION: THAT MAYOR CARRUTH PRESENT A PROCLAMATION TO ORANGE COUNTY FIRE AUTHORITY BATTALION CHIEF ART NEVAREZ, RECOGNIZING MAY 6, 2012, THROUGH MAY 12, 2012, AS "WILDFIRE AWARENESS WEEK."

ATTACHMENT:

- Proclamation

PROCLAMATION

WILDFIRE AWARENESS WEEK
MAY 6, 2012, THROUGH MAY 12, 2012

WHEREAS, *California and Orange County's long, hot, and dry seasons with winds make our wildland areas vulnerable to severe wildfire conditions; and*

WHEREAS*, Orange County frequently experiences low humidity and dry periods, which makes the brush extremely dry and flammable, creating more dangerous fire conditions; and*

WHEREAS, *this year's "Wildfire Awareness Week" theme of, "Ready, Set, Go!" emphasizes the importance of taking personal responsibility to prepare your home and family through home hardening, vegetation management, emergency preparedness, and knowing when to leave before or when asked; and*

WHEREAS, *all Californians who live, work, and recreate in our state's wildland must recognize the high risk of wildfire and therefore, should strive to be fire safe and take every precaution to protect themselves, their property and our natural resources; and*

WHEREAS, *approximately 94 percent of wildfires in California are human-caused and therefore, are preventable; and*

WHEREAS, *wildlife suppression costs only represent a small portion of overall economic impacts and do not reflect the total cost of large and damaging fires; and*

WHEREAS, "*Wildfire Awareness Week" is a valuable opportunity for California's fire agencies and communities to reduce the risk of wildfire and increase public safety and awareness through education on preparation and prevention; and*

WHEREAS, *Governor Jerry Brown and the California Office of Emergency Services has designated the week of May 6, 2012, through May 12, 2012, as "Wildfire Awareness Week" throughout the state.*

NOW, THEREFORE, *I, Melody Carruth, Mayor, on behalf of the City Council of the City of Laguna Hills, California, do hereby recognize and proclaim the week of May 6, 2012, through May 12, 2012, as "Wildfire Awareness Week" and encourage all residents to protect their homes and families by heeding the potentially life-saving messages and support the many activities and efforts of the Orange County Fire Authority's fire and emergency services.*

Dated this 8th day of May 2012.

MELODY CARRUTH, MAYOR

CITY OF LAGUNA HILLS

AGENDA REPORT
CITY CLERK

ISSUE: PROCLAMATION OF MAY 2012 AS WATER AWARENESS MONTH

SUMMARY:

The City has received a request from Martin McIntosh, of Keena Thomas Communications, representing the El Toro Water District, asking that the City proclaim May 2012 as Water Awareness Month.

The City supports the El Toro Water District and the Moulton Niguel Water District efforts in encouraging Orange County residents to save water and do more with less. Ted Martin, Board President of the El Toro Water District Board, and Donald Froelich, Board Vice President of Moulton Niguel Water District, will be present at the meeting to receive the Proclamations.

RECOMMENDATION: THAT MAYOR CARRUTH PRESENT PROCLAMATIONS TO TED MARTIN, BOARD PRESIDENT OF THE EL TORO WATER DISTRICT, AND DONALD FROELICH, BOARD VICE PRESIDENT OF MOULTON NIGUEL WATER DISTRICT PROCLAIMING MAY 2012 AS WATER AWARENESS MONTH.

ATTACHMENT:

- Proclamation

PROCLAMATION

WATER AWARENESS MONTH
MAY, 2012

WHEREAS, California Governor Edmund G. "Jerry" Brown has declared May as Water Awareness Month; and

WHEREAS, municipal agencies and governments continue to seek cost-effective and efficient systems to obtain and deliver water to meet the needs of California residents, agriculture and the economy; and

WHEREAS, Orange County water providers are leaders in promoting water use efficiency practices, conserving billions of gallons of water through conservation and recycling programs; and

WHEREAS, the need to develop a diverse portfolio approach to water supply reliability that includes a balanced combination of conservation, water reuse and new supplies is critical to the region's future; and

WHEREAS, Californians need to be informed about the damaging effects of runoff, the value of conservation, and the importance of regional cooperation; and

WHEREAS, during May 2012, water districts, cities, counties and organizations throughout California will sponsor activities to educate the public regarding water management efforts on the part of residential users, businesses, industry and others; and

WHEREAS, the El Toro Water District and Moulton Niguel Water District are participating in Water Awareness Month to raise awareness of the importance of cost-efficient practices and water conservation.

NOW, THEREFORE, I, Melody Carruth, Mayor, on behalf of the City Council of the City of Laguna Hills, California, do hereby proclaim May 2012, as Water Awareness Month in Laguna Hills, and urge all citizens to join in supporting local water agencies and organizations in their efforts to help Orange County residents to SAVE WATER: DO MORE WITH LESS.

Dated this 8th day of May 2012.

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MELODY CARRUTH, MAYOR

CITY OF LAGUNA HILLS, CALIFORNIA
CITY COUNCIL/PLANNING AGENCY REGULAR MEETING
MINUTES
APRIL 24, 2012

CALL TO ORDER

Mayor Carruth called the Regular Meeting of the City Council of the City of Laguna Hills, California, to order at 7:00 PM in the Laguna Hills City Council Chamber, 24035 El Toro Road, Laguna Hills.

PLEDGE OF ALLEGIANCE: Council Member Songstad

ROLL CALL OF CITY COUNCIL MEMBERS

Present: Mayor Carruth, Mayor Pro Tempore Lautenschleger, Council Member Bressette, Council Member Kogerman, and Council Member Songstad

1. PRESENTATIONS AND PROCLAMATIONS

There were no Presentations and Proclamations.

2. PUBLIC COMMENTS

MOULTON LA PAZ SHOPPING CENTER

Shannon Freedman, Laguna Hills, spoke in opposition to the project and expressed concern regarding potential impacts to the neighborhood that the renovation of the Moulton La Paz Shopping Center could create.

LAGUNA HILLS HIGH SCHOOL GRAD NIGHT FUND RAISER

Meg Gorham, Laguna Hills, gave an update on the activities for the Laguna Hills High School Grad Night Fund raiser, Win-Win-Wednesday.

2.1 LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON

THE CITY COUNCIL RECEIVED AN ORAL REPORT FROM LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON JEENA BONUTTO.

3. MINUTES

3.1 REGULAR MEETING, APRIL 10, 2012

MOTION TO APPROVE THE MINUTES OF THE APRIL 10, 2012, REGULAR MEETING, BY M/COUNCIL MEMBER KOGERMAN, S/MAYOR PRO TEMPORE LAUTENSCHLEGER.
APPROVED BY A VOTE OF 5-0.

4. CONSENT CALENDAR

MOTION TO APPROVE THE CONSENT CALENDAR, BY M/COUNCIL MEMBER BRESSETTE, S/MAYOR PRO TEMPORE LAUTENSCHLEGER, WITH COUNCIL MEMBER KOGERMAN REMOVING ITEM NO. 4.6.
APPROVED BY A VOTE OF 5-0.

4.1 MOTION TO APPROVE THE READING BY TITLE OF ALL ORDINANCES AND RESOLUTIONS, SAID TITLES, WHICH APPEAR ON THE PUBLIC AGENDA, SHALL BE DETERMINED TO HAVE BEEN READ BY TITLE AND FURTHER READING WAIVED

THE CITY COUNCIL WAIVED READING OF ORDINANCES AND RESOLUTIONS.

4.2 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED APRIL 24, 2012

THE CITY COUNCIL APPROVED THE WARRANT REGISTER IN THE AMOUNT OF $1,068,699.96.

4.3 PROGRESS PAYMENT NO. 13 FOR LA PAZ ROAD WIDENING AT I-5 IMPROVEMENT PROJECT, CIP NO. 159

THE CITY COUNCIL: (1) APPROVED PROGRESS PAYMENT NO. 13, IN THE NET AMOUNT OF $189,800.99, TO SEMA CONSTRUCTION, INC., (2) APPROVED CONTRACT CHANGE ORDER NO. 5; (3) APPROVED AMENDMENT NO. 7 TO AGREEMENT FOR CONSULTING SERVICES WITH PARSONS BRINCKERHOFF, INC.; AND (4) APPROVED AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT WITH ATHALYE CONSULTING ENGINEERING SERVICES, FOR THE LA PAZ ROAD WIDENING AT I-5 IMPROVEMENT PROJECT, CIP NO. 159.

4.4 2012 WEED ABATEMENT PROGRAM

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2012-04-24-1, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DECLARING WEEDS AND RUBBISH ON SPECIFIED PRIVATE PROPERTY TO BE A PUBLIC NUISANCE, COMMENCING PUBLIC PROCEEDINGS, AND SETTING A PUBLIC HEARING FOR MAY 22, 2012.

4.5 SECOND CALL FOR PROJECTS FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM (ECP) TIER 1 GRANT

THE CITY COUNCIL: (1) APPROVED THE GRANT APPLICATION FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM TIER 1 GRANT; (2) ADOPTED RESOLUTION NO. 2012-04-24-2, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING AN APPLICATION FOR FUNDS FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM TIER 1 GRANT UNDER ORANGE COUNTY LOCAL TRANSPORTATION ORDINANCE NO. 3 FOR THE LAGUNA HILLS DEBRIS GATES PROJECT;" AND (3) AUTHORIZED THE SOLE-SOURCE SELECTION OF G2 CONSTRUCTION, INC., FOR THIS WORK.

ITEMS REMOVED FROM THE CONSENT CALENDAR

4.6 AUTHORIZATION TO ADVERTISE FOR BIDS FOR THE CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-H

Council Member Kogerman removed this item from the Consent Calendar to inquire from City Attorney Simonian about her possible conflict of interest on this project, since her street was one of the streets scheduled for rehabilitation. City Attorney Simonian indicated that with this type of maintenance project, there was no conflict.

MOTION TO APPROVE THE PLANS AND SPECIFICATIONS AND AUTHORIZE THE ADVERTISEMENT FOR BIDS OF THE CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-H, BY M/COUNCIL MEMBER KOGERMAN, S/COUNCIL MEMBER BRESSETTE.
APPROVED BY A VOTE OF 5-0.

5. PLANNING AGENCY

Mayor Carruth recessed the City Council meeting and acting in the capacity of Chair, called the regular meeting of the Planning Agency of the City of Laguna Hills, California, to order at 7:13 PM.

5.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Carruth, Vice Chair Lautenschleger, Agency Member Bressette, Agency Member Kogerman, and Agency Member Songstad

5.2 PUBLIC COMMENTS

There were no Public Comments.

5.3 MINUTES

5.3.1 REGULAR MEETING, APRIL 10, 2012

MOTION TO APPROVE THE MINUTES OF THE APRIL 10, 2012, REGULAR MEETING, AS PRESENTED IN CITY COUNCIL MINUTES BEGINNING ON PAGE 3, BY M/AGENCY MEMBER SONGSTAD, S/VICE CHAIR LAUTENSCHLEGER. APPROVED BY A VOTE OF 5-0.

5.4 PLANNING AGENCY PUBLIC HEARINGS

5.4.1 ZONING TEXT AMENDMENT NO. 01-12-2163, AN ORDINANCE ADDING CHAPTER 9-93, ENTITLED "REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES," TO THE LAGUNA HILLS MUNICIPAL CODE, PROVIDING A PROCEDURE FOR GRANTING REASONABLE ACCOMMODATION IN THE CITY'S ZONING AND LAND USE REGULATIONS, POLICIES, AND PRACTICES PURSUANT TO FEDERAL AND STATE FAIR HOUSING LAWS.

The public notice for this zoning text amendment was incorrectly published as a Planning Agency item when this item is subject to review by the City Council. Therefore, staff must provide the proper public notice as a City Council agenda item, and anticipates bringing this item forward for review by the City Council at the regular meeting of May 8, 2012.

MOTION TO RECEIVE AND FILE THE REPORT, BY M/AGENCY MEMBER KOGERMAN, S/VICE CHAIR LAUTENSCHLEGER.
APPROVED BY A VOTE OF 5-0.

PLANNING AGENCY ADJOURNMENT

6. JOINT PLANNING AGENCY/CITY COUNCIL MEETING

6.1 ROLL CALL OF JOINT CITY COUNCIL/PLANNING AGENCY MEETING

Present: Mayor/Chair Carruth, Mayor Pro Tempore/Vice Chair Lautenschleger, Council Member/Agency Member Bressette, Council Member/Agency Member Kogerman, and Council Member/Agency Member Songstad

6.2 PUBLIC COMMENTS

There were no Public Comments.

6.3 PUBLIC HEARINGS

6.3.1 SITE DEVELOPMENT PERMIT/CONDITIONAL USE PERMIT/PARKING USE PERMIT NO. 12-11-2131, A REQUEST BY MOULTON LA PAZ, LLC, TO REMODEL AND EXPAND THE MOULTON LA PAZ SHOPPING CENTER AT 26534-26562 MOULTON PARKWAY, INCLUDING THE ADDITION OF APPROXIMATELY 30,000 SQUARE FEET OF NEW COMMERCIAL SPACE, UPDATED FACADES, AND NEW PARKING LOT LAYOUT AND LANDSCAPING, CONSIDERATION OF A DETERMINATION THAT THE DISPOSAL OF CERTAIN CITY-OWNED REAL PROPERTY INCLUDED IN THE DEVELOPMENT PROPOSAL IS IN CONFORMANCE WITH THE GENERAL PLAN, AND CONSIDERATION AND APPROVAL BY THE CITY COUNCIL OF A PROPOSED REAL PROPERTY PURCHASE AND SALE AGREEMENT ENTITLED "AGREEMENT FOR PURCHASE AND SALE BY AND BETWEEN MOULTON LA PAZ, LLC, AND CITY OF LAGUNA HILLS," CONCERNING THE PROPOSED SALE OF PARCEL 1 (3.365 ACRES) OF FINAL PARCEL MAP NO. 2009-134 TO ALLOW FOR THE REMODEL AND EXPANSION OF THE MOULTON LA PAZ SHOPPING CENTER.

Vice Chair/Mayor Pro Tempore Lautenschleger indicated he had a conflict with this item, recused himself from the dais, and left the meeting.

Mayor/Chair Carruth opened the Public Hearing.

Jerry Garner, Vintage Property Group representative, spoke on the proposed remodel and expansion of the Moulton La Paz Shopping Center and answered questions from the City Council/Planning Agency Members. Mr. Garner indicated he had read and agreed to all of the Conditions of Approval.

Jim Leach, CEO of the South Orange County Regional Chamber and Economic Coalition, supported the proposed renovations of the Moulton La Paz Shopping Center.

There were five Laguna Hills residents that spoke in opposition to the proposed modifications for the Moulton La Paz Shopping Center.

Jerry Kramer, Nadel Architects representative, spoke on the proposed remodel and expansion of the Moulton La Paz shopping Center and answered questions from the City Council/Planning Agency Members.

Mayor/Chair Carruth closed the Public Hearing.

(1) THE PLANNING AGENCY ADOPTED RESOLUTION NO. PA2012-04-24-1, A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING SITE DEVELOPMENT PERMIT/CONDITIONAL USE PERMIT/PARKING USE PERMIT NO. 12-11-2131, A REQUEST BY MOULTON LA PAZ, LLC, TO REMODEL AND EXPAND THE MOULTON LA PAZ SHOPPING CENTER LOCATED AT 26534-26562 MOULTON PARKWAY, INCLUDING THE ADDITION OF APPROXIMATELY 30,000 SQUARE FEET OF NEW COMMERCIAL SPACE, UPDATED FACADES, AND NEW PARKING LOT LAYOUT AND LANDSCAPING; AND MADE A DETERMINATION THAT THE DISPOSAL OF CERTAIN CITY-OWNED REAL PROPERTY INCLUDED IN THE DEVELOPMENT PROPOSAL IS IN CONFORMANCE WITH THE GENERAL PLAN;" AND

(2) THE CITY COUNCIL APPROVED THE PROPOSED REAL PROPERTY PURCHASE AND SALE AGREEMENT FOR PURCHASE AND SALE BY AND BETWEEN MOULTON LA PAZ, LLC, AND THE CITY OF LAGUNA HILLS, CONCERNING THE PROPOSED SALE OF PARCEL 1 (3.365 ACRES) OF FINAL PARCEL MAP NO. 2009-134 TO ALLOW FOR THE REMODEL AND EXPANSION OF THE MOULTON LA PAZ SHOPPING CENTER, AND AUTHORIZED THE MAYOR TO EXECUTE SAME, BY M/AGENCY MEMBER/COUNCIL MEMBER KOGERMAN, S/CHAIR/MAYOR CARRUTH.
APPROVED BY A VOTE OF 5-0.

JOINT PLANNING AGENCY/CITY COUNCIL MEETING ADJOURNMENT

Vice Chair/Mayor Pro Tempore Lautenschleger returned to the meeting.

7. ADMINISTRATIVE REPORTS

7.1 City Manager

The City Manager made no reports.

7.2 Public Services Director/City Engineer

7.2.1 PROJECT SELECTION FOR STATE-LOCAL PARTNERSHIP PROGRAM FUNDING THROUGH THE ORANGE COUNTY TRANSPORTATION AUTHORITY

MOTION TO TABLE THIS ITEM UNTIL AFTER THE DISCUSSION OF ITEM NO. 7.2.3, LA PAZ ROAD SIDEWALK ADJACENT TO VALENCIA ELEMENTARY SCHOOL, BY M/COUNCIL MEMBER BRESSETTE, S/MAYOR CARRUTH.
APPROVED BY A VOTE OF 3-2, (COUNCIL MEMBER SONGSTAD, AND MAYOR PRO TEMPORE LAUTENSCHLEGER VOTING NO).

This item was taken out of order on the Agenda.

7.2.3 LA PAZ ROAD SIDEWALK ADJACENT TO VALENCIA ELEMENTARY SCHOOL

MOTION TO DIRECT STAFF TO RETURN WITH AN OPTION AT THE MID-YEAR BUDGET REVIEW, TO INCLUDE DESIGN COSTS AT THAT TIME, BY/COUNCIL MEMBER BRESSETTE, S/MAYOR CARRUTH.
APPROVED BY A VOTE OF 5-0.

7.2.1 PROJECT SELECTION FOR STATE-LOCAL PARTNERSHIP PROGRAM FUNDING THROUGH THE ORANGE COUNTY TRANSPORTATION AUTHORITY(CONTINUED)

MOTION TO AUTHORIZE STAFF TO SUBMIT AN APPLICATION TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR STATE-LOCAL PARTNERSHIP PROGRAM FUNDING IN ACCORDANCE WITH THE FOLLOWING PRIORITY OF PROJECTS LIST: (1) RIDGE ROUTE DRIVE PAVEMENT REHABILITATION, CIP NO. 172A; (2) EL TORO ROAD PAVEMENT REHABILITATION, CIP NO. 179; AND (3) ACCESS RAMP CONSTRUCTION, CIP NO. 170, BY M/COUNCIL MEMBER BRESSETTE, S/COUNCIL MEMBER SONGSTAD.
APPROVED BY A VOTE OF 5-0.

7.2.2 AUTHORIZATION TO ADVERTISE FOR BIDS FOR TURF RENOVATION AT THE COMMUNITY CENTER AND SPORTS COMPLEX, CIP NO. 238

MOTION TO APPROVE THE PLANS AND SPECIFICATIONS, AUTHORIZED THE SOLE-SOURCE PURCHASE OF SAND AND TURF MATERIALS, AND AUTHORIZED THE ADVERTISEMENT FOR BIDS FOR THE TURF RENOVATION AT THE COMMUNITY CENTER AND SPORTS COMPLEX, CIP NO. 238.
APPROVED BY A VOTE OF 5-0.

8. MATTERS AGENDIZED AND PRESENTED BY CITY COUNCIL MEMBERS AND MAYOR

There were no matters agendized and presented by City Council Members.

9. CITY COUNCIL MEMBER COMMENTS

MAYOR CARRUTH

Mayor Carruth thanked the Community Services staff for a great Earth Day event held on Saturday, April 21, 2012.

COUNCIL MEMBER KOGERMAN

Council Member Kogerman indicated that Saturday, April 28, 2012, was National Prescription Medication Take Back Day, and indicated that she would like the City to participate next year.

Council Member Kogerman discussed the placement of items on the City Council Agendas by the Council Members.

10. CLOSED SESSION

There was no Closed Session.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Carruth declared the meeting adjourned at 11:03 PM.

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PEGGY J. JOHNS, CITY CLERK

ATTEST:

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MELODY CARRUTH, MAYOR

APPROVED AT MEETING OF __________________________

CITY OF LAGUNA HILLS

AGENDA REPORT
ADMINISTRATIVE SERVICES DEPARTMENT

ISSUE: **APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED MAY 08, 2012.**

SUMMARY:

In accordance with Government Code Section 37202, the Finance Manager prepares the attached warrant register, which reflects the disbursements of the City of Laguna Hills for the period reported thereon. The Assistant City Manager certifies that funds are available for the payment thereof. These warrants are hereby submitted to the City Council for approval of payment.

Prepared by:

JANICE MATEO REYES
Finance Manager

Certified:

DONALD J. WHITE
Assistant City Manager

5-2-12
DATE

FISCAL IMPACT:

The warrant register total is $ 365,007.69

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $ 365,007.69.

ATTACHMENTS:

1. **Warrant Register**

WarrantCoverModified-DW JMRFinance MGR-prepared

CITY OF LAGUNA HILLS
WARRANT REGISTER
May 8, 2012

VENDOR	DESCRIPTION	CHECK NO.		AMOUNT
PREPAID WARRANTS:				
ALICEA, MIA	*Contract Instructor Fee, Dancing Spring Session, Community Services*	8803167	$	8,284.85
ASHWORTH AWARDS	*Program Supplies - Deposit, 1/2 Marathon and 5K Event, Community Services, May '12*	8803179		3,443.42
AT&T	*Communication Expense, Administrative Services Fax Line, Apr '12*	8803180		85.30
AU-YEUNG, MELISSA	*Travel Advance, Administrative Services, May '12*	8803182		300.00
CA PARK & REC SOCIETY, DISTRICT 10	*Employee Training, Community Services, May '12*	8803193		70.00
CROCKETT, KATIE	*Mileage Reimbursement, Planning, Apr '12*	8803194		166.50
CSMFO	*Employee Training, Administrative Services, May '12*	8803195		75.00
DOMINGUEZ, CHRIS	*Mileage Reimbursement, Planning, Apr '12*	8803196		50.51
EVERBANK COMMERCIAL FINANCE	*Lease - Copier, City Hall, Apr '12*	8803200		221.04
MMASC	*Employee Training, Administrative Services, May '12*	8803217		225.00
MOBILE MINI, INC.	*Storage Rental Fee, Community Services, Apr '12*	8803168		82.97
RALPHS GROCERY COMPANY	*Program Supplies, Community Services, Feb - Mar '12*	8803169		103.32
REFUND, COMMUNITY SVCS PROGRAM	*R. Ibarra, V# 2002341.002*	8803170		125.00
REFUND, FACILITY RENTAL DEPOSIT	*El Toro High School, V# 2002350.002*	8803226		500.00
REFUND, FACILITY RENTAL FEE	*D. Lee, V# 2002345.002*	8803171		100.00
REYES, JANICE MATEO	*Petty Cash Replenishment, Departmental Operating Expenditures, Apr '12*	8803172		681.63
SAN DIEGO GAS & ELECTRIC	*Electric Usage, Street Lights and Traffic Control, Mar '12*	8803173		20,983.45
SMART & FINAL	*Program Supplies, Community Services, Mar '12*	8803174		89.12
SOUTHERN CALIFORNIA EDISON	*Electric Usage, Street Lights and Traffic Control, Mar '12*	8803175		357.91
SOUTHERN CALIFORNIA EDISON	*Electric Usage, Street Lights and Traffic Control, Apr '12*	8803231		1,024.53
SPRINT	*Communication Expense, Community Services, Mar '12*	8803176		148.15
TRISKELION EVENT SERVICES, INC	*Program Expense - Deposit, 1/2 Marathon and 5K Event, Community Services, May '12*	8803238		416.75
U.S. POSTAL SERVICE	*Postage, Community Mailing, Weed Abatement*	8803239		130.38
	Total Prepaid Warrants:		**$**	**37,664.83**

CITY OF LAGUNA HILLS
WARRANT REGISTER
May 8, 2012

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
REGULAR WARRANTS:			
ALL CITY MANAGEMENT, INC.	*Crossing Guard Services, 03/11/12 - 04/07/12*	8803177	$ 6,797.25
AMERICAN WEST COAST SECURITY	*Refund, Fires Fees, CR #43972*	8803178	409.20
ATHALYE CONSULTING ENGINEERING	*Professional Fees, La Paz Widening @ I-5 CIP # 159*	8803181	28,650.00
AU-YEUNG, MELISSA	*Travel Advance, Administrative Services, May '12*	8803183	300.00
BRAME, MARILYN	*Contract Instructor Fee, Drawing Spring Session, Community Services*	8803184	840.00
C & A ATHLETICS	*Program Supplies, Community Services, Apr '12*	8803185	803.55
CA CITY MANAGEMENT FOUNDATION	*Annual Membership, Administrative Services, FY 12/13*	8803186	400.00
CALIF PARK & REC SOCIETY, INC.	*Membership, Community Services, FY 11/12*	8803187	135.00
CALIFORNIA OFFICE SYSTEMS	*Usage - Copier, Community Center, Apr '12*	8803188	310.11
CALIFORNIA YELLOW CAB	*Dial-a-Taxi, Senior Transportation Program, Mar '12*	8803189	190.00
CDW GOVERNMENT, INC.	*Computer Supplies, Building, Apr '12*	8803190	173.32
CODE PUBLISHING COMPANY, INC.	*Online Municipal Code Update, City Clerk, Apr '12*	8803191	165.15
COMPLETE OFFICE OF CALIFORNIA	*Office and Operating Supplies, Community Center, Apr '12*	8803192	194.42
DUNBAR ARMORED, INC.	*Courier Fee, Armored Transport, Apr '12*	8803197	362.18
ECHITO, MARTIE	*Program Expense, Community Services, May '12*	8803198	600.00
ELKINS, CHRISTINA	*Contract Instructor Fee, Dancing Spring Session, Community Services*	8803199	205.80
FORBES, JACOB	*Referee Fees, Basketball, Community Services*	8803201	90.00
GOLDEN, JEFF	*Referee Fees, Basketball, Community Services*	8803202	90.00
GOOLD, MARTIN	*Referee Fees, Basketball, Community Services*	8803203	90.00
GOVPARTNER	*Hosting Fees, Request Partner, Apr '12*	8803204	500.00
GREEN MART, INC.	*Operating Supplies, Parks, Apr '12*	8803205	1,023.63
GREENSPAN, FRANCES	*Contract Instructor Fee, How to Sell on eBay Spring Session, Community Services*	8803206	371.70
HANSEN, MARIA	*Contract Instructor Fee, Zumba Spring Session, Community Services*	8803207	179.20

CITY OF LAGUNA HILLS
WARRANT REGISTER
May 8, 2012

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
HARRINGTON GEOTECH ENGINEERING	*Professional Fees, El Toro Rd @ Carlota Street Improvements CIP # 164*	8803208	2,148.50
HILLCREST CONTRACTING	*Progress Payment #5, El Toro Rd @ Carlota Street Improvements CIP # 164*	8803209	233,510.97
IRON MOUNTAIN OFFSITE	*Off Site Data Storage, Mar '12*	8803210	208.26
JAMEY CLARK, INC.	*Miscellaneous Park Repairs and Graffiti Removal, Mar - Apr '12*	8803211	688.47
JOE A. GONSALVES & SON	*Professional Fees, Legislative Services, May '12*	8803212	2,900.00
KNIGHT, LORNA ANGELA	*Contract Instructor Fee, Yoga Spring Session, Community Services*	8803213	2,799.30
LIEBERT CASSIDY WHITMORE	*Professional Fees, Legal Services, Mar '12*	8803214	630.00
MARTIN-RUSK, DINA	*Contract Instructor Fee, Zumba Spring Session, Community Services*	8803215	134.40
MAYER HOFFMAN MC CANN P.C.	*Employee Training, Administration, Jun '12*	8803216	130.00
MUSIC MOVES ACADEMY, INC.	*Contract Instructor Fee, Music Classes Spring Session, Community Services*	8803218	1,421.00
MYERS, JOHN	*Contract Instructor Fee, Tennis Classes Spring Session, Community Services*	8803219	416.00
NEVCO, INC.	*Equipment Maintenance, Control Panel, Community Services, Feb '12*	8803220	53.64
OC SHERIFF'S ADVISORY COUNCIL	*Meeting Expense, Public Safety*	8803221	650.00
OFFICE SOLUTIONS	*Office and Operating Supplies, Apr '12*	8803223	581.03
PAPER RECYCLING SPECIALISTS, INC.	*Document Recycling Program, Apr '12*	8803224	50.00
QUIKSILVER COURIER	*Delivery Service, Apr '12*	8803225	29.64
REYNOLDS, DAVID	*Cash Drawer Replenishment, Onsite Registration, 1/2 Marathon & 5K Event, Community Services*	8803227	1,250.00
RICHARD FISHER ASSOCIATES	*Professional Fees, La Paz Open Space Riparian Habitat CIP # 615*	8803228	418.24
SOCAL OFFICE TECHNOLOGIES	*Printer, Maintenance and Supplies, May '12*	8803229	546.20
SOUTHERN CAL ASSOC OF GOVTS	*Annual Membership, Administrative Services, FY 12/13*	8803230	3,242.00
STAPLETON, VIVIAN	*Contract Instructor Fee, Early Childhood Music Spring Session, Community Services*	8803232	462.00
STATE WATER RESOURCES CONTROL	*Construction Permit App Fee, La Paz Widening @ I-5*	8803233	543.00
STUDIO TWO BLACK DIAMOND	*Printing Expense, Apr '12*	8803234	1,594.75
STV INCORPORATED	*Professional Fees, Paseo de Valencia Widening CIP # 145A*	8803235	25,274.12
THE LIFE TRENDS GROUP, INC.	*Equipment Maintenance and Support, AED Program*	8803236	420.00

CITY OF LAGUNA HILLS
WARRANT REGISTER
May 8, 2012

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
TRAUMA INTERVENTION PROGRAMS	*Community Program, TIP, Apr - Jun '12*	8803237	910.32
WILLDAN	*Professional Fees, Engineering, Mar '12*	8803240	2,965.00
XEROX CORPORATION	*Lease - Copier, City Hall, Apr '12*	8803241	485.51
	Total Regular Warrants:		**$ 327,342.86**
	*****WARRANT REGISTER TOTAL*****		**$ 365,007.69**

CITY OF LAGUNA HILLS

AGENDA REPORT
ADMINISTRATIVE SERVICES DEPARTMENT

ISSUE: **THIRD QUARTER FINANCIAL AND TREASURER'S REPORT (FY2011/12)**

SUMMARY:

Staff is submitting to the City Council the Quarterly Financial Highlights for the Third Quarter of Fiscal Year 2011/12. The financial statements show the anticipated use of reserves for the third quarter. This is largely due to the number of revenues and expenditures that are unevenly received or expended over the course of the year. The City's total fund balance as of March 31, 2012, is $6,689,417.

BACKGROUND

Attached to this report is a pamphlet entitled “City of Laguna Hills Quarterly Financial Highlights, Third Quarter, Fiscal Year 2011/12.” The information presented in the pamphlet provides the City Council and City management with the results of the City's financial operations for the quarter ended March 31, 2012, and its fund balance as of the same period.

The pamphlet also contains a condensed Treasurer’s Investment Report. The City’s total cash and investments as of March 31, 2012, is $7,857,124, which is a decrease of approximately $1.1 million compared with the same period in 2011. This decrease is the result of special revenue inflows and outflows related to major capital projects underway in the City, namely, the I-5/La Paz Road Interchange and the Avenida de la Carlota Widening at El Toro Road. When compared to the March 31, 2010, quarterly financial report, total cash and investments are up by over $1.8 million.

The Laguna Hills Civic Center section in the pamphlet includes an abridged balance sheet and income statement summary for the Laguna Hills Center leasing operation. Essex Realty, the management company for the property, reported a net income of $43,093 for the nine months of leasing activity from July 1, 2011 to March 31, 2012. After adding back contra rent revenue associated with the City’s occupied spaces, the effective net income is $493,513. The balance sheet shows equity of $16,774,647 as of March 31, 2012.

RECOMMENDATION: **THAT THE CITY COUNCIL RECEIVE AND FILE THE THIRD QUARTER FINANCIAL AND TREASURER’S REPORT FOR FY2011/12.**

ATTACHMENTS:

Exhibit A: City of Laguna Hills Quarterly Financial Highlights
3rd Quarter FY 2011/12

EXHIBIT A

City of Laguna Hills

Quarterly Financial Highlights

3rd Quarter, FY 2011/12

CITY OF LAGUNA HILLS

Quarterly Financial Highlights

3rd Quarter, Fiscal Year 2011 / 12

March 31, 2012

Honorable Mayor and City Council Members:

The following unaudited financial information summarizes the City's overall financial position for the fiscal year through March 31, 2012.

The City's fiscal year-to-date funding sources by the end of the third quarter totaled approximately $13.2 million and funding uses were $17 million. The resulting usage of fund balance is primarily due to the timing issues of when payments are received and made, which is caused by the cyclical fluctuations in revenues and expenditures during the fiscal year. By fiscal year end, after year-end accruals and standard accounting year-end adjustments, total funding sources and uses are expected to meet projections.

The Summary of Funding Sources and Uses for the third quarter ended March 31, 2012 is presented in the following table:

FY 2011/12 Third Quarter Highlights

	YTD Actual (million)	Amended Budget (million)	YTD % of Budget
Funding Sources	*$ 13.18*	*$ 26.71*	*49%*
Funding Uses	*$ 17.01*	*$ 26.68*	*64%*
Excess of Sources over Uses	*$ (3.83)*	*$ .03*	

Report Variances

Given that numerous revenue and expenditure items are received and expended unevenly during the fiscal year, the expectation that the City's position at the end of the third quarter would be approximately 75% of budget can not be assumed. Given this basis, the YTD as a % of budget shown does not indicate any material deviations from year-end projections.

Fund Balance

Included in this pamphlet, on page 4, is a report on the City's Fund Balance as of March 31, 2012. City-managed short-term idle funds, as well as bond funds, are invested in approved securities. An abridged balance sheet, which itemizes the City's assets and liabilities, is included on page 3.

Continued on page 2

Laguna Hills Civic Center

The abridged Balance Sheet and Income statement for the Laguna Hills Civic Center leasing operation is shown below:

Abridged Balance Sheet
As of March 31, 2012

ASSETS		
Total Current Assets	$	128,138
Total Fixed Assets		16,685,675
Total Other Assets		2,242
TOTAL ASSETS	**$**	**16,816,056**
LIABILITY & EQUITY		
Total Current Liabilities	$	41,409
Total Equity		16,774,647
TOTAL LIABILITIES & EQUITY	**$**	**16,816,056**

Income Statement Summary
For the 9 Months Ended March 31, 2012

TOTAL INCOME	$	396,044
TOTAL EXPENSES		352,951
NET INCOME/(LOSS)	**$**	**43,093**

Funding Sources

The City's total funding sources are made up of general fund revenues, special revenues, and debt financing. General Fund Revenues are utilized primarily to finance the City's general governmental activities. Special revenues and grants are earmarked for specific expenditures, typically capital projects.

General Fund Revenues

At quarter end, general fund revenues totaled $9.9 million, or 53% of budget. Receipts of Property Tax, which are concurrent with the County's tax collection schedule, came in at $4.8 million, or 56% of budget. Intergovernmental Revenues were approximately $2.9 million, or 52% of budget. Recording of these revenue sources comply with GASB 23 which addresses the timing of recognition of non-exchange transactions, e.g. taxes and fines. Franchise fees from utility companies and transient occupancy tax comprise Franchise Tax revenues, which came in at 45% of budget. These receipts lag at least a quarter and no accrual was made at quarter end. Revenues from Licenses and Permits and Charges for Services are dependent upon development activities. Licenses and Permits came in at 53% of budget and Charges for Services came in at 51% of budget.

Special Revenues and Grants

Many of the Special Revenue funding sources are tied in with the City's Capital Improvement Plan. The receipts of funding sources for certain capital projects typically lag behind the spending on the projects, as the claims are applied for during construction or after project-completion. At the end of the third quarter, special revenues receipts totaled approximately $3.2 million, or 41% of budget.

Funding Uses

The City's total funding uses consist of the City's Operating Expenditures, outlay for Capital Improvement projects, debt charges and expenditures for grant related programs. At the end of the third quarter, total funding uses were approximately $17 million, which is 64% of the annual budget .

Operating Expenditures

At the end of the third quarter, operating expenditures totaled roughly $11.9 million, which represents 70% of the total operating budget. The spending level for all the functional areas, with the exception of City Council/Manager, were below the end of quarter average of 75% of their approved budget.

Capital Improvement Plan

At the end of the third quarter, total capital expenditures were approximately $3.25 million, which was 44% of the approved budget of approximately $7.4 million. The following table lists the City's capital projects by major expenditure categories as of the end of this reporting period.

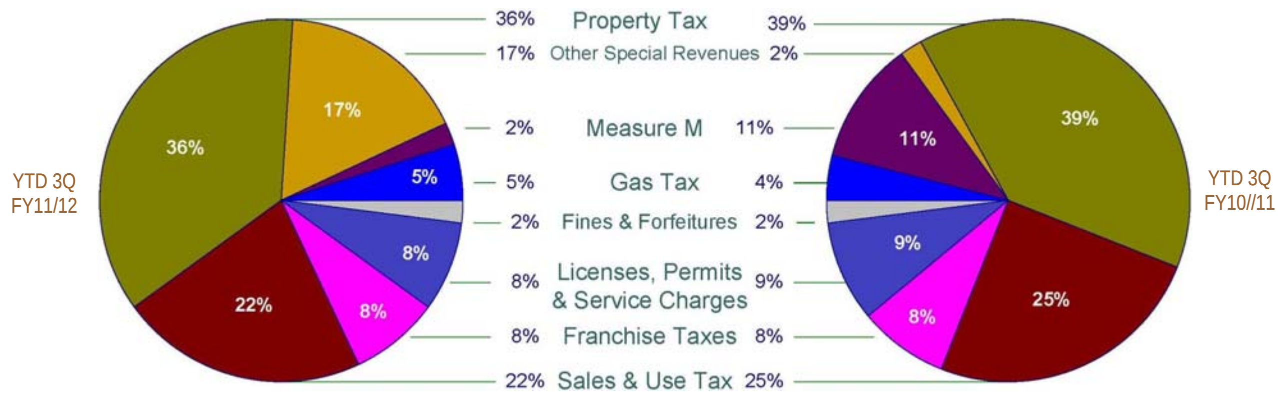
Capital Improvement Program

For the 9 Months Ended, March 31, 2012

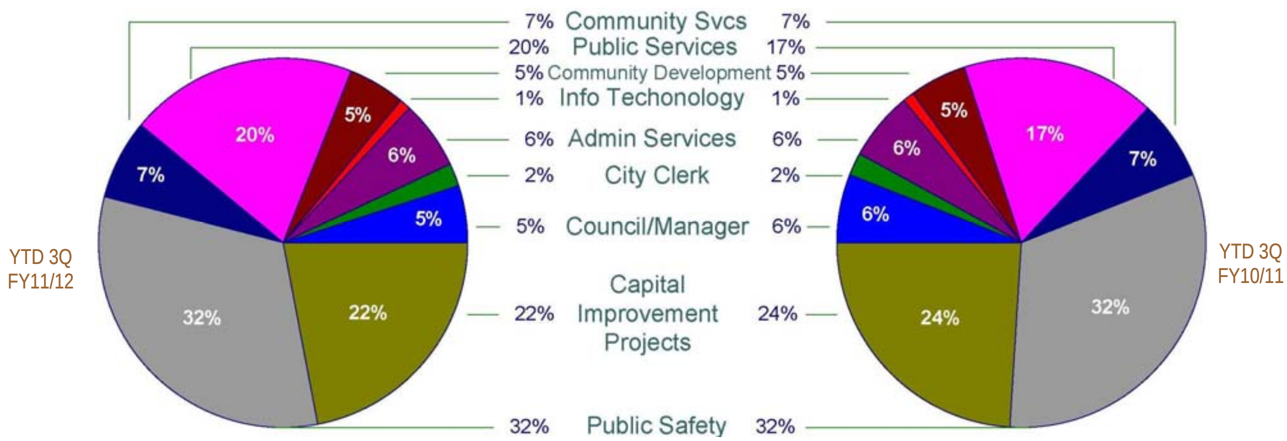
Streets, Signals & Lighting	$	2,818,061
Streetscape		65,598
Flood Control & Water Quality		110,792
Parks		31,222
Public Facilities		191,349
Trails & Open Space		34,168
Total	**$**	**3,251,189**

5/8/2012 ITEM NO. 4.3

Operating & Special Revenues– YTD 3RD Quarter Comparison



Operating & CIP Expenditures– YTD 3RD Quarter Comparison



CITY OF LAGUNA HILLS
Abridged Balance Sheet - Governmental Funds
March 31, 2012

Assets		
Cash and investments	$	7,857,125
Receivables:		
Accounts		163,115
Interest		6,829
Due from other governments		765,236
Prepaid items		2,700
Total assets	**$**	**8,795,004**
Liabilities and Fund Balances		
Liabilities:		
Accounts payable	$	840,533
Payroll and benefits		7,203
Refundable deposits to contractors		428,651
Deferred revenue		813,417
Trust accounts		15,782
Total liabilities		2,105,586
Fund balances:	$	6,689,417
Total liabilities and fund balances	**$**	**8,795,004**

CITY OF LAGUNA HILLS
STATEMENT OF WORKING FUNDS
AS OF MARCH 31, 2012

Fund Balance	**As of July 1, 2011**		
General Fund		$	7,160,285
Measure M			365,709
Proposition 1B			476,833
CARITS			804,331
Redevelopment Tax Increment			103,440
Beverage Recycling			45,153
CR&R Recycling			(6,976)
C&D Forfeited Deposits			10,529
AB 939 Surcharge Grant			10,558
Public Art Fund			(266,350)
Grants & Contributions			25,234
Debt Service			1,811,562
Total			10,540,306
Excess (Deficiency) of Funding Sources over Funding Uses			(3,850,889)
Fund Balance	**As of March 31, 2012**	$	**6,689,417**
Disposition of Working Funds	**As of March 31, 2012**		
Total Cash per General Ledger		$	155,012
Investments (Details of Portfolio are in Treasurer's Report)			7,702,113
Total Cash and Investments			7,857,125
Receivables Net of Liabilities			(1,167,707)
Working Funds	**As of March 31, 2012**	$	**6,689,417**

The Financial Management Report for the 3rd Quarter of Fiscal Year 2011-12 is hereby submitted. The accounts of the City are organized on the basis of funds, each of which is considered a separate accounting entity. To the best of our knowledge and belief, the above information are reported in a manner that presents fairly the financial position and results of operation of the governmental funds of the City of Laguna Hills.

Respectfully submitted,

Original Signed | *May 2 , 2012*

Donald J. White
Assistant City Manager

Date

CITY OF LAGUNA HILLS
Comparative Statement of Operation - All Funds
For the 9 Months Ended, March 31, 2012

	FY 2011/12			FY 2010/11		
	Y-T-D ACTUAL	AMENDED BUDGET	YTD % of BUDGET	Y-T-D ACTUAL	AMENDED BUDGET	YTD % of BUDGET
FUNDING SOURCES						
Operating Revenues						
Property Taxes	$ 4,768,778	$ 8,443,720	56%	$ 4,824,139	$ 9,165,896	53%
Intergovernmental Revenues	2,931,822	5,615,936	52%	3,167,410	6,498,750	49%
Franchise Taxes	1,015,520	2,244,170	45%	925,970	2,368,281	39%
Licenses and Permits	430,096	805,600	53%	392,934	481,518	82%
Charges for Current Services	571,629	1,117,613	51%	726,758	1,024,872	71%
Fines & Forfeitures	207,910	500,000	42%	277,007	475,000	58%
Total General Fund Revenues	9,925,756	18,727,039	53%	10,314,218	20,014,317	52%
Special Revenue Funds						
Gas Tax Fund	629,895	912,629	69%	536,024	630,360	85%
Measure M	308,147	468,290	66%	266,729	429,686	62%
Measure M - Competitive	-	837,222	0%	1,035,000	2,877,381	36%
AB 2766 Fund	19,225	40,000	48%	18,975	38,000	50%
Prop 42 Traffic Congestion Relief	-	-		-	451,392	0%
CDBG	-	228,750	0%	1,192	373,725	0%
ARRA	144,399	-		-	-	
FCPP	-	-		1,275,000	1,275,000	
Developer Fees	238,754	-		-	-	
Redevelopment Tax Increment	62,302	70,000	89%	76,720	33,660	228%
Housing Set-aside	-	22,400	0%			
CARITS	545,476	123,838	440%	-	646,027	0%
Beverage Recycling Fund	-	8,826	0%	-	8,000	0%
CR&R Recycling Fees	20,000	20,000	100%	20,000	20,000	100%
C&D Forfeited Deposits	30,107	50,000	60%	16,517	-	
Senior Mobility Program	20,419	34,226	60%	34,226	-	
Public Art Fund	27,613	-		-	-	
Grants and Contributions	1,080,931	4,990,000	22%	36,261	5,140,000	1%
Law Enforcement Grants	88,184	-		61,145	100,000	61%
Total Special Revenue Funding	3,215,452	7,806,181	41%	3,377,789	12,023,231	28%
Other Funding Sources						
Interest Income	20,310	80,000	25%	27,451	140,000	20%
Distribution from Enterprise Fund	-	100,000	0%	-	200,000	0%
Total Other Funding Sources	20,310	180,000	11%	27,451	340,000	8%
TOTAL FUNDING SOURCES	$ 13,161,518	$ 26,713,220	49%	$ 13,719,459	$ 32,377,548	42%
FUNDING USES						
Operating Expenditures						
City Council/Manager	$ 820,917	1,056,981	78%	$ 830,938	$ 1,215,047	68%
City Clerk	253,616	378,693	67%	282,882	416,673	68%
Administrative Services	940,856	1,310,565	72%	887,834	1,357,090	65%
Information Technology	161,868	287,970	56%	136,304	203,001	67%
Community Development	791,462	1,360,257	58%	786,999	1,246,135	63%
Public Services	2,981,923	4,018,945	74%	2,625,764	4,034,907	65%
Community Services	1,108,495	1,750,495	63%	1,107,933	1,754,629	63%
Public Safety	4,816,168	6,759,246	71%	4,804,320	6,939,462	69%
Total Operating Expenditures	11,875,305	16,923,152	70%	11,462,973	17,166,944	67%
Capital Improvement Program	3,251,189	7,438,785	44%	3,597,981	13,434,559	27%
Other Funding Uses						
Debt Charges	1,800,243	1,798,387	100%	1,802,977	1,892,000	95%
Claims	13,120	50,000	26%	192,341	-	
Special Revenue Fund Expenditures						
Redevelopment Tax Increment Fund	10,323	47,515	22%	20,065	-	
Housing Set-Aside	-	22,400	0%			
CDBG Fund Expenditures	-	228,750	0%	93,494	373,725	25%
Senior Mobility Program	3,070	63,721	5%	3,191	-	
Beverage Recyling	14,154	34,000	42%	1,333	20,000	7%
CR&R Recyling Fund	13,019	13,019	100%	26,055	20,000	130%
Forfeited C&D Deposits	2,270	58,981	4%	11,041	49,000	23%
AB 939 Surcharge Grant	2,985	7,468	40%	1,609	-	
Go Local	-	-		-	-	
Grants & Contributions	16,415	-		38,987	-	
Law Enforcement Fund Expenditures	10,315	-		-	-	
Total Other Funding Uses	1,885,914	2,324,241	81%	2,191,093	2,354,725	93%
TOTAL FUNDING USES	$ 17,012,407	$ 26,686,178	64%	$ 17,252,046	$ 32,956,228	52%
NET CHANGE IN FUND BALANCE	$ (3,850,889)	$ 27,042		$ (3,532,587)	$ (578,680)	

5/8/2012 ITEM NO. 4.3

TREASURER'S INVESTMENT REPORT (CONDENSED)
FOR THE THIRD QUARTER ENDED MARCH 31, 2012

Cash and Investments by Type	Beginning Book Value	Deposits	Withdrawals	Ending Book Value	3rd Quarter Interest Income
State Treasurer's Investment Fund	$ 5,721,624	$ 603,209	$ 1,250,000	$ 5,074,834	$ 5,007
Public Funds Certificates of Deposits	500,000	250,000	-	750,000	387
Multiple Maturity Certificates of Deposits	70,957	-	-	70,957	898
Funds Under Trust Indenture	1,809,026	1,735	4,439	1,806,322	1,699
Demand Deposits	428,286	6,665,579	7,025,011	68,855	-
Demand Deposit with Fiscal Agent	155,050	30,000	98,893	86,157	5
TOTAL	**$ 8,684,944**	**$ 7,550,523**	**$ 8,378,343**	**$ 7,857,124**	**$ 7,996**

CURRENT PORTFOLIO SUMMARY

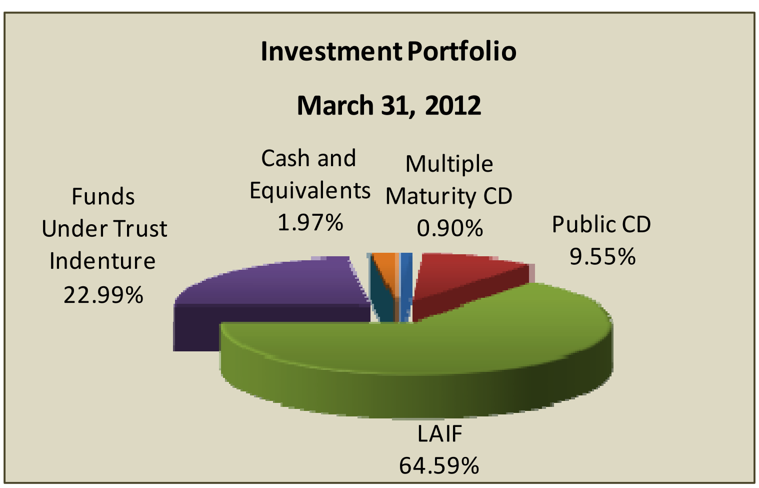
Short-term excess cash is currently invested primarily in the Local Agency Investment Fund (LAIF) administered by the State Treasurer. Held under trust indenture by The Bank of New York Mellon Trust Company, N.A, is a Reserve Fund established to secure the timely payment of principal and interest represented by the 2010 Refinancing Project bond issues. The City's investment policy approved by Council resolution is the prevailing guideline in managing investments.

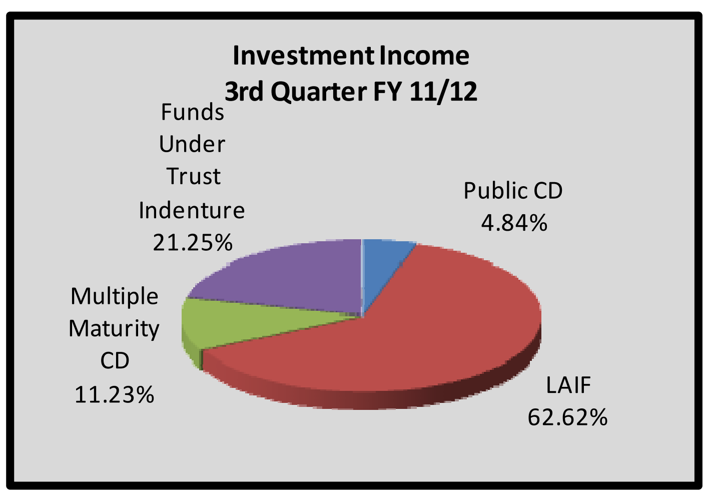
CASH AND INVESTMENTS

The following is the summary of the cash and investments of the City-managed funds for the 3rd quarter ended March 31, 2012, compared with the same period of the previous fiscal year:

	31-Mar-12	31-Mar-11
Cash	$ 68,855	$1,786,749
Investments	5,895,790	5,125,155
Cash & Investments - City Managed Funds	5,964,645	6,911,904
Restricted Cash and Investments	1,892,479	2,054,550
Total Cash & Investments - All Funds	$7,857,124	$8,966,454

We believe the City's portfolio provides sufficient cash flow liquidity to meet the next six months of the City's projected operating expenditures.





CITY OF LAGUNA HILLS

AGENDA REPORT
COMMUNITY DEVELOPMENT

ISSUE: CONTRACT WITH THE COUNTY OF ORANGE FOR $162,000 IN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR FISCAL YEAR 2012-2013 FOR RESIDENTIAL RENOVATION ACTIVITIES AT THE ALISO MEADOWS CONDOMINIUM COMPLEX

SUMMARY:

The City has been awarded $162,000 from the County of Orange to continue its on-going efforts to rehabilitate the Aliso Meadows condominium complex located on Via Lomas. Funding is provided through the County's Community Development Block Grant (CDBG) program. The program is made available to low income households in partnership with the Aliso Meadows Homeowners Association. Program funds are used to make exterior repairs to housing units.

Historically, the City has used redevelopment funds to have a third party consultant administer the contract. Due to the elimination of redevelopment agencies by the state on March 1, 2012, the City has no funds to implement the contract at this time. However, the City Council should enter into the contract in the event funding becomes available for contract administration activities through the successor agency to the former Lake Forest Redevelopment Agency.

BACKGROUND:

Over the past seven years the City has received Community Development Block Grant (CDBG) funds through the County for the purpose of completing rehabilitation work at the Aliso Meadows condominium complex located on Via Lomas. CDBG funds are distributed by the federal government to local agencies which then apply the funds towards specific projects that generally serve low income residents. Aliso Meadows was originally built as an affordable housing development by the County in 1980 and consists of 248 units.

To date the City has obtained nearly $2.1 million dollars in CDBG money which has been used for some level of rehabilitation work on 152 units. Only 68 of the units have completed the full scope of rehabilitation work needed. The scope of work has generally involved several components including replacement of deteriorated wood siding on the units, painting, roof repairs, water heater enclosure repairs, repair of termite damage and repair/ replacement of heating and air conditioning units. The scope of rehabilitation work for each unit varies depending on the amount of work needed and the funds

available. The work completed to date has provided owners and tenants with the ability to keep pace with needed maintenance which may not have otherwise occurred.
Should contract administration funding become available, use of the CDBG funds would be subject to a future agreement between the City and the Aliso Meadows Condominium Association which staff would have to bring back to the City Council for review and approval. Staff anticipates the FY2012/13 CDBG funds would be sufficient to complete rehabilitation work for 17 units.

FISCAL IMPACT:
The project has no direct fiscal impact. However, in the event the successor agency to the former Lake Forest Redevelopment Agency does not provide funding needed to administer the CDBG contract as an on-going obligation, the City Council would have to determine if use of the General Fund was appropriate to implement the project. The cost of administering the CDBG contract has historically been $20,000 to $30,000 per fiscal year.

CEQA: The Aliso Meadows Project is Categorically Exempt from the requirements of CEQA pursuant to California Code of Regulations Title 14, Chapter 3, Section 15301 which exempts projects consisting of repair or maintenance of existing private structures where no expansion of the facilities is involved.

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE A CONTRACT WITH THE COUNTY OF ORANGE FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR THE 2012-2013 FISCAL YEAR AND AUTHORIZE THE MAYOR AND CITY MANAGER TO EXECUTE THE CONTRACT.

ATTACHMENTS:

1. County Contract (w/ attachments)
2. Notice of Exemption

CONTRACT

BETWEEN

COUNTY OF ORANGE

AND

CITY OF LAGUNA HILLS

FOR

HOUSING REHABILITATION

ALISO MEADOWS REHABILITATION PROJECT

CDBG – CFDA NUMBER 14.218

5/8/2012 ITEM NO. 4.4

CONTRACT

ATTACHMENTS / EXHIBITS

AGREEMENT

This Agreement, hereinafter referred to as "CONTRACT" is made between the County of Orange, a political subdivision of the State of California and recognized Urban County under the Federal Housing and Community Development Act of 1974 (Public Law 93-383), as amended, with a place of business at 1770 North Broadway, Santa Ana, CA 92706-2642; hereinafter referred to as "COUNTY," and City of Laguna Hills, a municipal corporation, in the State of California with a place of business at 24035 El Toro Road, Laguna Hills, CA 92653, hereinafter referred to as "SUBRECIPIENT," with COUNTY and SUBRECIPIENT sometimes referred to as "PARTY", or collectively as "PARTIES."

This Agreement, hereinafter referred to as CONTRACT, is entered into on ___________.

RECITALS

This CONTRACT is made with reference to the following facts, among others:

WHEREAS, COUNTY has applied for and anticipates receiving funds from the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", under Title I of the Housing and Community Development Act of 1974 (Public Law 93-383, as amended) for the purpose of funding programs meeting one of the HUD national objectives; and

WHEREAS, a Grant Agreement between HUD and the County of Orange has been entered; and

WHEREAS, COUNTY and Participating Cities previously entered into a Cooperation Agreement dated July 1, 2012 as amended, in which both parties agreed to cooperate in the undertaking, or assist in the undertaking, of community development and housing assistance activity; and

WHEREAS, SUBRECIPIENT has submitted to COUNTY an application for funding of a housing and community development activity; and

WHEREAS, COUNTY adopted its FY 2012-13 Annual Action Plan, (hereinafter referred to as "Annual Action Plan"), including any substantial amendments, which sets forth the PROGRAM described herein; and

WHEREAS, HUD, in accordance with 24 CFR Part 570 Subpart O, 570.902, will annually review the performance of COUNTY to determine whether COUNTY has carried out its Community Development Block Grant (CDBG) assisted activities in a timely manner and has significantly disbursed CDBG funds and met the mandated "1.5 ratio" threshold; and

WHEREAS, COUNTY approved an allocation of $162,000.00 (One Hundred Sixty-Two Thousand Dollars and 00 Cents) in program funding to SUBRECIPIENT for the Fiscal Year 2012-13; and

WHEREAS, HUD has accepted and certified the aforementioned ANNUAL ACTION PLAN; and

WHEREAS, COUNTY engages SUBRECIPIENT to assist COUNTY in utilizing aforesaid funds:

NOW, THEREFORE, the PARTIES mutually agree as follows:

DEFINITIONS

For the purposes of this CONTRACT the following definitions shall apply:

1. HUD: United States Department of Housing and Urban Development.
2. OC COMMUNITY RESOURCES (OCCR): Designated as the Lead for the development and implementation of County of Orange Urban County Program's Consolidated Plan.
3. DIRECTOR: DIRECTOR of OC Community Resources, or designee.
4. PROGRAM INCOME: The gross income received by SUBRECIPIENT directly generated from the use of the subject program funds.
5. GRANTEE PERFORMANCE REPORT (GPR) INFORMATION FORM: A PROGRAM activity data document provided by COUNTY to SUBRECIPIENT used to monitor and track the performance of SUBRECIPIENT.
6. OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY: A COUNTY document setting policies regarding types of documentation required to support the costs incurred and paid (including but not limited to copies of paid invoices, certified payroll registers, bank statements, etc.)
7. PROJECT: Any site or sites, including buildings, and/or activities assisted with federal program funds.
8. OMB: Federal Office of Management and Budget.
9. CAPER: Consolidated Annual Performance and Evaluation Report. An annual published report to HUD and the public on all housing-related activities.
10. CDBG: 24 CFR Part 570 - Community Development Block Grant – the CDBG regulations set forth eligible activities and the national objectives that each activity must meet. The Catalog of Federal Domestic Assistance (CFDA) # 14.218 distributes formula grants (CDBG) to develop viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income.
11. CONTINUUM OF CARE: An Orange County group composed of representatives of relevant organizations that serve homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of services to address the various needs of homeless persons and persons at risk of homelessness.
12. HOMELESS MANAGEMENT INFORMATION SYSTEM (HMIS): The information system designated by the Continuum of Care to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness. (24 CFR Part 580)
13. EQUIPMENT: 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.

14. SUBSTANTIAL AMENDMENT: The following criteria will be used by the COUNTY – if any one criteria applies, a substantial amendment will be required:
   14.1 A new activity not previously listed and described in the Consolidated Plan/Annual Action Plan;
   14.2 When a proposal is made to amend the description of an existing activity in such a way that the newly described purpose, scope, or beneficiaries differ significantly from the original activity's purpose, scope, or beneficiaries; or
   14.3 An increase in the amount of Federal Community Planning Development and/or local funds allocated to an existing activity when the following apply:
      14.3.1 An increase in funding for a public service activity in an amount greater than a 50% increase over the current funded amount.
      14.3.2 An increase in the funding for public facility improvements/housing rehabilitation in an amount greater than a 50% increase over the current funded amount.

15. CONSTRUCTION BID PACKAGE: A package of bidding documents which includes the proposal, bidding instructions, CONTRACT documents, detailed estimated costs, and plans and specifications for a construction project, all prepared in accordance with applicable Federal regulations.

16. PROGRAM ADMINISTRATION: An activity relating to the general management, oversight and coordination of community development programs. Costs directly related to carrying out eligible activities are not included.

ARTICLES

General Terms and Conditions:

A. **Governing Law and Venue**: This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange COUNTY, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another COUNTY.

B. **Entire CONTRACT**: This CONTRACT, including Attachments A, B, C, D and E and Exhibits A, B, C and D which are attached hereto and incorporated herein by this reference, when accepted by the SUBRECIPIENT either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire CONTRACT between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing. Electronic acceptance of any additional terms, conditions or supplemental CONTRACTs by any COUNTY

employee or agent, including but not limited to installers of software, shall not be valid or binding on COUNTY unless accepted in writing by COUNTY's Purchasing Agent or his designee, hereinafter "Purchasing Agent."

C. **Amendments**: No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

D. **Taxes**: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

E. **Delivery:** Time of delivery of services is of the essence in this CONTRACT. COUNTY reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed scope of services. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by COUNTY.

F. **Acceptance/Payment**: Unless otherwise agreed to in writing by the COUNTY, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of COUNTY, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty**: SUBRECIPIENT expressly warrants that the services covered by this CONTRACT are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon SUBRECIPIENT's part to indemnify, defend and hold COUNTY and its indemnities as identified in paragraph "P" below, and as more fully described in paragraph "P", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by COUNTY by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement**: Unless otherwise expressly provided in this CONTRACT, SUBRECIPIENT shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. SUBRECIPIENT warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. SUBRECIPIENT agrees that, in accordance with the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold COUNTY and COUNTY Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

I. **Assignment or Sub-Contracting**: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or sub-contracted by SUBRECIPIENT without the express written consent of COUNTY. Any attempt by SUBRECIPIENT to assign or sub-

contract the performance or any portion thereof of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTRACT.

J. **Non-Discrimination**: In the performance of this CONTRACT, SUBRECIPIENT agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-SUBRECIPIENTs to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. SUBRECIPIENT acknowledges that a violation of this provision shall subject SUBRECIPIENT to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

K. **Termination**: In addition to any other remedies or rights it may have by law, COUNTY has the right to terminate this CONTRACT without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of CONTRACT, any misrepresentation or fraud on the part of the SUBRECIPIENT. Exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligations.

L. **Consent to Breach Not Waiver**: No term or provision of this CONTRACT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Remedies Not Exclusive**: The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either party to any other remedies provided by law.

N. **Independent Contractor**: SUBRECIPIENT shall be considered an independent CONTRACTOR and neither SUBRECIPIENT nor its employees; nor anyone working under SUBRECIPIENT shall be considered an agent or an employee of COUNTY. Neither SUBRECIPIENT nor its employees; nor anyone working under SUBRECIPIENT shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

O. **Performance**: SUBRECIPIENT shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to COUNTY's satisfaction. SUBRECIPIENT shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the SUBRECIPIENT under this CONTRACT. SUBRECIPIENT shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of COUNTY required in its governmental capacity, in connection with performance of the work; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-SUBRECIPIENTs.

P. **Insurance**:

Insurance Provisions

Prior to the provision of services under this CONTRACT, the SUBRECIPIENT agrees to purchase all required insurance at SUBRECIPIENT's expense and to deposit with the COUNTY Certificates of Insurance, including all endorsements required herein,

necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the COUNTY during the entire term of this CONTRACT. In addition, all sub-SUBRECIPIENTs performing work on behalf of SUBRECIPIENT pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for SUBRECIPIENT.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of $25,000 ($5,000 for automobile liability), shall specifically be approved by the COUNTY Executive Office (CEO)/Office of Risk Management.
If the SUBRECIPIENT fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

Qualified Insurer
The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**

If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the SUBRECIPIENT shall provide the minimum limits and coverage as set forth below:

Coverage	**Minimum Limits**
Commercial General Liability	$1,000,000 per occurrence; $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles	$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence
Professional Liability Insurance	$1,000,000 per claims made or per occurrence
Sexual Misconduct Liability	$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the COUNTY of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
2) A primary non-contributing endorsement evidencing that the SUBRECIPIENT's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this CONTRACT shall give the County of Orange 30 day notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If SUBRECIPIENT's Professional Liability policy is a "claims made" policy, SUBRECIPIENT shall agree to maintain professional liability coverage for two years following completion of CONTRACT.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the SUBRECIPIENT fails to provide the insurance certificates and endorsements within seven (7) days of notification to OC Community Resources/Contract Development and Management, award may be made to the next qualified vendor.

COUNTY expressly retains the right to require SUBRECIPIENT to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify SUBRECIPIENT in writing of changes in the insurance requirements. If SUBRECIPIENT does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty days of receipt of such notice, this CONTRACT may be in breach without further notice to SUBRECIPIENT, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit SUBRECIPIENT's liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage and limits available from the insurer.

Q. **Bills and Liens**: SUBRECIPIENT shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. SUBRECIPIENT shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, SUBRECIPIENT shall promptly procure its release and, in accordance with the requirements of paragraph "P" above, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

R. **Changes**: SUBRECIPIENT shall make no changes in the work or perform any additional work without the COUNTY's specific written approval.

S. **Change of Ownership**: SUBRECIPIENT agrees that if there is a change or transfer in ownership of SUBRECIPIENT's business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume SUBRECIPIENT's duties and obligations contained in this CONTRACT and complete them to the satisfaction of COUNTY.

T. **Force Majeure**: SUBRECIPIENT shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided SUBRECIPIENT gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and SUBRECIPIENT avails himself of any available remedies.

U. **Confidentiality**: SUBRECIPIENT agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this CONTRACT. All such records and information shall be considered confidential and kept confidential by SUBRECIPIENT and SUBRECIPIENT's staff, agents and employees.

V. **Compliance with Laws**: SUBRECIPIENT represents and warrants that services to be provided under this CONTRACT shall fully comply, at SUBRECIPIENT's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. SUBRECIPIENT acknowledges that COUNTY is relying on SUBRECIPIENT to ensure such compliance, and pursuant to the requirements of paragraph "P" above, SUBRECIPIENT agrees that it shall defend, indemnify and hold COUNTY and COUNTY Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.

W. **Freight (F.O.B. Destination):** SUBRECIPIENT assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this CONTRACT.

X. **Pricing**: The CONTRACT bid price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of services attached to this CONTRACT, and no additional compensation will be allowed therefore, unless otherwise provided for in this CONTRACT.

Y. **Waiver of Jury Trial**: Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this CONTRACT and /or any other claim of injury or damage.

Z. **Terms and Conditions**: SUBRECIPIENT acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.

AA. **Headings**: The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

BB. **Severability**: If any term, covenant, condition, or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

CC. **Calendar Days**: Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

DD. **Attorney Fees**: In any action or proceeding to enforce or interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

EE. **Interpretation**: This CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the party that has drafted it is not applicable and is waived. The provisions of this CONTRACT shall be interpreted in a reasonable manner to affect the purpose of the parties and this CONTRACT.

FF. **Authority**: The Parties to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

GG. **Employee Eligibility Verification:** The SUBRECIPIENT warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The SUBRECIPIENT shall obtain, from all employees, consultants and sub-SUBRECIPIENTs performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The SUBRECIPIENT shall retain all such documentation for all covered employee, consultants and sub-SUBRECIPIENTs for the period prescribed by the law. The SUBRECIPIENT shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the SUBRECIPIENT or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.

HH. **Indemnification:** SUBRECIPIENT agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by SUBRECIPIENT pursuant to this CONTRACT. If judgment is entered against SUBRECIPIENT and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, SUBRECIPIENT and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Additional Terms and Conditions:

1. **Scope of Services:** This CONTRACT specifies the Contractual terms and conditions by which the COUNTY will procure services from SUBRECIPIENT as further detailed in the Scope of Services, identified and incorporated herein by this reference as "Attachment A".

2. **Term of CONTRACT:** This CONTRACT shall be effective from July 1, 2012 through June 30, 2013, unless otherwise terminated by the COUNTY. The term of this CONTRACT may be extended upon mutual agreement of the parties in writing in accordance with paragraph 2.2.

2.1 Eligible costs related to services provided by SUBRECIPIENT must be incurred during the period beginning July 1, 2012. The Project shall be completed and all funds provided through this CONTRACT shall be expended on eligible Project activities through and including June 30, 2013.

2.2 Housing Rehabilitation CONTRACTS and Public Facilities & Improvement CONTRACTS.

2.2.1 SUBRECIPIENT may be eligible to request additional funding up to the maximum set forth in the applicable FY 2012-13 Annual Action Plan if *SUBRECIPIENT* meets or exceeds any one of the Required Expenditure Thresholds at 50%, 70% or 80% on or prior to the milestone date as set forth in paragraph 24.3.3.

2.2.2 If additional funding is available for allocation to SUBRECIPIENT, SUBRECIPIENT and COUNTY shall first amend the *SUBRECIPIENT*

SCOPE OF SERVICES component of this CONTRACT. Furthermore, SUBRECIPIENT shall demonstrate, to the satisfaction of DIRECTOR, that the required Performance Expenditure and Accomplishment Thresholds set forth in paragraph 26.3., will continue to be met before such extension and additional allocation shall be granted.

2.2.3 CONTRACT Extension

2.2.3.1 The term of this CONTRACT and the provisions herein may be extended to cover an additional time period as specified herein.

2.2.3.2 The date for PROJECT completion and expenditure of all funds may be extended by the DIRECTOR without further action by the BOARD for a period not to exceed six (6) months from June 30, 2013. For all extensions, the deadline for submittal of invoices shall be forty-five (45) days after the new expiration date.

2.2.3.3 CONTRACT extension provisions are not applicable to PROGRAM ADMINISTRATION activities.

2.3 Housing Rehabilitation CONTRACTS and Public Services CONTRACTS may be renewed on the same terms, conditions, and scope of services for up to two (2) individual consecutive one-year periods upon mutual written agreement by the COUNTY and SUBRECIPIENT.

3. **Contingency of Funds:** SUBRECIPIENT acknowledges that funding or portions of funding for this CONTRACT may also be contingent upon the receipt of funds from, and/or appropriation of funds by Federal, State of California or local Government funds to COUNTY. If such funding and/or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate or modify this CONTRACT without penalty.

3.1 If funding levels are significantly affected by Federal budget and funds are not allocated and available for the continuance of the function performed by SUBRECIPIENT, the CONTRACT may be terminated by the COUNTY at the end of the period for which funds are available. The COUNTY shall notify SUBRECIPIENT at the earliest possible time of any service, which will or may be affected by a shortage of funds. No penalty shall accrue to the COUNTY in the event this provision is exercised and the COUNTY shall not be obligated nor liable for any damages as a result of termination under this provision of this CONTRACT, and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any CONTRACT or other obligation for future payment of money in excess of appropriations authorized by law.

4. **Fiscal Appropriations:** This CONTRACT is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this CONTRACT. If such appropriations are not approved, the CONTRACT will be terminated without penalty to the COUNTY.

5. **Adjustments – Scope of Services:** No adjustments made to the scope of services will be authorized without prior written approval of the COUNTY assigned Purchasing Agent.

6. **Changes/Extra Work:** The SUBRECIPIENT shall make no changes to this CONTRACT without the COUNTY's written consent. In the event that there are new or unforeseen requirements, the COUNTY with the SUBRECIPIENT's concurrence has the discretion to request official changes at any time without changing the intent of this CONTRACT.

If COUNTY-initiated changes or changes in laws or government regulations affect price, the SUBRECIPIENT's ability to deliver services, or the program schedule, the SUBRECIPIENT shall give the COUNTY written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the COUNTY and the SUBRECIPIENT was notified of the change. Such changes shall be agreed to in writing and incorporated into a CONTRACT Amendment; said Amendment shall be issued by the COUNTY-assigned Purchasing Agent, shall require the mutual consent of all Parties, and may prohibit the SUBRECIPIENT from proceeding with the work as set forth in this CONTRACT.

7. **Breach of CONTRACT:** The failure of the SUBRECIPIENT to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event the COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT:

   Terminate the CONTRACT immediately, pursuant to paragraph K and paragraphs 30 through 32 herein;

   Afford the SUBRECIPIENT written notice of the breach and ten calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;

   Discontinue payment to the SUBRECIPIENT for and during the period in which the SUBRECIPIENT is in breach; and

   Offset against any monies billed by the SUBRECIPIENT but yet unpaid by the COUNTY those monies disallowed pursuant to the above.

8. **Conditions Affecting Work:** The SUBRECIPIENT shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this CONTRACT; and to know the general conditions which can affect the work or the cost thereof. Any failure by the SUBRECIPIENT to do so will not relieve SUBRECIPIENT from responsibility for successfully performing the work without additional cost to the COUNTY. The COUNTY assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this CONTRACT, unless such understanding or representations by the COUNTY are expressly stated in the CONTRACT.

9. **Conflict of Interest – SUBRECIPIENT's Personnel:** The SUBRECIPIENT shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the SUBRECIPIENT; the SUBRECIPIENT's employees, agents, and relatives; sub-tier SUBRECIPIENTs; and third Parties associated with accomplishing work and services hereunder. The SUBRECIPIENT's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

   SUBRECIPIENT agrees to abide by the provisions of OMB Circulars 102 and 110, as applicable, 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this CONTRACT.

SUBRECIPIENT further covenants that in the performance of this CONTRACT no person having such a financial interest shall be employed or retained by SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of COUNTY or SUBRECIPIENT, or any designated public agencies which are receiving funds under the CDBG Entitlement Program.

10. **Conflict of Interest – COUNTY Personnel:** The County of Orange Board of Supervisors' policy prohibits its employees from engaging in activities involving a conflict of interest. The SUBRECIPIENT shall not, during the period of this CONTRACT, employ any COUNTY employee for any purpose.

11. **Consulting Contract – Follow-On Work:** No person or firm or subsidiary thereof who has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a CONTRACT for the provision of services, the delivery of goods or supplies, or the provision of any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services contract. Therefore, any consultant that contracts with a COUNTY agency/department to develop a feasibility study or to provide formal recommendations is precluded from contracting for any work recommended in the study or included in the recommendations.

12. **Contingent Fees:** The SUBRECIPIENT warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the SUBRECIPIENT or bona fide established commercial or selling agencies maintained by the SUBRECIPIENT for the purpose of securing business.

    For breach or violation of this warranty, the COUNTY shall have the right to terminate this CONTRACT in accordance with the termination clause and at its sole discretion to deduct from the CONTRACT price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from the SUBRECIPIENT.

13. **Bankruptcy/Insolvency:** If the SUBRECIPIENT should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the SUBRECIPIENT's insolvency, the COUNTY may terminate this CONTRACT.

14. **SUBRECIPIENT Personnel – Reference Checks:** The SUBRECIPIENT warrants that all persons employed to provide service under this CONTRACT have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this CONTRACT. SUBRECIPIENT's employees assigned to this program must meet character standards as demonstrated by reference checks, coordinated by the agency/department issuing this CONTRACT.

15. **SUBRECIPIENT's Project Manager and Key Personnel:** SUBRECIPIENT shall appoint a Project Manager to direct the SUBRECIPIENT's efforts in fulfilling SUBRECIPIENT's obligations under this CONTRACT. This Project Manager shall be subject to approval by the COUNTY and shall not be changed without the written consent of the COUNTY's Project Manager, which consent shall not be unreasonably withheld.

    The SUBRECIPIENT's Project Manager shall be assigned to this project for the duration of this CONTRACT and shall diligently pursue all work and services to meet the program time lines. The COUNTY's Project Manager shall have the right to require the removal

and replacement of the SUBRECIPIENT's Project Manager from providing services to the COUNTY under this CONTRACT. The COUNTY's Project Manager shall notify the SUBRECIPIENT in writing of such action. The SUBRECIPIENT shall accomplish the removal within three (3) business days after written notice by the COUNTY's Project Manager. The COUNTY's Project Manager shall review and approve the appointment of the replacement for the SUBRECIPIENT's Project Manager. The COUNTY is not required to provide any additional information, reason or rationale in the event it elects to request the removal of SUBRECIPIENTs Project Manager from providing services to the COUNTY under this CONTRACT.

16. **Data – Title To:** All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the SUBRECIPIENT in the performance of this CONTRACT will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the SUBRECIPIENT after completion or termination of this CONTRACT without the express written consent of the COUNTY. All materials, documents, data or information, including copies, must be returned to the COUNTY at the end of this CONTRACT.

17. **County Of Orange Child Support Enforcement:** In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of award of CONTRACT, the selected SUBRECIPIENT agrees to furnish to the CONTRACT administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:
    - 17.1 In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address;
    - 17.2 In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
    - 17.3 A certification that the SUBRECIPIENT has fully complied with all applicable federal and State reporting requirements regarding its employees; and
    - 17.4 A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

    Failure of the SUBRECIPIENT to timely submit the data and/or certifications required may result in the CONTRACT being awarded to another SUBRECIPIENT. In the event a CONTRACT has been issued, failure of the SUBRECIPIENT to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

18. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the COUNTY pays $600 or more or with whom the COUNTY enters into a CONTRACT for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations as set forth in Exhibit A., attached hereto and incorporated herein by reference.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a CONTRACT for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a CONTRACT for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

19. **Appointment and Acceptance:** The COUNTY designates the SUBRECIPIENT as the exclusive SUBRECIPIENT for the management of the Program, and the SUBRECIPIENT accepts the appointment, subject to the terms and conditions set forth in this CONTRACT. SUBRECIPIENT hereby agrees to manage the Program in an efficient and satisfactory manner to the best of its ability.

20. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the COUNTY, state or federal government, this CONTRACT may be subjected to unusual usage. The SUBRECIPIENT shall service the COUNTY during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the SUBRECIPIENT shall apply to serving the COUNTY's needs regardless of the circumstances. If the SUBRECIPIENT is unable to supply the goods/services under the terms of the CONTRACT, then the SUBRECIPIENT shall provide proof of such disruption and a copy of the invoice for the goods/services from the SUBRECIPIENT's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the SUBRECIPIENT shall show both the emergency purchase order number and the CONTRACT number.

21. **SUBRECIPIENT's Responsibilities:** The SUBRECIPIENT shall:
    21.1 Operate and manage the Project and provide Services/Activities as set forth herein. In this regard the SUBRECIPIENT will assess current services being provided, assess what Services/Activities are needed, or have been requested, and structure the Services/Activities accordingly.

22. **Business License:** At its own expense, SUBRECIPIENT shall qualify to do business and obtain and maintain such licenses as may be required for the performance by SUBRECIPIENT of its services under this CONTRACT.

23. **Substantial Amendments:**
    23.1 If any amendment results in a change in the funding amount, that does not trigger a SUBSTANTIAL AMENDMENT, as defined, SUBRECIPIENT SCOPE OF SERVICES, threshold and milestone dates or schedule of activities to be undertaken as part of this CONTRACT, such modifications will be incorporated only by written amendment executed by Director and SUBRECIPIENT.

23.2 In an effort to efficiently utilize CDBG funds within timeframes required by HUD, the COUNTY will consider the reprogramming of unspent CDBG balances from completed and cancelled CDBG-funded activities to other eligible activities as a "Non-Substantial Amendment".

In the event that any of these "administrative" reprogramming actions fall under the "Substantial Amendment" criteria, the proposed actions to the Citizen Participating process, requires formal action by the Board of Supervisors, and subsequent approval by HUD.

24. Payment Requirements:

24.1 CONTRACT Amount: It is expressly agreed and understood that the total amount to be paid by COUNTY under this CONTRACT shall not exceed the total COUNTY funding as set forth in Attachment B., - Compensation to SUBRECIPIENT attached hereto and incorporated herein by reference.

24.2 COUNTY will reclaim any unused balance of funds for reallocation to other COUNTY approved projects.

24.3 Payment of Project Activities:

24.3.1 Payment of Project Activities: COUNTY will reimburse SUBRECIPIENT for eligible project-related costs only. SUBRECIPIENT shall submit requests for reimbursement to COUNTY on a monthly basis beginning on July 1, 2012, and must provide adequate documentation as required by COUNTY in accordance with the *OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY*, as set forth in Exhibit B., attached hereto and incorporated herein by reference. In addition, SUBRECIPIENT will provide a progress performance report ("GPR INFORMATION FORM") for the time period covered, as prescribed by COUNTY. Failure to provide any of the required documentation and reporting will cause COUNTY to withhold all or a portion of a request for reimbursement, or return the entire reimbursement package to SUBRECIPIENT, until such documentation and reporting has been received and approved by COUNTY.

24.3.2 If SUBRECIPIENT has no request for reimbursement during any quarter during the term of this CONTRACT, a GPR Information Form, including and explanation as to why no invoices were being processed, shall be required in lieu of a request for reimbursement.

24.3.3 The following "Required Expenditure Threshold" criteria have been established to guide the SUBRECIPIENT in structuring and scheduling their expenditure of funds received through this CONTRACT, through term of CONTRACT. The criteria thresholds are consistent with the criteria used by OC Community Resources to determine performance including, but not limited to, determinations of future award of funds, additional funding requests and/or determinations for the recapture of funding.

Milestone Date	*Minimum Required Expenditure Threshold*
December 15th	50% of Contracted Amount Expended
January 15th	70% of Contracted Amount Expended
March 15th	80% of Contracted Amount Expended

24.3.4 SUBRECIPIENT will have forty-five (45) days following the expiration of the CONTRACT to submit outstanding invoices for reimbursement of eligible costs incurred during the CONTRACT period. After the forty-five (45) day period for submitting invoices has expired, COUNTY shall

reallocate the remaining balance under this CONTRACT for other program purposes and SUBRECIPIENT shall be ineligible for any further reimbursement.

24.4 Funds shall not be disbursed for any costs incurred prior to the certification by COUNTY and HUD of Certificate(s) of Insurance and environmental compliance as further defined in paragraph P and paragraph 34 of this CONTRACT. Additionally, no funds shall be disbursed prior to submittal of certified payroll documentation to COUNTY with each invoice package/request for payment, as further defined in paragraph 33.

24.5 Readiness – for Housing Rehabilitation and Public Facilities & Improvement Projects:
SUBRECIPIENT shall be required to demonstrate to COUNTY its readiness to immediately initiate its Project upon execution of this CONTRACT by providing to the COUNTY documentation including, but not limited to, the following: Board or Council Minutes/Resolution; Awarded bid documents with timeline requirements; and, executed Architect and Engineer (hereafter referred to as "A&E") contracts with specific project timelines consistent with funding. By September 30 of contract term, SUBRECIPIENT shall provide COUNTY a Project Readiness Checklist incorporating the status of all Project-phasing milestones. In the case of milestones not yet reached, SUBRECIPIENT shall provide projected target dates for when said milestones would be met. The Project Readiness Checklist shall clearly demonstrate that SUBRECIPIENT will meet the "Required Expenditure Thresholds" as set forth in paragraph 24.3.3. SUBRECIPIENT acknowledges that said Project Readiness Checklist may be considered to evaluate the performance of the SUBRECIPIENT.

25. Program Income

25.1 SUBRECIPIENT shall comply with regulations set forth in 24 CFR 570.504, as well as all applicable State or COUNTY regulations concerning the reporting and payment procedures for program income.

25.2 All Program Income accrued shall be returned to COUNTY on a quarterly basis prior to SUBRECIPIENT receiving any reimbursement from grant funds provided under this CONTRACT.

25.3 SUBRECIPIENT shall provide information of the receipt of Program Income by SUBRECIPIENT related to Program on all GPR INFORMATION FORMS submitted with requests for reimbursement.

25.4 SUBRECIPIENT shall complete and submit a Year-End Program Income letter, indicating amount of Program Income and include any reimbursement remittance necessitated therein, by July 15, after the close of the CONTRACT fiscal year.

26. Performance:

26.1 SUBRECIPIENT shall provide the oversight, administration, and project management necessary to accomplish all contracted activities in a timely manner. SUBRECIPIENT also agrees to comply with all applicable Federal, State, and local laws and regulations governing the funds provided under this CONTRACT.

26.2 SUBRECIPIENT shall comply with all applicable HUD regulations, as described in paragraph 35 General Administration of this CONTRACT, concerning administrative requirements and maintain records as to services provided and total number of persons served through the project, including but not limited to, population-served analysis (i.e., extremely-low income persons, very-low income persons, and low-income persons as defined by HUD). Such information shall

be available for periodic monitoring by representatives of COUNTY or HUD and shall be submitted by SUBRECIPIENT in report form to COUNTY by dates specified by COUNTY.

26.3 The following "Performance Threshold" criteria shall be used to assess the level of performance of the SUBRECIPIENT, including Attachment A. - Scope of Services, attached hereto and incorporated herein by reference. Furthermore, the criteria will be considered by OC Community Resources when determining future funding. In order to be considered in compliance with the performance threshold criteria, the SUBRECIPIENT must, on or before the required milestone date, submit to OC Community Resources a request for reimbursement which demonstrates that SUBRECIPIENT has expended funds and met their proposed accomplishment goals at the required levels, unless exempted in writing by the DIRECTOR.

Milestone Date	*Minimum Required Expenditure Threshold*
December 15th	50% of Contracted Amount Expended 50% of Proposed Accomplishments Met
January 15th	70% of Contracted Amount Expended 70% of Proposed Accomplishments Met
March 15th	80% of Contracted Amount Expended 80% of Proposed Accomplishments Met

Failure to achieve at least the aforementioned 50% drawdown, without written exception approved by the DIRECTOR, may cause any remaining balance in this CONTRACT to be reclaimed by COUNTY, and will negatively affect future funding to SUBRECIPIENT. Failure to achieve the aforementioned 80% drawdown goal, without written exception approved by the DIRECTOR, may cause any remaining balance in this CONTRACT to be reclaimed by COUNTY, and will impact future funding to SUBRECIPIENT.

26.4 SUBRECIPIENT shall complete and submit a Year End GPR INFORMATION FORM by July 15, after the close of the CONTRACT fiscal year.

26.5 Should the activity being funded through this CONTRACT be completed, cancelled or terminated prior to the termination date set forth herein in paragraph 2. Additional Terms and Conditions, SUBRECIPIENT shall complete and submit a Mid-Year GPR INFORMATION FORM at the time of the completion, cancellation or termination. Said GPR INFORMATION FORM shall consist of a cumulative reporting of project-related expenditures and accomplishments relative to the *SCOPE OF SERVICES,* as set forth in Attachment A., attached hereto and incorporated herein by reference. If activity funded through this CONTRACT is completed, or if funds allocated through this CONTRACT are fully expended, prior to end of CONTRACT term, SUBRECIPIENT must continue to serve its clients for the entire term of this CONTRACT.

26.6 SUBRECIPIENT shall complete and submit a GPR INFORMATION FORM in support of all requests for reimbursement. Said GPR INFORMATION FORM shall consist of a cumulative report of project related accomplishments as set forth in Attachment A., SCOPE OF SERVICES, attached hereto and incorporated herein by reference, for the subject quarter. If at any time during the term of this CONTRACT SUBRECIPIENT has no activity occur during any quarter, SUBRECIPIENT shall prepare and submit to COUNTY a Quarterly GPR INFORMATION FORM, regardless of actual activity.

26.7 SUBRECIPIENT acknowledges that the GPR INFORMATION FORM is a monitoring tool that will be reviewed and evaluated to determine SUBRECIPIENT's level of performance relative to this CONTRACT.

26.8 SUBRECIPIENT shall submit all requested data necessary to complete the Consolidated Annual Performance and Evaluation Report (CAPER), and monitor program accountability and progress in accordance with HUD requirements, in the format and at the time designated by COUNTY.

27. Performance Monitoring:

27.1 Performance Monitoring of SUBRECIPIENT by COUNTY and/or HUD shall consist of requested and/or required written reporting, as well as onsite monitoring by COUNTY or HUD representatives.

27.2 COUNTY shall periodically evaluate SUBRECIPIENT's progress in complying with the terms of this CONTRACT. SUBRECIPIENT shall cooperate fully during such monitoring. COUNTY shall report the findings of each monitoring to SUBRECIPIENT.

27.3 COUNTY shall monitor the performance of SUBRECIPIENT against the goals, outcomes, milestones and performance standards required herein. Substandard performance, as determined by COUNTY, will constitute non-compliance with this CONTRACT for which COUNTY may immediately terminate the CONTRACT. If action to correct such substandard performance is not taken by SUBRECIPIENT within the time period specified by COUNTY, payment(s) will be denied in accordance with the provisions contained in paragraph 41 of this CONTRACT.

28. Disputes – CONTRACT:

28.1 The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this CONTRACT is not disposed of in a reasonable period of time by the SUBRECIPIENT's Project Manager and the COUNTY's Project Manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:

28.1.1 The SUBRECIPIENT shall submit to the agency/department assigned COUNTY Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this CONTRACT, unless the COUNTY, on its own initiative, has already rendered such a final decision.

28.1.2 The SUBRECIPIENT's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the CONTRACT, the SUBRECIPIENT shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the CONTRACT adjustment for which the SUBRECIPIENT believes the COUNTY is liable.

28.2 Pending the final resolution of any dispute arising under, related to, or involving this CONTRACT, the SUBRECIPIENT agrees to diligently proceed with the provision of services under this CONTRACT. The SUBRECIPIENT's failure to diligently proceed shall be considered a material breach of this CONTRACT.

Any final decision of the COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by the COUNTY Purchasing Agent or his designee. If the COUNTY fails to render a decision within ninety (90) days after receipt of the SUBRECIPIENT's demand, it shall be deemed a final decision adverse to the SUBRECIPIENT's contentions. Nothing in this section shall be construed as affecting the COUNTY's right to terminate the CONTRACT for Cause as stated in paragraph K herein.

29. **Gratuities:** The SUBRECIPIENT warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the SUBRECIPIENT or any agent or representative of the SUBRECIPIENT to any officer or employee of the COUNTY with a view toward securing the CONTRACT or securing favorable treatment with respect to any determinations concerning the performance of the CONTRACT. For breach or violation of this warranty, the COUNTY shall have the right to terminate the CONTRACT, either in whole or in part, and any loss or damage sustained by the COUNTY in procuring on the open market any services which the SUBRECIPIENT agreed to supply shall be borne and paid for by the SUBRECIPIENT. The rights and remedies of the COUNTY provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the CONTRACT.

30. **Termination – Convenience of the COUNTY:** The COUNTY may terminate performance of work under this CONTRACT for its convenience in whole, or, from time to time, in part if the user agency/department determines that a termination is in the COUNTY's interest. The agency/department assigned buyer shall terminate the CONTRACT by delivering to the SUBRECIPIENT a written notice of termination specifying the extent of the termination and the effective date thereof. The parties agree that, as to the terminated portion of the CONTRACT, the CONTRACT shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the CONTRACT shall not be void.
After receipt of a notice of termination and, except as directed by the assigned buyer, the SUBRECIPIENT shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The SUBRECIPIENT shall:
30.1 Stop work as specified in the notice of termination;
30.2 Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the CONTRACT;
30.3 Terminate all orders and subcontracts to the extent they relate to the work terminated;
30.4 Settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts, the approval or ratification of which will be final for purposes of this clause;
30.5 As directed by the assigned buyer transfer title and deliver to the COUNTY (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the CONTRACT had been completed, would be required to be furnished to the COUNTY;
30.6 Complete performance of the work not terminated; and
30.7 Take any action that may be necessary or as the COUNTY may direct for the protection and preservation of the property related to this CONTRACT that is in the possession of the SUBRECIPIENT and in which the COUNTY has or may

acquire an interest and to mitigate any potential damages or requests for CONTRACT adjustment or termination settlement to the maximum practical extent.

At the completion of the SUBRECIPIENT's termination efforts, the SUBRECIPIENT may submit to the assigned buyer a list indicating quantity and quality of termination inventory not previously disposed of and request instructions for disposition of the residual termination inventory.

After termination the SUBRECIPIENT shall submit a final termination settlement proposal to the user agency/department in a format acceptable to the COUNTY.

The SUBRECIPIENT shall submit the proposal promptly, but no later than 60 days from the effective date of the termination, unless extended in writing by the COUNTY upon written request of the SUBRECIPIENT within the ninety-day (90-day) period. However, if the agency/department determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension. The SUBRECIPIENT and the COUNTY may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total CONTRACT price as reduced by (a) the amount of payment previously made and (b) the CONTRACT price of work not terminated. The CONTRACT shall be amended and the SUBRECIPIENT paid the agreed amount.

If the SUBRECIPIENT and the COUNTY fail to agree on the whole amount to be paid because of the termination of work, the COUNTY shall pay the SUBRECIPIENT the amounts determined by the COUNTY as follows, but without duplication of any amounts agreed on as set forth above:

30.8 The CONTRACT price for completed supplies or services accepted by the COUNTY (or sold or acquired) not previously paid for, adjusted for any savings of freight and other charges; and

30.9 Except for normal spoiling and except to the extent that the COUNTY expressly assumes the risk of loss, the COUNTY shall exclude from the amounts payable to the SUBRECIPIENT the fair value, as determined by the agency/department, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the COUNTY.

The SUBRECIPIENT shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated CONTRACT or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.

The SUBRECIPIENT shall have the right to appeal, under the COUNTY's protest procedure, any determination made by the COUNTY, except that if the SUBRECIPIENT failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the SUBRECIPIENT under this clause, there shall be deducted:

30.10 All payment to the SUBRECIPIENT under the terminated portion of this CONTRACT;

30.11 Any claim which the COUNTY has against the SUBRECIPIENT under this or any other CONTRACT; and

30.12 The agreed price for or proceeds of sale of materials, supplies, or other things acquired by the SUBRECIPIENT or sold under the provisions of this clause and not recovered by or credited to the COUNTY.

If the termination is partial, the SUBRECIPIENT may file a proposal with the agency/department for an equitable adjustment of the price(s) of the continued portion of the CONTRACT. The agency/department shall make any equitable adjustment agreed upon. Any proposal by the SUBRECIPIENT for an equitable adjustment under this clause shall be requested within thirty (30) days from the effective date of termination unless extended in writing by agency/department.

The COUNTY may:

30.13 Under the terms and conditions it prescribes, make partial payment and payments against costs incurred by the SUBRECIPIENT for their terminated portion of the CONTRACT, if the COUNTY believes that the total of these payments will not exceed the amount to which the contactor will be entitled; and

30.14 If the total payments exceed the amount finally determined to be due, the SUBRECIPIENT shall repay the excess to the COUNTY upon demand.

In determining the amount payable to the SUBRECIPIENT and notwithstanding any other provision, if it appears that the SUBRECIPIENT would have sustained a loss on the entire CONTRACT had it been completed, the COUNTY shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.

Unless otherwise provided in this CONTRACT or by statute, the SUBRECIPIENT shall maintain all records and documents relating to the terminated portion of this CONTRACT for five (5) years after final settlement. This includes all books and other evidence bearing on the SUBRECIPIENT's costs and expenses under this CONTRACT. The SUBRECIPIENT shall make these records and documents available to the COUNTY, at the SUBRECIPIENT's office, at all reasonable times, without any direct charge. If approved by the COUNTY, photographs, microphotographs, electronic storage, or other authentic reproductions may be maintained instead of original records and documents.

31. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the SUBRECIPIENT shall submit to the COUNTY a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the COUNTY upon written request of the SUBRECIPIENT. Upon termination COUNTY agrees to pay the SUBRECIPIENT for all services performed prior to termination which meet the requirements of the CONTRACT, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the CONTRACT. Upon termination or other expiration of this CONTRACT, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the CONTRACT. In addition, each Party will assist the other Party in orderly termination of this CONTRACT and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

32. **Stop Work:** The COUNTY may, at any time, by written stop work order to the SUBRECIPIENT, require the SUBRECIPIENT to stop all or any part of the work called for by this CONTRACT for a period of 90 days after the stop work order is delivered to the SUBRECIPIENT and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this

clause. Upon receipt of the stop work order, the SUBRECIPIENT shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the SUBRECIPIENT or within any extension of that period to which the parties shall have agreed, the COUNTY shall either:

32.1 Cancel the stop work order; or

32.2 Terminate work covered by the stop work order as provided for in the termination for default or the termination for convenience clause of this CONTRACT.

If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the SUBRECIPIENT shall resume work. The COUNTY shall make an equitable adjustment in the delivery schedule, the CONTRACT price, or both, and the CONTRACT shall be modified in writing accordingly if:

32.3 The stop work order results in an increase in the time required or in the SUBRECIPIENT's cost properly allocable to the performance of any part of this CONTRACT; and

32.4 The SUBRECIPIENT asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage, provided that if the COUNTY decides the facts justify the action, the COUNTY may receive and act upon a proposal submitted at any time before final payment under this CONTRACT.

If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provision entitled, "Termination - Convenience of COUNTY," the COUNTY shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

If a stop work order is not canceled and the work covered by the stop work order is terminated for default, the COUNTY shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related CONTRACT of the SUBRECIPIENT that provides for adjustment and is affected by any stop work order under this clause. The COUNTY shall not be liable to the SUBRECIPIENT for loss of profits because of a stop work order issued under this clause.

If any provisions of this agreement are invalid under any applicable statute or rule of law, they are, to that extent, omitted, but the remainder of this agreement shall continue to be binding upon the parties hereto.

33. Federal Administrative Requirements:

33.1 Financial Management:

33.1.1 Accounting Standards: SUBRECIPIENT agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

33.1.2 Cost Principles: SUBRECIPIENT shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," or A-87, "Cost Principles for State and Local Governments" (and if SUBRECIPIENT is a governmental or quasi-governmental agency, the applicable sections of 24 CFR 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,") as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

33.2 **Civil Rights**

Compliance

33.2.1 SUBRECIPIENT agrees to comply with California Civil Rights Act Ordinances and Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12107 and 12086.

33.2.2 **Rehabilitation Act**

SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. COUNTY shall provide SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this CONTRACT.

33.2.3 **Nondiscrimination in Employment and Contracting**

SUBRECIPIENT agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279, including 24 CFR Part 8, 24 CFR 570.602 and Section 504 of Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11063. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act (HCDA) are still applicable.

33.3 **Drug-Free Workplace**:

The SUBRECIPIENT hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace as set forth in Exhibit C., attached hereto and incorporated herein by reference. The SUBRECIPIENT will:

33.3.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

33.3.2 Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:

33.3.2.1 The dangers of drug abuse in the workplace;

33.3.2.2 The SUBRECIPIENT's policy of maintaining a drug free workplace;

33.3.2.3 Any available counseling, rehabilitation, and employee assistance programs; and

33.3.2.4 Penalties that may be imposed upon employees for drug abuse violations.

33.3.3 Provide as required by Government Code Section 8355(c) that every employee who works under this CONTRACT:

33.3.3.1 Will receive a copy of the company's drug-free policy statement; and

33.3.3.2 Will agree to abide by the terms of the company's statement as a condition of employment under this CONTRACT.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both, and the SUBRECIPIENT may be ineligible for award of any future COUNTY contracts if the COUNTY determines that any of the following has occurred:

33.3.3.3 The SUBRECIPIENT has made false certification, or

33.3.3.4 The SUBRECIPIENT violates the certification by failing to carry out the requirements as noted above.

33.4 **Affirmative Action:** SUBRECIPIENT agrees that it shall be committed to carry out an Affirmative Action Program that encompasses that principals provided in President's Executive Order 11246, as revised on January 4, 2002.

33.5 **Americans with Disabilities Act:** SUBRECIPIENT agrees to comply with Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.

33.6 **Employment Restrictions:**

33.6.1 **Prohibited Activity:** SUBRECIPIENT is prohibited from using funds provided herein, or personnel employed in the administration of the program, for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

33.6.2 **OSHA:** Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

33.6.3 **Employee Rights**

Federal Minimum Wage

33.6.3.1 SUBRECIPIENT must follow the Fair Labor Standards Act (FLSA), as it currently exists and it may be amended, which sets basic minimum wage and overtime pay standards. These standards are enforced by The United States Department of Wage and Hour Division under Department's Wage and Hour Division. The Federal minimum wage provisions are contained in the FLSA. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

33.6.4 **California Minimum Wage**

33.6.4.1 SUBRECIPIENT must follow the California enacted legislation signed by the Governor of California, raising the minimum wage for all industries (MW-2007). (AB 1835, CH230, Stats of 2006, adding sections 1182.12 and 1182.13 to the California Labor Code.) Pursuant to its authority under Labor Code section 1182.13, the Department of Industrial Relations amends and republishes Sections, 1, 2, 3, and 5 of the General Minimum Wage Order. MW-2001, Section 4, Separability,

has not been changed. Consistent with this enactment, amendments are made to the minimum wage, and the meals and lodging credits sections of all of the IWC's industry and occupation orders. This summary must be made available to employees in accordance with the IWC's wage orders. Copies of the full text of the amended wage orders may be obtained by ordering on-line at www.dir.ca.gov/WP.asp or by contacting your local Division of Labor Standards Enforcement office.

33.7 **Hatch Act:** SUBRECIPIENT agrees that no funds provided, nor personnel employed under this CONTRACT, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C. Section 1501 et seq. and Chapter 15 of Title V of the U.S.C.

33.8 **Religious Organization/Activities:** In accordance with 24 CFR 570.200(j), SUBRECIPIENT shall not discriminate against faith-based organizations in administering its federal HUD activities. However, SUBRECIPIENT agrees that funds provided under this CONTRACT will not be utilized for inherently religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with 24 CFR 570.200 (j)(2).

33.9 **Anti-Lobbying:** SUBRECIPIENT certifies that:

33.9.1 No Federal appropriated funds 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 of any Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal CONTRACT, grant, loan, or Cooperative Agreement; and

33.9.2 SUBRECIPIENT will complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," if any funds other than Federal appropriated funds have been paid, in accordance with its instructions; and

33.9.3 SUBRECIPIENT shall include subject anti-lobbying certification in award documents for all sub-SUBRECIPIENTs at all tiers (including sub-subcontracts, sub-subgrants, and CONTRACT under grants, loans, and Cooperative Agreements) and that all sub-SUBRECIPIENTs shall certify and disclose accordingly.

33.10 **Audits:** If SUBRECIPIENT expends Federal funds in a fiscal year which equal or exceed $500,000 (Five hundred thousand dollars and no cents) as specified in OMB Circular A-133-Revised, SUBRECIPIENT shall cause an audit to be prepared by a Certified Public Accountant (CPA) who is a member in good standing with the American Institute of Certified Public Accountants (AICPA) of the California Society of CPA's. The audit must be performed annually in accordance with Generally Accepted Auditing Standards (GAAS) authorized by the AICPA and Federal laws and regulations governing the programs in which it participates.

Furthermore, COUNTY retains the authority to require SUBRECIPIENT to submit similarly prepared audit at SUBRECIPIENT's expense even in instances when SUBRECIPIENT's expenditure is less than $500,000. SUBRECIPIENT will be required to identify corrective action taken in response to any findings identified by CPA related to their funded activity or program.

SUBRECIPIENT will ensure an annual financial audit is performed in compliance with the Federal Single Audit Act and will submit two (2) copies of such audit report, including a copy of the management letter, to COUNTY within six (6) months of the end of each CONTRACT year in which SUBRECIPIENT has received federal funding (i.e., July 1 – June 30). Failure to meet this requirement may result in COUNTY denying reimbursement of funds to SUBRECIPIENT, as well as future funding qualification. SUBRECIPIENTS, which are exempt from statutory audit requirements, shall maintain records, which are available for review by COUNTY or Federal officials. SUBRECIPIENT acknowledges that any and all "Financial Statements" submitted to COUNTY pursuant to this COUNTY become Public Records and are subject to public inspection pursuant to Sec. 6250 et seq. of the California Government Code.

33.11 **Modifications/Transfers of Real Property:**

33.11.1 Any proposed modification or change in use of real property acquired or improved, in whole or in part, by CDBG funds from the use planned at the time of the acquisition or improvement, including disposition, is prohibited.

33.11.2 SUBRECIPIENT shall ensure that any real property under SUBRECIPIENT's control that was acquired or improved in whole or in part with CDBG funds in excess of $25,000 is either:

33.11.2.1 Used to meet one of the national objectives contained in 24 CFR 570.208 for a period not less than five years, or for such period of time as determined to be appropriate by COUNTY, after expiration of the CONTRACT and close-out of SUBRECIPIENT's participation in the CDBG Program, or, until five years after the close-out of the grant from which the assistance to the property, whichever occurs first; or,

33.11.2.2 Disposed of in a manner which results in COUNTY being reimbursed in an amount equal to the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such reimbursement is not required after the period of time specified in accordance with paragraph 33.11.2.1 above.

33.12 **Labor Standards**

33.12.1 SUBRECIPIENT agrees to contact COUNTY no less than fourteen (14) days prior to the Pre-Construction Meeting date to seek consultation regarding application of requirements per federal labor standards regulations or Davis-Bacon related Acts.

33.12.2 SUBRECIPIENT will comply with Davis-Bacon Act and/or State Prevailing Wage requirements, when applicable.

33.12.3 SUBRECIPIENT agrees to comply with all applicable requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, the provisions of CONTRACT work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333), and all other applicable Federal, State and local laws and regulations pertaining to labor standards. SUBRECIPIENT shall maintain all applicable documentation, which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to COUNTY for review upon request.

33.12.4 SUBRECIPIENT agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than eight (8) units, all contractors engaged in contracts of $2,000.00 or more for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this CONTRACT, shall comply with all applicable federal requirements including Department of Labor regulations, under 29 CFR, Parts 3, 1, 5, 7 and 1926 governing the payment of wages and ratio of apprentices and trainees to journeymen. Nothing hereunder is intended to relieve SUBRECIPIENT of its obligation, if any, to require payment of the higher rate under state or local laws SUBRECIPIENT shall insert provisions meeting the requirements of this paragraph in all such CONTRACTS.

33.12.5 In case where the Davis-Bacon Act applies, SUBRECIPIENT agrees to submit the Construction Bid Package for this project to DIRECTOR for modification, SUBRECIPIENT shall construct project in accordance with the approved Construction Bid Package.

33.13 **California Labor Code Compliance**

33.13.1 If Prevailing Wage laws apply, SUBRECIPIENT hereby agrees to pay, or cause its subcontractors to pay, Prevailing Wage rates at all times for all construction, improvements, or modifications to be completed for COUNTY under this CONTRACT. SUBRECIPIENT herein agrees that SUBRECIPIENT shall post, or cause to be posted, a copy of the most current, applicable Prevailing Wage rates at the site where the construction, improvements, or modifications are performed.

33.13.2 Payroll Records

SUBRECIPIENT agrees that:

Certified copies of all payroll records for this project shall be required pursuant to the provisions of California Labor Code "Section 1776". The reporting format and words of certification shall be as indicated in Title 8 of the California Code of Regulations, Section 16401.

Certified copies of the payroll records of all subcontractors working on this project are required. It shall be the responsibility of the prime contractor to ensure subcontractor compliance.

Certified copies of all payroll records shall be submitted on a weekly basis to COUNTY through the duration of this CONTRACT.

SUBRECIPIENT acknowledges that failure to comply with Section 1776 may result in a forfeiture of twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, and it should be recognized that a contractor or subcontractor, or agent or representative thereof who neglects to comply is guilty of a misdemeanor pursuant to California Labor Code Section 1777.

33.14 **Economic Opportunities**

33.14.1 Compliance

This Contract is subject to the requirements of 12 USC 1701u, the HUD regulations issued pursuant thereto at 24 CFR, 135.1 et seq., and any applicable rules and orders of HUD issued Federal financial assistance shall be conditioned upon compliance with 12 USC 1701u. Failure to fulfill these requirements shall subject SUBRECIPIENT and

any sub-subrecipients, their successors and assigns, to those remedies specified herein. SUBRECIPIENT certifies and agrees that no conflict exists which would prevent compliance with requirements.

The Contractor agrees to abide by 24 CFR, 135.38, below and will insert the following clause in any subcontracts executed with third parties for work covered by this Contract:

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

The contractor agree 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 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.

The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR 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 CFR 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 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts. 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 extend feasible (1) 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)."

34. Environmental Conditions:

34.1 SUBRECIPIENT shall comply with HUD Environmental Review under HUD regulations at 24 CFR 58 et seq., which implement the National Environmental Policy Act (NEPA); and, the California Environmental Quality Act (CEQA). No costs shall be incurred and no funds shall be disbursed prior to certification by COUNTY and/or HUD of environmental compliance.

34.2 SUBRECIPIENT shall incur no costs for any project-related activity defined in SUBRECIPENT SCOPE OF SERVICES and COUNTY shall not disburse funds prior to certification by COUNTY and/or HUD for environmental compliance.

34.3 SUBRECIPIENT shall provide requested material to COUNTY for the Environmental Review process required by applicable regulations.

34.4 **Air and Water:** SUBRECIPIENT agrees to comply with the following regulations in so far as they apply to the performance of this CONTRACT:

34.4.1 Clean Air Act, 42 U.S.C., 1857, et seq.

34.4.2 Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.

34.4.3 Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50 and 40 CFR 58.

34.5 **Flood Disaster Protection:** SUBRECIPIENT agrees to comply with the requirements of the Flood Disaster Protection Act of 1973, including as applicable any regulations set forth in 24 CFR 55, (implementing Executive Order 11988) in regard to the sale, lease or other transfer of land acquired, cleared, or improved under the terms of this CONTRACT, as it may apply to the provisions of this CONTRACT.

34.6 **Lead-Based Paint:** SUBRECIPIENT agrees that any construction or rehabilitation of residential structures with assistance provided under this CONTRACT shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35, particularly, 24 CFR 35.100 through 35.175. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified with the "Protect Your Family From Lead In Your Home" publication, found at http://www.epa.gov/lead that such properties may include lead-based paint.

34.7 **Historic Preservation:** SUBRECIPIENT agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800, Protection of Historic Properties, insofar as they apply to the performance of this CONTRACT.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

34.8 **Energy Efficiency Standards:** SUBRECIPIENT agrees to comply with the California Energy Commission Assembly Bill 970, Title 24, Part I of the California Code of Regulations (AB970: Building Efficiency Energy Standards), in regard to construction and property development, when applicable.

35. General Administration:

35.1 **Fair Housing:** SUBRECIPIENT shall affirmatively further fair housing in accordance with 24 CFR 570.904.

35.2 **Grantor Recognition:** SUBRECIPIENT shall insure recognition of the role of the COUNTY in providing services through this CONTRACT. All activities, facilities and items utilized pursuant to this CONTRACT shall be prominently labeled as to funding source. In addition, SUBRECIPIENT will include a reference to the support provided herein in all publications made possible with funds made available under this CONTRACT. SUBRECIPIENT will retain documentation of such recognition, which shall be available for periodic monitoring by representatives of COUNTY or HUD.

35.3 **Records to be Maintained:** SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570.503(b)(2), 570.506, 570.507, 570.508 that are pertinent to the activities to be funded under this CONTRACT. Such records shall include, but not be limited to:

35.3.1 Records providing a full description of each activity undertaken;

35.3.2 Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

35.3.3 Records required to determine the eligibility of activities;

35.3.4 Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with CDBG assistance;

35.3.5 Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

35.3.6 Financial records as required by 24 CFR 570.502, and OMB Circular A-87; and

35.3.7 Other records necessary to document compliance with Subpart K of 24 CFR 570.

35.3.8 Retention: SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this CONTRACT for a period of five (5) years after the termination of all activities funded under this CONTRACT, or after the resolution of all Federal audit finding, whichever occurs later. Records for non-expendable property acquired with funds under this CONTRACT shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after s/he has received final payment.

35.4 **Client Data**

35.4.1 SUBRECIPIENT shall maintain client data demonstrating client Eligibility for services provided for a period of five (5) years after the termination of all activities funded under this CONTRACT, or after the resolution of all Federal audit finding, whichever occurs later. Such data shall be consistent and include, but not limited to, client name,

address, verifiable income level (as documented by income tax returns, employee payroll records, retirement statements, etc. or other third party documentation acceptable to COUNTY, for determining eligibility), and description of service provided. Such information shall be made available to HUD representatives, COUNTY monitors, or their designees, for review upon request.

35.4.2 SUBRECIPIENT shall develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the subject program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

35.5 **Property Records:** SUBRECIPIENT shall maintain real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria, rental limitations, health, safety and building codes, etc., and shall conform to 24 CFR 570.505.

35.6 **Close-Out:** SUBRECIPIENT's obligation to COUNTY shall not end until all close-out requirements are completed. Activities during this close-out period shall be completed in accordance with 24 CFR 570.509 and shall include, but are not limited to: making final payments; submitting final invoice(s), report(s), in accordance with the requirements of paragraph 24.3.4 above, and documentation; disposing of program assets (including the return to COUNTY of all unused materials and equipment); remitting any program income balances and receivable accounts to COUNTY, and determining the custodianship of records.

35.7 **Equipment:** SUBRECIPIENT shall use, manage and dispose of equipment in accordance with 24 CFR 85.32 and 24 CFR 570.502.

35.8 **Subcontracts:**

35.8.1 SUBRECIPIENT shall submit all subcontract agreements to COUNTY for review and consent prior to entering into such subcontracts. For construction subcontracts, SUBRECIPIENT shall submit the Construction Bid Package to COUNTY for review and written approval by DIRECTOR or designee prior to advertising for bids and award for the construction contract. SUBRECIPIENT shall construct Project in accordance with the Construction Bid Package, which DIRECTOR approved, unless prior written approval is received from DIRECTOR for modification thereof.

35.8.2 SUBRECIPIENT shall assume responsibility for all subcontracted services to assure CONTRACT compliance.

35.8.3 SUBRECIPIENT shall cause all of the provisions of this CONTRACT in entirety to be included in and made a part of any subcontract executed in the performance of this CONTRACT.

35.8.4 SUBRECIPIENT shall monitor all subcontracted services on a quarterly basis to assure CONTRACT compliance. Results of said monitoring efforts shall be summarized in written form, and supported with documented evidence of follow-up actions(s) to correct any area(s) of CONTRACT non-compliance. Documentation shall be made available for periodic monitoring by representatives of COUNTY and/or HUD.

35.9 **Relocation:**
SUBRECIPIENT shall, in all matters relating to the project:

35.9.1 Take all reasonable steps to minimize displacement by providing tenants reasonable opportunity to lease and occupy dwelling units in the project being improved; and,

35.9.2 Submit to COUNTY a Plan outlining financial and advisory assistance in securing temporary housing for any eligible tenant who is temporarily or permanently relocated due to the project.

35.9.3 Comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act/URA, 49 CFR Part 24 and 24 CFR 570.606 for persons displaced by the project; and

35.9.4 Have in effect and follow a residential anti-displacement and relocation plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in conjunction with any activity assisted with funding under the subject project.

36. News/Information Release: The SUBRECIPIENT agrees that it will not issue any news releases in connection with either the award of this CONTRACT or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from the COUNTY through the COUNTY's Project Manager.

37. Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' Project Managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For COUNTY:
County of Orange
OC Community Services
Housing Community Development
1770 North Broadway
Santa Ana, CA 92706-2642

For SUBRECIPIENT:
Bruce Channing, City Manager
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653-3103

38. Ownership of Documents: The COUNTY has permanent ownership of all directly connected and derivative materials produced under this CONTRACT by the SUBRECIPIENT. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the COUNTY and may be used by the COUNTY as it may require without additional cost to

the COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the SUBRECIPIENT without the express written consent of the COUNTY.

39. **Precedence:** The CONTRACT documents consist of this CONTRACT and its attachments and exhibits. In the event of a conflict between or among the CONTRACT documents, the order of precedence shall be the provisions of the main body of this CONTRACT, i.e., those provisions set forth in the articles of this CONTRACT, and then the exhibits and attachments.

40. **Project Manager, COUNTY:** The COUNTY shall appoint a Project Manager to act as liaison between the COUNTY and the SUBRECIPIENT during the term of this CONTRACT. The COUNTY's Project Manager shall coordinate the activities of the COUNTY staff assigned to work with the SUBRECIPIENT.

    The COUNTY's Project Manager shall have the right to require the removal and replacement of the SUBRECIPIENT's Project Manager and key personnel. The COUNTY's Project Manager shall notify the SUBRECIPIENT in writing of such action. The SUBRECIPIENT shall accomplish the removal within 14 calendar days after written notice by the COUNTY's Project Manager. The COUNTY's Project Manager shall review and approve the appointment of the replacement for the SUBRECIPIENT's Project Manager and key personnel. Said approval shall not be unreasonably withheld.

41. **Errors and Omissions:** All reports, files and other documents prepared and submitted by SUBRECIPIENT shall be complete and shall be carefully checked by the professional(s) identified by SUBRECIPIENT as Project Manager and key personnel attached hereto, prior to submission to the COUNTY. SUBRECIPIENT agrees that COUNTY review is discretionary and SUBRECIPIENT shall not assume that the COUNTY will discover errors and/or omissions. If the COUNTY discovers any errors or omissions prior to approving SUBRECIPIENT's reports, files and other written documents, the reports, files or documents will be returned to SUBRECIPIENT for correction. Should the COUNTY or others discover errors or omissions in the reports, files or other written documents submitted by SUBRECIPIENT after COUNTY approval thereof, COUNTY approval of SUBRECIPIENT's reports, files or documents shall not be used as a defense by SUBRECIPIENT in any action between the COUNTY and SUBRECIPIENT, and the reports, files or documents will be returned to SUBRECIPIENT for correction.

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and have hereby cause this CONTRACT to be executed.

***City of Laguna Hills**

By: ______________________ By: ______________________

Title: MAYOR Title: CITY MANAGER

Dated: ______________________ Dated: ______________________

COUNTY OF ORANGE
A Political Subdivision of the State of California

By: ______________________ Dated: ______________________
Orange County Community Resources

APPROVED AS TO FORM:
COUNTY COUNSEL,

By: ______________________
Jacqueline Guzman, DEPUTY

****

*For SUBRECIPIENTs that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.

For SUBRECIPIENTs that are not corporations, the person who has authority to bind the SUBRECIPIENT to a CONTRACT, must sign on one of the lines above.

ATTACHMENT A

1. **Scope of Services**

A. Project Title:

Aliso Meadows Rehabilitation Project

B. HUD Matrix Code / Activity:

14 B Rehab: Multi-Unit Residential / 570.202 (a) (1)

C. Program Description:

The City of Laguna Hills will use CDBG funds to implement its Aliso Meadows Rehabilitation Project. The City project will rehabilitate nine (9) of the 248 units located within the complex that are occupied by very low income households. The rehabilitation will include but not be limited to: a) Exterior wood repairs, b) Heating system repairs, c) Water heaters replacement, d) Water closets repairs, e) Roof replacement/repairs, f) Fumigation, and g) Exterior preparation and painting.

D. Project Need:

The City of Laguna Hills has identified more than $2,750,000 in needed rehabilitation work at the Aliso Meadows development. The project is more than 30 years old and is pre-fabricated housing that has original, problematic design issued that have generated problems preserving and maintaining this housing stock.

E. Low/Mod Neighborhood Preservation:

This project helps to preserve and maintain affordable housing within the City and allows homeownership for those of extremely-low and low income levels.

The Homeowners' Association (HOA) is unable to fund the large amount of repairs needed to keep this housing stock from being neglected and falling in to a state of disrepair. These repairs are needed to provide safe and healthy living conditions. The HOA has been and continues to be unable to fund many of these needed repairs.

F. Program Objectives and Outcomes Chart: describe to what extent this activity delivers the desired outcomes in the community or in the lives of the persons assisted.

G.

Activity	Outputs
1. Rehabilitation	Housing Unit

Performance Objectives	Performance Outcomes
1. Decent Housing	Affordable

CDBG National Objective: LMH 570.208 (a)(3)

Outcomes	Job Number
9 Housing Units	KC12024 / 2024

ATTACHMENT B

Compensation/Payment

1. **COMPENSATION:**

   This is a fixed fee price CONTRACT between the COUNTY and the SUBRECIPIENT for **$162,000** as set forth in Attachment A. Scope of Services attached hereto and incorporated herein by reference. The SUBRECIPIENT agrees to accept the specified compensation as set forth in this CONTRACT as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the SUBRECIPIENT of all its duties and obligations hereunder. The COUNTY shall have no obligation to pay any sum in excess of the total CONTRACT amount specified unless authorized by an amendment in accordance with paragraphs C and R of the COUNTY's General Terms and Conditions.

2. **FIRM DISCOUNT AND PRICING STRUCTURE:**

   SUBRECIPIENT guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. SUBRECIPIENT agrees that no price increases shall be passed along to the COUNTY during the term of this CONTRACT not otherwise specified and provided for within this CONTRACT.

3. **PAYMENT TERMS:**

   An invoice for the fixed cost of the services shall be submitted to the address specified below upon the completion of the engagement and approval of the COUNTY Project Manager. SUBRECIPIENT shall reference CONTRACT number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the COUNTY of Orange and verified and approved by OC Community Services and subject to routine processing requirements of the COUNTY. The responsibility for providing an acceptable invoice rests with the SUBRECIPIENT.

   Billing shall cover services not previously invoiced. The SUBRECIPIENT shall reimburse the COUNTY of Orange for any monies paid to the SUBRECIPIENT for services not provided or when services do not meet the CONTRACT requirements.

Payments made by the COUNTY shall not preclude the right of the COUNTY from thereafter disputing any items or services involved or billed under this CONTRACT and shall not be construed as acceptance of any part of the services.

Invoice(s) are to be sent to:

OC Community Resources

1300 S. Grand

Santa Ana, CA 92705,

Attention: Accounts Payable

4. **INVOICING INSTRUCTIONS:**

The SUBRECIPIENT will provide an invoice on SUBRECIPIENT's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. SUBRECIPIENT's name and address
2. SUBRECIPIENT's remittance address (if different from 1 above)
3. Name of COUNTY Agency Department
4. COUNTY CONTRACT/MASTER AGREEMENT number
5. Service date(s) – Month of Service
6. Rate
7. Delivery Order (DO) / Subordinate Agreement Number
8. Deliverables / Service description (in accordance with Attachment C)
9. SUBRECIPIENT's Federal I. D. number
10. Total

The responsibility for providing an acceptable invoice to the COUNTY for payment rests with the SUBRECIPIENT. Incomplete or incorrect invoices are not acceptable and will be returned to the SUBRECIPIENT for correction. The COUNTY's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment.

5. **OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY:**

Further instructions regarding invoicing/reimbursements as set forth in Exhibit B – OC Community Resources Contract Reimbursement Policy, are attached hereto and incorporated herein by reference.

ATTACHMENT C

1. **SUBRECIPIENT's Cost Proposal**

A. Administration and Program Cost Proposal

Project Cost Budget Chart City of Laguna Hills – Aliso Meadows Rehabilitation Project			
Project Costs/Activity	Urban County Funds	Leveraged Resources	Total
Design/Project Development	N/A	N/A	N/A
Acquisition	N/A	N/A	N/A
Construction	N/A	N/A	N/A
Rehabilitation (9 units)	$162,000	$40,000	$202,000
Total Project Cost	$162,000	$40,000	$202,000

B. Detailed Project Cost Budget Description

Aliso Meadows is a 248 unit condominium complex, approved in 1980 by the County of Orange, providing low and moderate income households an opportunity for ownership. The Aliso Meadows Condominiums stretch along both sides of Via Lomas midway between Moulton Parkway and Alicia Parkway. The repairs need to preserve and maintain this affordable housing are extensive and include the following improvements: repair ducting, wood repairs, painting, install new (30 year) asphalt shingles on roof, replace fencing, bringing water heater closets up to building code and fumigation for termites and rodents.

ATTACHMENT D

1. **Staffing Plan**

Project Title: Aliso Meadows Rehabilitation Project

Complete and Submit – Initial Report due on or before July 1.
(Include name and classification).

	Name/Staff	Classification/Title
1	David Chantarangsu	Project Manager: Community Development Director
2		
3		
4		
5		
6		
7		
8		
9		
10		

The substitution or addition of other key individuals in any given category or classification shall be allowed only with prior written approval of the COUNTY Project Manager.

The CONTRACTOR may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and time of the service/class required. Assignment of additional key personnel shall be subject to COUNTY approval.

2. Project Administration

The staff members, consultants and vendors have a wealth of municipal experience, including planning, construction/engineering activities, public administration, public finance, and personnel. In addition, the City of Laguna Hills will provide on-going training and staff development relative to customer driven programs and services that are outcome based. Staff and/or vendors must demonstrate knowledge as well as the skills to provide services that are collaborative and outcome based that build and expands community capacity and civic engagement. Overall, the experience of the principal staff for this project includes the following: over 25 years of Land Use Planning, 25 years of Building and Construction, 20 years of Engineering, 15 years of Public Finance, and 17 years of Public Administration.

3. Project Experience

The City has been awarded CDBG funds for the rehabilitation of Aliso Meadows condos for the past eight years. During this time the city has made positive steps towards maintaining and preserving this affordable housing stock.

ATTACHMENT E

1. **Project Schedule**

   July 1 – CONTRACT Start Date

2. Tools to Measure Project's Effect – Aliso Meadows Rehabilitation Project

Milestone Date	Minimum Required Expenditure/ Accomplishment Threshold	Activity Results Achieved
December 15th	50% of Contracted Amount Expended	$81,000.00
	50% of Proposed Accomplishments Achieved	4 Housing Units
January 15th	70% of Contracted Amount Expended	$113,400.00
	70% of Proposed Accomplishments Achieved	6 Housing Units
March 15th	80% of Contracted Amount Expended	$129,600.00
	80% of Proposed Accomplishments Achieved	7 Housing Units

3. Performance can easily be measured by the number of units rehabilitated and the schedule of performance. This rehabilitation will take between 90-120 days for construction.

<u>EXHIBIT A</u>

County of Orange Child Support Enforcement

Certification Requirements

In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of award of CONTRACT, the successful SUBRECIPIENT must furnish to the CONTRACT Administrator, Purchasing Agent or the agency/department Deputy Purchasing Agent:

1. In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address;

2. In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity; A certification that the SUBRECIPIENT has fully complied with all applicable federal and state reporting requirements regarding its employees; and

3. A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

<u>The certifications will be stated as follows:</u>

"I certify that <u>City of Laguna Hills</u> is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of CONTRACT <u># 613031</u> with the County of Orange. I understand that failure to comply shall constitute a material breach of the CONTRACT and that failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes and will be held confidential by those agencies.

Failure of the SUBRECIPIENT to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

The successful SUBRECIPIENT may use the forms supplied herein, to furnish required information listed above.

County of Orange Child Support Enforcement

Certification Requirements

(blank form)

A. In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address:

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________

Residence Address: ______________________

____

B. In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity:

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________

Residence Address: ______________________

____

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________

Residence Address: ______________________

____

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________

Residence Address: ______________________

____

(Additional sheets may be used if necessary)

C. A certification that the SUBRECIPIENT has fully complied with all applicable federal and state reporting requirements regarding its employees; and

D. A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

"I certify that City of Laguna Hills is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of CONTRACT # 613031 with the County of Orange. I understand that failure to comply shall constitute a material breach of the CONTRACT and that failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

Authorized Signature	Print Name	Title

EXHIBIT B

ORANGE COUNTY
OC Community Resources
Our Community. Our Commitment.

Subject: OC Community Resources Contract Reimbursement Policy | Effective: July 1, 2010 | Revised: April 13, 2012

PURPOSE:
This policy contains updated fiscal documentation requirements for contract reimbursement for OC Community Services. The procedures provide instructions for submitting reimbursement demand letter or invoice.

EFFECTIVE DATE:
July 1, 2010

REVISION DATE:
April 13, 2012

REFERENCES:
Executed Board of Supervisors approved contract
Budget included in contract or presented as an exhibit
OMB Circular A-21 Cost Principles for Educational Institutions
OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments
OMB Circular A-122 Cost Principles for Non-Profit Organizations
48 CFR Part 31 Contract Cost Principles and Procedures
24 CFR Parts 85, 570.502, 570.201, 576.21, 576.51 and 576.61: For Housing & Community Development and Homeless Prevention Contracts only.

BACKGROUND:
The executed Board of Supervisors approved contract is the authorization for all aspects of payment, including the maximum amount to be paid, the payee, and the scope of services and work. Payments are made in strict accordance with the contract terms. Allowable costs are identified in referenced OMB Circulars and Code of Federal Regulations (CFR).

ATTACHMENTS:
Reimbursement Policy Status Form (RPS-1)

POLICY:
Contractor is responsible for the submission of accurate claims. This reimbursement policy is intended to ensure that the Contractor is reimbursed based on the code or codes that correctly describe the services provided. This information is intended to serve only as a general reference resource regarding OC Community Services' reimbursement policy for the services described and is not intended to address every aspect of a reimbursement situation. Accordingly, OC Community Services may use reasonable discretion in interpreting and applying this policy to services provided in a particular case. Other factors affecting reimbursement may supplement, modify or, in some cases, supersede this policy. These factors may include, but are not limited to: legislative mandates and County directives. OC Community Services may modify this reimbursement policy at any time by publishing a new version of the policy. However, the information presented in this policy is accurate and current as of the date of publication.

Cost incurred by contractor must be substantiated and incurred during the contract period. Total of all reimbursements cannot exceed the amount of the contract. Cost must be allowable under applicable OMB Circular or CFR. All supporting documentation for reimbursement must be submitted with demand letter or invoice. If contract requires matching

contribution, documentation substantiating contribution match must be submitted with demand letter or invoice.

At any time, based on County's business needs and/or Contractor's performance, the County may designate Contractor to submit abbreviated or comprehensive documentation, as identified in the respective sections. Upon designation, Contractor will be notified, in writing via Reimbursement Policy Status Form, of which requirements are in full force. When Contractor is required to submit comprehensive documentation, in addition to the items identified in the Abbreviated Documentation Requirements Section, Contractor must also provide the documentation identified in the Comprehensive Documentation Requirements Section.

PROCEDURES:

Abbreviated Documentation Requirements

Compile and submit:

1. Supporting documentation includes, but is not limited to:
    a. General ledger/expense transaction report
    b. Payroll register or labor distribution report
    c. Payroll allocation plan
    d. Personnel Documentation
    e. Benefit plan and calculation of benefit
    f. Employer-employee contract for non-customary benefits (if applicable)
    g. Pre-approval documentation for equipment purchases equal to or greater than $5,000
2. The following is required with the first month's invoice only:
    a. Cost allocation plan for rent, utilities, etc.
    b. Indirect rate approved by cognizant agency (if applicable)
3. Summary of leveraged resources (if applicable)
4. Demand letters must contain the following certification (if required by Contract):
   "I certify under the penalty of perjury that this claim is true and correct and that the requested payments have been made. I also certify that this claim agrees with our official payroll and financial records and that these amounts have not been, or will not be claimed from any other funding source"
5. Grantee Performance Report (if required by Contract)
6. Supporting documentation shall be on single-sided sheets
7. Please redact employees' Social Security numbers from payroll reports
8. Demand letter or invoice, along with supporting documentation shall be submitted to:
   OC Community Resources Accounting
   1300 S. Grand, Building B, 2nd Floor
   Santa Ana, CA 92705

Comprehensive Documentation Requirements

In addition to abbreviated documentation, compile and submit:

9. Purchase orders, invoices, and receipts
10. Cashed checks
11. Check register
12. Consultant/sub-contractor invoices (with description of services)
13. Travel expense documentation: mileage reimbursement, hotel bill, meal reimbursement

ACTION:

Distribute this policy to all appropriate staff

INQUIRIES:

Inquiries may be directed to the following:

- **Win Swe: 714-480-6532 or win.swe@occr.ocgov.com**
- **Cathy Tran: 714-480-6531 or cathy.tran@occr.ocgov.com**

ORANGE COUNTY
OC Community Resources
Our Community. Our Commitment.

Reimbursement Policy Status Form

Per OC Community Resources Contract Reimbursement Policy, in regards to the Contract # listed herein, Contractor is designated with the Documentation Status identified below, with all related documentation requirements in full force, until further notice.

Contractor: Click here to enter text. **Effective Date:** Click here to enter text.

Contract #: Click here to enter text.

Documentation Status: ☐ **Abbreviated** ☐ **Comprehensive**

****

Program Authorization by:

Click here to enter text.
Print Name

Signed by: ______________________

Date: Click here to enter text.

Auditor Controller Authorization by:

Click here to enter text.
Print Name

Signed by: ______________________

Date: Click here to enter text.

Two signatures are required to implement the form.

Distribution:
Contractor
Auditor Controller
Contract File
Program File

Exhibit C

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees —

(I) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(I) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(I) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here O if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.
(18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title
Signature	Date
X	

EXHIBIT D

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _________ quarter _________ date of last report _____________

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ______, *if known*: Congressional District, *if known*: 4c	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** Congressional District, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: ____________
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: ______________________ Print Name: ______________________ Title: ______________________ Telephone No.: ______________ Date: ________
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

NOTICE OF EXEMPTION

TO: Orange County Clerk Recorder
County of Orange
P. O. Box 238
Santa Ana, CA 92702

FROM: City of Laguna Hills
Planning Department
24035 El Toro Road
Laguna Hills, CA 92653

Project Title: Aliso Meadows FY2012-13 CDBG Rehabilitation Project

Project Location: Via Lomas Condominium Complex (near the northeast corner of the intersection of Alicia and Moulton Parkways)

Project Location – City: Laguna Hills, CA   Project Location – County: Orange

Project Approval Date: May 8, 2012

Description of nature, purpose, and beneficiaries of project: The project will result in minor exterior rehabilitation work at 17 units in the 248-unit condominium complex including fence repair, exterior siding repair or replacement, water heater replacements, and HVAC maintenance.

Name of public agency approving project:
City of Laguna Hills

Name of person or Agency carrying out project:
City of Laguna Hills, 24035 El Toro Road, Laguna Hills, CA 92653

Exempt Status: (Check One)

________ Ministerial project. (Section l5073, State Guidelines)

________ Not a project. (Section l507l(a) State Guidelines)

________ Emergency project.(Section l507l(b) and (c) State Guidelines)

__X__ Categorical Exemption. Code Number: Section 15301, Class 1(a),(d)

Reason why project was exempt: The project will result in minor exterior rehabilitation work at the condominium complex including fence repair, exterior siding repair or replacement, water heater replacements, and HVAC maintenance on existing structures. The structures are not historic and no expansion of structures is involved.

Lead Agency Contact Person: David Chantarangsu   Phone: 949-707-2675

Signature: ____________________

Title: Community Development Director

Date Submitted to County Clerk: ________________________

CITY OF LAGUNA HILLS

AGENDA REPORT
COMMUNITY SERVICES

ISSUE: 2012 FOURTH OF JULY CELEBRATION

SUMMARY:

The City of Laguna Hills will host its annual Fourth of July celebration at the Laguna Hills Sports Complex on Wednesday, July 4, 2012. The special event will be held from 4:00 p.m. to 9:30 p.m. and includes a number of activities in addition to the fireworks show.

BACKGROUND:

The City of Laguna Hills will host its annual Fourth of July celebration at the Laguna Hills Sports Complex on Wednesday, July 4, 2012. For the Fourth of July Celebration event this year, the following activities are tentatively scheduled:

Main Stage Entertainment:
- Rockit Scientist (50's, 60's, and 70's music)

Games:
- Soccer Kick
- Double Hoop Shot
- Football Toss

Carnival Rides:
- Two carnival rides (to be determined)

Activities:
- 40 foot obstacle Course
- Spacewalk-Airwalk

Children's Activities
- Face Painting
- Crafts

City Information Booth: (To Date)
- Community Services Summer Camps/Programs
- City Commissions
- Recycling Information

<u>Vendor Booths: (</u>* Vendor responses pending)

- Ice cream sandwiches and juice pops
- Cupcakes and Iced Coffee
- Churros, candy, pretzels, & nachos*
- Roasted Corn & Lemonade
- Hamburgers, chips, baked beans*
- Hot dogs & brownies

<u>The following is the tentative schedule of events:</u>

4:00 p.m. Event Begins
Activities, games, music, food, and vendor booths

8:50 P.M. Mayor's Welcome/Comments

9:00 P.M. National Anthem

9:10 P.M. Fireworks Display

In addition to the activities listed above, staff is working with "Team Dark Horse" on their involvement in this year's event. Marine's from the 3/5 Battalion and some static displays may also be present.

Vendor booth rental forms were sent to all past vendors. Vendors who have participated previously in the fourth of July Celebration have until May 18, 2012, to submit their request for a booth for 2012. After this date, food items that have not been secured by a past vendor may be given away to other interested non-profit organizations.

The Fourth of July Celebration event was attended by approximately 11,000 people last year. Each year the City provides entertainment and activities free of charge for the public to enjoy. The 2012 Fourth of July event will once again include carnival rides, games, informational booths, and entertainment. The City Council approved, at its April 10, 2012, meeting, the Fourth of July fireworks show Agreement with Pyro Engineering, Inc.

FISCAL IMPACT:

The proposed budget for the 2012 Fourth of July event is $53,750 which includes a fireworks budget of $26,400. The cost for this year's show is $24,000. Last year's Fourth of July event expenditures totaled $46,078 which includes the discounted cost of the fireworks show due to technical issues that negatively impacted the show. Net costs totaled $42,697 when accounting for the $3,381 in ride ticket sales revenue.

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AND FILE THE REPORT.

CITY OF LAGUNA HILLS

AGENDA REPORT
PUBLIC SERVICES

ISSUE: **PROGRESS PAYMENT NO. 5 FOR AVENIDA DE LA CARLOTA WIDENING PROJECT, CIP NO. 164**

SUMMARY:

Work on the Avenida de la Carlota Widening Project, CIP No. 164, began on October 17, 2011, and is being performed by Hillcrest Contracting, Inc. Work performed in March included clearing and grubbing, traffic control, a Storm Water Pollution Prevention Plan, excavation, concrete removal and replacement, cold planing, utility adjustments, signing and striping, and traffic signal modifications. The project is in the final stages of work and all travel lanes have been opened. The contractor has submitted the fifth progress payment request for approval.

BACKGROUND:

A routine monthly action for capital improvement projects is the submission, review, and approval of the contractor's invoice. Procedurally, field staff verifies the contractor's quantities and matches them with the submitted invoice. The unit prices and total costs of the project are confirmed by the office staff and a progress payment is then processed. A ten-percent (10%) retention is withheld from each payment to assure final performance of the work. The contractor for the project, Hillcrest Contracting, Inc., has submitted the fifth progress payment for the subject project as follows:

ITEM #	DESCRIPTION	QUANTITY	UNIT	$	AMOUNT
1	Clearing & Grubbing	.19	LS	$ 47,000.00	$ 8,930.00
2	Traffic Control	.09	LS	$ 7,500.00	$ 675.00
3	SWPPP	.09	LS	$ 1,680.00	$ 151.20
5	Unclassified Excavation	80	CY	$ 63.00	$ 5,040.00
10	R&R .33' AC	8,900	SF	$ 4.20	$37,380.00
16	1.9' Aggregate Base	60	CY	$ 35.40	$ 2,124.00
17	0.5' AC	60.13	TN	$ 85.50	$ 5,141.11
18	Cold Plane/Edge Grind	6,900	SF	$ 0.88	$ 6,072.00
19	0.15' AC Overlay	59,450	SF	$ 1.17	$69,556.50
20	Adjust water valve	6	EA	$ 240.00	$ 1,440.00
21	Adjust manhole	2	EA	$ 540.00	$ 1,080.00
22	Signing & Striping	1	LS	$ 17,000.00	$17,000.00
23	Traffic Signal Mod/PDV	.30	LS	$ 88,200.00	$26,460.00
24	Traffic Signal Mod	.10	LS	$222,600.00	$22,260.00

Contract Change Order No. 1

C01-01	Parkway Drain	1	EA	$ 2,950.00	$ 2,950.00
C01-02	Block Slough Wall	54	LF	$ 105.00	$ 5,670.00
C01-03	Grade Pkwy to Elev	3,810	SF	$ 0.70	$ 2,667.00
C01-04	Add Stripe & Signage	1	LS	$ 24,418.03	$24,418.03
C01-05	Traffic Signal Mod	1	LS	$ 17,783.19	$17,783.19
C01-06	Add Decor for Ramp	633	SF	$ 4.20	$ 2,658.60

Total To Date	$756.949.82	
Less Prior Billing	$497,493.19	
Total This Period	$259,456.63	$259,456.63
Less 10% Retention		$(25,945.66)
		$233,510.97

This Progress Payment includes a portion of Contract Change Order No. 1 which was approved at the City Council meeting of February 28, 2012.

FISCAL IMPACT:

The progress payment is within the Capital Improvement Program Budget for the Avenida de la Carlota Widening Project, CIP No. 164.

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 5, IN THE NET AMOUNT OF $233,510.97, TO HILLCREST CONTRACTING, INC., FOR THE AVENIDA DE LA CARLOTA WIDENING PROJECT, CIP NO. 164.

CITY OF LAGUNA HILLS

AGENDA REPORT
ADMINISTRATIVE SERVICES DEPARTMENT

ISSUE: CONTRACTS WITH COUNTY OF ORANGE AND AGE WELL SENIOR SERVICES FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR FISCAL YEAR 2012/2013

SUMMARY:

Staff was advised of the availability of federal Community Development Block Grant (CDBG) funding for "Public Facilities and Improvements" for Fiscal Year 2012/2013, administered by the County of Orange. Staff completed and submitted the appropriate CDBG application on behalf of the Florence Sylvester Senior Center in the amount of $60,000. For Fiscal Year 2012/2013, the City of Laguna Hills has tentatively been awarded an amount of $54,000 to assist Age Well Senior Services (formerly known as South County Senior Services) in completing a number of improvements at the Florence Sylvester Senior Center. The award letter from the County of Orange is attached. The next steps required to access the funds and initiate the rehabilitation process is to sign individual contracts with the County of Orange and Age Well Senior Services documenting the use and limitations associated with the funds. The draft contracts are included as attachments to this report.

Staff recommends that the City Council approve individual contracts with the County of Orange and Age Well Senior Services and authorize the Mayor and City Manager to execute the contracts for the CDBG funds obtained on behalf of the Florence Sylvester Senior Center.

BACKGROUND:

The County of Orange is responsible for administering all programs for those cities who participate in the Urban County Program, including the CDBG program. The Urban County consists of the unincorporated areas of Orange County, and the cities which are "non-entitlement" cities. "Non-entitlement" cities are those with a population under

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RECOMMENDATION: THAT THE CITY COUNCIL: (1) APPROVE INDIVIDUAL CONTRACTS WITH THE COUNTY OF ORANGE AND AGE WELL SENIOR SERVICES FOR UTILIZATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR FISCAL YEAR 2012/2013; AND (2) AUTHORIZE THE MAYOR AND CITY MANAGER TO EXECUTE THE CONTRACTS.

50,000. There are thirteen cities in the county that must utilize the Urban County Program in order to access these funds, which are allocated on a competitive basis.

For Fiscal Year 2012/2013, the City of Laguna Hills has tentatively been awarded $54,000 in CDBG funds for the following project:

> **<u>Florence Sylvester Senior Center</u>**
> The Florence Sylvester Senior Center provides a variety of services to the elderly/frail elderly population of the community. Because of the high number of elderly/frail population that utilize the Center on a daily basis and the high visibility of the Center, staff is requesting funds for the following improvements: (1) demolition of a common wall and installation of a retractable room divider to facilitate large group activities; and (2) the expansion of the solar panel electrical system. These improvements will assist in increasing the Center's sustainability and accessibility, while simultaneously reducing costs.

Approval of the attached contract with the County of Orange commits the City of Laguna Hills to spend the CDBG funds consistent with any applicable federal, state, and county laws and regulations. Funds must be spent only on eligible projects and City staff must complete the documentation and reporting requirements associated with expenditure of the funds.

Approval of the attached contract with Age Well Senior Services ensures that CDBG funds are expended on the specified scope of work and that the rehabilitation work is completed in accordance with all federal, state, and county laws and regulations.

FISCAL IMPACT:

In accordance with the initial application submitted by the City to the County, the City has agreed to leverage the County's funds with in-lieu staff time totaling approximately $8,000. No other commitment of General Fund monies are required.

CEQA FINDINGS:

The Florence Sylvester Senior Center Rehabilitation project has been found to be Categorically Exempt from the requirements of the California Environmental Quality Act based upon a Class 1 – Existing Facilities (Section 15301) exemption.

RECOMMENDATION: THAT THE CITY COUNCIL: (1) APPROVE INDIVIDUAL CONTRACTS WITH THE COUNTY OF ORANGE AND AGE WELL SENIOR SERVICES FOR UTILIZATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR FISCAL YEAR 2012/2013; AND (2) AUTHORIZE THE MAYOR AND CITY MANAGER TO EXECUTE THE CONTRACTS.

ATTACHMENTS:

1. Preliminary Funding Letter from the County
2. City Agreement with the County of Orange for FY 2012/2013 CDBG Funds
3. City Agreement with Age Well Senior Services for FY 2012/2013 CDBG Funds (including Exhibits A-G)

ATTACHMENT NO. 1

Original Sent Via Certified U.S. Mail
Electronic Copy Sent To (dchantarangsu@ci.laguna-hills.ca.us)

February 24, 2012

Mr. Bruce Channing, City Manager
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653-3103

Re: Bid #: 012-613225 FY 2012-13 Housing Rehabilitation and Public Facilities & Improvement RFP

Dear Mr. Channing:

Thank you for submitting a proposal for the Bid #: 012-613225 FY 2012-13 Housing Rehabilitation and Public Facilities & Improvement RFP.

Based upon the County of Orange's award procedures as set forth in RFP Bid #: 012-613225 FY 2012-13 Housing Rehabilitation and Public Facilities & Improvement RFP, OC Community Resources is pleased to inform you that your proposal for Florence Sylvester Senior Center Rehabilitation is being recommended for funding.

The preliminary funding amount is $54,000 the actual amount of funding issued is dependent upon final U.S. Department of Housing and Urban Development (HUD) appropriations and/or any conditions placed on your proposal and Board of Supervisors approval.

As stated in the RFP, it is necessary to complete a few administrative requirements. These include verification insurance coverage's: Certificates of Insurance, including all endorsements. **These items are due back to me no later than March 09, 2012.**

In addition, the following conditions will need to be met:

- Submittal of the Environmental Information Form
- Finalize Contract Negotiation

To conclude, I want to congratulate the City of Laguna Hills on your selection to provide the County with the proposed Public Facilities & Improvement activity.

Sincerely,

Judi Crumly

Judi Crumly
Contract Manager

OFFICE OF THE DIRECTOR
1770 NORTH BROADWAY
SANTA ANA, CA 92706-2642
PHONE: 714.480.2788
FAX: 714.480.2899

Cc: Bid #: 012-613225 Job #: KC12021 - CDBG Funds

ATTACHMENT NO. 2

CONTRACT

BETWEEN

COUNTY OF ORANGE

AND

CITY OF LAGUNA HILLS

FOR

PUBLIC FACILITIES & IMPROVEMENTS

FLORENCE SYLVESTER SENIOR CENTER REHABILITATION

CDBG – CFDA NUMBER 14.218

CONTRACT

ARTICLES

GENERAL TERMS AND CONDITIONS

ADDITIONAL TERMS AND CONDITIONS

ATTACHMENTS / EXHIBITS

AGREEMENT

This Agreement, hereinafter referred to as "CONTRACT" is made between the County of Orange, a political subdivision of the State of California and recognized Urban County under the Federal Housing and Community Development Act of 1974 (Public Law 93-383), as amended, with a place of business at 1770 North Broadway, Santa Ana, CA 92706-2642; hereinafter referred to as "COUNTY," and City of Laguna Hills, a municipal corporation, in the State of California with a place of business at 24035 El Toro Road, Laguna Hills, CA 92653, hereinafter referred to as "SUBRECIPIENT," with COUNTY and SUBRECIPIENT sometimes referred to as "PARTY", or collectively as "PARTIES."

This Agreement, hereinafter referred to as CONTRACT, is entered into on ___________.

RECITALS

This CONTRACT is made with reference to the following facts, among others:

WHEREAS, COUNTY has applied for and anticipates receiving funds from the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", under Title I of the Housing and Community Development Act of 1974 (Public Law 93-383, as amended) for the purpose of funding programs meeting one of the HUD national objectives; and

WHEREAS, a Grant Agreement between HUD and the County of Orange has been entered; and

WHEREAS, COUNTY and Participating Cities previously entered into a Cooperation Agreement dated July 1, 2012 as amended, in which both parties agreed to cooperate in the undertaking, or assist in the undertaking, of community development and housing assistance activity; and

WHEREAS, SUBRECIPIENT has submitted to COUNTY an application for funding of a housing and community development activity; and

WHEREAS, COUNTY adopted its FY 2012-13 Annual Action Plan, (hereinafter referred to as "Annual Action Plan"), including any substantial amendments, which sets forth the PROGRAM described herein; and

WHEREAS, HUD, in accordance with 24 CFR Part 570 Subpart O, 570.902, will annually review the performance of COUNTY to determine whether COUNTY has carried out its Community Development Block Grant (CDBG) assisted activities in a timely manner and has significantly disbursed CDBG funds and met the mandated "1.5 ratio" threshold; and

WHEREAS, COUNTY approved an allocation of $54,000.00 (Fifty-Four Thousand Dollars and 00 Cents) in program funding to SUBRECIPIENT for the Fiscal Year 2012-13; and

WHEREAS, HUD has accepted and certified the aforementioned ANNUAL ACTION PLAN; and

WHEREAS, COUNTY engages SUBRECIPIENT to assist COUNTY in utilizing aforesaid funds:

NOW, THEREFORE, the PARTIES mutually agree as follows:

DEFINITIONS

For the purposes of this CONTRACT the following definitions shall apply:

1. HUD: United States Department of Housing and Urban Development.

2. OC COMMUNITY RESOURCES (OCCR): Designated as the Lead for the development and implementation of County of Orange Urban County Program's Consolidated Plan.

3. DIRECTOR: DIRECTOR of OC Community Resources, or designee.

4. PROGRAM INCOME: The gross income received by SUBRECIPIENT directly generated from the use of the subject program funds.

5. GRANTEE PERFORMANCE REPORT (GPR) INFORMATION FORM: A PROGRAM activity data document provided by COUNTY to SUBRECIPIENT used to monitor and track the performance of SUBRECIPIENT.

6. OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY: A COUNTY document setting policies regarding types of documentation required to support the costs incurred and paid (including but not limited to copies of paid invoices, certified payroll registers, bank statements, etc.)

7. PROJECT: Any site or sites, including buildings, and/or activities assisted with federal program funds.

8. OMB: Federal Office of Management and Budget.

9. CAPER: Consolidated Annual Performance and Evaluation Report. An annual published report to HUD and the public on all housing-related activities.

10. CDBG: 24 CFR Part 570 - Community Development Block Grant – the CDBG regulations set forth eligible activities and the national objectives that each activity must meet. The Catalog of Federal Domestic Assistance (CFDA) # 14.218 distributes formula grants (CDBG) to develop viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income.

11. CONTINUUM OF CARE: An Orange County group composed of representatives of relevant organizations that serve homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of services to address the various needs of homeless persons and persons at risk of homelessness.

12. HOMELESS MANAGEMENT INFORMATION SYSTEM (HMIS): The information system designated by the Continuum of Care to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness. (24 CFR Part 580)

13. EQUIPMENT: 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.

14. SUBSTANTIAL AMENDMENT: The following criteria will be used by the COUNTY – if any one criteria applies, a substantial amendment will be required:

   14.1 A new activity not previously listed and described in the Consolidated Plan/Annual Action Plan;

   14.2 When a proposal is made to amend the description of an existing activity in such a way that the newly described purpose, scope, or beneficiaries differ significantly from the original activity's purpose, scope, or beneficiaries; or

   14.3 An increase in the amount of Federal Community Planning Development and/or local funds allocated to an existing activity when the following apply:

      14.3.1 An increase in funding for a public service activity in an amount greater than a 50% increase over the current funded amount.

      14.3.2 An increase in the funding for public facility improvements/housing rehabilitation in an amount greater than a 50% increase over the current funded amount.

15. CONSTRUCTION BID PACKAGE: A package of bidding documents which includes the proposal, bidding instructions, CONTRACT documents, detailed estimated costs, and plans and specifications for a construction project, all prepared in accordance with applicable Federal regulations.

16. PROGRAM ADMINISTRATION: An activity relating to the general management, oversight and coordination of community development programs. Costs directly related to carrying out eligible activities are not included.

ARTICLES

General Terms and Conditions:

A. **Governing Law and Venue**: This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange COUNTY, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another COUNTY.

B. **Entire CONTRACT**: This CONTRACT, including Attachments A, B, C, D and E and Exhibits A, B, C and D which are attached hereto and incorporated herein by this reference, when accepted by the SUBRECIPIENT either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire CONTRACT between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing. Electronic acceptance of any additional terms, conditions or supplemental CONTRACTs by any COUNTY

employee or agent, including but not limited to installers of software, shall not be valid or binding on COUNTY unless accepted in writing by COUNTY's Purchasing Agent or his designee, hereinafter "Purchasing Agent."

C. **Amendments**: No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

D. **Taxes**: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

E. **Delivery:** Time of delivery of services is of the essence in this CONTRACT. COUNTY reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed scope of services. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by COUNTY.

F. **Acceptance/Payment**: Unless otherwise agreed to in writing by the COUNTY, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of COUNTY, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty**: SUBRECIPIENT expressly warrants that the services covered by this CONTRACT are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon SUBRECIPIENT's part to indemnify, defend and hold COUNTY and its indemnities as identified in paragraph "P" below, and as more fully described in paragraph "P", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by COUNTY by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement**: Unless otherwise expressly provided in this CONTRACT, SUBRECIPIENT shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. SUBRECIPIENT warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. SUBRECIPIENT agrees that, in accordance with the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold COUNTY and COUNTY Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

I. **Assignment or Sub-Contracting**: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or sub-contracted by SUBRECIPIENT without the express written consent of COUNTY. Any attempt by SUBRECIPIENT to assign or sub-

contract the performance or any portion thereof of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTRACT.

J. **Non-Discrimination**: In the performance of this CONTRACT, SUBRECIPIENT agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-SUBRECIPIENTs to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. SUBRECIPIENT acknowledges that a violation of this provision shall subject SUBRECIPIENT to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

K. **Termination**: In addition to any other remedies or rights it may have by law, COUNTY has the right to terminate this CONTRACT without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of CONTRACT, any misrepresentation or fraud on the part of the SUBRECIPIENT. Exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligations.

L. **Consent to Breach Not Waiver**: No term or provision of this CONTRACT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Remedies Not Exclusive**: The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either party to any other remedies provided by law.

N. **Independent Contractor**: SUBRECIPIENT shall be considered an independent CONTRACTOR and neither SUBRECIPIENT nor its employees; nor anyone working under SUBRECIPIENT shall be considered an agent or an employee of COUNTY. Neither SUBRECIPIENT nor its employees; nor anyone working under SUBRECIPIENT shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

O. **Performance**: SUBRECIPIENT shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to COUNTY's satisfaction. SUBRECIPIENT shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the SUBRECIPIENT under this CONTRACT. SUBRECIPIENT shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of COUNTY required in its governmental capacity, in connection with performance of the work; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-SUBRECIPIENTs.

P. **Insurance**:

<u>**Insurance Provisions**</u>

Prior to the provision of services under this CONTRACT, the SUBRECIPIENT agrees to purchase all required insurance at SUBRECIPIENT's expense and to deposit with the COUNTY Certificates of Insurance, including all endorsements required herein,

necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the COUNTY during the entire term of this CONTRACT. In addition, all sub-SUBRECIPIENTs performing work on behalf of SUBRECIPIENT pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for SUBRECIPIENT.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of $25,000 ($5,000 for automobile liability), shall specifically be approved by the COUNTY Executive Office (CEO)/Office of Risk Management.
If the SUBRECIPIENT fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

Qualified Insurer
The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**

If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the SUBRECIPIENT shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	$1,000,000 per occurrence; $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles	$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence
Professional Liability Insurance	$1,000,000 per claims made or per occurrence
Sexual Misconduct Liability	$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the COUNTY of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
2) A primary non-contributing endorsement evidencing that the SUBRECIPIENT's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this CONTRACT shall give the County of Orange 30 day notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If SUBRECIPIENT's Professional Liability policy is a "claims made" policy, SUBRECIPIENT shall agree to maintain professional liability coverage for two years following completion of CONTRACT.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the SUBRECIPIENT fails to provide the insurance certificates and endorsements within seven (7) days of notification to OC Community Resources/Contract Development and Management, award may be made to the next qualified vendor.

COUNTY expressly retains the right to require SUBRECIPIENT to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify SUBRECIPIENT in writing of changes in the insurance requirements. If SUBRECIPIENT does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty days of receipt of such notice, this CONTRACT may be in breach without further notice to SUBRECIPIENT, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit SUBRECIPIENT's liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage and limits available from the insurer.

Q. **Bills and Liens**: SUBRECIPIENT shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. SUBRECIPIENT shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, SUBRECIPIENT shall promptly procure its release and, in accordance with the requirements of paragraph "P" above, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

R. **Changes**: SUBRECIPIENT shall make no changes in the work or perform any additional work without the COUNTY's specific written approval.

S. **Change of Ownership**: SUBRECIPIENT agrees that if there is a change or transfer in ownership of SUBRECIPIENT's business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume SUBRECIPIENT's duties and obligations contained in this CONTRACT and complete them to the satisfaction of COUNTY.

T. **Force Majeure**: SUBRECIPIENT shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided SUBRECIPIENT gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and SUBRECIPIENT avails himself of any available remedies.

U. **Confidentiality**: SUBRECIPIENT agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this CONTRACT. All such records and information shall be considered confidential and kept confidential by SUBRECIPIENT and SUBRECIPIENT's staff, agents and employees.

V. **Compliance with Laws**: SUBRECIPIENT represents and warrants that services to be provided under this CONTRACT shall fully comply, at SUBRECIPIENT's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. SUBRECIPIENT acknowledges that COUNTY is relying on SUBRECIPIENT to ensure such compliance, and pursuant to the requirements of paragraph "P" above, SUBRECIPIENT agrees that it shall defend, indemnify and hold COUNTY and COUNTY Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.

W. **Freight (F.O.B. Destination):** SUBRECIPIENT assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this CONTRACT.

X. **Pricing**: The CONTRACT bid price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of services attached to this CONTRACT, and no additional compensation will be allowed therefore, unless otherwise provided for in this CONTRACT.

Y. **Waiver of Jury Trial**: Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this CONTRACT and /or any other claim of injury or damage.

Z. **Terms and Conditions**: SUBRECIPIENT acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.

AA. **Headings**: The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

BB. **Severability**: If any term, covenant, condition, or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

CC. **Calendar Days**: Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

DD. **Attorney Fees**: In any action or proceeding to enforce or interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

EE. **Interpretation**: This CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the party that has drafted it is not applicable and is waived. The provisions of this CONTRACT shall be interpreted in a reasonable manner to affect the purpose of the parties and this CONTRACT.

FF. **Authority**: The Parties to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

GG. **Employee Eligibility Verification:** The SUBRECIPIENT warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The SUBRECIPIENT shall obtain, from all employees, consultants and sub-SUBRECIPIENTs performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The SUBRECIPIENT shall retain all such documentation for all covered employee, consultants and sub-SUBRECIPIENTs for the period prescribed by the law. The SUBRECIPIENT shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the SUBRECIPIENT or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.

HH. **Indemnification:** SUBRECIPIENT agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by SUBRECIPIENT pursuant to this CONTRACT. If judgment is entered against SUBRECIPIENT and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, SUBRECIPIENT and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Additional Terms and Conditions:

1. **Scope of Services:** This CONTRACT specifies the Contractual terms and conditions by which the COUNTY will procure services from SUBRECIPIENT as further detailed in the Scope of Services, identified and incorporated herein by this reference as "Attachment A".

2. **Term of CONTRACT:** This CONTRACT shall be effective from July 1, 2012 through June 30, 2013, unless otherwise terminated by the COUNTY. The term of this CONTRACT may be extended upon mutual agreement of the parties in writing in accordance with paragraph 2.2.

   2.1 Eligible costs related to services provided by SUBRECIPIENT must be incurred during the period beginning July 1, 2012. The Project shall be completed and all funds provided through this CONTRACT shall be expended on eligible Project activities through and including June 30, 2013.

   2.2 Housing Rehabilitation CONTRACTS and Public Facilities & Improvement CONTRACTS.

      2.2.1 SUBRECIPIENT may be eligible to request additional funding up to the maximum set forth in the applicable FY 2012-13 Annual Action Plan if *SUBRECIPIENT* meets or exceeds any one of the Required Expenditure Thresholds at 50%, 70% or 80% on or prior to the milestone date as set forth in paragraph 24.3.3.

      2.2.2 If additional funding is available for allocation to SUBRECIPIENT, SUBRECIPIENT and COUNTY shall first amend the *SUBRECIPIENT*

SCOPE OF SERVICES component of this CONTRACT. Furthermore, SUBRECIPIENT shall demonstrate, to the satisfaction of DIRECTOR, that the required Performance Expenditure and Accomplishment Thresholds set forth in paragraph 26.3., will continue to be met before such extension and additional allocation shall be granted.

2.2.3 CONTRACT Extension

2.2.3.1 The term of this CONTRACT and the provisions herein may be extended to cover an additional time period as specified herein.

2.2.3.2 The date for PROJECT completion and expenditure of all funds may be extended by the DIRECTOR without further action by the BOARD for a period not to exceed six (6) months from June 30, 2013. For all extensions, the deadline for submittal of invoices shall be forty-five (45) days after the new expiration date.

2.2.3.3 CONTRACT extension provisions are not applicable to PROGRAM ADMINISTRATION activities.

2.3 Housing Rehabilitation CONTRACTS and Public Services CONTRACTS may be renewed on the same terms, conditions, and scope of services for up to two (2) individual consecutive one-year periods upon mutual written agreement by the COUNTY and SUBRECIPIENT.

3. **Contingency of Funds:** SUBRECIPIENT acknowledges that funding or portions of funding for this CONTRACT may also be contingent upon the receipt of funds from, and/or appropriation of funds by Federal, State of California or local Government funds to COUNTY. If such funding and/or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate or modify this CONTRACT without penalty.

3.1 If funding levels are significantly affected by Federal budget and funds are not allocated and available for the continuance of the function performed by SUBRECIPIENT, the CONTRACT may be terminated by the COUNTY at the end of the period for which funds are available. The COUNTY shall notify SUBRECIPIENT at the earliest possible time of any service, which will or may be affected by a shortage of funds. No penalty shall accrue to the COUNTY in the event this provision is exercised and the COUNTY shall not be obligated nor liable for any damages as a result of termination under this provision of this CONTRACT, and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any CONTRACT or other obligation for future payment of money in excess of appropriations authorized by law.

4. **Fiscal Appropriations:** This CONTRACT is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this CONTRACT. If such appropriations are not approved, the CONTRACT will be terminated without penalty to the COUNTY.

5. **Adjustments – Scope of Services:** No adjustments made to the scope of services will be authorized without prior written approval of the COUNTY assigned Purchasing Agent.

6. **Changes/Extra Work:** The SUBRECIPIENT shall make no changes to this CONTRACT without the COUNTY's written consent. In the event that there are new or unforeseen requirements, the COUNTY with the SUBRECIPIENT's concurrence has the discretion to request official changes at any time without changing the intent of this CONTRACT.

If COUNTY-initiated changes or changes in laws or government regulations affect price, the SUBRECIPIENT's ability to deliver services, or the program schedule, the SUBRECIPIENT shall give the COUNTY written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the COUNTY and the SUBRECIPIENT was notified of the change. Such changes shall be agreed to in writing and incorporated into a CONTRACT Amendment; said Amendment shall be issued by the COUNTY-assigned Purchasing Agent, shall require the mutual consent of all Parties, and may prohibit the SUBRECIPIENT from proceeding with the work as set forth in this CONTRACT.

7. **Breach of CONTRACT:** The failure of the SUBRECIPIENT to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event the COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT:

   Terminate the CONTRACT immediately, pursuant to paragraph K and paragraphs 30 through 32 herein;

   Afford the SUBRECIPIENT written notice of the breach and ten calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;

   Discontinue payment to the SUBRECIPIENT for and during the period in which the SUBRECIPIENT is in breach; and

   Offset against any monies billed by the SUBRECIPIENT but yet unpaid by the COUNTY those monies disallowed pursuant to the above.

8. **Conditions Affecting Work:** The SUBRECIPIENT shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this CONTRACT; and to know the general conditions which can affect the work or the cost thereof. Any failure by the SUBRECIPIENT to do so will not relieve SUBRECIPIENT from responsibility for successfully performing the work without additional cost to the COUNTY. The COUNTY assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this CONTRACT, unless such understanding or representations by the COUNTY are expressly stated in the CONTRACT.

9. **Conflict of Interest – SUBRECIPIENT's Personnel:** The SUBRECIPIENT shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the SUBRECIPIENT; the SUBRECIPIENT's employees, agents, and relatives; sub-tier SUBRECIPIENTs; and third Parties associated with accomplishing work and services hereunder. The SUBRECIPIENT's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

   SUBRECIPIENT agrees to abide by the provisions of OMB Circulars 102 and 110, as applicable, 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this CONTRACT.

SUBRECIPIENT further covenants that in the performance of this CONTRACT no person having such a financial interest shall be employed or retained by SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of COUNTY or SUBRECIPIENT, or any designated public agencies which are receiving funds under the CDBG Entitlement Program.

10. **Conflict of Interest – COUNTY Personnel:** The County of Orange Board of Supervisors' policy prohibits its employees from engaging in activities involving a conflict of interest. The SUBRECIPIENT shall not, during the period of this CONTRACT, employ any COUNTY employee for any purpose.

11. **Consulting Contract – Follow-On Work:** No person or firm or subsidiary thereof who has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a CONTRACT for the provision of services, the delivery of goods or supplies, or the provision of any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services contract. Therefore, any consultant that contracts with a COUNTY agency/department to develop a feasibility study or to provide formal recommendations is precluded from contracting for any work recommended in the study or included in the recommendations.

12. **Contingent Fees:** The SUBRECIPIENT warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the SUBRECIPIENT or bona fide established commercial or selling agencies maintained by the SUBRECIPIENT for the purpose of securing business.

    For breach or violation of this warranty, the COUNTY shall have the right to terminate this CONTRACT in accordance with the termination clause and at its sole discretion to deduct from the CONTRACT price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from the SUBRECIPIENT.

13. **Bankruptcy/Insolvency:** If the SUBRECIPIENT should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the SUBRECIPIENT's insolvency, the COUNTY may terminate this CONTRACT.

14. **SUBRECIPIENT Personnel – Reference Checks:** The SUBRECIPIENT warrants that all persons employed to provide service under this CONTRACT have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this CONTRACT. SUBRECIPIENT's employees assigned to this program must meet character standards as demonstrated by reference checks, coordinated by the agency/department issuing this CONTRACT.

15. **SUBRECIPIENT's Project Manager and Key Personnel:** SUBRECIPIENT shall appoint a Project Manager to direct the SUBRECIPIENT's efforts in fulfilling SUBRECIPIENT's obligations under this CONTRACT. This Project Manager shall be subject to approval by the COUNTY and shall not be changed without the written consent of the COUNTY's Project Manager, which consent shall not be unreasonably withheld.

    The SUBRECIPIENT's Project Manager shall be assigned to this project for the duration of this CONTRACT and shall diligently pursue all work and services to meet the program time lines. The COUNTY's Project Manager shall have the right to require the removal

and replacement of the SUBRECIPIENT's Project Manager from providing services to the COUNTY under this CONTRACT. The COUNTY's Project Manager shall notify the SUBRECIPIENT in writing of such action. The SUBRECIPIENT shall accomplish the removal within three (3) business days after written notice by the COUNTY's Project Manager. The COUNTY's Project Manager shall review and approve the appointment of the replacement for the SUBRECIPIENT's Project Manager. The COUNTY is not required to provide any additional information, reason or rationale in the event it elects to request the removal of SUBRECIPIENTs Project Manager from providing services to the COUNTY under this CONTRACT.

16. **Data – Title To:** All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the SUBRECIPIENT in the performance of this CONTRACT will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the SUBRECIPIENT after completion or termination of this CONTRACT without the express written consent of the COUNTY. All materials, documents, data or information, including copies, must be returned to the COUNTY at the end of this CONTRACT.

17. **County Of Orange Child Support Enforcement:** In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of award of CONTRACT, the selected SUBRECIPIENT agrees to furnish to the CONTRACT administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:
    - 17.1 In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address;
    - 17.2 In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
    - 17.3 A certification that the SUBRECIPIENT has fully complied with all applicable federal and State reporting requirements regarding its employees; and
    - 17.4 A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

    Failure of the SUBRECIPIENT to timely submit the data and/or certifications required may result in the CONTRACT being awarded to another SUBRECIPIENT. In the event a CONTRACT has been issued, failure of the SUBRECIPIENT to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

18. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the COUNTY pays $600 or more or with whom the COUNTY enters into a CONTRACT for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations as set forth in Exhibit A., attached hereto and incorporated herein by reference.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a CONTRACT for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a CONTRACT for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

19. **Appointment and Acceptance:** The COUNTY designates the SUBRECIPIENT as the exclusive SUBRECIPIENT for the management of the Program, and the SUBRECIPIENT accepts the appointment, subject to the terms and conditions set forth in this CONTRACT. SUBRECIPIENT hereby agrees to manage the Program in an efficient and satisfactory manner to the best of its ability.

20. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the COUNTY, state or federal government, this CONTRACT may be subjected to unusual usage. The SUBRECIPIENT shall service the COUNTY during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the SUBRECIPIENT shall apply to serving the COUNTY's needs regardless of the circumstances. If the SUBRECIPIENT is unable to supply the goods/services under the terms of the CONTRACT, then the SUBRECIPIENT shall provide proof of such disruption and a copy of the invoice for the goods/services from the SUBRECIPIENT's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the SUBRECIPIENT shall show both the emergency purchase order number and the CONTRACT number.

21. **SUBRECIPIENT's Responsibilities:** The SUBRECIPIENT shall:
    21.1 Operate and manage the Project and provide Services/Activities as set forth herein. In this regard the SUBRECIPIENT will assess current services being provided, assess what Services/Activities are needed, or have been requested, and structure the Services/Activities accordingly.

22. **Business License:** At its own expense, SUBRECIPIENT shall qualify to do business and obtain and maintain such licenses as may be required for the performance by SUBRECIPIENT of its services under this CONTRACT.

23. **Substantial Amendments:**
    23.1 If any amendment results in a change in the funding amount, that does not trigger a SUBSTANTIAL AMENDMENT, as defined, SUBRECIPIENT SCOPE OF SERVICES, threshold and milestone dates or schedule of activities to be undertaken as part of this CONTRACT, such modifications will be incorporated only by written amendment executed by Director and SUBRECIPIENT.

23.2 In an effort to efficiently utilize CDBG funds within timeframes required by HUD, the COUNTY will consider the reprogramming of unspent CDBG balances from completed and cancelled CDBG-funded activities to other eligible activities as a "Non-Substantial Amendment".
In the event that any of these "administrative" reprogramming actions fall under the "Substantial Amendment" criteria, the proposed actions to the Citizen Participating process, requires formal action by the Board of Supervisors, and subsequent approval by HUD.

24. Payment Requirements:

24.1 CONTRACT Amount: It is expressly agreed and understood that the total amount to be paid by COUNTY under this CONTRACT shall not exceed the total COUNTY funding as set forth in Attachment B., - Compensation to SUBRECIPIENT attached hereto and incorporated herein by reference.

24.2 COUNTY will reclaim any unused balance of funds for reallocation to other COUNTY approved projects.

24.3 Payment of Project Activities:

24.3.1 Payment of Project Activities: COUNTY will reimburse SUBRECIPIENT for eligible project-related costs only. SUBRECIPIENT shall submit requests for reimbursement to COUNTY on a monthly basis beginning on July 1, 2012, and must provide adequate documentation as required by COUNTY in accordance with the *OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY*, as set forth in Exhibit B., attached hereto and incorporated herein by reference. In addition, SUBRECIPIENT will provide a progress performance report ("GPR INFORMATION FORM") for the time period covered, as prescribed by COUNTY. Failure to provide any of the required documentation and reporting will cause COUNTY to withhold all or a portion of a request for reimbursement, or return the entire reimbursement package to SUBRECIPIENT, until such documentation and reporting has been received and approved by COUNTY.

24.3.2 If SUBRECIPIENT has no request for reimbursement during any quarter during the term of this CONTRACT, a GPR Information Form, including and explanation as to why no invoices were being processed, shall be required in lieu of a request for reimbursement.

24.3.3 The following "Required Expenditure Threshold" criteria have been established to guide the SUBRECIPIENT in structuring and scheduling their expenditure of funds received through this CONTRACT, through term of CONTRACT. The criteria thresholds are consistent with the criteria used by OC Community Resources to determine performance including, but not limited to, determinations of future award of funds, additional funding requests and/or determinations for the recapture of funding.

Milestone Date	*Minimum Required Expenditure Threshold*
December 15th	50% of Contracted Amount Expended
January 15th	70% of Contracted Amount Expended
March 15th	80% of Contracted Amount Expended

24.3.4 SUBRECIPIENT will have forty-five (45) days following the expiration of the CONTRACT to submit outstanding invoices for reimbursement of eligible costs incurred during the CONTRACT period. After the forty-five (45) day period for submitting invoices has expired, COUNTY shall

reallocate the remaining balance under this CONTRACT for other program purposes and SUBRECIPIENT shall be ineligible for any further reimbursement.

24.4 Funds shall not be disbursed for any costs incurred prior to the certification by COUNTY and HUD of Certificate(s) of Insurance and environmental compliance as further defined in paragraph P and paragraph 34 of this CONTRACT. Additionally, no funds shall be disbursed prior to submittal of certified payroll documentation to COUNTY with each invoice package/request for payment, as further defined in paragraph 33.

24.5 Readiness – for Housing Rehabilitation and Public Facilities & Improvement Projects:
SUBRECIPIENT shall be required to demonstrate to COUNTY its readiness to immediately initiate its Project upon execution of this CONTRACT by providing to the COUNTY documentation including, but not limited to, the following: Board or Council Minutes/Resolution; Awarded bid documents with timeline requirements; and, executed Architect and Engineer (hereafter referred to as "A&E") contracts with specific project timelines consistent with funding. By September 30 of contract term, SUBRECIPIENT shall provide COUNTY a Project Readiness Checklist incorporating the status of all Project-phasing milestones. In the case of milestones not yet reached, SUBRECIPIENT shall provide projected target dates for when said milestones would be met. The Project Readiness Checklist shall clearly demonstrate that SUBRECIPIENT will meet the "Required Expenditure Thresholds" as set forth in paragraph 24.3.3. SUBRECIPIENT acknowledges that said Project Readiness Checklist may be considered to evaluate the performance of the SUBRECIPIENT.

25. Program Income

25.1 SUBRECIPIENT shall comply with regulations set forth in 24 CFR 570.504, as well as all applicable State or COUNTY regulations concerning the reporting and payment procedures for program income.

25.2 All Program Income accrued shall be returned to COUNTY on a quarterly basis prior to SUBRECIPIENT receiving any reimbursement from grant funds provided under this CONTRACT.

25.3 SUBRECIPIENT shall provide information of the receipt of Program Income by SUBRECIPIENT related to Program on all GPR INFORMATION FORMS submitted with requests for reimbursement.

25.4 SUBRECIPIENT shall complete and submit a Year-End Program Income letter, indicating amount of Program Income and include any reimbursement remittance necessitated therein, by July 15, after the close of the CONTRACT fiscal year.

26. Performance:

26.1 SUBRECIPIENT shall provide the oversight, administration, and project management necessary to accomplish all contracted activities in a timely manner. SUBRECIPIENT also agrees to comply with all applicable Federal, State, and local laws and regulations governing the funds provided under this CONTRACT.

26.2 SUBRECIPIENT shall comply with all applicable HUD regulations, as described in paragraph 35 General Administration of this CONTRACT, concerning administrative requirements and maintain records as to services provided and total number of persons served through the project, including but not limited to, population-served analysis (i.e., extremely-low income persons, very-low income persons, and low-income persons as defined by HUD). Such information shall

be available for periodic monitoring by representatives of COUNTY or HUD and shall be submitted by SUBRECIPIENT in report form to COUNTY by dates specified by COUNTY.

26.3 The following "Performance Threshold" criteria shall be used to assess the level of performance of the SUBRECIPIENT, including Attachment A. - Scope of Services, attached hereto and incorporated herein by reference. Furthermore, the criteria will be considered by OC Community Resources when determining future funding. In order to be considered in compliance with the performance threshold criteria, the SUBRECIPIENT must, on or before the required milestone date, submit to OC Community Resources a request for reimbursement which demonstrates that SUBRECIPIENT has expended funds and met their proposed accomplishment goals at the required levels, unless exempted in writing by the DIRECTOR.

Milestone Date	*Minimum Required Expenditure Threshold*
December 15th	50% of Contracted Amount Expended 50% of Proposed Accomplishments Met
January 15th	70% of Contracted Amount Expended 70% of Proposed Accomplishments Met
March 15th	80% of Contracted Amount Expended 80% of Proposed Accomplishments Met

Failure to achieve at least the aforementioned 50% drawdown, without written exception approved by the DIRECTOR, may cause any remaining balance in this CONTRACT to be reclaimed by COUNTY, and will negatively affect future funding to SUBRECIPIENT. Failure to achieve the aforementioned 80% drawdown goal, without written exception approved by the DIRECTOR, may cause any remaining balance in this CONTRACT to be reclaimed by COUNTY, and will impact future funding to SUBRECIPIENT.

26.4 SUBRECIPIENT shall complete and submit a Year End GPR INFORMATION FORM by July 15, after the close of the CONTRACT fiscal year.

26.5 Should the activity being funded through this CONTRACT be completed, cancelled or terminated prior to the termination date set forth herein in paragraph 2. Additional Terms and Conditions, SUBRECIPIENT shall complete and submit a Mid-Year GPR INFORMATION FORM at the time of the completion, cancellation or termination. Said GPR INFORMATION FORM shall consist of a cumulative reporting of project-related expenditures and accomplishments relative to the *SCOPE OF SERVICES,* as set forth in Attachment A., attached hereto and incorporated herein by reference. If activity funded through this CONTRACT is completed, or if funds allocated through this CONTRACT are fully expended, prior to end of CONTRACT term, SUBRECIPIENT must continue to serve its clients for the entire term of this CONTRACT.

26.6 SUBRECIPIENT shall complete and submit a GPR INFORMATION FORM in support of all requests for reimbursement. Said GPR INFORMATION FORM shall consist of a cumulative report of project related accomplishments as set forth in Attachment A., SCOPE OF SERVICES, attached hereto and incorporated herein by reference, for the subject quarter. If at any time during the term of this CONTRACT SUBRECIPIENT has no activity occur during any quarter, SUBRECIPIENT shall prepare and submit to COUNTY a Quarterly GPR INFORMATION FORM, regardless of actual activity.

26.7 SUBRECIPIENT acknowledges that the GPR INFORMATION FORM is a monitoring tool that will be reviewed and evaluated to determine SUBRECIPIENT's level of performance relative to this CONTRACT.

26.8 SUBRECIPIENT shall submit all requested data necessary to complete the Consolidated Annual Performance and Evaluation Report (CAPER), and monitor program accountability and progress in accordance with HUD requirements, in the format and at the time designated by COUNTY.

27. Performance Monitoring:

27.1 Performance Monitoring of SUBRECIPIENT by COUNTY and/or HUD shall consist of requested and/or required written reporting, as well as onsite monitoring by COUNTY or HUD representatives.

27.2 COUNTY shall periodically evaluate SUBRECIPIENT's progress in complying with the terms of this CONTRACT. SUBRECIPIENT shall cooperate fully during such monitoring. COUNTY shall report the findings of each monitoring to SUBRECIPIENT.

27.3 COUNTY shall monitor the performance of SUBRECIPIENT against the goals, outcomes, milestones and performance standards required herein. Substandard performance, as determined by COUNTY, will constitute non-compliance with this CONTRACT for which COUNTY may immediately terminate the CONTRACT. If action to correct such substandard performance is not taken by SUBRECIPIENT within the time period specified by COUNTY, payment(s) will be denied in accordance with the provisions contained in paragraph 41 of this CONTRACT.

28. Disputes – CONTRACT:

28.1 The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this CONTRACT is not disposed of in a reasonable period of time by the SUBRECIPIENT's Project Manager and the COUNTY's Project Manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:

28.1.1 The SUBRECIPIENT shall submit to the agency/department assigned COUNTY Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this CONTRACT, unless the COUNTY, on its own initiative, has already rendered such a final decision.

28.1.2 The SUBRECIPIENT's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the CONTRACT, the SUBRECIPIENT shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the CONTRACT adjustment for which the SUBRECIPIENT believes the COUNTY is liable.

28.2 Pending the final resolution of any dispute arising under, related to, or involving this CONTRACT, the SUBRECIPIENT agrees to diligently proceed with the provision of services under this CONTRACT. The SUBRECIPIENT's failure to diligently proceed shall be considered a material breach of this CONTRACT.

Any final decision of the COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by the COUNTY Purchasing Agent or his designee. If the COUNTY fails to render a decision within ninety (90) days after receipt of the SUBRECIPIENT's demand, it shall be deemed a final decision adverse to the SUBRECIPIENT's contentions. Nothing in this section shall be construed as affecting the COUNTY's right to terminate the CONTRACT for Cause as stated in paragraph K herein.

29. **Gratuities:** The SUBRECIPIENT warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the SUBRECIPIENT or any agent or representative of the SUBRECIPIENT to any officer or employee of the COUNTY with a view toward securing the CONTRACT or securing favorable treatment with respect to any determinations concerning the performance of the CONTRACT. For breach or violation of this warranty, the COUNTY shall have the right to terminate the CONTRACT, either in whole or in part, and any loss or damage sustained by the COUNTY in procuring on the open market any services which the SUBRECIPIENT agreed to supply shall be borne and paid for by the SUBRECIPIENT. The rights and remedies of the COUNTY provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the CONTRACT.

30. **Termination – Convenience of the COUNTY:** The COUNTY may terminate performance of work under this CONTRACT for its convenience in whole, or, from time to time, in part if the user agency/department determines that a termination is in the COUNTY's interest. The agency/department assigned buyer shall terminate the CONTRACT by delivering to the SUBRECIPIENT a written notice of termination specifying the extent of the termination and the effective date thereof. The parties agree that, as to the terminated portion of the CONTRACT, the CONTRACT shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the CONTRACT shall not be void.
After receipt of a notice of termination and, except as directed by the assigned buyer, the SUBRECIPIENT shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The SUBRECIPIENT shall:
    30.1 Stop work as specified in the notice of termination;
    30.2 Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the CONTRACT;
    30.3 Terminate all orders and subcontracts to the extent they relate to the work terminated;
    30.4 Settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts, the approval or ratification of which will be final for purposes of this clause;
    30.5 As directed by the assigned buyer transfer title and deliver to the COUNTY (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the CONTRACT had been completed, would be required to be furnished to the COUNTY;
    30.6 Complete performance of the work not terminated; and
    30.7 Take any action that may be necessary or as the COUNTY may direct for the protection and preservation of the property related to this CONTRACT that is in the possession of the SUBRECIPIENT and in which the COUNTY has or may

acquire an interest and to mitigate any potential damages or requests for CONTRACT adjustment or termination settlement to the maximum practical extent.

At the completion of the SUBRECIPIENT's termination efforts, the SUBRECIPIENT may submit to the assigned buyer a list indicating quantity and quality of termination inventory not previously disposed of and request instructions for disposition of the residual termination inventory.

After termination the SUBRECIPIENT shall submit a final termination settlement proposal to the user agency/department in a format acceptable to the COUNTY.

The SUBRECIPIENT shall submit the proposal promptly, but no later than 60 days from the effective date of the termination, unless extended in writing by the COUNTY upon written request of the SUBRECIPIENT within the ninety-day (90-day) period. However, if the agency/department determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension. The SUBRECIPIENT and the COUNTY may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total CONTRACT price as reduced by (a) the amount of payment previously made and (b) the CONTRACT price of work not terminated. The CONTRACT shall be amended and the SUBRECIPIENT paid the agreed amount.

If the SUBRECIPIENT and the COUNTY fail to agree on the whole amount to be paid because of the termination of work, the COUNTY shall pay the SUBRECIPIENT the amounts determined by the COUNTY as follows, but without duplication of any amounts agreed on as set forth above:

30.8 The CONTRACT price for completed supplies or services accepted by the COUNTY (or sold or acquired) not previously paid for, adjusted for any savings of freight and other charges; and

30.9 Except for normal spoiling and except to the extent that the COUNTY expressly assumes the risk of loss, the COUNTY shall exclude from the amounts payable to the SUBRECIPIENT the fair value, as determined by the agency/department, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the COUNTY.

The SUBRECIPIENT shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated CONTRACT or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.

The SUBRECIPIENT shall have the right to appeal, under the COUNTY's protest procedure, any determination made by the COUNTY, except that if the SUBRECIPIENT failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the SUBRECIPIENT under this clause, there shall be deducted:

30.10 All payment to the SUBRECIPIENT under the terminated portion of this CONTRACT;

30.11 Any claim which the COUNTY has against the SUBRECIPIENT under this or any other CONTRACT; and

30.12 The agreed price for or proceeds of sale of materials, supplies, or other things acquired by the SUBRECIPIENT or sold under the provisions of this clause and not recovered by or credited to the COUNTY.

If the termination is partial, the SUBRECIPIENT may file a proposal with the agency/department for an equitable adjustment of the price(s) of the continued portion of the CONTRACT. The agency/department shall make any equitable adjustment agreed upon. Any proposal by the SUBRECIPIENT for an equitable adjustment under this clause shall be requested within thirty (30) days from the effective date of termination unless extended in writing by agency/department.

The COUNTY may:

30.13 Under the terms and conditions it prescribes, make partial payment and payments against costs incurred by the SUBRECIPIENT for their terminated portion of the CONTRACT, if the COUNTY believes that the total of these payments will not exceed the amount to which the contactor will be entitled; and

30.14 If the total payments exceed the amount finally determined to be due, the SUBRECIPIENT shall repay the excess to the COUNTY upon demand.

In determining the amount payable to the SUBRECIPIENT and notwithstanding any other provision, if it appears that the SUBRECIPIENT would have sustained a loss on the entire CONTRACT had it been completed, the COUNTY shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.

Unless otherwise provided in this CONTRACT or by statute, the SUBRECIPIENT shall maintain all records and documents relating to the terminated portion of this CONTRACT for five (5) years after final settlement. This includes all books and other evidence bearing on the SUBRECIPIENT's costs and expenses under this CONTRACT. The SUBRECIPIENT shall make these records and documents available to the COUNTY, at the SUBRECIPIENT's office, at all reasonable times, without any direct charge. If approved by the COUNTY, photographs, microphotographs, electronic storage, or other authentic reproductions may be maintained instead of original records and documents.

31. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the SUBRECIPIENT shall submit to the COUNTY a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the COUNTY upon written request of the SUBRECIPIENT. Upon termination COUNTY agrees to pay the SUBRECIPIENT for all services performed prior to termination which meet the requirements of the CONTRACT, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the CONTRACT. Upon termination or other expiration of this CONTRACT, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the CONTRACT. In addition, each Party will assist the other Party in orderly termination of this CONTRACT and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

32. **Stop Work:** The COUNTY may, at any time, by written stop work order to the SUBRECIPIENT, require the SUBRECIPIENT to stop all or any part of the work called for by this CONTRACT for a period of 90 days after the stop work order is delivered to the SUBRECIPIENT and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this

clause. Upon receipt of the stop work order, the SUBRECIPIENT shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the SUBRECIPIENT or within any extension of that period to which the parties shall have agreed, the COUNTY shall either:

32.1 Cancel the stop work order; or

32.2 Terminate work covered by the stop work order as provided for in the termination for default or the termination for convenience clause of this CONTRACT.

If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the SUBRECIPIENT shall resume work. The COUNTY shall make an equitable adjustment in the delivery schedule, the CONTRACT price, or both, and the CONTRACT shall be modified in writing accordingly if:

32.3 The stop work order results in an increase in the time required or in the SUBRECIPIENT's cost properly allocable to the performance of any part of this CONTRACT; and

32.4 The SUBRECIPIENT asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage, provided that if the COUNTY decides the facts justify the action, the COUNTY may receive and act upon a proposal submitted at any time before final payment under this CONTRACT.

If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provision entitled, "Termination - Convenience of COUNTY," the COUNTY shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

If a stop work order is not canceled and the work covered by the stop work order is terminated for default, the COUNTY shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related CONTRACT of the SUBRECIPIENT that provides for adjustment and is affected by any stop work order under this clause. The COUNTY shall not be liable to the SUBRECIPIENT for loss of profits because of a stop work order issued under this clause.

If any provisions of this agreement are invalid under any applicable statute or rule of law, they are, to that extent, omitted, but the remainder of this agreement shall continue to be binding upon the parties hereto.

33. Federal Administrative Requirements:

33.1 Financial Management:

33.1.1 Accounting Standards: SUBRECIPIENT agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

33.1.2 Cost Principles: SUBRECIPIENT shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," or A-87, "Cost Principles for State and Local Governments" (and if SUBRECIPIENT is a governmental or quasi-governmental agency, the applicable sections of 24 CFR 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,") as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

33.2 **Civil Rights**

Compliance

33.2.1 SUBRECIPIENT agrees to comply with California Civil Rights Act Ordinances and Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12107 and 12086.

33.2.2 **Rehabilitation Act**

SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. COUNTY shall provide SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this CONTRACT.

33.2.3 **Nondiscrimination in Employment and Contracting**

SUBRECIPIENT agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279, including 24 CFR Part 8, 24 CFR 570.602 and Section 504 of Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11063. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act (HCDA) are still applicable.

33.3 **Drug-Free Workplace**:

The SUBRECIPIENT hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace as set forth in Exhibit C., attached hereto and incorporated herein by reference. The SUBRECIPIENT will:

33.3.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

33.3.2 Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:

33.3.2.1 The dangers of drug abuse in the workplace;

33.3.2.2 The SUBRECIPIENT's policy of maintaining a drug free workplace;

33.3.2.3 Any available counseling, rehabilitation, and employee assistance programs; and

33.3.2.4 Penalties that may be imposed upon employees for drug abuse violations.

33.3.3 Provide as required by Government Code Section 8355(c) that every employee who works under this CONTRACT:

33.3.3.1 Will receive a copy of the company's drug-free policy statement; and

33.3.3.2 Will agree to abide by the terms of the company's statement as a condition of employment under this CONTRACT.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both, and the SUBRECIPIENT may be ineligible for award of any future COUNTY contracts if the COUNTY determines that any of the following has occurred:

33.3.3.3 The SUBRECIPIENT has made false certification, or

33.3.3.4 The SUBRECIPIENT violates the certification by failing to carry out the requirements as noted above.

33.4 **Affirmative Action:** SUBRECIPIENT agrees that it shall be committed to carry out an Affirmative Action Program that encompasses that principals provided in President's Executive Order 11246, as revised on January 4, 2002.

33.5 **Americans with Disabilities Act:** SUBRECIPIENT agrees to comply with Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.

33.6 **Employment Restrictions:**

33.6.1 **Prohibited Activity:** SUBRECIPIENT is prohibited from using funds provided herein, or personnel employed in the administration of the program, for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

33.6.2 **OSHA:** Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

33.6.3 **Employee Rights**

Federal Minimum Wage

33.6.3.1 SUBRECIPIENT must follow the Fair Labor Standards Act (FLSA), as it currently exists and it may be amended, which sets basic minimum wage and overtime pay standards. These standards are enforced by The United States Department of Wage and Hour Division under Department's Wage and Hour Division. The Federal minimum wage provisions are contained in the FLSA. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

33.6.4 **California Minimum Wage**

33.6.4.1 SUBRECIPIENT must follow the California enacted legislation signed by the Governor of California, raising the minimum wage for all industries (MW-2007). (AB 1835, CH230, Stats of 2006, adding sections 1182.12 and 1182.13 to the California Labor Code.) Pursuant to its authority under Labor Code section 1182.13, the Department of Industrial Relations amends and republishes Sections, 1, 2, 3, and 5 of the General Minimum Wage Order. MW-2001, Section 4, Separability,

has not been changed. Consistent with this enactment, amendments are made to the minimum wage, and the meals and lodging credits sections of all of the IWC's industry and occupation orders. This summary must be made available to employees in accordance with the IWC's wage orders. Copies of the full text of the amended wage orders may be obtained by ordering on-line at www.dir.ca.gov/WP.asp or by contacting your local Division of Labor Standards Enforcement office.

33.7 **Hatch Act:** SUBRECIPIENT agrees that no funds provided, nor personnel employed under this CONTRACT, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C. Section 1501 et seq. and Chapter 15 of Title V of the U.S.C.

33.8 **Religious Organization/Activities:** In accordance with 24 CFR 570.200(j), SUBRECIPIENT shall not discriminate against faith-based organizations in administering its federal HUD activities. However, SUBRECIPIENT agrees that funds provided under this CONTRACT will not be utilized for inherently religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with 24 CFR 570.200 (j)(2).

33.9 **Anti-Lobbying:** SUBRECIPIENT certifies that:

33.9.1 No Federal appropriated funds 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 of any Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal CONTRACT, grant, loan, or Cooperative Agreement; and

33.9.2 SUBRECIPIENT will complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," if any funds other than Federal appropriated funds have been paid, in accordance with its instructions; and

33.9.3 SUBRECIPIENT shall include subject anti-lobbying certification in award documents for all sub-SUBRECIPIENTs at all tiers (including sub-subcontracts, sub-subgrants, and CONTRACT under grants, loans, and Cooperative Agreements) and that all sub-SUBRECIPIENTs shall certify and disclose accordingly.

33.10 **Audits:** If SUBRECIPIENT expends Federal funds in a fiscal year which equal or exceed $500,000 (Five hundred thousand dollars and no cents) as specified in OMB Circular A-133-Revised, SUBRECIPIENT shall cause an audit to be prepared by a Certified Public Accountant (CPA) who is a member in good standing with the American Institute of Certified Public Accountants (AICPA) of the California Society of CPA's. The audit must be performed annually in accordance with Generally Accepted Auditing Standards (GAAS) authorized by the AICPA and Federal laws and regulations governing the programs in which it participates.

Furthermore, COUNTY retains the authority to require SUBRECIPIENT to submit similarly prepared audit at SUBRECIPIENT's expense even in instances when SUBRECIPIENT's expenditure is less than $500,000. SUBRECIPIENT will be required to identify corrective action taken in response to any findings identified by CPA related to their funded activity or program.

SUBRECIPIENT will ensure an annual financial audit is performed in compliance with the Federal Single Audit Act and will submit two (2) copies of such audit report, including a copy of the management letter, to COUNTY within six (6) months of the end of each CONTRACT year in which SUBRECIPIENT has received federal funding (i.e., July 1 – June 30). Failure to meet this requirement may result in COUNTY denying reimbursement of funds to SUBRECIPIENT, as well as future funding qualification. SUBRECIPIENTS, which are exempt from statutory audit requirements, shall maintain records, which are available for review by COUNTY or Federal officials. SUBRECIPIENT acknowledges that any and all "Financial Statements" submitted to COUNTY pursuant to this COUNTY become Public Records and are subject to public inspection pursuant to Sec. 6250 et seq. of the California Government Code.

33.11 **Modifications/Transfers of Real Property:**

33.11.1 Any proposed modification or change in use of real property acquired or improved, in whole or in part, by CDBG funds from the use planned at the time of the acquisition or improvement, including disposition, is prohibited.

33.11.2 SUBRECIPIENT shall ensure that any real property under SUBRECIPIENT's control that was acquired or improved in whole or in part with CDBG funds in excess of $25,000 is either:

33.11.2.1 Used to meet one of the national objectives contained in 24 CFR 570.208 for a period not less than five years, or for such period of time as determined to be appropriate by COUNTY, after expiration of the CONTRACT and close-out of SUBRECIPIENT's participation in the CDBG Program, or, until five years after the close-out of the grant from which the assistance to the property, whichever occurs first; or,

33.11.2.2 Disposed of in a manner which results in COUNTY being reimbursed in an amount equal to the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such reimbursement is not required after the period of time specified in accordance with paragraph 33.11.2.1 above.

33.12 **Labor Standards**

33.12.1 SUBRECIPIENT agrees to contact COUNTY no less than fourteen (14) days prior to the Pre-Construction Meeting date to seek consultation regarding application of requirements per federal labor standards regulations or Davis-Bacon related Acts.

33.12.2 SUBRECIPIENT will comply with Davis-Bacon Act and/or State Prevailing Wage requirements, when applicable.

33.12.3 SUBRECIPIENT agrees to comply with all applicable requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, the provisions of CONTRACT work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333), and all other applicable Federal, State and local laws and regulations pertaining to labor standards. SUBRECIPIENT shall maintain all applicable documentation, which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to COUNTY for review upon request.

33.12.4 SUBRECIPIENT agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than eight (8) units, all contractors engaged in contracts of $2,000.00 or more for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this CONTRACT, shall comply with all applicable federal requirements including Department of Labor regulations, under 29 CFR, Parts 3, 1, 5, 7 and 1926 governing the payment of wages and ratio of apprentices and trainees to journeymen. Nothing hereunder is intended to relieve SUBRECIPIENT of its obligation, if any, to require payment of the higher rate under state or local laws SUBRECIPIENT shall insert provisions meeting the requirements of this paragraph in all such CONTRACTS.

33.12.5 In case where the Davis-Bacon Act applies, SUBRECIPIENT agrees to submit the Construction Bid Package for this project to DIRECTOR for modification, SUBRECIPIENT shall construct project in accordance with the approved Construction Bid Package.

33.13 **California Labor Code Compliance**

33.13.1 If Prevailing Wage laws apply, SUBRECIPIENT hereby agrees to pay, or cause its subcontractors to pay, Prevailing Wage rates at all times for all construction, improvements, or modifications to be completed for COUNTY under this CONTRACT. SUBRECIPIENT herein agrees that SUBRECIPIENT shall post, or cause to be posted, a copy of the most current, applicable Prevailing Wage rates at the site where the construction, improvements, or modifications are performed.

33.13.2 Payroll Records

SUBRECIPIENT agrees that:

Certified copies of all payroll records for this project shall be required pursuant to the provisions of California Labor Code "Section 1776". The reporting format and words of certification shall be as indicated in Title 8 of the California Code of Regulations, Section 16401.

Certified copies of the payroll records of all subcontractors working on this project are required. It shall be the responsibility of the prime contractor to ensure subcontractor compliance.

Certified copies of all payroll records shall be submitted on a weekly basis to COUNTY through the duration of this CONTRACT.

SUBRECIPIENT acknowledges that failure to comply with Section 1776 may result in a forfeiture of twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, and it should be recognized that a contractor or subcontractor, or agent or representative thereof who neglects to comply is guilty of a misdemeanor pursuant to California Labor Code Section 1777.

33.14 **Economic Opportunities**

33.14.1 Compliance

This Contract is subject to the requirements of 12 USC 1701u, the HUD regulations issued pursuant thereto at 24 CFR, 135.1 et seq., and any applicable rules and orders of HUD issued Federal financial assistance shall be conditioned upon compliance with 12 USC 1701u. Failure to fulfill these requirements shall subject SUBRECIPIENT and

any sub-subrecipients, their successors and assigns, to those remedies specified herein. SUBRECIPIENT certifies and agrees that no conflict exists which would prevent compliance with requirements.

The Contractor agrees to abide by 24 CFR, 135.38, below and will insert the following clause in any subcontracts executed with third parties for work covered by this Contract:
"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. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

The contractor agree 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 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.

The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR 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 CFR 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 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts. 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 extend feasible (1) 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)."

34. Environmental Conditions:

34.1 SUBRECIPIENT shall comply with HUD Environmental Review under HUD regulations at 24 CFR 58 et seq., which implement the National Environmental Policy Act (NEPA); and, the California Environmental Quality Act (CEQA). No costs shall be incurred and no funds shall be disbursed prior to certification by COUNTY and/or HUD of environmental compliance.

34.2 SUBRECIPIENT shall incur no costs for any project-related activity defined in SUBRECIPENT SCOPE OF SERVICES and COUNTY shall not disburse funds prior to certification by COUNTY and/or HUD for environmental compliance.

34.3 SUBRECIPIENT shall provide requested material to COUNTY for the Environmental Review process required by applicable regulations.

34.4 **Air and Water:** SUBRECIPIENT agrees to comply with the following regulations in so far as they apply to the performance of this CONTRACT:

34.4.1 Clean Air Act, 42 U.S.C., 1857, et seq.

34.4.2 Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.

34.4.3 Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50 and 40 CFR 58.

34.5 **Flood Disaster Protection:** SUBRECIPIENT agrees to comply with the requirements of the Flood Disaster Protection Act of 1973, including as applicable any regulations set forth in 24 CFR 55, (implementing Executive Order 11988) in regard to the sale, lease or other transfer of land acquired, cleared, or improved under the terms of this CONTRACT, as it may apply to the provisions of this CONTRACT.

34.6 **Lead-Based Paint:** SUBRECIPIENT agrees that any construction or rehabilitation of residential structures with assistance provided under this CONTRACT shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35, particularly, 24 CFR 35.100 through 35.175. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified with the "Protect Your Family From Lead In Your Home" publication, found at http://www.epa.gov/lead that such properties may include lead-based paint.

34.7 **Historic Preservation:** SUBRECIPIENT agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800, Protection of Historic Properties, insofar as they apply to the performance of this CONTRACT.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

34.8 **Energy Efficiency Standards:** SUBRECIPIENT agrees to comply with the California Energy Commission Assembly Bill 970, Title 24, Part I of the California Code of Regulations (AB970: Building Efficiency Energy Standards), in regard to construction and property development, when applicable.

35. General Administration:

35.1 **Fair Housing:** SUBRECIPIENT shall affirmatively further fair housing in accordance with 24 CFR 570.904.

35.2 **Grantor Recognition:** SUBRECIPIENT shall insure recognition of the role of the COUNTY in providing services through this CONTRACT. All activities, facilities and items utilized pursuant to this CONTRACT shall be prominently labeled as to funding source. In addition, SUBRECIPIENT will include a reference to the support provided herein in all publications made possible with funds made available under this CONTRACT. SUBRECIPIENT will retain documentation of such recognition, which shall be available for periodic monitoring by representatives of COUNTY or HUD.

35.3 **Records to be Maintained:** SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570.503(b)(2), 570.506, 570.507, 570.508 that are pertinent to the activities to be funded under this CONTRACT. Such records shall include, but not be limited to:

35.3.1 Records providing a full description of each activity undertaken;

35.3.2 Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

35.3.3 Records required to determine the eligibility of activities;

35.3.4 Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with CDBG assistance;

35.3.5 Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

35.3.6 Financial records as required by 24 CFR 570.502, and OMB Circular A-87; and

35.3.7 Other records necessary to document compliance with Subpart K of 24 CFR 570.

35.3.8 Retention: SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this CONTRACT for a period of five (5) years after the termination of all activities funded under this CONTRACT, or after the resolution of all Federal audit finding, whichever occurs later. Records for non-expendable property acquired with funds under this CONTRACT shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after s/he has received final payment.

35.4 **Client Data**

35.4.1 SUBRECIPIENT shall maintain client data demonstrating client Eligibility for services provided for a period of five (5) years after the termination of all activities funded under this CONTRACT, or after the resolution of all Federal audit finding, whichever occurs later. Such data shall be consistent and include, but not limited to, client name,

address, verifiable income level (as documented by income tax returns, employee payroll records, retirement statements, etc. or other third party documentation acceptable to COUNTY, for determining eligibility), and description of service provided. Such information shall be made available to HUD representatives, COUNTY monitors, or their designees, for review upon request.

35.4.2 SUBRECIPIENT shall develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the subject program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

35.5 **Property Records:** SUBRECIPIENT shall maintain real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria, rental limitations, health, safety and building codes, etc., and shall conform to 24 CFR 570.505.

35.6 **Close-Out:** SUBRECIPIENT's obligation to COUNTY shall not end until all close-out requirements are completed. Activities during this close-out period shall be completed in accordance with 24 CFR 570.509 and shall include, but are not limited to: making final payments; submitting final invoice(s), report(s), in accordance with the requirements of paragraph 24.3.4 above, and documentation; disposing of program assets (including the return to COUNTY of all unused materials and equipment); remitting any program income balances and receivable accounts to COUNTY, and determining the custodianship of records.

35.7 **Equipment:** SUBRECIPIENT shall use, manage and dispose of equipment in accordance with 24 CFR 85.32 and 24 CFR 570.502.

35.8 **Subcontracts:**

35.8.1 SUBRECIPIENT shall submit all subcontract agreements to COUNTY for review and consent prior to entering into such subcontracts. For construction subcontracts, SUBRECIPIENT shall submit the Construction Bid Package to COUNTY for review and written approval by DIRECTOR or designee prior to advertising for bids and award for the construction contract. SUBRECIPIENT shall construct Project in accordance with the Construction Bid Package, which DIRECTOR approved, unless prior written approval is received from DIRECTOR for modification thereof.

35.8.2 SUBRECIPIENT shall assume responsibility for all subcontracted services to assure CONTRACT compliance.

35.8.3 SUBRECIPIENT shall cause all of the provisions of this CONTRACT in entirety to be included in and made a part of any subcontract executed in the performance of this CONTRACT.

35.8.4 SUBRECIPIENT shall monitor all subcontracted services on a quarterly basis to assure CONTRACT compliance. Results of said monitoring efforts shall be summarized in written form, and supported with documented evidence of follow-up actions(s) to correct any area(s) of CONTRACT non-compliance. Documentation shall be made available for periodic monitoring by representatives of COUNTY and/or HUD.

35.9 **Relocation:**

SUBRECIPIENT shall, in all matters relating to the project:

35.9.1 Take all reasonable steps to minimize displacement by providing tenants reasonable opportunity to lease and occupy dwelling units in the project being improved; and,

35.9.2 Submit to COUNTY a Plan outlining financial and advisory assistance in securing temporary housing for any eligible tenant who is temporarily or permanently relocated due to the project.

35.9.3 Comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act/URA, 49 CFR Part 24 and 24 CFR 570.606 for persons displaced by the project; and

35.9.4 Have in effect and follow a residential anti-displacement and relocation plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in conjunction with any activity assisted with funding under the subject project.

36. News/Information Release: The SUBRECIPIENT agrees that it will not issue any news releases in connection with either the award of this CONTRACT or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from the COUNTY through the COUNTY's Project Manager.

37. Notices: Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' Project Managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For COUNTY:	County of Orange OC Community Services Housing Community Development 1770 North Broadway Santa Ana, CA 92706-2642
For SUBRECIPIENT:	Bruce Channing, City Manager City of Laguna Hills 24035 El Toro Road Laguna Hills, CA 92653-3103

38. Ownership of Documents: The COUNTY has permanent ownership of all directly connected and derivative materials produced under this CONTRACT by the SUBRECIPIENT. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the COUNTY and may be used by the COUNTY as it may require without additional cost to

the COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the SUBRECIPIENT without the express written consent of the COUNTY.

39. **Precedence:** The CONTRACT documents consist of this CONTRACT and its attachments and exhibits. In the event of a conflict between or among the CONTRACT documents, the order of precedence shall be the provisions of the main body of this CONTRACT, i.e., those provisions set forth in the articles of this CONTRACT, and then the exhibits and attachments.

40. **Project Manager, COUNTY:** The COUNTY shall appoint a Project Manager to act as liaison between the COUNTY and the SUBRECIPIENT during the term of this CONTRACT. The COUNTY's Project Manager shall coordinate the activities of the COUNTY staff assigned to work with the SUBRECIPIENT.

    The COUNTY's Project Manager shall have the right to require the removal and replacement of the SUBRECIPIENT's Project Manager and key personnel. The COUNTY's Project Manager shall notify the SUBRECIPIENT in writing of such action. The SUBRECIPIENT shall accomplish the removal within 14 calendar days after written notice by the COUNTY's Project Manager. The COUNTY's Project Manager shall review and approve the appointment of the replacement for the SUBRECIPIENT's Project Manager and key personnel. Said approval shall not be unreasonably withheld.

41. **Errors and Omissions:** All reports, files and other documents prepared and submitted by SUBRECIPIENT shall be complete and shall be carefully checked by the professional(s) identified by SUBRECIPIENT as Project Manager and key personnel attached hereto, prior to submission to the COUNTY. SUBRECIPIENT agrees that COUNTY review is discretionary and SUBRECIPIENT shall not assume that the COUNTY will discover errors and/or omissions. If the COUNTY discovers any errors or omissions prior to approving SUBRECIPIENT's reports, files and other written documents, the reports, files or documents will be returned to SUBRECIPIENT for correction. Should the COUNTY or others discover errors or omissions in the reports, files or other written documents submitted by SUBRECIPIENT after COUNTY approval thereof, COUNTY approval of SUBRECIPIENT's reports, files or documents shall not be used as a defense by SUBRECIPIENT in any action between the COUNTY and SUBRECIPIENT, and the reports, files or documents will be returned to SUBRECIPIENT for correction.

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and have hereby cause this CONTRACT to be executed.

***City of Laguna Hills**

By: ______________________________ By: ______________________________

Title: ______________________________ Title: ______________________________

Dated: ______________________________ Dated: ______________________________

COUNTY OF ORANGE
A Political Subdivision of the State of California

By: ______________________________ Dated: ______________________________
Orange County Community Resources

APPROVED AS TO FORM:
COUNTY COUNSEL,

By: ______________________________
Jacqueline Guzman, DEPUTY

****

*For SUBRECIPIENTs that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.

For SUBRECIPIENTs that are not corporations, the person who has authority to bind the SUBRECIPIENT to a CONTRACT, must sign on one of the lines above.

ATTACHMENT A

1. **Scope of Services**

A. HUD Matrix Code / Activity:
03A Senior Centers / 570.201 (c)

B. Project Title:
Florence Sylvester Senior Center Rehabilitation

C. Program Description:
The City of Laguna Hills will use CDBG funds to rehabilitate and improve the function and increase the capacity of the senior center. The scope of work will include: a) Demolition of the common wall and install a retractable room divider, and b) Expand the solar panel electrical system.

D. Project Need:
The Florence Sylvester Senior Center provides a number of vital services to the elderly/frail elderly population of the community. Currently, over 300 elderly persons are served on a daily basis. This project is needed to increase the sustainability of the Center while decreasing overall costs, thereby resulting in continued and increased accessibility to the Center for the elderly/frail elderly. In addition, converting the existing common wall into a room divider will provide flexibility to facilitate large group activities or divide the room into smaller areas better allowing for the provision of medical services.

E. Low/Mod Neighborhood Preservation:
The Florence Sylvester Senior Center addresses the needs of the elderly population in the community, which are predominantly low and moderate-income persons. In addition, these improvements provide a community benefit

by increasing the sustainability through the use of renewable energy technologies. The Center represents a safe and accessible senior center for the community, and these improvements would allow the Center to provide continued access for the elderly/frail elderly population.

F. Program Objectives and Outcomes Chart:

Activity	Outputs
1. Improvement	Demolish Interior Wall
2. Improvement	Install Interior Wall

Performance Objectives	Performance Outcomes
1. Suitable Living Environment	Availability/Accessibility
2. Suitable Living Environment	Availability/Accessibility

CDBG National Objective: LMA 570.208 (a)(1)

Outcomes	Job Number
1 Public Facility	KC12021 / 2021

ATTACHMENT B

Compensation/Payment

1. **COMPENSATION:**

This is a fixed fee price CONTRACT between the COUNTY and the SUBRECIPIENT for **$54,000** as set forth in Attachment A. Scope of Services attached hereto and incorporated herein by reference. The SUBRECIPIENT agrees to accept the specified compensation as set forth in this CONTRACT as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the SUBRECIPIENT of all its duties and obligations hereunder. The COUNTY shall have no obligation to pay any sum in excess of the total CONTRACT amount specified unless authorized by an amendment in accordance with paragraphs C and R of the COUNTY's General Terms and Conditions.

2. **FIRM DISCOUNT AND PRICING STRUCTURE:**

SUBRECIPIENT guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. SUBRECIPIENT agrees that no price increases shall be passed along to the COUNTY during the term of this CONTRACT not otherwise specified and provided for within this CONTRACT.

3. **PAYMENT TERMS:**

An invoice for the fixed cost of the services shall be submitted to the address specified below upon the completion of the engagement and approval of the COUNTY Project Manager. SUBRECIPIENT shall reference CONTRACT number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the COUNTY of Orange and verified and approved by OC Community Services and subject to routine processing requirements of the COUNTY. The responsibility for providing an acceptable invoice rests with the SUBRECIPIENT.

Billing shall cover services not previously invoiced. The SUBRECIPIENT shall reimburse the COUNTY of Orange for any monies paid to the SUBRECIPIENT for services not provided or when services do not meet the CONTRACT requirements.

Payments made by the COUNTY shall not preclude the right of the COUNTY from thereafter disputing any items or services involved or billed under this CONTRACT and shall not be construed as acceptance of any part of the services.

Invoice(s) are to be sent to:

OC Community Resources

1300 S. Grand

Santa Ana, CA 92705,

Attention: Accounts Payable

4. **INVOICING INSTRUCTIONS:**

The SUBRECIPIENT will provide an invoice on SUBRECIPIENT's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. SUBRECIPIENT's name and address
2. SUBRECIPIENT's remittance address (if different from 1 above)
3. Name of COUNTY Agency Department
4. COUNTY CONTRACT/MASTER AGREEMENT number
5. Service date(s) – Month of Service
6. Rate
7. Delivery Order (DO) / Subordinate Agreement Number
8. Deliverables / Service description (in accordance with Attachment C)
9. SUBRECIPIENT's Federal I. D. number
10. Total

The responsibility for providing an acceptable invoice to the COUNTY for payment rests with the SUBRECIPIENT. Incomplete or incorrect invoices are not acceptable and will be returned to the SUBRECIPIENT for correction. The COUNTY's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment.

5. **OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY:**

Further instructions regarding invoicing/reimbursements as set forth in Exhibit B – OC Community Resources Contract Reimbursement Policy, are attached hereto and incorporated herein by reference.

ATTACHMENT C

1. **SUBRECIPIENT's Cost Proposal**

A. Administration and Program Cost Proposal

Project Cost Budget Chart City of Laguna Hills – Florence Sylvester Senior Center Rehabilitation			
Project Costs/Activity	Urban County Funds	Leveraged Resources	Total
Design/Project Development	0	$7,992	$7,992
Acquisition	N/A	N/A	N/A
Construction	$54,000	0	$54,000
Total Project Cost	$54,000	$7,992	$61,992

B. Detailed Project Cost Budget Description

Demolition of common wall between activity room and health room and installation of retractable room divider to facilitate large group activities. This provides the flexibility of dividing the space as need for education purposes and small group activities or the provision of medical services.

Expansion of the solar panel electrical system.

ATTACHMENT D

1. **Staffing Plan**

Project Title: Florence Sylvester Senior Center Rehabilitation

Complete and Submit – Initial Report due on or before July 1.
(Include name and classification).

	Name/Staff	Classification/Title
1	Melissa Au-Yeung	Project Manager: Senior Management Analyst (City)
2	Don White	Assistant City Manager/Finance Director
3		
4		
5		
6		
7		
8		
9		
10		

The substitution or addition of other key individuals in any given category or classification shall be allowed only with prior written approval of the COUNTY Project Manager.

The SUBRECIPIENT may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and time of the service/class required. Assignment of additional key personnel shall be subject to COUNTY approval.

2. Project Administration

The program will be monitored and implemented by staff from the City of Laguna Hills from the City Manager's Office. The lead staff member implementing the project for FY 2012-13 has been responsible for the implementation of the City's past grant monies for

Contracts KC11981, KC10939, and KC09852. The experience of key administrators and other staff members throughout the City also includes experience monitoring past CDBG Housing Rehabilitation program funding. In addition, key administrators and staff members' experience includes over 33 years in Public Administration, 20 years in City Management experience, 8 years in Community Development, and 30 years in Public Finance.

3. Project Experience

The City of Laguna Hills has been the recipient of CDBG Public Facilities and Improvement grants in FY 2009-10, FY 2010-11, and FY 2011-12 and has experience administering this type of grant. The City has also been the recipient of similar grants in the past, including CDBG Housing Rehabilitation funds. The City has worked closely with the County to ensure the funds were administered correctly. In addition, staff members have a wealth of municipal experience, including community development, rehabilitation activities and monitoring, public administration, public finance, and personnel.

ATTACHMENT E

1. **Project Schedule**
   July 1 – CONTRACT Start Date

2. Tools to Measure Project's Effect – Florence Sylvester Senior Center Rehabilitation

Milestone Date	Minimum Required Expenditure/ Accomplishment Threshold	Activity Results Achieved
December 15th	50% of Contracted Amount Expended	$27,000.00
	50% of Proposed Accomplishments Achieved	Construction and/or installation
January 15th	70% of Contracted Amount Expended	$37,800.00
	70% of Proposed Accomplishments Achieved	Construction and/or installation
March 15th	80% of Contracted Amount Expended	$43,200.00
	80% of Proposed Accomplishments Achieved	Construction and/or installation

3. There are currently measures in place to track participation in the various programs offered at the Florence Sylvester Senior Center. With these improvements, the Florence Sylvester Senior Center staff will be better equipped to continue to meet the growing demand and utilization by this fast-growing demographic group. The project's effect on the intended participants will be noticeable as the Center's sustainability is improved and continued accessibility to the Center is improved. In addition, the Center will have the flexibility to better meet the needs of the elderly population of the community.

EXHIBIT A

County of Orange Child Support Enforcement

Certification Requirements

In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of award of CONTRACT, the successful SUBRECIPIENT must furnish to the CONTRACT Administrator, Purchasing Agent or the agency/department Deputy Purchasing Agent:

1. In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address;

2. In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity; A certification that the SUBRECIPIENT has fully complied with all applicable federal and state reporting requirements regarding its employees; and

3. A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

The certifications will be stated as follows:

"I certify that City of Laguna Hills is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of CONTRACT # 613038 with the County of Orange. I understand that failure to comply shall constitute a material breach of the CONTRACT and that failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes and will be held confidential by those agencies.

Failure of the SUBRECIPIENT to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

The successful SUBRECIPIENT may use the forms supplied herein, to furnish required information listed above.

County of Orange Child Support Enforcement

Certification Requirements

(blank form)

A. In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address:

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________________

Residence Address: ______________________________

____

B. In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity:

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________________

Residence Address: ______________________________

____

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________________

Residence Address: ______________________________

____

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________________

Residence Address: ______________________________

____

(Additional sheets may be used if necessary)

C. A certification that the SUBRECIPIENT has fully complied with all applicable federal and state reporting requirements regarding its employees; and

D. A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

"I certify that _City of Laguna Hills_ *is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of CONTRACT* _# 613038_ *with the County of Orange. I understand that failure to comply shall constitute a material breach of the CONTRACT and that failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.*

____

Authorized Signature Print Name Title

EXHIBIT B

ORANGE COUNTY
OC Community Resources
Our Community. Our Commitment.

Subject: OC Community Resources Contract Reimbursement Policy | Effective: July 1, 2010 | Revised: April 13, 2012

PURPOSE:
This policy contains updated fiscal documentation requirements for contract reimbursement for OC Community Services. The procedures provide instructions for submitting reimbursement demand letter or invoice.

EFFECTIVE DATE:
July 1, 2010

REVISION DATE:
April 13, 2012

REFERENCES:
Executed Board of Supervisors approved contract
Budget included in contract or presented as an exhibit
OMB Circular A-21 Cost Principles for Educational Institutions
OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments
OMB Circular A-122 Cost Principles for Non-Profit Organizations
48 CFR Part 31 Contract Cost Principles and Procedures
24 CFR Parts 85, 570.502, 570.201, 576.21, 576.51 and 576.61: For Housing & Community Development and Homeless Prevention Contracts only.

BACKGROUND:
The executed Board of Supervisors approved contract is the authorization for all aspects of payment, including the maximum amount to be paid, the payee, and the scope of services and work. Payments are made in strict accordance with the contract terms. Allowable costs are identified in referenced OMB Circulars and Code of Federal Regulations (CFR).

ATTACHMENTS:
Reimbursement Policy Status Form (RPS-1)

POLICY:
Contractor is responsible for the submission of accurate claims. This reimbursement policy is intended to ensure that the Contractor is reimbursed based on the code or codes that correctly describe the services provided. This information is intended to serve only as a general reference resource regarding OC Community Services' reimbursement policy for the services described and is not intended to address every aspect of a reimbursement situation. Accordingly, OC Community Services may use reasonable discretion in interpreting and applying this policy to services provided in a particular case. Other factors affecting reimbursement may supplement, modify or, in some cases, supersede this policy. These factors may include, but are not limited to: legislative mandates and County directives. OC Community Services may modify this reimbursement policy at any time by publishing a new version of the policy. However, the information presented in this policy is accurate and current as of the date of publication.

Cost incurred by contractor must be substantiated and incurred during the contract period. Total of all reimbursements cannot exceed the amount of the contract. Cost must be allowable under applicable OMB Circular or CFR. All supporting documentation for reimbursement must be submitted with demand letter or invoice. If contract requires matching

contribution, documentation substantiating contribution match must be submitted with demand letter or invoice.

At any time, based on County's business needs and/or Contractor's performance, the County may designate Contractor to submit abbreviated or comprehensive documentation, as identified in the respective sections. Upon designation, Contractor will be notified, in writing via Reimbursement Policy Status Form, of which requirements are in full force. When Contractor is required to submit comprehensive documentation, in addition to the items identified in the Abbreviated Documentation Requirements Section, Contractor must also provide the documentation identified in the Comprehensive Documentation Requirements Section.

PROCEDURES:

Abbreviated Documentation Requirements

Compile and submit:

1. Supporting documentation includes, but is not limited to:
    a. General ledger/expense transaction report
    b. Payroll register or labor distribution report
    c. Payroll allocation plan
    d. Personnel Documentation
    e. Benefit plan and calculation of benefit
    f. Employer-employee contract for non-customary benefits (if applicable)
    g. Pre-approval documentation for equipment purchases equal to or greater than $5,000
2. The following is required with the first month's invoice only:
    a. Cost allocation plan for rent, utilities, etc.
    b. Indirect rate approved by cognizant agency (if applicable)
3. Summary of leveraged resources (if applicable)
4. Demand letters must contain the following certification (if required by Contract):
   "I certify under the penalty of perjury that this claim is true and correct and that the requested payments have been made. I also certify that this claim agrees with our official payroll and financial records and that these amounts have not been, or will not be claimed from any other funding source"
5. Grantee Performance Report (if required by Contract)
6. Supporting documentation shall be on single-sided sheets
7. Please redact employees' Social Security numbers from payroll reports
8. Demand letter or invoice, along with supporting documentation shall be submitted to:
   OC Community Resources Accounting
   1300 S. Grand, Building B, 2nd Floor
   Santa Ana, CA 92705

Comprehensive Documentation Requirements

In addition to abbreviated documentation, compile and submit:

9. Purchase orders, invoices, and receipts
10. Cashed checks
11. Check register
12. Consultant/sub-contractor invoices (with description of services)
13. Travel expense documentation: mileage reimbursement, hotel bill, meal reimbursement

ACTION:

Distribute this policy to all appropriate staff

INQUIRIES:

Inquiries may be directed to the following:

- **Win Swe: 714-480-6532 or win.swe@occr.ocgov.com**
- **Cathy Tran: 714-480-6531 or cathy.tran@occr.ocgov.com**

ORANGE COUNTY
OC Community Resources
Our Community. Our Commitment.

Reimbursement Policy Status Form

Per OC Community Resources Contract Reimbursement Policy, in regards to the Contract # listed herein, Contractor is designated with the Documentation Status identified below, with all related documentation requirements in full force, until further notice.

Contractor: Click here to enter text. **Effective Date:** Click here to enter text.

Contract #: Click here to enter text.

Documentation Status: ☐ **Abbreviated** ☐ **Comprehensive**

****

Program Authorization by:

Click here to enter text.
Print Name

Signed by: ______________________

Date: Click here to enter text.

Auditor Controller Authorization by:

Click here to enter text.
Print Name

Signed by: ______________________

Date: Click here to enter text.

Two signatures are required to implement the form.

Distribution:
Contractor
Auditor Controller
Contract File
Program File

Exhibit C

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(I) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(I) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(I) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here O if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.
(18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official | Title

Signature | Date

X

EXHIBIT D

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year ________ quarter ________ date of last report ____________

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ______, *if known*: Congressional District, *if known*: 4c	Congressional District, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: ____________
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: ____________________ Print Name: ____________________ Title: ____________________ Telephone No.: ______________ Date: ________
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

ATTACHMENT NO. 3

AGREEMENT BETWEEN

THE CITY OF LAGUNA HILLS
AND
AGE WELL SENIOR SERVICES, INC.

FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
PUBLIC FACILITIES AND IMPROVEMENT FUNDS
(Program Year 2012/2013)

TITLE OF PROJECT: Public Facilities and Improvements – Florence Sylvester Senior Center (Age Well Senior Services, Inc.)

This **AGREEMENT** is made and entered into the _______ **day of _________, 2012**.

BY AND BETWEEN City of Laguna Hills, a municipal corporation organized and existing under the laws of the State of California, and hereinafter referred to as **"CITY"**.

AND Age Well Senior Services, Inc., a California Non-Profit Public Benefit Corporation, hereinafter referred to as "**SUB-RECIPIENT**"

RECITALS

WHEREAS, the County of Orange (the "County") has applied for and anticipates receiving funds from the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", under Title I of the Housing and Community Development Act of 1974 (Public Law 93-383, as amended) for the purpose of funding projects meeting one of the HUD national objectives; and

WHEREAS, the County of Orange and participating cities (of which the City is a member) previously entered into a Cooperation Agreement dated July 1, 2012, as amended, in which both parties agreed to cooperate in the undertaking, or assist in the undertaking, of community development and housing assistance activities; and

WHEREAS, the County of Orange adopted its Annual Action Plan and application funding, including any mid-year amendments, from HUD's Community Development Block Grant Program for fiscal year 2012/2013 which includes the Project described herein; and

WHEREAS, the City is covered by the County's Annual Action Plan, and

WHEREAS, the City submitted to the County of Orange an application for funding of the Project described herein, and

WHEREAS, the City has entered into a separate contract for the period July 1, 2012 - June 30, 2013 with the County of Orange (Contract No. KC12021, entitled "Contract Between County of Orange and City of Laguna Hills for Public Facilities & Improvements Florence Sylvester Senior Center Rehabilitation", a copy of which is attached as Exhibit A and is incorporated herein by this reference) to receive Community Development Block Grant (CDBG) funds under Title I of the Housing and Community Development Act of 1974 (Public Law 93-838, as amended) for the purpose of assisting Sub-recipient with the Florence Sylvester Senior Center rehabilitation project which meets one of the HUD National Objectives, and

WHEREAS, Contract No. KC12021 provides that funds to the City for qualified projects are conditional upon: County being funded by HUD and the release of funds to County; Certification of Insurance; and certification of environmental compliance by County and/or HUD in accordance with 24 CFR 58 et seq., and

WHEREAS, the Sub-recipient is a California nonprofit public benefit corporation that has been selected by the City to receive and administer CDBG funds, and to provide the rehabilitation project services at the Florence Sylvester Senior Center, located at 23721 Moulton Parkway, as described in Exhibit B ("Project"), in accordance with the schedule of performance included therein; and

WHEREAS, Sub-recipient represents that it is qualified and willing to administer the Project and hereby certifies that the activities carried out with funds provided under this Agreement will meet one or more of the CDBG program's National Objectives, and

WHEREAS, the Sub-recipient agrees that it will adhere to the Project performance measurements and outcomes set forth herein; and Sub-recipient understands and agrees that its failure to follow the performance measurements and meet the stated outcomes may constitute breach of contract that could result in termination of this Agreement or serve as reason for the City to recapture the CDBG funds awarded to Sub-recipient pursuant to this Agreement.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the City and Sub-recipient agree as follows:

I. SCOPE OF SERVICES

A. Project Description

(1) As a condition of receiving CDBG funding pursuant to this Agreement, Sub-recipient shall act as Project Manager and shall be responsible for administering the approved fiscal year 2012/2013 CDBG Project described herein in a manner satisfactory to the City and consistent with any and all applicable standards, including this Agreement, Contract No. KC12021, completion milestones (provided by the County), and all applicable Federal, State, and local laws, guidelines, policies, and

regulations. Sub-recipient shall use CDBG funds for rehabilitation of the Florence Sylvester Senior Center, located at 23721 Moulton Parkway, as set forth in the Scope of Work described in Exhibit B, which is attached hereto and incorporated herein by reference (the "Project").

(2) The construction rehabilitation Project contemplated herein is a "public work", under California Labor Code Section 1720, and the construction contractors should be paid prevailing wages in accordance with State law. In addition, the Federal Labor Standards, including Davis-Bacon prevailing wages shall apply. A current and appropriate Davis-Bacon wage decision approved by the County shall be included in the Construction Bid Package, along with HUD – 4010 form, "Federal Labor Standards Provisions".

(3) Prior to advertising for bids, the Construction Bid Package for the work on the Project shall be submitted to the City for review and approval by the County's Director of Housing and Community Services. A County representative shall be invited to a preconstruction conference to review Federal Labor Standards compliance procedures with the Sub-recipient and construction contractors.

(4) No costs shall be incurred prior to receipt of written certification of approval by County of the fulfillment of the requirements of Section XXI (Insurance) of this Agreement.

B. Budget

This Agreement is for a CDBG funding reimbursement amount not to exceed $54,000 (fifty four thousand dollars and no cents). As described further in Section III below, the Sub-recipient shall provide the funds for the Project and shall submit written proof of payment to City, whereupon after approval by City, the City shall seek reimbursement of eligible costs from the County pursuant to Contract No. KC12021.

C. Work Schedule

Reimbursable activities per this Agreement may begin on the effective date of this Agreement, and shall end on June 30, 2013. Quarterly reports shall be provided by the Sub-recipient in accordance with Section VII(B) of this Agreement. The Quarterly Report shall indicate the progress of the components of the rehabilitation Project.

II. PERFORMANCE MEASURES

A. Performance Objectives

Sub-recipient hereby certifies that the Project carried out with funds provided under this Agreement will meet one or more of the CDBG program's National Objectives: 1) benefit low/moderate income persons; 2) aid in the prevention or elimination of slums or blight; or 3) meet community development needs having a particular urgency as defined in

Title 24 of the Code of Federal Regulations ("24 CFR") Part 570.208. Sub-recipient agrees that the Project shall be implemented and appropriately maintained for community development purposes as defined by applicable HUD provisions to ensure maximum feasible benefit and utilization of the project by low- and moderate-income persons.

B. Goals and Performance Measures

In addition to the reasonable administrative services required as part of this Agreement, Sub-recipient agrees to accomplish the rehabilitation work on the Project as delineated in Exhibit B, which is attached hereto and incorporated herein by reference.

C. Performance Monitoring

The City will monitor the performance of the Sub-recipient against the goals and performance standards required by this Agreement, applicable Federal, State, and local laws, guidelines, policies, and regulations, and in accordance with Contract No. KC12021. The Sub-recipient shall cooperate by providing completed Quarterly Performance Reports as delineated in Section VII(B). Substandard performance as determined by the City, in its sole discretion, shall constitute noncompliance with this Agreement. If action to correct such substandard performance is not promptly taken by Sub-recipient within a reasonable time after being notified by the City, Agreement suspension or termination procedures may be initiated.

D. Time of Performance

Eligible project activities as set forth in Exhibit B shall begin on the effective date of this Agreement, and shall be completed by June 30, 2013. A final invoice for eligible project costs shall be submitted within 15 days after the Agreement expiration date. The term of this Agreement and the provisions herein may be extended by the City at the City's sole discretion for up to six months from the Agreement expiration date, upon written notification to the Sub-recipient. In the event of such extension, the deadline for submittal of a final invoice shall be 15 days after the new completion date. Every effort shall be made by Sub-recipient to expend the allocated funds in their entirety by June 30, 2013. If Sub-recipient does not expend all funds by June 30, 2013, either due to costs not incurred or costs not approved by the City, the City may allocate the funds not yet drawn to another eligible CDBG project(s) within the City of Laguna Hills.

III. DISBURSEMENT OF FUNDS

A. Reimbursements

Subject to availability of funds from HUD to County, County approval of Sub-recipient's Insurance, County approval of Sub-recipients Federal Labor Standards submittals, and Sub-recipient's timely completion and submission of complete Requests for Reimbursements to City, payment shall be made by City and shall be in the form of reimbursement for eligible costs as outlined in Exhibit B for the period beginning on the effective date of this Agreement, and ending June 30, 2013. It is expressly agreed and understood by the parties that the total amount of CDBG funding eligible for reimbursement under this Agreement shall not exceed the amount stated in Section I(B) of this Agreement.

B. Reimbursement Schedule

Reimbursement for eligible costs shall be made on a quarterly basis in accordance with Exhibit A "General Conditions" and as delineated in Exhibit B, both attached hereto and incorporated herein by this reference. The City shall not provide any payments/reimbursements in advance of actual expenditures by Sub-recipient. Funding is contingent upon the City receiving CDBG funds from the County and HUD.

C. Reimbursement Requests

On a quarterly basis and within fifteen (15) days of the end of a quarter, the Sub-recipient may invoice City for reimbursement of eligible costs as outlined in Exhibit B. Concurrently with its request for the aforementioned funds, Sub-recipient shall submit to the City the following supporting documentation: copies of paid invoices, receipts, certified payroll records, bank statements, canceled checks, attendance records, and other items adequate to document project expenditures. In addition, Sub-recipient shall also provide a Quarterly Performance Report which addresses its level of performance for each activity undertaken relative to the scope of services set forth in Section I. Prior to reimbursing, the City will verify that Sub-recipient has met all applicable regulations for the Project. The City will not authorize reimbursement if any preceding quarter's reports or invoices are incomplete, or have not been submitted.

D. Reimbursement Records

Records shall be kept by Sub-recipient in accordance with all records maintenance requirements set forth in Contract No. KC12021, which is attached as Exhibit A and is incorporated herein by reference.

IV. NOTICES

A. Communication

Communication and details concerning this Agreement shall be directed to the following representatives:

City

City of Laguna Hills
Office of the City Manager
25035 El Toro Road
Laguna Hills, California 92653
Attn: Melissa Au-Yeung, Senior Management Analyst

Sub-recipient

Age Well Senior Services, Inc.
24300 El Toro Road, Building A
Laguna Woods, CA 92637
Attn: Marilyn Ditty, Chief Executive Officer

B. <u>Certified Mail</u>

Any notice required under this Agreement shall be sent by certified mail, postage prepaid, and shall be deemed complete on the third business day following deposit in the United States Postal Service.

V. PROGRAM REQUIREMENTS

A. Compliance

Sub-recipient shall adhere to the terms of the City's CDBG application, Contract KC12021, and this Agreement, including any subsequent assurances and agreements made by the City to the County and HUD, pertaining to this Agreement. In addition, Sub-recipient shall comply with all applicable County requirements, in particular Section 33 of Contract No. KC12021. Sub-recipient shall comply with applicable Uniform Administrative Requirements as described in 24 CFR 570.502, attached as Exhibit C and incorporated herein by reference.

The Sub-recipient shall carry out all activities in compliance with all Federal laws and regulations as described in Subpart K, such as labor standards (Davis Bacon Act) and fair housing requirements of the CDBG Program Regulations.

The provisions of Subpart K of Title 24 of the Code of Federal Regulations relating to CDBG Program Regulations are attached as Exhibit D and are incorporated as a condition of this Agreement by this reference. The Sub-recipient shall comply with all applicable Federal laws related to the use of CDBG funds by the Sub-recipient and the approved Project outlined herein.

VI. EXPENSES FOR LABOR, MATERIALS AND SUPPLIES

The Sub-recipient shall furnish all labor, materials and services and bear all expenses to carry out the Project activities as outlined in this Agreement. Under this Agreement, the City's only financial obligation to the Sub-recipient is to provide the approved CDBG funds for the maximum amount specified in Section I(B) of this Agreement, as allocated by the County of Orange and the City of Laguna Hills for CDBG Program Year 2012/2013.

VII. RECORDS AND REPORTS

A. Documentation

The Sub-recipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.503 (b)(2), 570.506, 570.507 and 570.508 that are pertinent to the activities to be funded under this Agreement. Such records and reports shall include, but not be limited, to:

(1) Documentation providing a full description of each activity undertaken;
(2) Documentation demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
(3) Documentation required to determine the eligibility of activities;

(4) Documentation required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
(5) Documentation of compliance with the fair housing and equal opportunity components of the CDBG program;
(6) Financial records as required by 24 CFR 570.502 and OMB Circular A-87 as detailed in Exhibit C, which is attached hereto and incorporated herein by reference;
(7) Other records necessary to document compliance with Subpart K of 24 CFR 570; and
(8) Any such other related records as the City shall require.

B. **Quarterly Reports**

The Sub-recipient shall submit "Quarterly Reports" on a Grantee Performance Report (GPR Form) during the program year beginning July 1, 2012, and ending June 30, 2013. Quarterly Reports shall be filed with the City fifteen (15) days before: December 15, 2012, January 15, 2013, and March 15, 2013. The report must include sufficient information to assist the City in monitoring the Sub-recipient's performance. The Sub-recipient must demonstrate satisfactory performance prior to reimbursement for expenditures. If it is determined by the City that Sub-recipient's performance or progress on performance is unsatisfactory, the City may withhold further funding on the Project pending resolution of the unsatisfactory condition(s), or may terminate this Agreement as prescribed in 24 CFR Subparts 85.43 and 85.44. In addition, the City may require the Sub-recipient to reimburse the City any funds that it determines to be improperly expended based on applicable CDBG Program Regulations.

C. **Accounting Records**

The Sub-recipient shall maintain separate accounting records for the Federal CDBG funds provided by the City. The City, County, Federal Grantor Agency, Controller General of the United States, or any of their duly authorized representatives shall have access to all books, documents, papers and records maintained by the Sub-recipient which directly pertain to the above Project for the purpose of audit, examination, excerpts and transcriptions. Unless otherwise notified by the City, the Sub-recipient shall retain all financial records, supporting documents and statistical reports related to the Project identified under this Agreement until June 30, 2018. All records subject to an audit finding must be retained for five (5) years from the date the finding is made or until the finding has been cleared by appropriate officials and the Sub-recipient has been given official written notice.

VIII. AUDIT REQUIREMENT

A. **Audit Report**

Sub-recipient's records on the Project shall be maintained and available to the City for conducting an audit. If the Sub-recipient receives $25,000 or more in total Federal financial assistance, Sub-recipient shall perform, if requested to do so by the City or County, an annual audit to be performed in accordance with OMB Circular A-133; and a copy of the audit shall be forwarded to the City within 180 days after the end of the City's fiscal year (June 30, 2013).

B. Single Audit Report

If the Sub-recipient receives more than $500,000 in total federal funds in one fiscal year from the City and/or any other city or agency, the Sub-recipient is required to submit a Single Audit Report. As required by the federal Single Audit Act, the Sub-recipient shall be required to submit to the City, a comprehensive financial audit prepared by an independent, neutral third party auditor. The audit shall cover financial operation of the Sub-recipient for the period beginning July 1, 2012 and ending June 30, 2013, and is due no later than six months after expiration of this Agreement.

C. Corrective Actions

The City shall have the right to ensure that necessary corrective actions are made by the Sub-recipient for any audit findings pertinent to Sub-recipient handling of funding attributable to the CDBG Program per Federal requirements, including requiring Sub-recipient to return funds paid by City.

IX. MODIFICATIONS/TRANSFERS

The Sub-recipient shall transfer to City any CDBG funds on hand at the time of the Agreement expiration and any accounts receivable attributable to the use of CDBG funds.

X. AMENDMENTS

The City and Sub-recipient may amend this Agreement at any time provided that any such amendment makes specific reference to this Agreement, is executed in writing, is approved by the County and signed by a duly authorized representative of each organization. Such amendment shall not invalidate this Agreement, nor relieve or release the City or Sub-recipient from their respective obligations under this Agreement. Any proposed amendment to this Agreement shall be submitted to, and approved by the City prior to commencement of any activity covered by said amendment.

The City may, at its sole discretion, amend this Agreement at any time to conform with Federal, State, County, or local government guidelines, policies, and available funding amounts. If any amendment results in a change of funding amount under this Agreement, the Scope of Work, threshold or milestone dates, or schedule of activities to be undertaken as part of this Agreement, such changes will be incorporated by written amendment between the City and Sub-recipient.

XI. SECTION 3 COVERED ASSISTANCE

A. Policies and Procedures

Where the Sub-recipient receives CDBG funds for work arising in connection with housing rehabilitation, housing construction, or other public improvements, the requirements of Section 3 of the Housing and Urban Development Act of 1968 shall apply as follows:

(1) The work to be performed under this Agreement 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.

(2) The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

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

(4) The Sub-recipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Sub-recipient will not subcontract with any subcontractor where the Sub-recipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(5) The Sub-recipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Sub-recipient is selected but

before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Sub-recipient's obligations under 24 CFR Part 135.

(6) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

(7) 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 extend feasible (1) 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.

(8) 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)."

B. Inclusion of Section 3 Clause

Sub-recipient shall abide by this Section 3 Clause and shall also require this Section 3 clause be inserted into any and all subcontracts executed with subcontractors for work covered by this Agreement.

XII. RELIGIOUS ACTIVITES

The Sub-recipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities or to promote religious interests. Religious entities may use CDBG funds for secular activities only in accordance with the Federal regulations specified in 24 CFR 570.200(j), attached as Exhibit E and incorporated into this Agreement.

XIII. NONDISCRIMINATION CLAUSE

The Sub-recipient shall comply with all State and Federal laws regarding nondiscrimination and the equal opportunity employment of personnel.

XIV. SUSPENSION AND TERMINATION OF AGREEMENT

In accordance with the pertinent provisions of the Code of Federal Regulations, this Agreement may be suspended or terminated if the Sub-recipient fails to comply with any term(s) of the award and/or for the City's convenience. Title 24, Code of Federal Regulations, Sections 85.43 and 85.44 are attached as Exhibit F and incorporated into this Agreement by this reference.

XV. REVERSION OF ASSETS UPON EXPIRATION OF AGREEMENT

Upon expiration of this Agreement, the Sub-recipient shall be required to use any real property under the Sub-recipient's control that was acquired or improved in whole or in part with CDBG funds in excess of $25,000 as follows:

(1) To meet one of the National Objectives in 24 CFR 570.208 until no earlier than five (5) years after expiration of this Agreement; or

(2) To be disposed of in a manner resulting in the City being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition or improvement of the property. Reimbursement is not required after the period of time specified in Section XV(1).

XVI. HOLD HARMLESS AND INDEMNITY AGREEMENT

The City, its elected and appointed officers, employees, contractors (other than Sub-recipient) and agents shall not be liable for any claims, liabilities, penalties, fines, or any damage to goods, properties, or effects of any person whatsoever, nor for personal injuries or death caused by, or claimed to have been caused by, or resulting from, any intentional or negligent acts, errors or omissions of Sub-recipient or Sub-recipient's agents, employees, subcontractors, or representatives in completion of Project outlined in the Agreement.

To the fullest extent permitted by law, the Sub-recipient agrees to defend, indemnify, and hold harmless the City and its elected and appointed officers, employees, contractors and agents against any of the foregoing liabilities or claims of any kind and any cost/and expense that is incurred by the City including attorney fees and litigation expenses on account of any of the foregoing liabilities, including liabilities or claims by reason of alleged, errors, omissions, or defects in any plans and specifications for the Project.

XVII. ASSIGNMENT OF AGREEMENT

The Sub-recipient shall not assign this Agreement or any monies due hereunder without the prior written consent of the City.

XVIII. SUCCESSORS OR ASSIGNS

Subject to the provisions of Section XVII (Assignment of Agreement), all terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns as permitted by this Agreement.

XIX. INDEPENDENT SUB-RECIPIENT

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Sub-recipient and its subcontractors shall at all times remain independent with respect to the services to be performed under this Agreement. The City shall be exempt from payment of any Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance. Sub-recipient and/or its subcontractors is/are independent contractors.

XX. ANTI-LOBBYING

Sub-recipient certifies the following:

(1) No Federal appropriated funds 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, then entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) Sub-recipient will complete and submit the "Disclosure of Lobbying Activities" Standard Form if any funds other than Federal appropriated funds have been paid, in accordance with its instructions; and

(3) Sub-recipient shall include the above anti-lobbying certification in award documents for all subcontractors and all subcontractors shall certify and disclose accordingly.

XXI. INSURANCE

At all times during the term of this Agreement, the Sub-recipient shall maintain insurance coverage in compliance with the Insurance Requirements attached as Exhibit G and incorporated into this Agreement by this reference. The insurance requirements of this section shall be in addition to, and shall not modify Section XVI (Hold Harmless and Indemnity Agreement).

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its City Manager and attested by its Clerk; Sub-recipient has caused this Agreement to be executed by its President, Secretary, and Chief Executive Officer, all having been duly authorized by the City Council of City of Laguna Hills and the Board of Directors of Sub-recipient, respectively.

EXECUTED:

CITY OF LAGUNA HILLS

By: ______________________
Bruce Channing, City Manager
Dated: ___________________

ATTEST:

By: ______________________
Peggy J. Johns, City Clerk

AGE WELL SENIOR SERVICES, INC., a California non-profit corporation

By: ______________________
Steve Moyer, President
Date: ______________________

By: ______________________
Norman B. Schmeltzer, III, Secretary
Date: ______________________

By: ______________________
Marilyn Ditty,
Chief Executive Officer
Date: ______________________

EXHIBIT A

CONTRACT

BETWEEN

COUNTY OF ORANGE

AND

CITY OF LAGUNA HILLS

FOR

PUBLIC FACILITIES & IMPROVEMENTS

FLORENCE SYLVESTER SENIOR CENTER REHABILITATION

CDBG – CFDA NUMBER 14.218

CONTRACT

ARTICLES

GENERAL TERMS AND CONDITIONS

ADDITIONAL TERMS AND CONDITIONS

ATTACHMENTS / EXHIBITS

AGREEMENT

This Agreement, hereinafter referred to as "CONTRACT" is made between the County of Orange, a political subdivision of the State of California and recognized Urban County under the Federal Housing and Community Development Act of 1974 (Public Law 93-383), as amended, with a place of business at 1770 North Broadway, Santa Ana, CA 92706-2642; hereinafter referred to as "COUNTY," and City of Laguna Hills, a municipal corporation, in the State of California with a place of business at 24035 El Toro Road, Laguna Hills, CA 92653, hereinafter referred to as "SUBRECIPIENT," with COUNTY and SUBRECIPIENT sometimes referred to as "PARTY", or collectively as "PARTIES."

This Agreement, hereinafter referred to as CONTRACT, is entered into on ___________.

RECITALS

This CONTRACT is made with reference to the following facts, among others:

WHEREAS, COUNTY has applied for and anticipates receiving funds from the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", under Title I of the Housing and Community Development Act of 1974 (Public Law 93-383, as amended) for the purpose of funding programs meeting one of the HUD national objectives; and

WHEREAS, a Grant Agreement between HUD and the County of Orange has been entered; and

WHEREAS, COUNTY and Participating Cities previously entered into a Cooperation Agreement dated July 1, 2012 as amended, in which both parties agreed to cooperate in the undertaking, or assist in the undertaking, of community development and housing assistance activity; and

WHEREAS, SUBRECIPIENT has submitted to COUNTY an application for funding of a housing and community development activity; and

WHEREAS, COUNTY adopted its FY 2012-13 Annual Action Plan, (hereinafter referred to as "Annual Action Plan"), including any substantial amendments, which sets forth the PROGRAM described herein; and

WHEREAS, HUD, in accordance with 24 CFR Part 570 Subpart O, 570.902, will annually review the performance of COUNTY to determine whether COUNTY has carried out its Community Development Block Grant (CDBG) assisted activities in a timely manner and has significantly disbursed CDBG funds and met the mandated "1.5 ratio" threshold; and

WHEREAS, COUNTY approved an allocation of $54,000.00 (Fifty-Four Thousand Dollars and 00 Cents) in program funding to SUBRECIPIENT for the Fiscal Year 2012-13; and

WHEREAS, HUD has accepted and certified the aforementioned ANNUAL ACTION PLAN; and

WHEREAS, COUNTY engages SUBRECIPIENT to assist COUNTY in utilizing aforesaid funds:

NOW, THEREFORE, the PARTIES mutually agree as follows:

DEFINITIONS

For the purposes of this CONTRACT the following definitions shall apply:

1. HUD: United States Department of Housing and Urban Development.
2. OC COMMUNITY RESOURCES (OCCR): Designated as the Lead for the development and implementation of County of Orange Urban County Program's Consolidated Plan.
3. DIRECTOR: DIRECTOR of OC Community Resources, or designee.
4. PROGRAM INCOME: The gross income received by SUBRECIPIENT directly generated from the use of the subject program funds.
5. GRANTEE PERFORMANCE REPORT (GPR) INFORMATION FORM: A PROGRAM activity data document provided by COUNTY to SUBRECIPIENT used to monitor and track the performance of SUBRECIPIENT.
6. OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY: A COUNTY document setting policies regarding types of documentation required to support the costs incurred and paid (including but not limited to copies of paid invoices, certified payroll registers, bank statements, etc.)
7. PROJECT: Any site or sites, including buildings, and/or activities assisted with federal program funds.
8. OMB: Federal Office of Management and Budget.
9. CAPER: Consolidated Annual Performance and Evaluation Report. An annual published report to HUD and the public on all housing-related activities.
10. CDBG: 24 CFR Part 570 - Community Development Block Grant – the CDBG regulations set forth eligible activities and the national objectives that each activity must meet. The Catalog of Federal Domestic Assistance (CFDA) # 14.218 distributes formula grants (CDBG) to develop viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income.
11. CONTINUUM OF CARE: An Orange County group composed of representatives of relevant organizations that serve homeless and formerly homeless persons that are organized to plan for and provide, as necessary, a system of services to address the various needs of homeless persons and persons at risk of homelessness.
12. HOMELESS MANAGEMENT INFORMATION SYSTEM (HMIS): The information system designated by the Continuum of Care to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness. (24 CFR Part 580)
13. EQUIPMENT: 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.

14. SUBSTANTIAL AMENDMENT: The following criteria will be used by the COUNTY – if any one criteria applies, a substantial amendment will be required:
   14.1 A new activity not previously listed and described in the Consolidated Plan/Annual Action Plan;
   14.2 When a proposal is made to amend the description of an existing activity in such a way that the newly described purpose, scope, or beneficiaries differ significantly from the original activity's purpose, scope, or beneficiaries; or
   14.3 An increase in the amount of Federal Community Planning Development and/or local funds allocated to an existing activity when the following apply:
      14.3.1 An increase in funding for a public service activity in an amount greater than a 50% increase over the current funded amount.
      14.3.2 An increase in the funding for public facility improvements/housing rehabilitation in an amount greater than a 50% increase over the current funded amount.

15. CONSTRUCTION BID PACKAGE: A package of bidding documents which includes the proposal, bidding instructions, CONTRACT documents, detailed estimated costs, and plans and specifications for a construction project, all prepared in accordance with applicable Federal regulations.

16. PROGRAM ADMINISTRATION: An activity relating to the general management, oversight and coordination of community development programs. Costs directly related to carrying out eligible activities are not included.

ARTICLES

General Terms and Conditions:

A. **Governing Law and Venue**: This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange COUNTY, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another COUNTY.

B. **Entire CONTRACT**: This CONTRACT, including Attachments A, B, C, D and E and Exhibits A, B, C and D which are attached hereto and incorporated herein by this reference, when accepted by the SUBRECIPIENT either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire CONTRACT between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing. Electronic acceptance of any additional terms, conditions or supplemental CONTRACTs by any COUNTY

employee or agent, including but not limited to installers of software, shall not be valid or binding on COUNTY unless accepted in writing by COUNTY's Purchasing Agent or his designee, hereinafter "Purchasing Agent."

C. **Amendments**: No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

D. **Taxes**: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

E. **Delivery:** Time of delivery of services is of the essence in this CONTRACT. COUNTY reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed scope of services. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by COUNTY.

F. **Acceptance/Payment**: Unless otherwise agreed to in writing by the COUNTY, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of COUNTY, and 2) payment shall be made in arrears after satisfactory acceptance.

G. **Warranty**: SUBRECIPIENT expressly warrants that the services covered by this CONTRACT are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon SUBRECIPIENT's part to indemnify, defend and hold COUNTY and its indemnities as identified in paragraph "P" below, and as more fully described in paragraph "P", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by COUNTY by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. **Patent/Copyright Materials/Proprietary Infringement**: Unless otherwise expressly provided in this CONTRACT, SUBRECIPIENT shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. SUBRECIPIENT warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. SUBRECIPIENT agrees that, in accordance with the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold COUNTY and COUNTY Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

I. **Assignment or Sub-Contracting**: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or sub-contracted by SUBRECIPIENT without the express written consent of COUNTY. Any attempt by SUBRECIPIENT to assign or sub-

contract the performance or any portion thereof of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTRACT.

J. **Non-Discrimination**: In the performance of this CONTRACT, SUBRECIPIENT agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-SUBRECIPIENTs to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. SUBRECIPIENT acknowledges that a violation of this provision shall subject SUBRECIPIENT to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

K. **Termination**: In addition to any other remedies or rights it may have by law, COUNTY has the right to terminate this CONTRACT without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of CONTRACT, any misrepresentation or fraud on the part of the SUBRECIPIENT. Exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligations.

L. **Consent to Breach Not Waiver**: No term or provision of this CONTRACT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Remedies Not Exclusive**: The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either party to any other remedies provided by law.

N. **Independent Contractor**: SUBRECIPIENT shall be considered an independent CONTRACTOR and neither SUBRECIPIENT nor its employees; nor anyone working under SUBRECIPIENT shall be considered an agent or an employee of COUNTY. Neither SUBRECIPIENT nor its employees; nor anyone working under SUBRECIPIENT shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

O. **Performance**: SUBRECIPIENT shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to COUNTY's satisfaction. SUBRECIPIENT shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the SUBRECIPIENT under this CONTRACT. SUBRECIPIENT shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of COUNTY required in its governmental capacity, in connection with performance of the work; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-SUBRECIPIENTs.

P. **Insurance**:

<u>**Insurance Provisions**</u>

Prior to the provision of services under this CONTRACT, the SUBRECIPIENT agrees to purchase all required insurance at SUBRECIPIENT's expense and to deposit with the COUNTY Certificates of Insurance, including all endorsements required herein,

necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the COUNTY during the entire term of this CONTRACT. In addition, all sub-SUBRECIPIENTs performing work on behalf of SUBRECIPIENT pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for SUBRECIPIENT.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of $25,000 ($5,000 for automobile liability), shall specifically be approved by the COUNTY Executive Office (CEO)/Office of Risk Management.
If the SUBRECIPIENT fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

Qualified Insurer
The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**

If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the SUBRECIPIENT shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	$1,000,000 per occurrence; $2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles	$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	$1,000,000 per occurrence
Professional Liability Insurance	$1,000,000 per claims made or per occurrence
Sexual Misconduct Liability	$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the COUNTY of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
2) A primary non-contributing endorsement evidencing that the SUBRECIPIENT's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this CONTRACT shall give the County of Orange 30 day notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If SUBRECIPIENT's Professional Liability policy is a "claims made" policy, SUBRECIPIENT shall agree to maintain professional liability coverage for two years following completion of CONTRACT.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the SUBRECIPIENT fails to provide the insurance certificates and endorsements within seven (7) days of notification to OC Community Resources/Contract Development and Management, award may be made to the next qualified vendor.

COUNTY expressly retains the right to require SUBRECIPIENT to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify SUBRECIPIENT in writing of changes in the insurance requirements. If SUBRECIPIENT does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty days of receipt of such notice, this CONTRACT may be in breach without further notice to SUBRECIPIENT, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit SUBRECIPIENT's liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage and limits available from the insurer.

Q. **Bills and Liens**: SUBRECIPIENT shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. SUBRECIPIENT shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, SUBRECIPIENT shall promptly procure its release and, in accordance with the requirements of paragraph "P" above, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

R. **Changes**: SUBRECIPIENT shall make no changes in the work or perform any additional work without the COUNTY's specific written approval.

S. **Change of Ownership**: SUBRECIPIENT agrees that if there is a change or transfer in ownership of SUBRECIPIENT's business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume SUBRECIPIENT's duties and obligations contained in this CONTRACT and complete them to the satisfaction of COUNTY.

T. **Force Majeure**: SUBRECIPIENT shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided SUBRECIPIENT gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and SUBRECIPIENT avails himself of any available remedies.

U. **Confidentiality**: SUBRECIPIENT agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this CONTRACT. All such records and information shall be considered confidential and kept confidential by SUBRECIPIENT and SUBRECIPIENT's staff, agents and employees.

V. **Compliance with Laws**: SUBRECIPIENT represents and warrants that services to be provided under this CONTRACT shall fully comply, at SUBRECIPIENT's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. SUBRECIPIENT acknowledges that COUNTY is relying on SUBRECIPIENT to ensure such compliance, and pursuant to the requirements of paragraph "P" above, SUBRECIPIENT agrees that it shall defend, indemnify and hold COUNTY and COUNTY Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.

W. **Freight (F.O.B. Destination):** SUBRECIPIENT assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this CONTRACT.

X. **Pricing**: The CONTRACT bid price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of services attached to this CONTRACT, and no additional compensation will be allowed therefore, unless otherwise provided for in this CONTRACT.

Y. **Waiver of Jury Trial**: Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this CONTRACT and /or any other claim of injury or damage.

Z. **Terms and Conditions**: SUBRECIPIENT acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.

AA. **Headings**: The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

BB. **Severability**: If any term, covenant, condition, or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

CC. **Calendar Days**: Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

DD. **Attorney Fees**: In any action or proceeding to enforce or interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

EE. **Interpretation**: This CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the party that has drafted it is not applicable and is waived. The provisions of this CONTRACT shall be interpreted in a reasonable manner to affect the purpose of the parties and this CONTRACT.

FF. **Authority**: The Parties to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

GG. **Employee Eligibility Verification:** The SUBRECIPIENT warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The SUBRECIPIENT shall obtain, from all employees, consultants and sub-SUBRECIPIENTs performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The SUBRECIPIENT shall retain all such documentation for all covered employee, consultants and sub-SUBRECIPIENTs for the period prescribed by the law. The SUBRECIPIENT shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the SUBRECIPIENT or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.

HH. **Indemnification:** SUBRECIPIENT agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by SUBRECIPIENT pursuant to this CONTRACT. If judgment is entered against SUBRECIPIENT and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, SUBRECIPIENT and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Additional Terms and Conditions:

1. **Scope of Services:** This CONTRACT specifies the Contractual terms and conditions by which the COUNTY will procure services from SUBRECIPIENT as further detailed in the Scope of Services, identified and incorporated herein by this reference as "Attachment A".

2. **Term of CONTRACT:** This CONTRACT shall be effective from July 1, 2012 through June 30, 2013, unless otherwise terminated by the COUNTY. The term of this CONTRACT may be extended upon mutual agreement of the parties in writing in accordance with paragraph 2.2.

    2.1 Eligible costs related to services provided by SUBRECIPIENT must be incurred during the period beginning July 1, 2012. The Project shall be completed and all funds provided through this CONTRACT shall be expended on eligible Project activities through and including June 30, 2013.

    2.2 Housing Rehabilitation CONTRACTS and Public Facilities & Improvement CONTRACTS.

        2.2.1 SUBRECIPIENT may be eligible to request additional funding up to the maximum set forth in the applicable FY 2012-13 Annual Action Plan if *SUBRECIPIENT* meets or exceeds any one of the Required Expenditure Thresholds at 50%, 70% or 80% on or prior to the milestone date as set forth in paragraph 24.3.3.

        2.2.2 If additional funding is available for allocation to SUBRECIPIENT, SUBRECIPIENT and COUNTY shall first amend the *SUBRECIPIENT*

SCOPE OF SERVICES component of this CONTRACT. Furthermore, SUBRECIPIENT shall demonstrate, to the satisfaction of DIRECTOR, that the required Performance Expenditure and Accomplishment Thresholds set forth in paragraph 26.3., will continue to be met before such extension and additional allocation shall be granted.

2.2.3 CONTRACT Extension

2.2.3.1 The term of this CONTRACT and the provisions herein may be extended to cover an additional time period as specified herein.

2.2.3.2 The date for PROJECT completion and expenditure of all funds may be extended by the DIRECTOR without further action by the BOARD for a period not to exceed six (6) months from June 30, 2013. For all extensions, the deadline for submittal of invoices shall be forty-five (45) days after the new expiration date.

2.2.3.3 CONTRACT extension provisions are not applicable to PROGRAM ADMINISTRATION activities.

2.3 Housing Rehabilitation CONTRACTS and Public Services CONTRACTS may be renewed on the same terms, conditions, and scope of services for up to two (2) individual consecutive one-year periods upon mutual written agreement by the COUNTY and SUBRECIPIENT.

3. **Contingency of Funds:** SUBRECIPIENT acknowledges that funding or portions of funding for this CONTRACT may also be contingent upon the receipt of funds from, and/or appropriation of funds by Federal, State of California or local Government funds to COUNTY. If such funding and/or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate or modify this CONTRACT without penalty.

3.1 If funding levels are significantly affected by Federal budget and funds are not allocated and available for the continuance of the function performed by SUBRECIPIENT, the CONTRACT may be terminated by the COUNTY at the end of the period for which funds are available. The COUNTY shall notify SUBRECIPIENT at the earliest possible time of any service, which will or may be affected by a shortage of funds. No penalty shall accrue to the COUNTY in the event this provision is exercised and the COUNTY shall not be obligated nor liable for any damages as a result of termination under this provision of this CONTRACT, and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any CONTRACT or other obligation for future payment of money in excess of appropriations authorized by law.

4. **Fiscal Appropriations:** This CONTRACT is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this CONTRACT. If such appropriations are not approved, the CONTRACT will be terminated without penalty to the COUNTY.

5. **Adjustments – Scope of Services:** No adjustments made to the scope of services will be authorized without prior written approval of the COUNTY assigned Purchasing Agent.

6. **Changes/Extra Work:** The SUBRECIPIENT shall make no changes to this CONTRACT without the COUNTY's written consent. In the event that there are new or unforeseen requirements, the COUNTY with the SUBRECIPIENT's concurrence has the discretion to request official changes at any time without changing the intent of this CONTRACT.

If COUNTY-initiated changes or changes in laws or government regulations affect price, the SUBRECIPIENT's ability to deliver services, or the program schedule, the SUBRECIPIENT shall give the COUNTY written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the COUNTY and the SUBRECIPIENT was notified of the change. Such changes shall be agreed to in writing and incorporated into a CONTRACT Amendment; said Amendment shall be issued by the COUNTY-assigned Purchasing Agent, shall require the mutual consent of all Parties, and may prohibit the SUBRECIPIENT from proceeding with the work as set forth in this CONTRACT.

7. **Breach of CONTRACT:** The failure of the SUBRECIPIENT to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event the COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT:

   Terminate the CONTRACT immediately, pursuant to paragraph K and paragraphs 30 through 32 herein;

   Afford the SUBRECIPIENT written notice of the breach and ten calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;

   Discontinue payment to the SUBRECIPIENT for and during the period in which the SUBRECIPIENT is in breach; and

   Offset against any monies billed by the SUBRECIPIENT but yet unpaid by the COUNTY those monies disallowed pursuant to the above.

8. **Conditions Affecting Work:** The SUBRECIPIENT shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this CONTRACT; and to know the general conditions which can affect the work or the cost thereof. Any failure by the SUBRECIPIENT to do so will not relieve SUBRECIPIENT from responsibility for successfully performing the work without additional cost to the COUNTY. The COUNTY assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this CONTRACT, unless such understanding or representations by the COUNTY are expressly stated in the CONTRACT.

9. **Conflict of Interest – SUBRECIPIENT's Personnel:** The SUBRECIPIENT shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the SUBRECIPIENT; the SUBRECIPIENT's employees, agents, and relatives; sub-tier SUBRECIPIENTs; and third Parties associated with accomplishing work and services hereunder. The SUBRECIPIENT's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

   SUBRECIPIENT agrees to abide by the provisions of OMB Circulars 102 and 110, as applicable, 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this CONTRACT.

SUBRECIPIENT further covenants that in the performance of this CONTRACT no person having such a financial interest shall be employed or retained by SUBRECIPIENT hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of COUNTY or SUBRECIPIENT, or any designated public agencies which are receiving funds under the CDBG Entitlement Program.

10. **Conflict of Interest – COUNTY Personnel:** The County of Orange Board of Supervisors' policy prohibits its employees from engaging in activities involving a conflict of interest. The SUBRECIPIENT shall not, during the period of this CONTRACT, employ any COUNTY employee for any purpose.

11. **Consulting Contract – Follow-On Work:** No person or firm or subsidiary thereof who has been awarded a consulting services contract or a contract which includes a consulting component may be awarded a CONTRACT for the provision of services, the delivery of goods or supplies, or the provision of any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services contract. Therefore, any consultant that contracts with a COUNTY agency/department to develop a feasibility study or to provide formal recommendations is precluded from contracting for any work recommended in the study or included in the recommendations.

12. **Contingent Fees:** The SUBRECIPIENT warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the SUBRECIPIENT or bona fide established commercial or selling agencies maintained by the SUBRECIPIENT for the purpose of securing business.

    For breach or violation of this warranty, the COUNTY shall have the right to terminate this CONTRACT in accordance with the termination clause and at its sole discretion to deduct from the CONTRACT price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from the SUBRECIPIENT.

13. **Bankruptcy/Insolvency:** If the SUBRECIPIENT should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the SUBRECIPIENT's insolvency, the COUNTY may terminate this CONTRACT.

14. **SUBRECIPIENT Personnel – Reference Checks:** The SUBRECIPIENT warrants that all persons employed to provide service under this CONTRACT have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this CONTRACT. SUBRECIPIENT's employees assigned to this program must meet character standards as demonstrated by reference checks, coordinated by the agency/department issuing this CONTRACT.

15. **SUBRECIPIENT's Project Manager and Key Personnel:** SUBRECIPIENT shall appoint a Project Manager to direct the SUBRECIPIENT's efforts in fulfilling SUBRECIPIENT's obligations under this CONTRACT. This Project Manager shall be subject to approval by the COUNTY and shall not be changed without the written consent of the COUNTY's Project Manager, which consent shall not be unreasonably withheld.

    The SUBRECIPIENT's Project Manager shall be assigned to this project for the duration of this CONTRACT and shall diligently pursue all work and services to meet the program time lines. The COUNTY's Project Manager shall have the right to require the removal

and replacement of the SUBRECIPIENT's Project Manager from providing services to the COUNTY under this CONTRACT. The COUNTY's Project Manager shall notify the SUBRECIPIENT in writing of such action. The SUBRECIPIENT shall accomplish the removal within three (3) business days after written notice by the COUNTY's Project Manager. The COUNTY's Project Manager shall review and approve the appointment of the replacement for the SUBRECIPIENT's Project Manager. The COUNTY is not required to provide any additional information, reason or rationale in the event it elects to request the removal of SUBRECIPIENTs Project Manager from providing services to the COUNTY under this CONTRACT.

16. **Data – Title To:** All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the SUBRECIPIENT in the performance of this CONTRACT will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the SUBRECIPIENT after completion or termination of this CONTRACT without the express written consent of the COUNTY. All materials, documents, data or information, including copies, must be returned to the COUNTY at the end of this CONTRACT.

17. **County Of Orange Child Support Enforcement:** In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of award of CONTRACT, the selected SUBRECIPIENT agrees to furnish to the CONTRACT administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:

    17.1 In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address;

    17.2 In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;

    17.3 A certification that the SUBRECIPIENT has fully complied with all applicable federal and State reporting requirements regarding its employees; and

    17.4 A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

    Failure of the SUBRECIPIENT to timely submit the data and/or certifications required may result in the CONTRACT being awarded to another SUBRECIPIENT. In the event a CONTRACT has been issued, failure of the SUBRECIPIENT to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

18. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the COUNTY pays $600 or more or with whom the COUNTY enters into a CONTRACT for $600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations as set forth in Exhibit A., attached hereto and incorporated herein by reference.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a CONTRACT for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a CONTRACT for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

19. **Appointment and Acceptance:** The COUNTY designates the SUBRECIPIENT as the exclusive SUBRECIPIENT for the management of the Program, and the SUBRECIPIENT accepts the appointment, subject to the terms and conditions set forth in this CONTRACT. SUBRECIPIENT hereby agrees to manage the Program in an efficient and satisfactory manner to the best of its ability.

20. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the COUNTY, state or federal government, this CONTRACT may be subjected to unusual usage. The SUBRECIPIENT shall service the COUNTY during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the SUBRECIPIENT shall apply to serving the COUNTY's needs regardless of the circumstances. If the SUBRECIPIENT is unable to supply the goods/services under the terms of the CONTRACT, then the SUBRECIPIENT shall provide proof of such disruption and a copy of the invoice for the goods/services from the SUBRECIPIENT's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the SUBRECIPIENT shall show both the emergency purchase order number and the CONTRACT number.

21. **SUBRECIPIENT's Responsibilities:** The SUBRECIPIENT shall:
    21.1 Operate and manage the Project and provide Services/Activities as set forth herein. In this regard the SUBRECIPIENT will assess current services being provided, assess what Services/Activities are needed, or have been requested, and structure the Services/Activities accordingly.

22. **Business License:** At its own expense, SUBRECIPIENT shall qualify to do business and obtain and maintain such licenses as may be required for the performance by SUBRECIPIENT of its services under this CONTRACT.

23. **Substantial Amendments:**
    23.1 If any amendment results in a change in the funding amount, that does not trigger a SUBSTANTIAL AMENDMENT, as defined, SUBRECIPIENT SCOPE OF SERVICES, threshold and milestone dates or schedule of activities to be undertaken as part of this CONTRACT, such modifications will be incorporated only by written amendment executed by Director and SUBRECIPIENT.

23.2 In an effort to efficiently utilize CDBG funds within timeframes required by HUD, the COUNTY will consider the reprogramming of unspent CDBG balances from completed and cancelled CDBG-funded activities to other eligible activities as a "Non-Substantial Amendment".
In the event that any of these "administrative" reprogramming actions fall under the "Substantial Amendment" criteria, the proposed actions to the Citizen Participating process, requires formal action by the Board of Supervisors, and subsequent approval by HUD.

24. Payment Requirements:

24.1 CONTRACT Amount: It is expressly agreed and understood that the total amount to be paid by COUNTY under this CONTRACT shall not exceed the total COUNTY funding as set forth in Attachment B., - Compensation to SUBRECIPIENT attached hereto and incorporated herein by reference.

24.2 COUNTY will reclaim any unused balance of funds for reallocation to other COUNTY approved projects.

24.3 Payment of Project Activities:

24.3.1 Payment of Project Activities: COUNTY will reimburse SUBRECIPIENT for eligible project-related costs only. SUBRECIPIENT shall submit requests for reimbursement to COUNTY on a monthly basis beginning on July 1, 2012, and must provide adequate documentation as required by COUNTY in accordance with the *OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY*, as set forth in Exhibit B., attached hereto and incorporated herein by reference. In addition, SUBRECIPIENT will provide a progress performance report ("GPR INFORMATION FORM") for the time period covered, as prescribed by COUNTY. Failure to provide any of the required documentation and reporting will cause COUNTY to withhold all or a portion of a request for reimbursement, or return the entire reimbursement package to SUBRECIPIENT, until such documentation and reporting has been received and approved by COUNTY.

24.3.2 If SUBRECIPIENT has no request for reimbursement during any quarter during the term of this CONTRACT, a GPR Information Form, including and explanation as to why no invoices were being processed, shall be required in lieu of a request for reimbursement.

24.3.3 The following "Required Expenditure Threshold" criteria have been established to guide the SUBRECIPIENT in structuring and scheduling their expenditure of funds received through this CONTRACT, through term of CONTRACT. The criteria thresholds are consistent with the criteria used by OC Community Resources to determine performance including, but not limited to, determinations of future award of funds, additional funding requests and/or determinations for the recapture of funding.

Milestone Date	*Minimum Required Expenditure Threshold*
December 15th	50% of Contracted Amount Expended
January 15th	70% of Contracted Amount Expended
March 15th	80% of Contracted Amount Expended

24.3.4 SUBRECIPIENT will have forty-five (45) days following the expiration of the CONTRACT to submit outstanding invoices for reimbursement of eligible costs incurred during the CONTRACT period. After the forty-five (45) day period for submitting invoices has expired, COUNTY shall

reallocate the remaining balance under this CONTRACT for other program purposes and SUBRECIPIENT shall be ineligible for any further reimbursement.

24.4 Funds shall not be disbursed for any costs incurred prior to the certification by COUNTY and HUD of Certificate(s) of Insurance and environmental compliance as further defined in paragraph P and paragraph 34 of this CONTRACT. Additionally, no funds shall be disbursed prior to submittal of certified payroll documentation to COUNTY with each invoice package/request for payment, as further defined in paragraph 33.

24.5 Readiness – for Housing Rehabilitation and Public Facilities & Improvement Projects:
SUBRECIPIENT shall be required to demonstrate to COUNTY its readiness to immediately initiate its Project upon execution of this CONTRACT by providing to the COUNTY documentation including, but not limited to, the following: Board or Council Minutes/Resolution; Awarded bid documents with timeline requirements; and, executed Architect and Engineer (hereafter referred to as "A&E") contracts with specific project timelines consistent with funding. By September 30 of contract term, SUBRECIPIENT shall provide COUNTY a Project Readiness Checklist incorporating the status of all Project-phasing milestones. In the case of milestones not yet reached, SUBRECIPIENT shall provide projected target dates for when said milestones would be met. The Project Readiness Checklist shall clearly demonstrate that SUBRECIPIENT will meet the "Required Expenditure Thresholds" as set forth in paragraph 24.3.3. SUBRECIPIENT acknowledges that said Project Readiness Checklist may be considered to evaluate the performance of the SUBRECIPIENT.

25. Program Income

25.1 SUBRECIPIENT shall comply with regulations set forth in 24 CFR 570.504, as well as all applicable State or COUNTY regulations concerning the reporting and payment procedures for program income.

25.2 All Program Income accrued shall be returned to COUNTY on a quarterly basis prior to SUBRECIPIENT receiving any reimbursement from grant funds provided under this CONTRACT.

25.3 SUBRECIPIENT shall provide information of the receipt of Program Income by SUBRECIPIENT related to Program on all GPR INFORMATION FORMS submitted with requests for reimbursement.

25.4 SUBRECIPIENT shall complete and submit a Year-End Program Income letter, indicating amount of Program Income and include any reimbursement remittance necessitated therein, by July 15, after the close of the CONTRACT fiscal year.

26. Performance:

26.1 SUBRECIPIENT shall provide the oversight, administration, and project management necessary to accomplish all contracted activities in a timely manner. SUBRECIPIENT also agrees to comply with all applicable Federal, State, and local laws and regulations governing the funds provided under this CONTRACT.

26.2 SUBRECIPIENT shall comply with all applicable HUD regulations, as described in paragraph 35 General Administration of this CONTRACT, concerning administrative requirements and maintain records as to services provided and total number of persons served through the project, including but not limited to, population-served analysis (i.e., extremely-low income persons, very-low income persons, and low-income persons as defined by HUD). Such information shall

be available for periodic monitoring by representatives of COUNTY or HUD and shall be submitted by SUBRECIPIENT in report form to COUNTY by dates specified by COUNTY.

26.3 The following "Performance Threshold" criteria shall be used to assess the level of performance of the SUBRECIPIENT, including Attachment A. - Scope of Services, attached hereto and incorporated herein by reference. Furthermore, the criteria will be considered by OC Community Resources when determining future funding. In order to be considered in compliance with the performance threshold criteria, the SUBRECIPIENT must, on or before the required milestone date, submit to OC Community Resources a request for reimbursement which demonstrates that SUBRECIPIENT has expended funds and met their proposed accomplishment goals at the required levels, unless exempted in writing by the DIRECTOR.

Milestone Date	*Minimum Required Expenditure Threshold*
December 15th	50% of Contracted Amount Expended 50% of Proposed Accomplishments Met
January 15th	70% of Contracted Amount Expended 70% of Proposed Accomplishments Met
March 15th	80% of Contracted Amount Expended 80% of Proposed Accomplishments Met

Failure to achieve at least the aforementioned 50% drawdown, without written exception approved by the DIRECTOR, may cause any remaining balance in this CONTRACT to be reclaimed by COUNTY, and will negatively affect future funding to SUBRECIPIENT. Failure to achieve the aforementioned 80% drawdown goal, without written exception approved by the DIRECTOR, may cause any remaining balance in this CONTRACT to be reclaimed by COUNTY, and will impact future funding to SUBRECIPIENT.

26.4 SUBRECIPIENT shall complete and submit a Year End GPR INFORMATION FORM by July 15, after the close of the CONTRACT fiscal year.

26.5 Should the activity being funded through this CONTRACT be completed, cancelled or terminated prior to the termination date set forth herein in paragraph 2. Additional Terms and Conditions, SUBRECIPIENT shall complete and submit a Mid-Year GPR INFORMATION FORM at the time of the completion, cancellation or termination. Said GPR INFORMATION FORM shall consist of a cumulative reporting of project-related expenditures and accomplishments relative to the *SCOPE OF SERVICES,* as set forth in Attachment A., attached hereto and incorporated herein by reference. If activity funded through this CONTRACT is completed, or if funds allocated through this CONTRACT are fully expended, prior to end of CONTRACT term, SUBRECIPIENT must continue to serve its clients for the entire term of this CONTRACT.

26.6 SUBRECIPIENT shall complete and submit a GPR INFORMATION FORM in support of all requests for reimbursement. Said GPR INFORMATION FORM shall consist of a cumulative report of project related accomplishments as set forth in Attachment A., SCOPE OF SERVICES, attached hereto and incorporated herein by reference, for the subject quarter. If at any time during the term of this CONTRACT SUBRECIPIENT has no activity occur during any quarter, SUBRECIPIENT shall prepare and submit to COUNTY a Quarterly GPR INFORMATION FORM, regardless of actual activity.

26.7 SUBRECIPIENT acknowledges that the GPR INFORMATION FORM is a monitoring tool that will be reviewed and evaluated to determine SUBRECIPIENT's level of performance relative to this CONTRACT.

26.8 SUBRECIPIENT shall submit all requested data necessary to complete the Consolidated Annual Performance and Evaluation Report (CAPER), and monitor program accountability and progress in accordance with HUD requirements, in the format and at the time designated by COUNTY.

27. Performance Monitoring:

27.1 Performance Monitoring of SUBRECIPIENT by COUNTY and/or HUD shall consist of requested and/or required written reporting, as well as onsite monitoring by COUNTY or HUD representatives.

27.2 COUNTY shall periodically evaluate SUBRECIPIENT's progress in complying with the terms of this CONTRACT. SUBRECIPIENT shall cooperate fully during such monitoring. COUNTY shall report the findings of each monitoring to SUBRECIPIENT.

27.3 COUNTY shall monitor the performance of SUBRECIPIENT against the goals, outcomes, milestones and performance standards required herein. Substandard performance, as determined by COUNTY, will constitute non-compliance with this CONTRACT for which COUNTY may immediately terminate the CONTRACT. If action to correct such substandard performance is not taken by SUBRECIPIENT within the time period specified by COUNTY, payment(s) will be denied in accordance with the provisions contained in paragraph 41 of this CONTRACT.

28. Disputes – CONTRACT:

28.1 The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this CONTRACT is not disposed of in a reasonable period of time by the SUBRECIPIENT's Project Manager and the COUNTY's Project Manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:

28.1.1 The SUBRECIPIENT shall submit to the agency/department assigned COUNTY Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this CONTRACT, unless the COUNTY, on its own initiative, has already rendered such a final decision.

28.1.2 The SUBRECIPIENT's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the CONTRACT, the SUBRECIPIENT shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the CONTRACT adjustment for which the SUBRECIPIENT believes the COUNTY is liable.

28.2 Pending the final resolution of any dispute arising under, related to, or involving this CONTRACT, the SUBRECIPIENT agrees to diligently proceed with the provision of services under this CONTRACT. The SUBRECIPIENT's failure to diligently proceed shall be considered a material breach of this CONTRACT.

Any final decision of the COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by the COUNTY Purchasing Agent or his designee. If the COUNTY fails to render a decision within ninety (90) days after receipt of the SUBRECIPIENT's demand, it shall be deemed a final decision adverse to the SUBRECIPIENT's contentions. Nothing in this section shall be construed as affecting the COUNTY's right to terminate the CONTRACT for Cause as stated in paragraph K herein.

29. **Gratuities:** The SUBRECIPIENT warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the SUBRECIPIENT or any agent or representative of the SUBRECIPIENT to any officer or employee of the COUNTY with a view toward securing the CONTRACT or securing favorable treatment with respect to any determinations concerning the performance of the CONTRACT. For breach or violation of this warranty, the COUNTY shall have the right to terminate the CONTRACT, either in whole or in part, and any loss or damage sustained by the COUNTY in procuring on the open market any services which the SUBRECIPIENT agreed to supply shall be borne and paid for by the SUBRECIPIENT. The rights and remedies of the COUNTY provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the CONTRACT.

30. **Termination – Convenience of the COUNTY:** The COUNTY may terminate performance of work under this CONTRACT for its convenience in whole, or, from time to time, in part if the user agency/department determines that a termination is in the COUNTY's interest. The agency/department assigned buyer shall terminate the CONTRACT by delivering to the SUBRECIPIENT a written notice of termination specifying the extent of the termination and the effective date thereof. The parties agree that, as to the terminated portion of the CONTRACT, the CONTRACT shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the CONTRACT shall not be void.
After receipt of a notice of termination and, except as directed by the assigned buyer, the SUBRECIPIENT shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The SUBRECIPIENT shall:
    30.1 Stop work as specified in the notice of termination;
    30.2 Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the CONTRACT;
    30.3 Terminate all orders and subcontracts to the extent they relate to the work terminated;
    30.4 Settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts, the approval or ratification of which will be final for purposes of this clause;
    30.5 As directed by the assigned buyer transfer title and deliver to the COUNTY (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the CONTRACT had been completed, would be required to be furnished to the COUNTY;
    30.6 Complete performance of the work not terminated; and
    30.7 Take any action that may be necessary or as the COUNTY may direct for the protection and preservation of the property related to this CONTRACT that is in the possession of the SUBRECIPIENT and in which the COUNTY has or may

acquire an interest and to mitigate any potential damages or requests for CONTRACT adjustment or termination settlement to the maximum practical extent.

At the completion of the SUBRECIPIENT's termination efforts, the SUBRECIPIENT may submit to the assigned buyer a list indicating quantity and quality of termination inventory not previously disposed of and request instructions for disposition of the residual termination inventory.

After termination the SUBRECIPIENT shall submit a final termination settlement proposal to the user agency/department in a format acceptable to the COUNTY.

The SUBRECIPIENT shall submit the proposal promptly, but no later than 60 days from the effective date of the termination, unless extended in writing by the COUNTY upon written request of the SUBRECIPIENT within the ninety-day (90-day) period. However, if the agency/department determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension. The SUBRECIPIENT and the COUNTY may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total CONTRACT price as reduced by (a) the amount of payment previously made and (b) the CONTRACT price of work not terminated. The CONTRACT shall be amended and the SUBRECIPIENT paid the agreed amount.

If the SUBRECIPIENT and the COUNTY fail to agree on the whole amount to be paid because of the termination of work, the COUNTY shall pay the SUBRECIPIENT the amounts determined by the COUNTY as follows, but without duplication of any amounts agreed on as set forth above:

30.8 The CONTRACT price for completed supplies or services accepted by the COUNTY (or sold or acquired) not previously paid for, adjusted for any savings of freight and other charges; and

30.9 Except for normal spoiling and except to the extent that the COUNTY expressly assumes the risk of loss, the COUNTY shall exclude from the amounts payable to the SUBRECIPIENT the fair value, as determined by the agency/department, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the COUNTY.

The SUBRECIPIENT shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated CONTRACT or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.

The SUBRECIPIENT shall have the right to appeal, under the COUNTY's protest procedure, any determination made by the COUNTY, except that if the SUBRECIPIENT failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the SUBRECIPIENT under this clause, there shall be deducted:

30.10 All payment to the SUBRECIPIENT under the terminated portion of this CONTRACT;

30.11 Any claim which the COUNTY has against the SUBRECIPIENT under this or any other CONTRACT; and

30.12 The agreed price for or proceeds of sale of materials, supplies, or other things acquired by the SUBRECIPIENT or sold under the provisions of this clause and not recovered by or credited to the COUNTY.

If the termination is partial, the SUBRECIPIENT may file a proposal with the agency/department for an equitable adjustment of the price(s) of the continued portion of the CONTRACT. The agency/department shall make any equitable adjustment agreed upon. Any proposal by the SUBRECIPIENT for an equitable adjustment under this clause shall be requested within thirty (30) days from the effective date of termination unless extended in writing by agency/department.

The COUNTY may:

30.13 Under the terms and conditions it prescribes, make partial payment and payments against costs incurred by the SUBRECIPIENT for their terminated portion of the CONTRACT, if the COUNTY believes that the total of these payments will not exceed the amount to which the contactor will be entitled; and

30.14 If the total payments exceed the amount finally determined to be due, the SUBRECIPIENT shall repay the excess to the COUNTY upon demand.

In determining the amount payable to the SUBRECIPIENT and notwithstanding any other provision, if it appears that the SUBRECIPIENT would have sustained a loss on the entire CONTRACT had it been completed, the COUNTY shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.

Unless otherwise provided in this CONTRACT or by statute, the SUBRECIPIENT shall maintain all records and documents relating to the terminated portion of this CONTRACT for five (5) years after final settlement. This includes all books and other evidence bearing on the SUBRECIPIENT's costs and expenses under this CONTRACT. The SUBRECIPIENT shall make these records and documents available to the COUNTY, at the SUBRECIPIENT's office, at all reasonable times, without any direct charge. If approved by the COUNTY, photographs, microphotographs, electronic storage, or other authentic reproductions may be maintained instead of original records and documents.

31. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the SUBRECIPIENT shall submit to the COUNTY a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the COUNTY upon written request of the SUBRECIPIENT. Upon termination COUNTY agrees to pay the SUBRECIPIENT for all services performed prior to termination which meet the requirements of the CONTRACT, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the CONTRACT. Upon termination or other expiration of this CONTRACT, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the CONTRACT. In addition, each Party will assist the other Party in orderly termination of this CONTRACT and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

32. **Stop Work:** The COUNTY may, at any time, by written stop work order to the SUBRECIPIENT, require the SUBRECIPIENT to stop all or any part of the work called for by this CONTRACT for a period of 90 days after the stop work order is delivered to the SUBRECIPIENT and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this

clause. Upon receipt of the stop work order, the SUBRECIPIENT shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the SUBRECIPIENT or within any extension of that period to which the parties shall have agreed, the COUNTY shall either:

32.1 Cancel the stop work order; or

32.2 Terminate work covered by the stop work order as provided for in the termination for default or the termination for convenience clause of this CONTRACT.

If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the SUBRECIPIENT shall resume work. The COUNTY shall make an equitable adjustment in the delivery schedule, the CONTRACT price, or both, and the CONTRACT shall be modified in writing accordingly if:

32.3 The stop work order results in an increase in the time required or in the SUBRECIPIENT's cost properly allocable to the performance of any part of this CONTRACT; and

32.4 The SUBRECIPIENT asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage, provided that if the COUNTY decides the facts justify the action, the COUNTY may receive and act upon a proposal submitted at any time before final payment under this CONTRACT.

If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provision entitled, "Termination - Convenience of COUNTY," the COUNTY shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

If a stop work order is not canceled and the work covered by the stop work order is terminated for default, the COUNTY shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related CONTRACT of the SUBRECIPIENT that provides for adjustment and is affected by any stop work order under this clause. The COUNTY shall not be liable to the SUBRECIPIENT for loss of profits because of a stop work order issued under this clause.

If any provisions of this agreement are invalid under any applicable statute or rule of law, they are, to that extent, omitted, but the remainder of this agreement shall continue to be binding upon the parties hereto.

33. Federal Administrative Requirements:

33.1 **Financial Management:**

33.1.1 Accounting Standards: SUBRECIPIENT agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

33.1.2 Cost Principles: SUBRECIPIENT shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," or A-87, "Cost Principles for State and Local Governments" (and if SUBRECIPIENT is a governmental or quasi-governmental agency, the applicable sections of 24 CFR 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,") as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

33.2 **Civil Rights**

Compliance

33.2.1 SUBRECIPIENT agrees to comply with California Civil Rights Act Ordinances and Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12107 and 12086.

33.2.2 **Rehabilitation Act**

SUBRECIPIENT agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. COUNTY shall provide SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this CONTRACT.

33.2.3 **Nondiscrimination in Employment and Contracting**

SUBRECIPIENT agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279, including 24 CFR Part 8, 24 CFR 570.602 and Section 504 of Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11063. The applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act (HCDA) are still applicable.

33.3 **Drug-Free Workplace**:

The SUBRECIPIENT hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace as set forth in Exhibit C., attached hereto and incorporated herein by reference. The SUBRECIPIENT will:

33.3.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

33.3.2 Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:

33.3.2.1 The dangers of drug abuse in the workplace;

33.3.2.2 The SUBRECIPIENT's policy of maintaining a drug free workplace;

33.3.2.3 Any available counseling, rehabilitation, and employee assistance programs; and

33.3.2.4 Penalties that may be imposed upon employees for drug abuse violations.

33.3.3 Provide as required by Government Code Section 8355(c) that every employee who works under this CONTRACT:

33.3.3.1 Will receive a copy of the company's drug-free policy statement; and

33.3.3.2 Will agree to abide by the terms of the company's statement as a condition of employment under this CONTRACT.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both, and the SUBRECIPIENT may be ineligible for award of any future COUNTY contracts if the COUNTY determines that any of the following has occurred:

33.3.3.3 The SUBRECIPIENT has made false certification, or

33.3.3.4 The SUBRECIPIENT violates the certification by failing to carry out the requirements as noted above.

33.4 **Affirmative Action:** SUBRECIPIENT agrees that it shall be committed to carry out an Affirmative Action Program that encompasses that principals provided in President's Executive Order 11246, as revised on January 4, 2002.

33.5 **Americans with Disabilities Act:** SUBRECIPIENT agrees to comply with Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.

33.6 **Employment Restrictions:**

33.6.1 **Prohibited Activity:** SUBRECIPIENT is prohibited from using funds provided herein, or personnel employed in the administration of the program, for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

33.6.2 **OSHA:** Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

33.6.3 **Employee Rights**

Federal Minimum Wage

33.6.3.1 SUBRECIPIENT must follow the Fair Labor Standards Act (FLSA), as it currently exists and it may be amended, which sets basic minimum wage and overtime pay standards. These standards are enforced by The United States Department of Wage and Hour Division under Department's Wage and Hour Division. The Federal minimum wage provisions are contained in the FLSA. Many states also have minimum wage laws. In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

33.6.4 **California Minimum Wage**

33.6.4.1 SUBRECIPIENT must follow the California enacted legislation signed by the Governor of California, raising the minimum wage for all industries (MW-2007). (AB 1835, CH230, Stats of 2006, adding sections 1182.12 and 1182.13 to the California Labor Code.) Pursuant to its authority under Labor Code section 1182.13, the Department of Industrial Relations amends and republishes Sections, 1, 2, 3, and 5 of the General Minimum Wage Order. MW-2001, Section 4, Separability,

has not been changed. Consistent with this enactment, amendments are made to the minimum wage, and the meals and lodging credits sections of all of the IWC's industry and occupation orders. This summary must be made available to employees in accordance with the IWC's wage orders. Copies of the full text of the amended wage orders may be obtained by ordering on-line at www.dir.ca.gov/WP.asp or by contacting your local Division of Labor Standards Enforcement office.

33.7 **Hatch Act:** SUBRECIPIENT agrees that no funds provided, nor personnel employed under this CONTRACT, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C. Section 1501 et seq. and Chapter 15 of Title V of the U.S.C.

33.8 **Religious Organization/Activities:** In accordance with 24 CFR 570.200(j), SUBRECIPIENT shall not discriminate against faith-based organizations in administering its federal HUD activities. However, SUBRECIPIENT agrees that funds provided under this CONTRACT will not be utilized for inherently religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with 24 CFR 570.200 (j)(2).

33.9 **Anti-Lobbying:** SUBRECIPIENT certifies that:

33.9.1 No Federal appropriated funds 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 of any Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal CONTRACT, grant, loan, or Cooperative Agreement; and

33.9.2 SUBRECIPIENT will complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," if any funds other than Federal appropriated funds have been paid, in accordance with its instructions; and

33.9.3 SUBRECIPIENT shall include subject anti-lobbying certification in award documents for all sub-SUBRECIPIENTs at all tiers (including sub-subcontracts, sub-subgrants, and CONTRACT under grants, loans, and Cooperative Agreements) and that all sub-SUBRECIPIENTs shall certify and disclose accordingly.

33.10 **Audits:** If SUBRECIPIENT expends Federal funds in a fiscal year which equal or exceed $500,000 (Five hundred thousand dollars and no cents) as specified in OMB Circular A-133-Revised, SUBRECIPIENT shall cause an audit to be prepared by a Certified Public Accountant (CPA) who is a member in good standing with the American Institute of Certified Public Accountants (AICPA) of the California Society of CPA's. The audit must be performed annually in accordance with Generally Accepted Auditing Standards (GAAS) authorized by the AICPA and Federal laws and regulations governing the programs in which it participates.

Furthermore, COUNTY retains the authority to require SUBRECIPIENT to submit similarly prepared audit at SUBRECIPIENT's expense even in instances when SUBRECIPIENT's expenditure is less than $500,000. SUBRECIPIENT will be required to identify corrective action taken in response to any findings identified by CPA related to their funded activity or program.

SUBRECIPIENT will ensure an annual financial audit is performed in compliance with the Federal Single Audit Act and will submit two (2) copies of such audit report, including a copy of the management letter, to COUNTY within six (6) months of the end of each CONTRACT year in which SUBRECIPIENT has received federal funding (i.e., July 1 – June 30). Failure to meet this requirement may result in COUNTY denying reimbursement of funds to SUBRECIPIENT, as well as future funding qualification. SUBRECIPIENTS, which are exempt from statutory audit requirements, shall maintain records, which are available for review by COUNTY or Federal officials. SUBRECIPIENT acknowledges that any and all "Financial Statements" submitted to COUNTY pursuant to this COUNTY become Public Records and are subject to public inspection pursuant to Sec. 6250 et seq. of the California Government Code.

33.11 **Modifications/Transfers of Real Property:**

33.11.1 Any proposed modification or change in use of real property acquired or improved, in whole or in part, by CDBG funds from the use planned at the time of the acquisition or improvement, including disposition, is prohibited.

33.11.2 SUBRECIPIENT shall ensure that any real property under SUBRECIPIENT's control that was acquired or improved in whole or in part with CDBG funds in excess of $25,000 is either:

33.11.2.1 Used to meet one of the national objectives contained in 24 CFR 570.208 for a period not less than five years, or for such period of time as determined to be appropriate by COUNTY, after expiration of the CONTRACT and close-out of SUBRECIPIENT's participation in the CDBG Program, or, until five years after the close-out of the grant from which the assistance to the property, whichever occurs first; or,

33.11.2.2 Disposed of in a manner which results in COUNTY being reimbursed in an amount equal to the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such reimbursement is not required after the period of time specified in accordance with paragraph 33.11.2.1 above.

33.12 **Labor Standards**

33.12.1 SUBRECIPIENT agrees to contact COUNTY no less than fourteen (14) days prior to the Pre-Construction Meeting date to seek consultation regarding application of requirements per federal labor standards regulations or Davis-Bacon related Acts.

33.12.2 SUBRECIPIENT will comply with Davis-Bacon Act and/or State Prevailing Wage requirements, when applicable.

33.12.3 SUBRECIPIENT agrees to comply with all applicable requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, the provisions of CONTRACT work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276, 327-333), and all other applicable Federal, State and local laws and regulations pertaining to labor standards. SUBRECIPIENT shall maintain all applicable documentation, which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to COUNTY for review upon request.

33.12.4 SUBRECIPIENT agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than eight (8) units, all contractors engaged in contracts of $2,000.00 or more for construction, renovation or repair of any building or work financed in whole or in part with assistance provided under this CONTRACT, shall comply with all applicable federal requirements including Department of Labor regulations, under 29 CFR, Parts 3, 1, 5, 7 and 1926 governing the payment of wages and ratio of apprentices and trainees to journeymen. Nothing hereunder is intended to relieve SUBRECIPIENT of its obligation, if any, to require payment of the higher rate under state or local laws SUBRECIPIENT shall insert provisions meeting the requirements of this paragraph in all such CONTRACTS.

33.12.5 In case where the Davis-Bacon Act applies, SUBRECIPIENT agrees to submit the Construction Bid Package for this project to DIRECTOR for modification, SUBRECIPIENT shall construct project in accordance with the approved Construction Bid Package.

33.13 **California Labor Code Compliance**

33.13.1 If Prevailing Wage laws apply, SUBRECIPIENT hereby agrees to pay, or cause its subcontractors to pay, Prevailing Wage rates at all times for all construction, improvements, or modifications to be completed for COUNTY under this CONTRACT. SUBRECIPIENT herein agrees that SUBRECIPIENT shall post, or cause to be posted, a copy of the most current, applicable Prevailing Wage rates at the site where the construction, improvements, or modifications are performed.

33.13.2 Payroll Records

SUBRECIPIENT agrees that:

Certified copies of all payroll records for this project shall be required pursuant to the provisions of California Labor Code "Section 1776". The reporting format and words of certification shall be as indicated in Title 8 of the California Code of Regulations, Section 16401.

Certified copies of the payroll records of all subcontractors working on this project are required. It shall be the responsibility of the prime contractor to ensure subcontractor compliance.

Certified copies of all payroll records shall be submitted on a weekly basis to COUNTY through the duration of this CONTRACT.

SUBRECIPIENT acknowledges that failure to comply with Section 1776 may result in a forfeiture of twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, and it should be recognized that a contractor or subcontractor, or agent or representative thereof who neglects to comply is guilty of a misdemeanor pursuant to California Labor Code Section 1777.

33.14 **Economic Opportunities**

33.14.1 Compliance

This Contract is subject to the requirements of 12 USC 1701u, the HUD regulations issued pursuant thereto at 24 CFR, 135.1 et seq., and any applicable rules and orders of HUD issued Federal financial assistance shall be conditioned upon compliance with 12 USC 1701u. Failure to fulfill these requirements shall subject SUBRECIPIENT and

any sub-subrecipients, their successors and assigns, to those remedies specified herein. SUBRECIPIENT certifies and agrees that no conflict exists which would prevent compliance with requirements.

The Contractor agrees to abide by 24 CFR, 135.38, below and will insert the following clause in any subcontracts executed with third parties for work covered by this Contract:
"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. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

The contractor agree 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 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.

The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR 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 CFR 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 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts. 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 extend feasible (1) 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)."

34. Environmental Conditions:

34.1 SUBRECIPIENT shall comply with HUD Environmental Review under HUD regulations at 24 CFR 58 et seq., which implement the National Environmental Policy Act (NEPA); and, the California Environmental Quality Act (CEQA). No costs shall be incurred and no funds shall be disbursed prior to certification by COUNTY and/or HUD of environmental compliance.

34.2 SUBRECIPIENT shall incur no costs for any project-related activity defined in SUBRECIPENT SCOPE OF SERVICES and COUNTY shall not disburse funds prior to certification by COUNTY and/or HUD for environmental compliance.

34.3 SUBRECIPIENT shall provide requested material to COUNTY for the Environmental Review process required by applicable regulations.

34.4 **Air and Water:** SUBRECIPIENT agrees to comply with the following regulations in so far as they apply to the performance of this CONTRACT:

34.4.1 Clean Air Act, 42 U.S.C., 1857, et seq.

34.4.2 Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.

34.4.3 Environmental Protection Agency (EPA) regulations pursuant to 40 CFR 50 and 40 CFR 58.

34.5 **Flood Disaster Protection:** SUBRECIPIENT agrees to comply with the requirements of the Flood Disaster Protection Act of 1973, including as applicable any regulations set forth in 24 CFR 55, (implementing Executive Order 11988) in regard to the sale, lease or other transfer of land acquired, cleared, or improved under the terms of this CONTRACT, as it may apply to the provisions of this CONTRACT.

34.6 **Lead-Based Paint:** SUBRECIPIENT agrees that any construction or rehabilitation of residential structures with assistance provided under this CONTRACT shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35, particularly, 24 CFR 35.100 through 35.175. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified with the "Protect Your Family From Lead In Your Home" publication, found at http://www.epa.gov/lead that such properties may include lead-based paint.

34.7 **Historic Preservation:** SUBRECIPIENT agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800, Protection of Historic Properties, insofar as they apply to the performance of this CONTRACT.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

34.8 **Energy Efficiency Standards:** SUBRECIPIENT agrees to comply with the California Energy Commission Assembly Bill 970, Title 24, Part I of the California Code of Regulations (AB970: Building Efficiency Energy Standards), in regard to construction and property development, when applicable.

35. General Administration:

35.1 **Fair Housing:** SUBRECIPIENT shall affirmatively further fair housing in accordance with 24 CFR 570.904.

35.2 **Grantor Recognition:** SUBRECIPIENT shall insure recognition of the role of the COUNTY in providing services through this CONTRACT. All activities, facilities and items utilized pursuant to this CONTRACT shall be prominently labeled as to funding source. In addition, SUBRECIPIENT will include a reference to the support provided herein in all publications made possible with funds made available under this CONTRACT. SUBRECIPIENT will retain documentation of such recognition, which shall be available for periodic monitoring by representatives of COUNTY or HUD.

35.3 **Records to be Maintained:** SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570.503(b)(2), 570.506, 570.507, 570.508 that are pertinent to the activities to be funded under this CONTRACT. Such records shall include, but not be limited to:

35.3.1 Records providing a full description of each activity undertaken;

35.3.2 Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;

35.3.3 Records required to determine the eligibility of activities;

35.3.4 Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with CDBG assistance;

35.3.5 Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;

35.3.6 Financial records as required by 24 CFR 570.502, and OMB Circular A-87; and

35.3.7 Other records necessary to document compliance with Subpart K of 24 CFR 570.

35.3.8 Retention: SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this CONTRACT for a period of five (5) years after the termination of all activities funded under this CONTRACT, or after the resolution of all Federal audit finding, whichever occurs later. Records for non-expendable property acquired with funds under this CONTRACT shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after s/he has received final payment.

35.4 **Client Data**

35.4.1 SUBRECIPIENT shall maintain client data demonstrating client Eligibility for services provided for a period of five (5) years after the termination of all activities funded under this CONTRACT, or after the resolution of all Federal audit finding, whichever occurs later. Such data shall be consistent and include, but not limited to, client name,

address, verifiable income level (as documented by income tax returns, employee payroll records, retirement statements, etc. or other third party documentation acceptable to COUNTY, for determining eligibility), and description of service provided. Such information shall be made available to HUD representatives, COUNTY monitors, or their designees, for review upon request.

35.4.2 SUBRECIPIENT shall develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the subject program, including protection against the release of the address or location of any family violence shelter project, except with the written authorization of the person responsible for the operation of that shelter.

35.5 **Property Records:** SUBRECIPIENT shall maintain real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria, rental limitations, health, safety and building codes, etc., and shall conform to 24 CFR 570.505.

35.6 **Close-Out:** SUBRECIPIENT's obligation to COUNTY shall not end until all close-out requirements are completed. Activities during this close-out period shall be completed in accordance with 24 CFR 570.509 and shall include, but are not limited to: making final payments; submitting final invoice(s), report(s), in accordance with the requirements of paragraph 24.3.4 above, and documentation; disposing of program assets (including the return to COUNTY of all unused materials and equipment); remitting any program income balances and receivable accounts to COUNTY, and determining the custodianship of records.

35.7 **Equipment:** SUBRECIPIENT shall use, manage and dispose of equipment in accordance with 24 CFR 85.32 and 24 CFR 570.502.

35.8 **Subcontracts:**

35.8.1 SUBRECIPIENT shall submit all subcontract agreements to COUNTY for review and consent prior to entering into such subcontracts. For construction subcontracts, SUBRECIPIENT shall submit the Construction Bid Package to COUNTY for review and written approval by DIRECTOR or designee prior to advertising for bids and award for the construction contract. SUBRECIPIENT shall construct Project in accordance with the Construction Bid Package, which DIRECTOR approved, unless prior written approval is received from DIRECTOR for modification thereof.

35.8.2 SUBRECIPIENT shall assume responsibility for all subcontracted services to assure CONTRACT compliance.

35.8.3 SUBRECIPIENT shall cause all of the provisions of this CONTRACT in entirety to be included in and made a part of any subcontract executed in the performance of this CONTRACT.

35.8.4 SUBRECIPIENT shall monitor all subcontracted services on a quarterly basis to assure CONTRACT compliance. Results of said monitoring efforts shall be summarized in written form, and supported with documented evidence of follow-up actions(s) to correct any area(s) of CONTRACT non-compliance. Documentation shall be made available for periodic monitoring by representatives of COUNTY and/or HUD.

35.9 **Relocation:**

SUBRECIPIENT shall, in all matters relating to the project:

35.9.1 Take all reasonable steps to minimize displacement by providing tenants reasonable opportunity to lease and occupy dwelling units in the project being improved; and,

35.9.2 Submit to COUNTY a Plan outlining financial and advisory assistance in securing temporary housing for any eligible tenant who is temporarily or permanently relocated due to the project.

35.9.3 Comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act/URA, 49 CFR Part 24 and 24 CFR 570.606 for persons displaced by the project; and

35.9.4 Have in effect and follow a residential anti-displacement and relocation plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in conjunction with any activity assisted with funding under the subject project.

36. **News/Information Release:** The SUBRECIPIENT agrees that it will not issue any news releases in connection with either the award of this CONTRACT or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from the COUNTY through the COUNTY's Project Manager.

37. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' Project Managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For COUNTY:	County of Orange OC Community Services Housing Community Development 1770 North Broadway Santa Ana, CA 92706-2642
For SUBRECIPIENT:	Bruce Channing, City Manager City of Laguna Hills 24035 El Toro Road Laguna Hills, CA 92653-3103

38. **Ownership of Documents:** The COUNTY has permanent ownership of all directly connected and derivative materials produced under this CONTRACT by the SUBRECIPIENT. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the COUNTY and may be used by the COUNTY as it may require without additional cost to

the COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the SUBRECIPIENT without the express written consent of the COUNTY.

39. **Precedence:** The CONTRACT documents consist of this CONTRACT and its attachments and exhibits. In the event of a conflict between or among the CONTRACT documents, the order of precedence shall be the provisions of the main body of this CONTRACT, i.e., those provisions set forth in the articles of this CONTRACT, and then the exhibits and attachments.

40. **Project Manager, COUNTY:** The COUNTY shall appoint a Project Manager to act as liaison between the COUNTY and the SUBRECIPIENT during the term of this CONTRACT. The COUNTY's Project Manager shall coordinate the activities of the COUNTY staff assigned to work with the SUBRECIPIENT.

    The COUNTY's Project Manager shall have the right to require the removal and replacement of the SUBRECIPIENT's Project Manager and key personnel. The COUNTY's Project Manager shall notify the SUBRECIPIENT in writing of such action. The SUBRECIPIENT shall accomplish the removal within 14 calendar days after written notice by the COUNTY's Project Manager. The COUNTY's Project Manager shall review and approve the appointment of the replacement for the SUBRECIPIENT's Project Manager and key personnel. Said approval shall not be unreasonably withheld.

41. **Errors and Omissions:** All reports, files and other documents prepared and submitted by SUBRECIPIENT shall be complete and shall be carefully checked by the professional(s) identified by SUBRECIPIENT as Project Manager and key personnel attached hereto, prior to submission to the COUNTY. SUBRECIPIENT agrees that COUNTY review is discretionary and SUBRECIPIENT shall not assume that the COUNTY will discover errors and/or omissions. If the COUNTY discovers any errors or omissions prior to approving SUBRECIPIENT's reports, files and other written documents, the reports, files or documents will be returned to SUBRECIPIENT for correction. Should the COUNTY or others discover errors or omissions in the reports, files or other written documents submitted by SUBRECIPIENT after COUNTY approval thereof, COUNTY approval of SUBRECIPIENT's reports, files or documents shall not be used as a defense by SUBRECIPIENT in any action between the COUNTY and SUBRECIPIENT, and the reports, files or documents will be returned to SUBRECIPIENT for correction.

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto certify that they have read and understand all the terms and conditions contained herein and have hereby cause this CONTRACT to be executed.

***City of Laguna Hills**

By: ______________________ By: ______________________

Title: ______________________ Title: ______________________

Dated: ______________________ Dated: ______________________

COUNTY OF ORANGE
A Political Subdivision of the State of California

By: ______________________ Dated: ______________________
Orange County Community Resources

APPROVED AS TO FORM:
COUNTY COUNSEL,

By: ______________________
Jacqueline Guzman, DEPUTY

****

*For SUBRECIPIENTs that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.

For SUBRECIPIENTs that are not corporations, the person who has authority to bind the SUBRECIPIENT to a CONTRACT, must sign on one of the lines above.

ATTACHMENT A

1. **Scope of Services**

A. HUD Matrix Code / Activity:
03A Senior Centers / 570.201 (c)

B. Project Title:
Florence Sylvester Senior Center Rehabilitation

C. Program Description:
The City of Laguna Hills will use CDBG funds to rehabilitate and improve the function and increase the capacity of the senior center. The scope of work will include: a) Demolition of the common wall and install a retractable room divider, and b) Expand the solar panel electrical system.

D. Project Need:
The Florence Sylvester Senior Center provides a number of vital services to the elderly/frail elderly population of the community. Currently, over 300 elderly persons are served on a daily basis. This project is needed to increase the sustainability of the Center while decreasing overall costs, thereby resulting in continued and increased accessibility to the Center for the elderly/frail elderly. In addition, converting the existing common wall into a room divider will provide flexibility to facilitate large group activities or divide the room into smaller areas better allowing for the provision of medical services.

E. Low/Mod Neighborhood Preservation:
The Florence Sylvester Senior Center addresses the needs of the elderly population in the community, which are predominantly low and moderate-income persons. In addition, these improvements provide a community benefit

by increasing the sustainability through the use of renewable energy technologies. The Center represents a safe and accessible senior center for the community, and these improvements would allow the Center to provide continued access for the elderly/frail elderly population.

F. Program Objectives and Outcomes Chart:

Activity	Outputs
1. Improvement	Demolish Interior Wall
2. Improvement	Install Interior Wall

Performance Objectives	Performance Outcomes
1. Suitable Living Environment	Availability/Accessibility
2. Suitable Living Environment	Availability/Accessibility

CDBG National Objective: LMA 570.208 (a)(1)

Outcomes	Job Number
1 Public Facility	KC12021 / 2021

ATTACHMENT B

Compensation/Payment

1. **COMPENSATION:**

This is a fixed fee price CONTRACT between the COUNTY and the SUBRECIPIENT for **$54,000** as set forth in Attachment A. Scope of Services attached hereto and incorporated herein by reference. The SUBRECIPIENT agrees to accept the specified compensation as set forth in this CONTRACT as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the SUBRECIPIENT of all its duties and obligations hereunder. The COUNTY shall have no obligation to pay any sum in excess of the total CONTRACT amount specified unless authorized by an amendment in accordance with paragraphs C and R of the COUNTY's General Terms and Conditions.

2. **FIRM DISCOUNT AND PRICING STRUCTURE:**

SUBRECIPIENT guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. SUBRECIPIENT agrees that no price increases shall be passed along to the COUNTY during the term of this CONTRACT not otherwise specified and provided for within this CONTRACT.

3. **PAYMENT TERMS:**

An invoice for the fixed cost of the services shall be submitted to the address specified below upon the completion of the engagement and approval of the COUNTY Project Manager. SUBRECIPIENT shall reference CONTRACT number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the COUNTY of Orange and verified and approved by OC Community Services and subject to routine processing requirements of the COUNTY. The responsibility for providing an acceptable invoice rests with the SUBRECIPIENT.

Billing shall cover services not previously invoiced. The SUBRECIPIENT shall reimburse the COUNTY of Orange for any monies paid to the SUBRECIPIENT for services not provided or when services do not meet the CONTRACT requirements.

Payments made by the COUNTY shall not preclude the right of the COUNTY from thereafter disputing any items or services involved or billed under this CONTRACT and shall not be construed as acceptance of any part of the services.

Invoice(s) are to be sent to:

OC Community Resources

1300 S. Grand

Santa Ana, CA 92705,

Attention: Accounts Payable

4. **INVOICING INSTRUCTIONS:**

The SUBRECIPIENT will provide an invoice on SUBRECIPIENT's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. SUBRECIPIENT's name and address
2. SUBRECIPIENT's remittance address (if different from 1 above)
3. Name of COUNTY Agency Department
4. COUNTY CONTRACT/MASTER AGREEMENT number
5. Service date(s) – Month of Service
6. Rate
7. Delivery Order (DO) / Subordinate Agreement Number
8. Deliverables / Service description (in accordance with Attachment C)
9. SUBRECIPIENT's Federal I. D. number
10. Total

The responsibility for providing an acceptable invoice to the COUNTY for payment rests with the SUBRECIPIENT. Incomplete or incorrect invoices are not acceptable and will be returned to the SUBRECIPIENT for correction. The COUNTY's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment.

5. **OC COMMUNITY RESOURCES CONTRACT REIMBURSEMENT POLICY:**

Further instructions regarding invoicing/reimbursements as set forth in Exhibit B – OC Community Resources Contract Reimbursement Policy, are attached hereto and incorporated herein by reference.

ATTACHMENT C

1. SUBRECIPIENT's Cost Proposal

A. Administration and Program Cost Proposal

Project Cost Budget Chart City of Laguna Hills – Florence Sylvester Senior Center Rehabilitation			
Project Costs/Activity	Urban County Funds	Leveraged Resources	Total
Design/Project Development	0	$7,992	$7,992
Acquisition	N/A	N/A	N/A
Construction	$54,000	0	$54,000
Total Project Cost	$54,000	$7,992	$61,992

B. Detailed Project Cost Budget Description

Demolition of common wall between activity room and health room and installation of retractable room divider to facilitate large group activities. This provides the flexibility of dividing the space as need for education purposes and small group activities or the provision of medical services.

Expansion of the solar panel electrical system.

ATTACHMENT D

1. **Staffing Plan**

Project Title: Florence Sylvester Senior Center Rehabilitation

Complete and Submit – Initial Report due on or before July 1.
(Include name and classification).

	Name/Staff	Classification/Title
1	Melissa Au-Yeung	Project Manager: Senior Management Analyst (City)
2	Don White	Assistant City Manager/Finance Director
3		
4		
5		
6		
7		
8		
9		
10		

The substitution or addition of other key individuals in any given category or classification shall be allowed only with prior written approval of the COUNTY Project Manager.

The SUBRECIPIENT may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and time of the service/class required. Assignment of additional key personnel shall be subject to COUNTY approval.

2. Project Administration

The program will be monitored and implemented by staff from the City of Laguna Hills from the City Manager's Office. The lead staff member implementing the project for FY 2012-13 has been responsible for the implementation of the City's past grant monies for

Contracts KC11981, KC10939, and KC09852. The experience of key administrators and other staff members throughout the City also includes experience monitoring past CDBG Housing Rehabilitation program funding. In addition, key administrators and staff members' experience includes over 33 years in Public Administration, 20 years in City Management experience, 8 years in Community Development, and 30 years in Public Finance.

3. Project Experience

The City of Laguna Hills has been the recipient of CDBG Public Facilities and Improvement grants in FY 2009-10, FY 2010-11, and FY 2011-12 and has experience administering this type of grant. The City has also been the recipient of similar grants in the past, including CDBG Housing Rehabilitation funds. The City has worked closely with the County to ensure the funds were administered correctly. In addition, staff members have a wealth of municipal experience, including community development, rehabilitation activities and monitoring, public administration, public finance, and personnel.

ATTACHMENT E

1. **Project Schedule**

   July 1 – CONTRACT Start Date

2. Tools to Measure Project's Effect – Florence Sylvester Senior Center Rehabilitation

Milestone Date	Minimum Required Expenditure/ Accomplishment Threshold	Activity Results Achieved
December 15th	50% of Contracted Amount Expended	$27,000.00
	50% of Proposed Accomplishments Achieved	Construction and/or installation
January 15th	70% of Contracted Amount Expended	$37,800.00
	70% of Proposed Accomplishments Achieved	Construction and/or installation
March 15th	80% of Contracted Amount Expended	$43,200.00
	80% of Proposed Accomplishments Achieved	Construction and/or installation

3. There are currently measures in place to track participation in the various programs offered at the Florence Sylvester Senior Center. With these improvements, the Florence Sylvester Senior Center staff will be better equipped to continue to meet the growing demand and utilization by this fast-growing demographic group. The project's effect on the intended participants will be noticeable as the Center's sustainability is improved and continued accessibility to the Center is improved. In addition, the Center will have the flexibility to better meet the needs of the elderly population of the community.

EXHIBIT A

County of Orange Child Support Enforcement

Certification Requirements

In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of award of CONTRACT, the successful SUBRECIPIENT must furnish to the CONTRACT Administrator, Purchasing Agent or the agency/department Deputy Purchasing Agent:

1. In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address;

2. In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity; A certification that the SUBRECIPIENT has fully complied with all applicable federal and state reporting requirements regarding its employees; and

3. A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

The certifications will be stated as follows:

"I certify that City of Laguna Hills is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of CONTRACT # 613038 with the County of Orange. I understand that failure to comply shall constitute a material breach of the CONTRACT and that failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes and will be held confidential by those agencies.

Failure of the SUBRECIPIENT to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

The successful SUBRECIPIENT may use the forms supplied herein, to furnish required information listed above.

County of Orange Child Support Enforcement

Certification Requirements

(blank form)

A. In the case of an individual SUBRECIPIENT, his/her name, date of birth, Social Security number, and residence address:

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________

Residence Address: ______________________

____

B. In the case of a SUBRECIPIENT doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity:

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________

Residence Address: ______________________

____

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________

Residence Address: ______________________

____

Name: ______________________________

D.O.B: ______________________________

Social Security No: ______________________

Residence Address: ______________________

____

(Additional sheets may be used if necessary)

C. A certification that the SUBRECIPIENT has fully complied with all applicable federal and state reporting requirements regarding its employees; and

D. A certification that the SUBRECIPIENT has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

"I certify that City of Laguna Hills is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of CONTRACT # 613038 with the County of Orange. I understand that failure to comply shall constitute a material breach of the CONTRACT and that failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

Authorized Signature Print Name Title

EXHIBIT B

ORANGE COUNTY

OC Community Resources

Our Community. Our Commitment.

Subject: OC Community Resources Contract Reimbursement Policy — Effective: July 1, 2010; Revised: April 13, 2012

PURPOSE:
This policy contains updated fiscal documentation requirements for contract reimbursement for OC Community Services. The procedures provide instructions for submitting reimbursement demand letter or invoice.

EFFECTIVE DATE:
July 1, 2010

REVISION DATE:
April 13, 2012

REFERENCES:
Executed Board of Supervisors approved contract
Budget included in contract or presented as an exhibit
OMB Circular A-21 Cost Principles for Educational Institutions
OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments
OMB Circular A-122 Cost Principles for Non-Profit Organizations
48 CFR Part 31 Contract Cost Principles and Procedures
24 CFR Parts 85, 570.502, 570.201, 576.21, 576.51 and 576.61: For Housing & Community Development and Homeless Prevention Contracts only.

BACKGROUND:
The executed Board of Supervisors approved contract is the authorization for all aspects of payment, including the maximum amount to be paid, the payee, and the scope of services and work. Payments are made in strict accordance with the contract terms. Allowable costs are identified in referenced OMB Circulars and Code of Federal Regulations (CFR).

ATTACHMENTS:
Reimbursement Policy Status Form (RPS-1)

POLICY:
Contractor is responsible for the submission of accurate claims. This reimbursement policy is intended to ensure that the Contractor is reimbursed based on the code or codes that correctly describe the services provided. This information is intended to serve only as a general reference resource regarding OC Community Services' reimbursement policy for the services described and is not intended to address every aspect of a reimbursement situation. Accordingly, OC Community Services may use reasonable discretion in interpreting and applying this policy to services provided in a particular case. Other factors affecting reimbursement may supplement, modify or, in some cases, supersede this policy. These factors may include, but are not limited to: legislative mandates and County directives. OC Community Services may modify this reimbursement policy at any time by publishing a new version of the policy. However, the information presented in this policy is accurate and current as of the date of publication.

Cost incurred by contractor must be substantiated and incurred during the contract period.
Total of all reimbursements cannot exceed the amount of the contract. Cost must be allowable under applicable OMB Circular or CFR. All supporting documentation for reimbursement must be submitted with demand letter or invoice. If contract requires matching

contribution, documentation substantiating contribution match must be submitted with demand letter or invoice.

At any time, based on County's business needs and/or Contractor's performance, the County may designate Contractor to submit abbreviated or comprehensive documentation, as identified in the respective sections. Upon designation, Contractor will be notified, in writing via Reimbursement Policy Status Form, of which requirements are in full force. When Contractor is required to submit comprehensive documentation, in addition to the items identified in the Abbreviated Documentation Requirements Section, Contractor must also provide the documentation identified in the Comprehensive Documentation Requirements Section.

PROCEDURES:

Abbreviated Documentation Requirements

Compile and submit:

1. Supporting documentation includes, but is not limited to:
    a. General ledger/expense transaction report
    b. Payroll register or labor distribution report
    c. Payroll allocation plan
    d. Personnel Documentation
    e. Benefit plan and calculation of benefit
    f. Employer-employee contract for non-customary benefits (if applicable)
    g. Pre-approval documentation for equipment purchases equal to or greater than $5,000
2. The following is required with the first month's invoice only:
    a. Cost allocation plan for rent, utilities, etc.
    b. Indirect rate approved by cognizant agency (if applicable)
3. Summary of leveraged resources (if applicable)
4. Demand letters must contain the following certification (if required by Contract):
   "I certify under the penalty of perjury that this claim is true and correct and that the requested payments have been made. I also certify that this claim agrees with our official payroll and financial records and that these amounts have not been, or will not be claimed from any other funding source"
5. Grantee Performance Report (if required by Contract)
6. Supporting documentation shall be on single-sided sheets
7. Please redact employees' Social Security numbers from payroll reports
8. Demand letter or invoice, along with supporting documentation shall be submitted to:
   OC Community Resources Accounting
   1300 S. Grand, Building B, 2nd Floor
   Santa Ana, CA 92705

Comprehensive Documentation Requirements

In addition to abbreviated documentation, compile and submit:

9. Purchase orders, invoices, and receipts
10. Cashed checks
11. Check register
12. Consultant/sub-contractor invoices (with description of services)
13. Travel expense documentation: mileage reimbursement, hotel bill, meal reimbursement

ACTION:

Distribute this policy to all appropriate staff

INQUIRIES:

Inquiries may be directed to the following:

- **Win Swe: 714-480-6532 or win.swe@occr.ocgov.com**
- **Cathy Tran: 714-480-6531 or cathy.tran@occr.ocgov.com**

ORANGE COUNTY
OC Community Resources
Our Community. Our Commitment.

Reimbursement Policy Status Form

Per OC Community Resources Contract Reimbursement Policy, in regards to the Contract # listed herein, Contractor is designated with the Documentation Status identified below, with all related documentation requirements in full force, until further notice.

Contractor: Click here to enter text. **Effective Date:** Click here to enter text.

Contract #: Click here to enter text.

Documentation Status: ☐ **Abbreviated** ☐ **Comprehensive**

****

Program Authorization by:

Click here to enter text.
Print Name

Signed by: ______________________________

Date: Click here to enter text.

Auditor Controller Authorization by:

Click here to enter text.
Print Name

Signed by: ______________________________

Date: Click here to enter text.

Two signatures are required to implement the form.

Distribution:
Contractor
Auditor Controller
Contract File
Program File

Exhibit C

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(I) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(I) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(I) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here O if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.
(18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official | Title

Signature | Date

X

form HUD-50070 (3/98)
ref. Handbooks 7417.1, 7475.13, 7485.1 & .3

EXHIBIT D

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award
3. Report Type: ☐ a. initial filing b. material change **For Material Change Only:** year ________ quarter ________ date of last report ____________	
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ______, *if known*: **Congressional District**, *if known*: 4c	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: ____________
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: ____________________ Print Name: ____________________ Title: ____________________ Telephone No.: ____________ Date: ________
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal Identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

EXHIBIT B

COMMUNITY DEVELOPMENT BLOCK GRANT
PROGRAM YEAR 2012/2013
SCOPE OF WORK

Description of Activities

The construction project will focus on the rehabilitation of the Florence Sylvester Senior Center. Eligible costs for reimbursement include: a) Demolition of the common wall and install a retractable room divider and b) expand the solar panel electrical system.

The project shall be performed in conformance with this Scope of Work, the Agreement Between The City of Laguna Hills and Age Well Senior Services, Inc., for Community Development Block Grant (CDBG) Public Facilities and Improvement Funds (Program Year 2012/2013) (hereinafter, "Agreement"), Contract No. KC12021 (entitled "Contract Between County of Orange and City of Laguna Hills for Public Facilities & Improvements Florence Sylvester Senior Center Rehabilitation "), and required County approvals therein. The Sub-recipient shall provide the oversight, administration and project management necessary to accomplish contracted activities in accordance with this Agreement, the County approved scope of Work, completion milestones (provided by County), State and Federal laws, applicable regulations, and authorities having jurisdiction.

Prior to the start of work:

(1) The construction project contemplated is a "public work", under California Labor Code Section 1720, and the Sub-recipient is required to adhere to prevailing wages requirements in accordance with State law. In addition, the Federal Labor Standards including Davis-Bacon prevailing wages shall apply. A current and appropriate Davis-Bacon wage decision approved by the County shall be included in the Construction Bid Package, along with HUD – 4010 form, "Federal Labor Standards Provisions".

(2) Prior to advertising for bids, the construction bid package for the rehabilitation work shall be submitted to the City for review and written approval by the County. A County representative shall be invited to a preconstruction conference to review Federal Labor Standards compliance procedures with the Sub-recipient and construction subcontractors.

(3) No costs shall be incurred prior to receipt of written certification of approval by County of the fulfillment of the requirements of Section XXI (Insurance) of the Agreement.

Project Budget

REHABILITATION PROJECT COST BUDGET	
Project Component	**CDBG Funds**
Demolish Common Wall & Install Retractable Room Divider	$ 20,000
Expansion of Solar Panel System	$ 34,000
Total Project Cost	$ 54,000

Milestones

MILESTONE DATE	MINIMUM REQUIRED EXPENDITURE THRESHOLD
December 15, 2012	50% of Contracted Amount Expended
January 15, 2013	70% of Contracted Amount Expended
March 15, 2013	80% of Contracted Amount Expended

Failure to achieve at least the 50% drawdown milestone, without a written exemption from the City, may cause any remaining balance in this Agreement to be reclaimed by the City, and will negatively affect future funding to Sub-recipient. Failure to achieve the 80% drawdown goal, without written exemption approved by the City, may cause any remaining balance in this Agreement to be reclaimed by the City.

Sub-recipient shall be required to complete and submit a Year End Grantee Performance Report Form by July 5, 2013.

Payment of Project Activities

On a quarterly basis and within fifteen (15) days of the end of a quarter, the Sub-recipient may invoice City for reimbursement of eligible costs. Concurrently with its request for the aforementioned funds, Sub-recipient shall submit to the City the following supporting documentation: Copies of paid invoices, receipts, certified payroll records, bank statements, canceled checks, attendance records, and other items adequate to document project expenditures. Sub-recipient shall also provide a Quarterly Performance Report, on a Grantee Performance Report Form (as reference in Contract No. KC12021), which addresses its level of performance for each activity undertaken relative to this Scope of Work. The City will not authorize reimbursement if any preceding quarter's reports or invoices are incomplete, or have not been submitted. In addition, if no request for reimbursement is submitted during any quarter during the term of the Agreement, a Grantee Performance Report Form shall be required from the Sub-recipient explain why no invoices were processed.

EXHIBIT C

EXHIBIT C

24 Code of Federal Regulations Section 570.502

TITLE 24—HOUSING AND URBAN DEVELOPMENT
SUBTITLE B—REGULATIONS RELATING TO HOUSING & URBAN DEVELOPMENT
CHAPTER V—OFFICE OF ASSISTANCE SECRETARY FOR COMMUNITY PLANNING & DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart J—Grant Administration

[Code of Federal Regulations]
[Title 24, Volume 3]
[Revised as of April 1, 2010]
From the U.S. Government Printing Office via GPO Access
[CITE: 24CFR570.502]

[Page 135-136]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER V--OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 570_COMMUNITY DEVELOPMENT BLOCK GRANTS--Table of Contents

Subpart J_Grant Administration

Sec. 570.502 Applicability of uniform administrative requirements.

(a) Recipients and subrecipients that are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A-87, ``Cost Principles for State, Local, and Indian Tribal Governments''; OMB Circular A-128, ``Audits of State and Local Governments'' (implemented at 24 CFR part 44); and with the following sections of 24 CFR part 85 ``Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' or the related CDBG provision, as specified in this paragraph:

(1) Section 85.3, ``Definitions'';
(2) Section 85.6, ``Exceptions'';
(3) Section 85.12, ``Special grant or subgrant conditions for `high-risk' grantees'';
(4) Section 85.20, ``Standards for financial management systems,'' except paragraph (a);
(5) Section 85.21, ``Payment,'' except as modified by Sec. 570.513;
(6) Section 85.22, ``Allowable costs'';
(7) Section 85.26, ``Non-federal audits'';
(8) Section 85.32, ``Equipment,'' except in all cases in which the equipment is sold, the proceeds shall be program income;
(9) Section 85.33, ``Supplies'';
(10) Section 85.34, ``Copyrights'';
(11) Section 85.35, ``Subawards to debarred and suspended parties'';
(12) Section 85.36, ``Procurement,'' except paragraph (a);
(13) Section 85.37, ``Subgrants'';
(14) Section 85.40, ``Monitoring and reporting program performance,'' except paragraphs (b) through (d) and paragraph (f);
(15) Section 85.41, ``Financial reporting,'' except paragraphs (a), (b), and (e);
(16) Section 85.42, ``Retention and access requirements for records,'' except that the period shall be four years;
(17) Section 85.43, ``Enforcement'';
(18) Section 85.44, ``Termination for convenience'';
(19) Section 85.51 ``Later disallowances and adjustments'' and
(20) Section 85.52, ``Collection of amounts due.''

(b) Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards of OMB Circular No. A-122, ``Cost Principles for Non-profit Organizations,'' or OMB Circular No. A-21, ``Cost Principles for Educational Institutions,'' as applicable, and OMB Circular A-133, ``Audits of Institutions

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of Higher Education and Other Nonprofit Institutions'' (as set forth in 24 CFR part 45). Audits shall be conducted annually. Such subrecipients shall also comply with the following provisions of the Uniform Administrative requirements of OMB Circular A-110 (implemented at 24 CFR part 84, ``Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations'') or the related CDBG provision, as specified in this paragraph:

(1) Subpart A--``General'';

(2) Subpart B--``Pre-Award Requirements,'' except for Sec. 84.12, ``Forms for Applying for Federal Assistance'';

(3) Subpart C--``Post-Award Requirements,'' except for:

(i) Section 84.22, ``Payment Requirements.'' Grantees shall follow the standards of Sec. Sec. 85.20(b)(7) and 85.21 in making payments to subrecipients;

(ii) Section 84.23, ``Cost Sharing and Matching'';

(iii) Section 84.24, ``Program Income.'' In lieu of Sec. 84.24, CDBG subrecipients shall follow Sec. 570.504;

(iv) Section 84.25, ``Revision of Budget and Program Plans'';

(v) Section 84.32, ``Real Property.'' In lieu of Sec. 84.32, CDBG subrecipients shall follow Sec. 570.505;

(vi) Section 84.34(g), ``Equipment.'' In lieu of the disposition provisions of Sec. 84.34(g), the following applies:

(A) In all cases in which equipment is sold, the proceeds shall be program income (prorated to reflect the extent to which CDBG funds were used to acquire the equipment); and

(B) Equipment not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient;

(vii) Section 84.51 (b), (c), (d), (e), (f), (g), and (h), ``Monitoring and Reporting Program Performance'';

(viii) Section 84.52, ``Financial Reporting'';

(ix) Section 84.53(b), ``Retention and access requirements for records.'' Section 84.53(b) applies with the following exceptions:

(A) The retention period referenced in Sec. 84.53(b) pertaining to individual CDBG activities shall be four years; and

(B) The retention period starts from the date of submission of the annual performance and evaluation report, as prescribed in 24 CFR 91.520, in which the specific activity is reported on for the final time rather than from the date of submission of the final expenditure report for the award;

(x) Section 84.61, ``Termination.'' In lieu of the provisions of Sec. 84.61, CDBG subrecipients shall comply with Sec. 570.503(b)(7); and

(4) Subpart D--``After-the-Award Requirements,'' except for Sec. 84.71, ``Closeout Procedures.''

[53 FR 8058, Mar. 11, 1988, as amended at 60 FR 1916, Jan. 5, 1995; 60 FR 56915, Nov. 9, 1995]

EXHIBIT D

EXHIBIT D

24 Code of Federal Regulations Subpart K

TITLE 24—HOUSING AND URBAN DEVELOPMENT
SUBTITLE B—REGULATIONS RELATING TO HOUSING & URBAN DEVELOPMENT
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Sec. 570.600 General.

Source: 53 FR 34456, Sept. 6, 1988, unless otherwise noted.

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to states made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular Areas Program in Sec. 570.405 and Sec. 570.440 with the exception of Sec. 570.612. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to states under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see Sec. 570.487.

(b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (subparts D and F, respectively), the requirements of this subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (subparts E and G, respectively), and to loans guaranteed pursuant to subpart M.

[53 FR 34456, Sept. 6, 1988, as amended at 61 FR 11477, Mar. 20, 1996; 72 FR 12536, Mar. 15, 2007]

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Sec. 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.

(a) The following requirements apply according to sections 104(b) and 107 of the Act:

(1) Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and implementing regulations in 24 CFR part 1.

(2) Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, in accordance with section 104(b)(2) of the Act, for each community receiving a grant

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under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

(b) Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

[61 FR 11477, Mar. 20, 1996]

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Sec. 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

[64 FR 3802, Jan. 25, 1999]

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Sec. 570.603 Labor standards.

(a) Section 110(a) of the Act contains labor standards that apply to nonvolunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(b) The regulations in 24 CFR part 70 apply to the use of volunteers.

[61 FR 11477, Mar. 20, 1996]

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Sec. 570.604 Environmental standards.

For purposes of section 104(g) of the Act, the regulations in 24 CFR part 58 specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities. In certain cases, grantees assume these environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary.

[61 FR 11477, Mar. 20, 1996]

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Sec. 570.605 National Flood Insurance Program.

Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under subpart D of this part or HUD-administered small cities recipients in Hawaii, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR part 91), section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR parts 59 through 79 apply to funds provided under this part 570.

[61 FR 11477, Mar. 20, 1996]

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Sec. 570.606 Displacement, relocation, acquisition, and replacement of housing.

(a) General policy for minimizing displacement. Consistent with the other goals and objectives of this part, grantees (or States or state recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) Relocation assistance for displaced persons at URA levels. (1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation

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Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(2) Displaced person. (i) For purposes of paragraph (b) of this section, the term ``displaced person'' means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(A) After notice by the grantee (or the state recipient, if applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this part that are later provided or granted.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i)(A) or (B) of this section, if either HUD or the grantee (or State, as applicable) determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the ``initiation of negotiations'' if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

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(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or

(2) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term ``displaced person-'' does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee (or State or state recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) Initiation of negotiations. For purposes of determining the type of replacement housing assistance to be provided under paragraph (b) of this section, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term ``initiation of negotiations'' means the execution of the grant or loan agreement between

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the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property.

(c) Residential antidisplacement and relocation assistance plan. The grantee shall comply with the requirements of 24 CFR part 42, subpart B.

(d) Optional relocation assistance. Under section 105(a)(11) of the Act, the grantee may provide (or the State may permit the state recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph (b) or (c) of this section. The grantee may also provide (or the State may also permit the state recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or state recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see, e.g., 24 CFR 570.201(i), as applicable). The grantee (or state recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or state recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) Acquisition of real property. The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) Appeals. If a person disagrees with the determination of the grantee (or the state recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or state recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of the State CDBG program, a low- or moderate-income household may file a written request for review of the state recipient's decision with the State.

(g) Responsibility of grantee or State. (1) The grantee (or State, if applicable) is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of the State CDBG program, the State shall require state recipients to certify that they will comply with the requirements of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee (or State and state recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(Approved by the Office of Management and Budget under OMB control number 2506-0102)

[61 FR 11477, Mar. 20, 1996, as amended at 61 FR 51760, Oct. 3, 1996]

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Sec. 570.607 Employment and contracting opportunities.

To the extent that they are otherwise applicable, grantees shall comply with:

(a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-1965 Comp. p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

[68 FR 56405, Sept. 30, 2003]

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Sec. 570.608 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at

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part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

[64 FR 50226, Sept. 15, 1999]

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Sec. 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

The requirements set forth in 24 CFR part 5 apply to this program.

[61 FR 5209, Feb. 9, 1996]

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Sec. 570.610 Uniform administrative requirements and cost principles.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars A-87, A-110 (implemented at 24 CFR part 84), A-122, A-133 (implemented at 24 CFR part 45), and A-128 \2\ (implemented at 24 CFR part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR parts 84 and 85 are set forth at Sec. 570.502.

\2\ See footnote 1 at Sec. 570.200(a)(5).

[60 FR 56916, Nov. 9, 1995]

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Sec. 570.611 Conflict of interest.

(a) Applicability. (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to Sec. 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to Sec. 570.203, 570.204, 570.455, or 570.703(i)).

(b) Conflicts prohibited. The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

(d) Exceptions. Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) Threshold requirements. HUD will consider an exception only after the recipient has provided the following documentation:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an

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exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

[60 FR 56916, Nov. 9, 1995]

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Sec. 570.612 Executive Order 12372.

(a) General. Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) Applicability. Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

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Sec. 570.613 Eligibility restrictions for certain resident aliens.

(a) Restriction. Certain newly legalized aliens, as described in 24 CFR part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in paragraph (e) of this section. ``Benefits'' under this section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities made available under covered activities funded by programs listed in paragraph (e) of this section. ``Benefits'' do not include relocation services and payments to which displacees are entitled by law.

(b) Covered activities. ``Covered activities'' under this section means activities meeting the requirements of Sec. 570.208(a) that either:

(1) Have income eligibility requirements limiting the benefits exclusively to low and moderate income persons; or

(2) Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.

(c) Limitation on coverage. The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section.

(d) Compliance. Compliance can be accomplished by obtaining certification as provided in 24 CFR 49.20.

(e) Programs affected. (1) The Community Development Block Grant program for small cities, administered under subpart F of part 570 of this title until closeout of the recipient's grant.

(2) The Community Development Block Grant program for entitlement

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grants, administered under subpart D of part 570 of this title.

(3) The Community Development Block Grant program for States, administered under subpart I of part 570 of this title until closeout of the unit of general local government's grant by the State.

(4) The Urban Development Action Grants program, administered under subpart G of part 570 of this title until closeout of the recipient's grant.

[55 FR 18494, May 2, 1990]

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Sec. 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

(a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of ``residential structure'' as defined in 24 CFR 40.2 or the definition of ``building'' as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

(b) The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable--that is, easily accomplishable and able to be carried out without much difficulty or expense.

[60 FR 56917, Nov. 9, 1995]

Subpart L [Reserved]

EXHIBIT E

EXHIBIT E

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CHAPTER V—OFFICE OF ASSISTANCE SECRETARY FOR COMMUNITY PLANNING & DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart C—Eligible Activities

[Code of Federal Regulations]
[Title 24, Volume 3]
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TITLE 24--HOUSING AND URBAN DEVELOPMENT

CHAPTER V--OFFICE OF ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 570_COMMUNITY DEVELOPMENT BLOCK GRANTS--Table of Contents

Subpart C_Eligible Activities

Sec. 570.200 General policies.

Source: 53 FR 34439, Sept. 6, 1988, unless otherwise noted.

(a) Determination of eligibility. An activity may be assisted in whole or in part with CDBG funds only if all of the following requirements are met:

(1) Compliance with section 105 of the Act. Each activity must meet the eligibility requirements of section 105 of the Act as further defined in this subpart.

(2) Compliance with national objectives. Grant recipients under the Entitlement and HUD-administered Small Cities programs and recipients of insular area funds under section 106 of the Act must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight. The projected use of funds may also include activities that the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient under the Entitlement or HUD-administered Small Cities programs, and each recipient of insular area funds under section 106 of the Act must ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are found in Sec. 570.208.

(3) Compliance with the primary objective. The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, entitlement recipients, non-entitlement CDBG grantees in Hawaii, and recipients of insular area funds under section 106 of the Act must ensure that, over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under Sec. 570.208(a) or under Sec. 570.208(d)(5) or (6) for benefiting low- and moderate-income persons. For grants under section 107 of the Act, insular area recipients must meet this requirement for each separate grant. See Sec. 570.420(d)(3) for additional discussion of the primary objective requirement for insular areas funded under

section 106 of the Act. The requirements for the HUD-administered Small Cities program in New York are at Sec. 570.420(d)(2). In determining the percentage of funds expended for such activities:

(i) Cost of administration and planning eligible under Sec. 570.205 and Sec. 570.206 will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the CDBG funds and, accordingly shall be excluded from the calculation;

(ii) Funds deducted by HUD for repayment of urban renewal temporary loans pursuant to Sec. 570.802(b) shall be excluded;

(iii) Funds expended for the repayment of loans guaranteed under the provisions of subpart M shall also be excluded;

(iv) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under Sec. 570.208(a)(3) shall be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons.

(v) Funds expended for any other activities qualifying under Sec. 570.208(a) shall be counted for this purpose in their entirety.

(4) Compliance with environmental review procedures. The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.

(5) Cost principles. Costs incurred, whether charged on a direct or an indirect basis, must be in conformance

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with OMB Circulars A-87, ``Cost Principles for State, Local and Indian Tribal Governments''; A-122, ``Cost Principles for Non-profit Organizations''; or A-21, ``Cost Principles for Educational Institutions,'' as applicable. \1\ All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under this subpart C, except for the following:

\1\ These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998-9999 or (800) 483-2209 (TDD).

(i) Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties (including punitive damages) are unallowable costs to the CDBG program.

(iii) Pre-award costs are limited to those authorized under paragraph (h) of this section.

(b) Special policies governing facilities. The following special policies apply to:

(1) Facilities containing both eligible and ineligible uses. A public facility otherwise eligible for assistance under the CDBG program may be provided with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(ii) The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(2) Fees for use of facilities. Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

(c) Special assessments under the CDBG program. The following policies relate to special assessments under the CDBG program:

(1) Definition of special assessment. The term ``special assessment'' means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

(2) Special assessments to recover capital costs. Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(i) Special assessments to recover the CDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

(ii) Special assessments to recover the non-CDBG portion may be made provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(3) Public improvements not initially assisted with CDBG funds. The payment of special assessments with CDBG funds

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constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments provided:

(i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental, citizen participation and Davis-Bacon requirements;

(ii) The installation of the public improvement meets a criterion for national objectives in Sec. 570.208(a)(1), (b), or (c); and

(iii) The requirements of Sec. 570.200(c)(2)(ii) are met.

(d) Consultant activities. Consulting services are eligible for assistance under this part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) Employer-employee type of relationship. No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

(2) Independent contractor relationship. Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36, and are not subject to the compensation limitation of Level IV of the Executive Schedule.

(e) Recipient determinations required as a condition of eligibility. In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of Sec. Sec. 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

(f) Means of carrying out eligible activities. (1) Activities eligible under this subpart, other than those authorized under Sec. 570.204(a), may be undertaken, subject to local law:

(i) By the recipient through:

(A) Its employees, or

(B) Procurement contracts governed by the requirements of 24 CFR 85.36; or

(ii) Through loans or grants under agreements with subrecipients, as defined at Sec. 570.500(c); or

(iii) By one or more public agencies, including existing local public agencies, that are designated by the chief executive officer of the recipient.

(2) Activities made eligible under Sec. 570.204(a) may only be undertaken by entities specified in that section.

(g) Limitation on planning and administrative costs. No more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, as defined in Sec. Sec. 570.205 and 507.206, respectively. Recipients of entitlement grants under subpart D of this part shall conform with this requirement by limiting the amount of CDBG funds obligated for planning plus administration during each program year to an amount no greater than 20 percent of the sum of its entitlement grant made for that program year (if any) plus the program income received by the recipient and its subrecipients (if any) during that program year.

(h) Reimbursement for pre-award costs. The effective date of the grant agreement is the program year start date or the date that the consolidated plan is received by HUD, whichever is later. For a Section 108 loan guarantee, the effective date of the grant agreement is the date of HUD execution of the grant agreement amendment for the particular loan guarantee commitment.

(1) Prior to the effective date of the grant agreement, a recipient may incur costs or may authorize a subrecipient to incur costs, and then after the effective date of the grant agreement pay for those costs using its CDBG funds, provided that:

(i) The activity for which the costs are being incurred is included, prior to the costs being incurred, in a consolidated plan action plan, an amended

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consolidated plan action plan, or an application under subpart M of this part, except that a new entitlement grantee preparing to receive its first allocation of CDBG funds may incur costs necessary to develop its consolidated plan and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in its consolidated plan;

(ii) Citizens are advised of the extent to which these pre-award costs will affect future grants;

(iii) The costs and activities funded are in compliance with the requirements of this part and with the Environmental Review Procedures stated in 24 CFR part 58;

(iv) The activity for which payment is being made complies with the statutory and regulatory provisions in effect at the time the costs are paid for with CDBG funds;

(v) CDBG payment will be made during a time no longer than the next two program years following the effective date of the grant agreement or amendment in which the activity is first included; and

(vi) The total amount of pre-award costs to be paid during any program year pursuant to this provision is no more than the greater of 25 percent of the amount of the grant made for that year or $300,000.

(2) Upon the written request of the recipient, HUD may authorize payment of pre-award costs for activities that do not meet the criteria at paragraph (h)(1)(v) or (h)(1)(vi) of this section, if HUD determines, in writing, that there is good cause for granting an exception upon consideration of the following factors, as applicable:

(i) Whether granting the authority would result in a significant contribution to the goals and purposes of the CDBG program;

(ii) Whether failure to grant the authority would result in undue hardship to the recipient or beneficiaries of the activity;

(iii) Whether granting the authority would not result in a violation of a statutory provision or any other regulatory provision;

(iv) Whether circumstances are clearly beyond the recipient's control; or

(v) Any other relevant considerations.

(i) Urban Development Action Grant. Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of subpart G, for:

(1) Activities eligible for assistance under this subpart; and

(2) Notwithstanding the provisions of Sec. 570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.

(j) Faith-based activities. (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. Neither the Federal government nor a State or local government receiving funds under CDBG programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the CDBG program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization.

Among other things, faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a CDBG-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members

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on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) CDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to CDBG funds in this part. Sanctuaries, chapels, or other rooms that a CDBG-funded religious congregation uses as its principal place of worship, however, are ineligible for CDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

[53 FR 34439, Sept. 6, 1988, as amended at 54 FR 47031, Nov. 8, 1989; 57 FR 27119, June 17, 1992; 60 FR 1943, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 60 FR 56910, Nov. 9, 1995; 61 FR 11476, Mar. 20, 1996; 61 FR 18674, Apr. 29, 1996; 65 FR 70215, Nov. 21, 2000; 68 FR 56404, Sept. 30, 2003; 69 FR 32778, June 10, 2004; 70 FR 76369, Dec. 23, 2005; 72 FR 46370, Aug. 17, 2007]

EXHIBIT F

EXHIBIT F

24 Code of Federal Regulations Section 85.43 and 85.44

TITLE 24—HOUSING AND URBAN DEVELOPMENT
SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL, AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

Reports, Records, Retention, and Enforcement

[Code of Federal Regulations]
[Title 24, Volume 1]
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TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 85_ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL

Subpart C_Post-Award Requirements

Sec. 85.43 Enforcement.

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

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(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a grantee or subgrantee from being subject to 2 CFR part 2424 (see Sec. 85.35).

[53 FR 8068, 8087, Mar. 11, 1988, as amended at 72 FR 73493, Dec. 27, 2007]

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TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 85_ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL

Subpart C_Post-Award Requirements

Sec. 85.44 Termination for convenience.

Except as provided in Sec. 85.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either Sec. 85.43 or paragraph (a) of this section.

EXHIBIT G

INSURANCE REQUIREMENTS

Sub-recipient shall procure and maintain insurance for the duration for this Agreement against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by Sub-recipient, its agents, representatives, subcontractors, or employees. If Sub-recipient fails to maintain insurance acceptable to the City for the full term of this Agreement, the City may terminate this Agreement. Prior to the commencement of work under this Agreement, Sub-recipient will file with the City (who shall forward to County) an original Certificate of Insurance and all required endorsements evidencing that coverage required by this Agreement and necessary to satisfy the insurance provisions of Contract No. KC12021 have been complied with and are in effect. Such insurance and the certificates will be kept on deposit with the City and County during the entire term of this Agreement.

In addition, all construction subcontractors performing work on behalf of Sub-recipient pursuant to this Agreement shall be covered under Sub-recipient's insurance or shall obtain insurance subject to the same terms and conditions as set forth herein. Sub-recipient shall require that any subcontractor working for Sub-recipient have the insurance required by this section and not allow subcontractors to work if the subcontractors have less than the level of coverage required by the City under this Agreement. Sub-recipient shall provide notice of the insurance requirements to every subcontractor and must receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Sub-recipient or subcontractor through the entirety of this Agreement for inspection by City and County representatives at any reasonable time

A. Minimum Limits of Insurance

The policy or policies of insurance maintained by Sub-recipient shall provide the minimum limits and coverage as set forth herein below:

Coverage	Minimum Limits
Commercial General Liability	$1,000,000 per occurrence $2,000,000 aggregate
Automobile Liability including all owned, non-owned, and hired	$1,000,000 per occurrence
Workers' Compensation	Statutory
Sexual Misconduct	$1,000,000 per occurrence
Employer's Liability	$1,000,000 per occurrence
Professional Liability	$1,000,000 per claims made or per occurrence

The City and County are to be added as an additional insured except for Workers' Compensation/Employers' Liability. (Endorsement must be attached to Certificate of Insurance).

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City. Any deductible or self-insured retention (SIR) amount in excess of $25,000 ($5,000 for automobile liability) shall specifically be approved by the County's Executive Office/Office of Risk Management. Sub-recipient shall be responsible for reimbursement of any deductible to the insurer.

C. Acceptability of Insurers

The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier). Insurance is to be placed with insurers with a minimum insurance company rating as determined by the most current edition of the *Best's Key Rating Guide/Property-Casualty/United States* or ambest.com of A- (Secure Best's Rating) and VIII (Finance Size Category). If the carrier is a non-admitted carrier in the State of California, the City and County retain the right to approve or reject carrier after a review of the company's performance and financial ratings.

D. Changes to Insurance

1. Insurance policy or policies shall not be changed, canceled, limited in scope of coverage or non-renewed until 30-days written notice had been given to the City and County of Orange/OC Community Services (Endorsement must be attached to Certificate of Insurance).

2. Any of the above insurance types may be increased or waived due to current insurance marketplace conditions, at the sole discretion of the City and County. In addition, the City and County retain the right to require additional insurance coverage as may be deemed appropriate to adequately protect the City and County. The requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risks, which exist at the time a change in insurance is required.

3. The City shall notify Sub-recipient in writing of changes required in the insurance requirements. If Sub-recipient does not deposit copies of acceptable Certificates of Insurance and endorsements with the City within thirty (30) days of receipt of such notice, this Agreement may be in default without further notice to Sub-recipient, and City shall be entitled to all legal remedies.

E. Other Requirements

Each insurance policy required by this Agreement shall be endorsed to contain the following provisions:

> All rights of subrogation are hereby waived against City and County, their respective elective and appointed officials, officers and employees when acting within the scope of their employment or appointment, and County and their Board or Commissions, which are governed by County Board of Supervisors. (Endorsement must be attached to Certificate of Insurance).

F. Verification of Coverage

Sub-recipient shall furnish the City with original certificates and amendatory endorsements affecting coverage. Said policies and endorsements shall conform to the requirements herein stated. All certificates and endorsements are to be received and approved by the City before work commences. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on the standard industry forms, as listed below. The City reserves the right to require Sub-recipient's insurers to provide complete, certified copies of all required insurances policies at any time.

Required ACORD Form	Certificate of Liability Form 25-S(7/97)
Notice of Policy Termination	Cancellation Section of ACORD Form 25S(7/97) Words "endeavor to" deleted from standard wording.

Required Insurance Services Office, Inc. Endorsements

Commercial General Liability	ISO Form CG 00 01; OR Or a substitute form providing coverage at least as broad
Business Automobile Liability	ISO Form CA 00 01, CA 00 05, CA 00 12, CA 00 02; Or a substitute form providing coverage at least as broad

Insurance information shall be submitted to:

City of Laguna Hills
City Manager's Office
Attn: Melissa Au-Yeung, Senior Management Analyst
24035 El Toro Rd
Laguna Hills, CA 92653

For submittal also to:

County of Orange
OC Community Services
Attn: Contract Administration and Compliance
1770 North Broadway
Santa Ana, CA 92706-2642

G. Sub-Recipient Liability

The procuring of such required policy or policies of insurance shall not be construed to limit Sub-recipient's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement.

CITY OF LAGUNA HILLS

AGENDA REPORT
ADMINISTRATIVE SERVICES DEPARTMENT

ISSUE: **LEASE AGREEMENT WITH THE LAW OFFICES OF FAY BLIX FOR 24031 EL TORO ROAD, SUITE 301, LAGUNA HILLS, CALIFORNIA**

SUMMARY:

Suite 301 was vacated back in September of 2011. Essex Realty has actively marketed the suite and received a proposal from the Law Offices of Fay Blix in March. The Civic Center was in competition with two other properties to secure this tenant and a sixty-two month lease was successfully negotiated. At the April 10, 2012 City Council meeting, the terms of the lease were reviewed and approved by the City Council in Closed Session.

Attached to this report is the final lease document, which has been executed by the prospective tenant. Staff is recommending the City Council authorize the City Manager to execute lease documents with the Law Offices of Fay Blix.

FISCAL IMPACT:

This lease will generate total rent revenue of $257,514 over the sixty-two month term.

RECOMMENDATION: THAT THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO EXECUTE LEASE DOCUMENTS WITH THE LAW OFFICES OF FAY BLIX FOR 24031 EL TORO ROAD, SUITE 301, LAGUNA HILLS, CALIFORNIA.

ATTACHMENTS:

- Lease

STANDARD MULTI-TENANT OFFICE LEASE - GROSS
AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("**Lease**"), dated for reference purposes only April 3, 2012, is made by and between The City of Laguna Hills ("**Lessor**") and Fay Blix, an individual dba The Law Office of Fay Blix ("**Lessee**"), (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Premises:** That certain portion of the Project (as defined below), known as Suite Numbers(s) 301, 3rd floor(s), consisting of approximately 2,288 rentable square feet and approximately 1,932 useable square feet("**Premises**"). The exact square footage to be fixed for the term of the lease. The Premises are located at: 24031 El Toro Road, in the City of Laguna Hills, County of Orange, State of California, with zip code 92654. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("**Building**") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project.**" The Project consists of approximately 51,943 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** 4/1,000sf unreserved and N/A reserved vehicle parking spaces at a monthly cost of $N/A per unreserved space and $N/A per reserved space. (See Paragraph 2.6)

1.3 **Term:** 5 years and 2 months ("**Original Term**") commencing September 1, 2012 ("**Commencement Date**") and ending October 31, 2017 ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing July 1, 2012 ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $4,118.40 per month ("**Base Rent**"), payable on the First day of each month commencing September 1, 2012. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph ______

1.6 **Lessee's Share of Operating Expense Increase:** 4.40 percent (4.40%) ("**Lessee's Share**"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $4,118.40 for the period September 1-30, 2012.

(b) **Security Deposit:** $4,576.00 ("**Security Deposit**"). (See also Paragraph 5)

(c) **Parking:** $N/A for the period ______.

(d) **Other:** $N/A for ______.

(e) **Total Due Upon Execution of this Lease:** $8,694.40.

1.8 **Agreed Use:** Legal and general office use. (See also Paragraph 6)

1.9 **Base Year; Insuring Party.** The Base Year is 2012. Lessor is the "**Insuring Party**". (See also Paragraphs 4.2 and 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (the "**Brokers**") and brokerage relationships exist in this transaction (check applicable boxes):

☑ Essex Realty Management Inc. represents Lessor exclusively ("**Lessor's Broker**");

☑ IN/House-Corporate Real Estate - Jerry Neitlich represents Lessee exclusively ("**Lessee's Broker**"); or

☐ ______ represents both Lessor and Lessee ("**Dual Agency**").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to in ~~to in the attached~~ a separate written agreement. ~~or if no such agreement is attached, the sum of ______ or ______% of the total Base Rent payable for the Original Term, the sum of ______ or ______ of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term, and/or the sum of ______ or ______% of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises.~~

1.11 **Guarantor.** The obligations of the Lessee under this Lease shall be guaranteed by Fay Blix ("**Guarantor**"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 2:00 p.m. on Saturdays (except Building Holidays). "**Building Holidays**" shall mean the dates of observation of New

Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and N/A .

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

☐ Janitorial services

☐ Electricity

☐ Other (specify): N/A

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs 1 through 13 ;

☑ a plot plan depicting the Premises;(Exhibit A)

☑ a current set of the Rules and Regulations;(Exhibit B)

☑ a Work Letter; (Exhibit D)

☐ a janitorial schedule;

☑ other (specify): Exhibit C Waiver and release

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs (**"Start Date"**), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (**"HVAC"**), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law.

2.3 **Compliance.** Lessor warrants to the best of its knowledge that the improvements comprising the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances (**"Applicable Requirements"**) in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises (**"Capital Expenditure"**), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to nonvoluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

~~(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.~~

2.7 **Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations (**"Rules and Regulations"**) for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project. Provided that in the event a violation of the Rules and Regulations by a third party materially interferes with Lessee's use and enjoyment of the Premises as contemplated under this Lease, then upon notice by Lessee, Lessor shall make reasonable efforts to enforce the same, subject to any legal constraints as determined by legal counsel for the Lessor.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways; provided that Lessee's obligations under this Lease are not materially increased and Lessee's access to or use of the Premises or other rights under this Lease are not materially decreased as a result thereof.

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date. Lessee shall have the right to enter the Premises following execution of the Lease during construction of the improvements in order to install telecommunication and data wires, provided Lessee does not interfer with any construction and indemnifies Lessor as stated in the Lease.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraphs 8.2 & 8.3 of the Addendum to this Lease ~~8.5~~). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent (**"Rent"**).

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the **"Operating Expense Increase"**, in accordance with the following provisions:

(a) **"Base Year"** is as specified in Paragraph 1.9.

(b) **"Comparison Year"** is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as **"Operating Expenses"** :

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provida those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(f) Lessee's Share of Operating Expense Increase is payable monthly on tha same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of tha Operating Expense Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such Year exceed Lessee's Share, Lessee shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated befora the end of such Comparison Year.

(g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constituta a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rant for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of tha Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that tha total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.** (See Addendum)

~~6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.~~

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term **"Hazardous Substance"** as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may usa any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household claaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during tha term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Laase with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

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(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Peragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to tha production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. Lessee shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any improvements with the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed $2000 annually. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with asbuilt plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lassee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. (See Addendum) ~~**Insurance; Indemnity.**~~

~~8.1 **Insurance Premiums.** The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of $2,000,000 procured under Paragraph 8.2(b).~~

~~8.2 **Liability Insurance.**~~

~~**(a) Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.~~

~~**(b) Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.~~

~~8.3 **Property Insurance - Building, Improvements and Rental Value.**~~

~~**(a) Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $5,000 per occurrence.~~

~~**(b) Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.~~

~~**(c) Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.~~

~~**(d) Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.~~

~~8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**~~

~~**(a) Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.~~

~~**(b) Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements.~~

~~**(c) Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.~~

~~**(d) No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.~~

~~8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.~~

~~8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.~~

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other

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lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the dete of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to Improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph. 8.1 & 8.2 or the Addendum to this Lease ~~8.3(a)~~, irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.3 (a) or the Addendum to this Lease. ~~8.6.~~

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definitions.** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. **"Real Property Taxes"** shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied

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or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.**

11.1 **Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 **Services Exclusive to Lessee.** Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "**Default**" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph. 8.1 & 8.2 or the Addendum to this Lease ~~8.3~~ is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.**. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest**. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for nonscheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to nonscheduled payments. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.** (See Addendum)

(a) **Notice of Breach**. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whosa name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

~~(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.~~

14. **Condemnation**. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

~~15.1 **Additional Commission.** If a separate brokerage fee agreement is attached then in addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule attached to such brokerage fee agreement.~~

~~15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.3 **Representations and Indemnities of Broker Relationships**. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates**.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIRCommercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability**. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days**. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability**. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence**. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer**. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements**. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given four(4) business days ~~72 hours~~ after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lesser or the Lessee. b. Othar duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advise is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Except as otherwise mutually agreed to the contrary, Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Devise to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents;

provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, **"Prevailing Party"** shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinery "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations.**

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be

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entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable nonmonetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☑ is not attached to this Lease.

49. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

50. Tenant Improvements. Lessor at Lessors expense shall construct a privacy wall between the reception area and the offices, install a door to the kitchen, install a door to the confrence room, replacethe kitchen cabinets, install new carpet and paint the premises a standard color to be chosen by Lessee. All areas including the offices shall include appropriate electric and data feeds.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: 24031 El Toro Road, Suite 100	Executed at: LAGUNA HILLS, CA
On:	On: APRIL 30, 2012
By LESSOR:	**By LESSEE:**
The City of Laguna Hills	Fay Blix, an individual dba The Law Office of Fay Blix
By:	By: [signature]
Name Printed: Bruce E Channing	Name Printed: Fay Blix
Title: City Manager	Title: Individual
By:	By:
Name Printed: Peggy Johns	Name Printed:
Title: City Clerk	Title:
Address: 24031 El Toro Road, Suite 200 Laguna Hills, CA 92653	Address:
Telephone:( )	Telephone:( )
Facsimile:( )	Facsimile:( )
Federal ID No.	Federal ID No.

INITIALS

FB
INITIALS

LESSOR'S BROKER:
Essex Realty Management Inc.

Attn: Sandi Montez
Address: 111 Corporate Drive, Suite 110
Ladera Ranch, CA 92694

Telephone: (949) 218-3801
Facsimile: (949) 218-3804
Broker/Agent DRE License #: 00965485

LESSEE'S BROKER:
IN/House Corporate Real Estate

Attn: Jerry Neitlich
Address: 2222 Martin St. Ste 255
Irvine, CA 92612

Telephone: (949) 442-0922
Facsimile: (949) 260-0940
Broker/Agent DRE License #: 01026305

Approved as to Form
By:____________________________ Gregory E Simonian, City Attorney

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

ADDENDUM TO LEASE

THIS ADDENDUM TO LEASE (this "Addendum") shall constitute part of that certain STANDARD MULTI-TENANT OFFICE LEASE -- GROSS ("Lease"), dated as of April 3, 2012, between The City of Laguna Hills ("Lessor"), and Fay Blix an individual dba the Law Office of Fay Blix. ("Lessee"). The terms of this Addendum shall be incorporated into the Lease for all purposes. In the event of any conflict between the terms of the Lease and the terms of this Addendum, the terms of this Addendum shall control.

1. Base Rent Schedule. Section 4.4 is hereby added to the Lease to read as follows:

4.4 Base Rent Schedule

4.4.1 The monthly Base Rent payable as defined in paragraph 4.1 and as set forth in paragraph 1.7 (a) of the Lease shall be adjusted as set forth below:

Months		Rent Per Month
9/1/2012	8/31/2013	$4,118.40
9/1/2013	9/30/2013	$0
10/1/2013	8/31/2014	$4,232.80
9/1/2014	8/31/2015	$4,347.20
9/1/2015	8/31/2016	$4,461.60
9/1/2016	10/31/1017	$4,576.00

2. Use. Section 6.1 of the Lease is hereby deleted in its entirety and replaced by the following:

"6.1. Use. The Premises shall be used only for the Agreed Use and for no other use. Lessee's use of the Premises shall be in compliance with and subject to all Applicable Requirements relating to or affecting the Project, the Premises or the Building or the use or operation thereof, whether now existing or hereafter enacted, including, without limitation, the Americans with Disabilities Act of 1990, 42 USC 12111 et seq. (the "ADA") as the same may be amended from time to time, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Lessee, the Premises, the Building, or the Project ("Environmental Laws"), any transportation or traffic management plan in satisfaction of any requirement imposed on the Project by a governmental agency with jurisdiction over the Project, and any CC&Rs or any supplement thereto recorded in any official or public records with respect to the Project or any portion thereof (collectively, "Applicable Laws"). Lessee shall be responsible for obtaining any permit, business license, or other permits or licenses required by any governmental agency permitting Lessee's use or occupancy of the Premises. Lessee shall not commit waste, overload the floors or structure of the Building, subject the Premises, the Building, the Common Area or the Project to any use which would damage the same or increase the risk of loss or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Lessor shall not be responsible for non-compliance by any other tenant or occupant of the Project with, or Lessor's failure to enforce, any of the rules or regulations or CC&Rs or any other terms or provisions of such tenant's or occupant's lease. Lessee shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Lessee shall not do any act which shall in any way encumber the title of Lessor in and to the Premises, the Building or the Project.

3. Insurance; Indemnity. Sections 8.1 through 8.6 of the Lease are hereby deleted in their entirety and replaced by the following:

"8.1 Lessor's Insurance. Lessor shall maintain insurance through individual or blanket policies insuring the Building against fire and extended coverage (including, if Lessor elects, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as selected by Lessor, together with rental abatement insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Lessor may also carry such other insurance as Lessor may deem prudent or advisable, including, without limitation, liability insurance in such amounts and on such terms as Lessor shall determine. Lessee shall pay to Lessor, as a portion of the Operating Expenses, the costs of the insurance coverages described herein, including, without limitation, Lessor's cost of any self-insurance deductible or retention.

8.2 Lessee's Insurance. Lessee shall, at Lessee's expense, obtain and keep in force at all times the following insurance:

(a) Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate per location if Lessee has multiple locations, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations with an "Additional Insured Managers or Lessors of Premises Endorsement" and personal and advertising injury coverage, with deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Lessee shall provide for restoration of the aggregate limit, and provided that the policy shall not contain any intra insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under the Lease as an "insured contract" for the performance of Lessee's indemnity obligations under the Lease;

(b) Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence and insuring Lessee against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

(c) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Lessee in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least Five Hundred Thousand ($500,000);

(d) Property Insurance. "Special Form" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any of Lessee's personal property, fixtures, equipment and alterations, including electronic data processing equipment (collectively "Lessee's Property") (and coverage for the full replacement cost thereof including business interruption of the Lessee), together with, if the property of Lessee's invitees is to be kept in the Premises, warehouseman's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located on the Premises.

(e) Business Interruption. Loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all peril commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

8.3 General.

(a) Insurance Companies. Insurance required to be maintained by Lessee shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least "A-" (or such higher rating as may be required by a lender having a lien on the Premises) and a financial rating of no less than VII as set forth in the most current issue of "Best's Insurance Guide."

(b) Certificates of Insurance. Lessee shall deliver to Lessor certificates of insurance and endorsements for all insurance required to be maintained by Lessee in the form acceptable to Lessor no later than seven (7) days prior to the date of possession of the Premises. Lessee shall, at least ten (10) days prior to expiration of the policy, furnish Lessor with certificates of renewal or "binders" thereof. If Lessee fails to maintain any insurance required in the Lease, Lessee shall be liable for all losses and costs suffered or incurred by Lessor (including litigation costs and attorneys' fees and expenses) resulting from said failure.

(c) Additional Insureds. Lessor, Lessor's lender, and any property management company of Lessor for the Premises shall be named as additional insureds (utilizing ISO Form CG2010 (11/85) or its equivalent) under all of the policies required by section 8.2(a). The policies required under Section 8.2(a) shall provide for severability of interest.

(d) Primary Coverage. All insurance to be maintained by Lessee shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Lessor. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Lessee shall not limit Lessee's liability under the Lease.

(e) Waiver of Subrogation. Notwithstanding any other provisions of the Lease, Lessee and Lessor each waive all rights to recover damages against the other, for loss or damage caused by fire and other perils and any other risk to the extent covered by policies of insurance or required to be covered by policies of insurance which are required to be carried in accordance with this Lease. This provision is intended to waive fully, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverages obtained by each of Lessee and Lessor pursuant to the Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance.

(f) Notification of Incidents. Lessee shall notify Lessor within twenty-four (24) hours after the occurrence of any accidents or incidents in the Premises, the Building, Common Areas or the Project which could give rise to a claim under any of the insurance policies required under this Section 8.

4. Breach by Lessor; Performance by Lessee on Behalf of Lessor. Section 13.6(b) of the Lease is hereby deleted in its entirety and replaced with the following:

"13.6(b). Lessee's Remedies. Lessee and all successors and assigns covenant and agree that, in the event of any actual or alleged default by Lessor, Lessee's sole and exclusive remedy shall be either to seek either specific performance or monetary damages, provided that Lessor shall not be liable for loss of business profits or consequential damages, and provided further, that any recourse for monetary damages by Lessee against Lessor shall be limited solely and exclusively to an amount which is equal to the amounts paid by Lessee to Lessor under the Lease (and Lessee hereby expressly waives and releases personal liability of Lessor in excess of such amount on behalf of itself and all persons claiming by through, or under the lease) Further, in no event shall the obligations of Lessor under the Lease constitute the personal obligations of Lessor or its partners, members, directors, officers, elected officials or shareholders, and Lessee shall have no right to seek recourse against Lessor's partners, members, directors, officers, elected officials or shareholders, or any of their personal assets for the satisfaction of any liability of Lessor with respect to the Lease. Lessee expressly waives all remedies except those specifically set forth in the Lease, including, without limitation, any right of offset or abatement except as specifically set forth in the Lease, any right to terminate the Lease under Civil Code Sections 1932(2), 1933(4) and 1941 or any other successor statute, or any statutory, legal or equitable self-help remedy including, without limitation, Civil Code Section 1942 or any other current or future law. Nothing contained in the Lease shall entitle Lessee to terminate the Lease as a result of Lessor's default nor excuse Lessee from paying Rent or Additional Rent due hereunder."

5. Estoppel Certificates. All references in the Lease to "Estoppel Certificate", including, but not limited to the definition in Section 16(a), shall refer to Lessor's standard form certificate.

6. Recordation. Lessee shall not have any right to cause the Lease or any short form or memorandum thereof to be recorded.

7. Option to Renew. Lessee shall have one option to renew for an additional 60 months at a rental rate adjusted to fair market value, the Base Year shall be adjusted to reflect the year of the extension term. Lessee shall notify Lessor in writing of their desire to exercise their option no later than One hundred and twenty (120) days prior to the termination of the original lease term.

8. Option to Terminate. Lessee shall have the right after the 24th month of the term to terminate the lease at the Lessee's or Lessee's heirs sole discretion upon the death of the principal. The associates of the Lessee may at their option elect to take over the Lease under the then existing terms provided they meet the financial requirements of the Lessor.

9. Council Chambers. Lessee shall be permitted to use the council chambers meeting room, all dates of use must be approved by the City of Laguna Hills. Rental rates for the use are $75.00 per hour with a two hour minimum.

10. Signage. Lessee shall have the right to place their name on the two lobby directories and on the wall next to their suite using building standard signage. Lessor shall pay the initial signage expense for the Lessee. Additional signage may be added at Lessee's expense and may include the name of any approved sublessee. All additional signage must be approved in advance by Lessor.

11. Relocation of Premises. Should the Lessor elect to relocate the Lessee, the Lessor shall give the Lessee 120 days notice and the new Premises shall be of similar size, build out and finishes. The Lessor shall pay for all reasonable costs incurred by the Lessee had they not relocated.

12. Notices to Lessee. A copy of all notices to tenant including yearly operating expenses shall be sent to: IN/House Corporate Real Estate, 2222 Martin St. Suite 255, Irvine, CA 92612.

13. Any reference to "Days" that is noted as less than (10) days shall be modified to mean "Ten (10) business days".

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of the Lease.

"Lessor"

THE CITY OF LAGUNA HILLS

By: Bruce E. Channing

By:____________________________
Its: City Manager

By: Peggy Johns

By:____________________________
Its: City Clerk

APPROVED AS TO FORM:

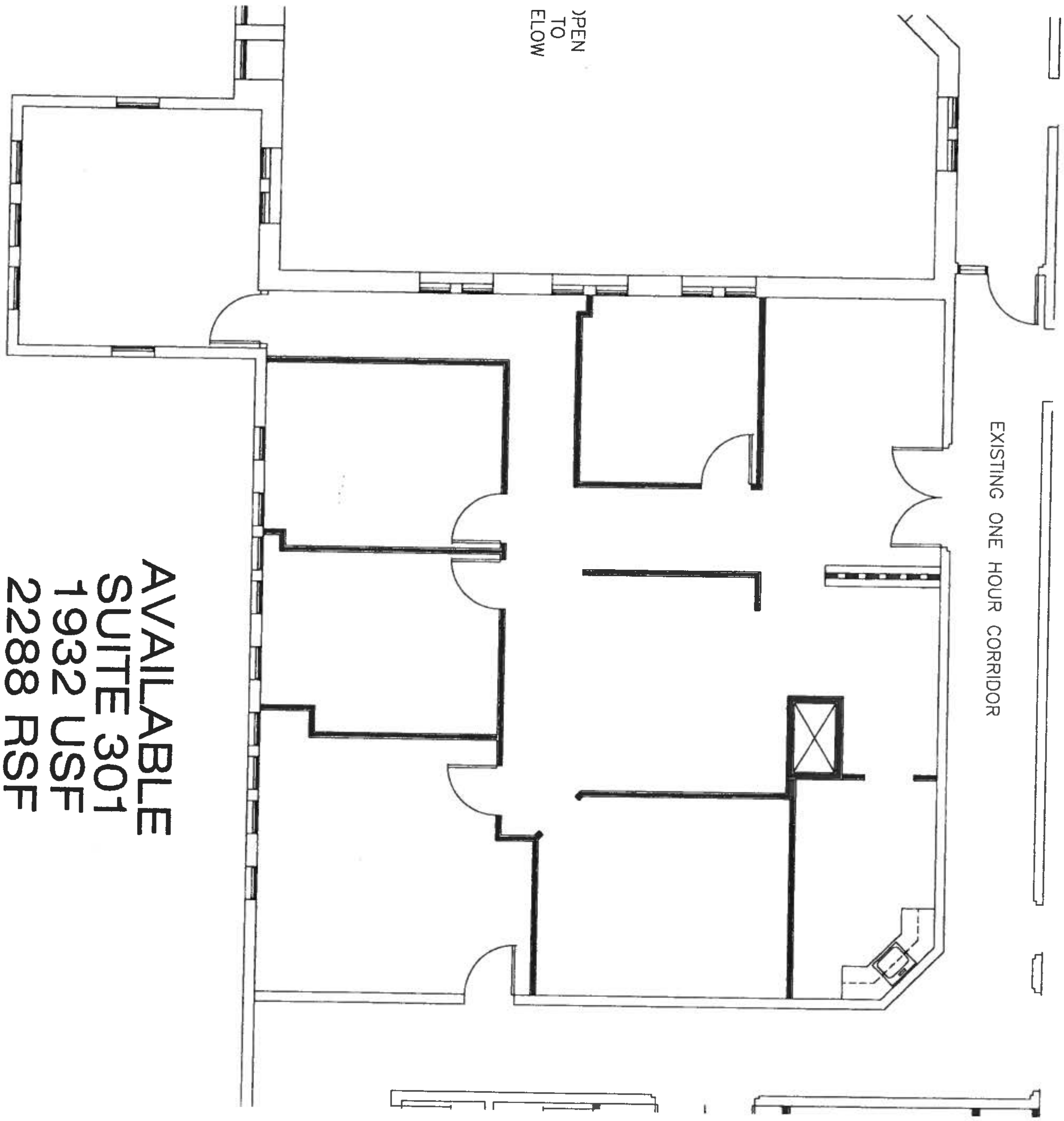
By:____________________________
City Attorney

"Lessee"
Fay Blix an individual dba The Law Office of Fay Blix

By:____________________________

Its: Individual

Exhibit "A"



AVAILABLE
SUITE 301
1932 USF
2288 RSF
EXISTING ONE HOUR CORRIDOR

EXHIBIT B

RULES AND REGULATIONS

ATTACHED TO AND MADE A PART OF STANDARD OFFICE LEASE

The following Rules and Regulations shall be in effect at the Office Building Project. Lessor reserves the right to adopt reasonable modifications and additions hereto. In the case of any conflict between these Rules and Regulations and the Lease, the Lease shall be controlling.

1. Except with the prior written consent of Lessor, no Lessee shall conduct any retail sales or any manufacturing of any kind in or from the Premises, or any business other than that specifically provided for in the Lease.

2. Lessor reserves the right to prohibit personal goods and services vendors from access to the Office Building Project except upon such reasonable terms and conditions, including but not limited to the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Office Building Project, the preservation of good order thereon, and the relief of any financial or other burden on Lessor occasioned by the presence of such vendors or the sale by them of personal goods or services to the Lessee or its employees. If reasonably necessary for the accomplishment of these purposes, Lessor may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Office Building Project. The term "personal goods or services vendors" means persons who periodically enter the Office Building Project of which the Premises are a part for the purpose of selling goods or services to a Lessee, other than goods or services, which are used by a lessee only for the purpose of conducting its business on the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, food, barbering services, and shoe shining services. This Section 2 shall not apply to Lessee's vendors and suppliers in connection with Lessee's operation of its business.

3. The sidewalks, halls, passages, elevators and stairways shall not be obstructed by any Lessee or used by it for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and Lessor shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Lessor shall be prejudicial to the safety, character, reputation and interests of the Office Building Project and its lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom Lessee normally deals only for the purpose of conducting its business on the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No Lessee and no employees of any Lessee shall go upon the roof of the Building without the written consent of Lessor. This Section 3 shall not apply to Lessee's vendor's suppliers in connection with Lessee's operation of its business.

4. The sashes, sash doors, windows, glass lights, and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that or which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the Lessee who, or whose clerks, agents, employees, or visitors, shall have caused it.

5. No sign, advertisement or notice visible from the exterior of the Premises or Building shall be inscribed, painted or affixed by Lessee on any part of the Office Building Project or the Premises without the prior written consent of Lessor. If Lessor shall have given such consent at any time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the

provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by Lessor and shall not be construed as dispensing with the necessity or obtaining the specific written consent of Lessor with respect to each and every such sign, advertisement or notice, as the case may be, so consented to by Lessor. Lessor shall have the right to remove any non-approved sign, advertisement or notice, without notice to and at the expense of Lessee, and Lessor shall not be liable in damages for such removal.

6. In order to maintain the outward professional appearance of the Office Building Project all window coverings to be installed at the Premises shall be subject to Lessor's prior approval. If Lessor, by a notice in writing to Lessee, shall object to any curtain, blind, shade or screen attached to or hung in, or used in connection with, any window door of the Premises, such use of such curtain, blind, shade or screen shall be forthwith discontinued by Lessee. No awnings shall be permitted on any part of the Premises.

7. Lessee shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor.

8. Lessee shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Office Building Project, or on the property kept therein, or obstruct or interfere with the rights of other Lessees, or in any way injure or annoy them, or conflict with the regulations of the Fire Department or the fire laws, or with any insurance policy upon the Office Building Project, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.

9. No Lessee shall sweep or throw or permit to be swept or thrown from the Premises any dirt or other substance into any of the corridors or halls or elevators, or out of the doors or windows or stairways of the Building. Lessee shall not use, keep or permit to be used any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Lessor or other occupants of the Office Building Project by reason of noise, odors, fire hazards and/or vibrations, or interfere in any way with other Lessees or those having business therein, nor shall any animals or birds be kept in or about the Office Building Project.

10. Lessee and its employees, agents and invitees shall not smoke any tobacco products or any other smoking materials whatsoever in the Premises, Building, common areas or any other area of the Project except in such areas, if any, as shall be designated by Lessor for smoking, in Lessor's sole and absolute discretion.

11. No cooking shall be done or permitted by Lessee on the Premises, except for the use of a microwave oven for food or Underwriter's Laboratory approved equipment for brewing coffee, tea, and similar beverages shall be permitted, provided that such use is in compliance with law. Offices in the Office Building Project shall not be used for the storage of merchandise or for sleeping or lodging.

12. Lessee, upon the termination of its tenancy, shall deliver to Lessor all the keys of offices, rooms and toilet rooms which shall have been furnished Lessee or which Lessee shall have had made, and in the event of loss of any keys so furnished, shall pay Lessor therefore.

13. On Saturdays after 6:00pm., Sundays and legal holidays, and on other days between the hours of 9:00 p.m. and 7:00 a.m., access to the Office Building Project or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the building watchman, if any, in charge and has a pass or is properly identified. Lessor shall in no case be liable for damages for the admission to or exclusion from the Office Building Project of any person whom Lessor has the right to exclude under Rule 3 above. In case of invasion, mob, riot, public excitement, or other commotion, Lessor reserves the right but shall not be

obligated to prevent access to the Office Building Project during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Office Building Project.

14. Lessee shall see that the windows and doors of the Premises are closed and securely locked before leaving the building and Lessee shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Lessee or Lessee's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Lessee shall make good all injuries sustained by other Lessees or occupants of the Building or Lessor.

15. Lessee shall not alter any lock or install a new or additional lock or any bolt on any door of the Premises without prior written consent of Lessor. If Lessor shall give its consent, Lessee shall in each case furnish Lessor with a key for any such lock.

16. Lessee shall not install equipment such as, but not limited to, electronic tabulating or computer equipment requiring electrical or air conditioning service in excess of those to be provided by Lessor under the Lease and any such equipment shall be placed in the Premises in settings approved by Lessor to adsorb or prevent any vibration, noise or annoyance.

17. No bicycle, or shopping cart, or other vehicle or any animal shall be brought into the Premises or the halls, corridors, elevators or any part of the Building by Lessee.

18. Lessor shall have the right to prohibit the use of the name of the Office Building Project or any other publicity by Lessee which in Landlord's opinion tends to impair the reputation of the Office Building Project, or their desirability for other Lessees, and upon written notice from Lessor, Lessee will refrain from or discontinue such publicity.

19. Lessee shall not erect any aerial or antenna on the roof or exterior walls of the Premises, the Building, or the Office Building Project.

20. Lessee shall not overload the floor of the Premises. In addition, Lessee shall not mark, drive nails, screw or drill into partitions, ceilings or floor of the Premises or deface the Premises.

21. No furniture, freight or equipment of any kind shall be brought into the Building or the Building's elevator without the consent of Lessor and all moving of the same into or out of the Building shall be done at such time and in such manner, as Lessor shall designate. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Office Building Project. Safes or other heavy objects shall, if considered necessary by Lessor, stand on wood strips of such thickness as is necessary to properly distribute the weight. However, Lessor's consent to placement of Lessee's safes, heavy equipment or furniture shall not constitute a representation or warranty by Lessor that the safe, heavy equipment or furniture complies, with regard to distribution of weight and/or vibration, with the provisions of the Rule 21 nor relieve Lessee from responsibility for the consequences of noncompliance. Lessor will not be responsible for loss of or damage to any safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Lessee. There shall not be used in any space, or in the public halls of the Building, either by any Lessee or others, any hand trucks except those equipped with rubber tires and side guards.

22. Except with the written consent of Lessor, no person or persons other than those approved by Lessor shall be permitted to enter the Building for their purpose of cleaning the same. Lessee shall not cause any unnecessary labor by reason of Lessee's carelessness or indifference in the preservation of good order and cleanliness. Lessor shall in no way be responsible to any Lessee for any loss of property on the Premises, however occurring, or for any damage done to the effects of any lessee by the janitor or any other employee or any other person. Janitor service shall include ordinary dusting and cleaning by the janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, or moving of furniture and other special services. Janitor service may not be furnished on nights when rooms are occupied after 9:00p.m.

23. Lessor will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Lessor. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Lessor.

24. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be designated by Lessor.

25. Lessor reserves the right to exclude or expel from the Office Building Project any person who in the judgment of Lessor, is intoxicated or under the influence of liquor or illegal, non-prescription drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Office Building Project.

26. The requirements of Lessee will be attended to only upon application to Lessor. Contractors, vendors and employees of Lessor shall not perform any work or do anything outside of their regular duties unless under special instructions from the Lessor or Lessor's agent.

27. No vending machine shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.

28. Lessor shall have the right, exercisable without notice and without liability to Lessee, to change the name and the street address of the Building and/or Office Building Project of which the Premises are a part.

29. Lessee agrees that it shall comply with all fire and security regulations that may be issued from time-to-time by Lessor and Lessee also shall provide Lessor with the name of a designated responsible employee to represent Lessee in all matters pertaining to such fire or security regulations.

30. Lessor reserves the right by written notice to Lessee, to rescind, alter or waive any rule or regulation at any time prescribed for the Office Building Project when, in Lessor's judgment, it is necessary, desirable or proper for the best interest of the Office Building Project and its lessees.

31. Lessees shall not disturb, solicit, or canvas any occupant of the Office Building Project and shall cooperate to prevent same.

32. Lessor shall furnish heating and air conditioning during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday except for holidays. In the event Lessee requires heating and air conditioning during off hours, Sundays or Holidays, Lessor shall on notice provide such services at the then prevailing rate for such extra services.

33. Lessee shall cooperate with Lessor in obtaining maximum effectiveness of the cooling system by closing blinds when the sun's rays fall directly on windows of the premises. Lessee shall not obstruct, alter, or in any way impair the efficient operation of Lessor's heating, ventilating and air-conditioning system. Lessee shall not tamper with or change the setting of any thermostats or control valves.

34. Parking

(a) The parking lot shall be accessible twenty-four (24) hours per day, subject to parking card or other reasonable Identification or security restriction as may be reasonably established by Lessor from time-to-time. Lessee agrees to cooperate with Lessor in completing regular maintenance of the parking lot.

(b) Automobiles must be parked entirely within the stall lines.

(c) All directional signs and arrows must be observed and the speed limit shall be 5 miles per hour.

(d) Parking is prohibited in areas not striped for parking.

(e) Lessor may refuse to permit any person who violates the within rules to park in the parking lot, and any violation of the rules shall subject the automobile to removal from the parking lot at the parker's expense.

(f) Every parker is required to park and lock his or her own automobile. All responsibility for any loss or damage to automobile or any personal property therein is assumed by the parker.

(g) The parking lot is for the sole purpose of parking one automobile per space. Washing, waxing, cleaning or servicing of any vehicles by the parker or his agents is prohibited.

(h) Storage of vehicles in the parking facilities is prohibited. Lessee and Lessee's employees and visitors shall not leave vehicles in the parking lot overnight.

(I) Lessor reserves the right to restrict customer, Lessee and Lessee's employees parking to a limited designated area or areas.

35. Lessee agrees to comply and acquaint its employees with such reasonable rules and regulations in the use of such Common areas as Lessor may adopt from time to time for the orderly and proper operation of said Common Areas.

Lessor reserves the right to make such other and further rules and regulations as in its judgment may be for the safety, care and cleanliness of the Office Building Project and for the preservation of good order therein. Lessee agrees to abide by these Rules and Regulations herein above stated and any additional rules and regulations, which are adopted hereafter.

Date: ___________________ Date: 4/30/12

Lessor's Initials: _________________ Lessee's Initials: JB

EXHIBIT "C"

Waiver and Release.

It is the express and understood intent, purpose, desire, and agreement of the parties in the event of termination for cause or expiration of the lease term, that Tenant, on behalf of itself, its officers, heirs, agents, shareholders, employees, subcontractors, executors, successors and assigns, shall and does hereby release and discharge Landlord, and its respective elected and appointed officials, officers, directors, employees, attorneys, accountants, consultants, other professionals, and agents, from and against the following: any claims, penalties, actions or causes of action, obligations, and demands of any kind including but not limited to, any claims arising under the California Eminent Domain Law (Title 7 (commending with Section 1230.010) of Part 3 of the California Code of Civil Procedure), the Relocation Statutes and Regulations set forth in Chapter 16 (commending with Section 7260) of Division 7 of the California Government Code and Subchapter 1 (commencing with Section 6000) Division 3 of Title 25 of the California Code of regulations, and claims for a "taking" or inverse condemnation arising under the United States or California Constitutions or under any federal, state, or local law, statute, ordinance, regulation, rule, official policy, court order, or common law (collectively, the "Released Claims").

The parties further acknowledge that the Released Claims include any claims for loss of business goodwill pursuant to Code of Civil Procedure §1263.510 et seq., for precondemnation damages and severance damages.

Initial ___ƎƧ___

EXHIBIT "D"

REQUIREMENTS FOR IMPROVEMENTS OR ALTERATIONS BY LESSEE

If Lessor shall permit Lessee to construct any interior improvements (subsequent to the initial Improvements which shall be constructed by Lessor) in the Premises or to have any work performed in the Premises at any time prior to or during the Lease term by a contractor retained by Lessee ("Lessee's Work"), then Lessee shall comply with the requirements set forth herein. If Lessee's Work has been properly authorized, Lessee will receive written approval and consent for alterations to the Premises. All alterations to the Premises, excepting movable furniture and trade fixtures, shall, at Lessor's option, become a part of the realty and belong to Lessor.

1. SUBMITTAL OF PLANS. Prior to commencing any work in the Premises, Lessee shall submit to Lessor for approval its proposed plans for the work. Without limiting the foregoing, Lessee shall provide:

(a) A separate scale drawing denoting all proposed construction and/or demolition, if necessary.

(b) A separate drawing for each trade proposing structural, electrical, mechanical, civil or landscaping modifications.

(c) Specify all dimensions and complete references to all work to be performed in the affected areas.

(d) If adding extra electrical or mechanical equipment, provide complete operating and maintenance specifications for each item.

2. CHECKLIST. With respect to each project, Lessor will provide Lessee with a checklist listing the items required to be furnished to Lessor in connection with the proposed work. Lessee shall furnish to Lessor prior to, during, or upon completion of Lessee's Work, as applicable, each of the items specified in the checklist attached hereto as Attachment 1.

3. CONTRACTORS PROVIDING INTERIOR IMPROVEMENT SERVICES.

(a) The contractor employed by Lessee and any subcontractors shall be (i) duly licensed in the state in which the Premises are located, and (ii) subject to Lessor's prior written approval, which approval shall not be unreasonably withheld. If more than one trade is employed on a single job, state law requires the services of a general contractor in addition to contractors for specialty work being performed.

(b) Each contractor shall provide proof of licensing as a general or specialty contractor in accordance with state law. Additionally, each contractor shall furnish proof of licensing in the city or municipality in which the construction related activity is to take place.

(c) Lessee shall use Lessor's subcontractor for mechanical, electrical, plumbing, roofing and roofing consultant if available at competitive rates.

(d) Lessee and Lessee's contractors shall comply with all Applicable Laws pertaining to the performance of Lessee's Work and the completed improvements and all applicable safety regulations established by Lessor or the general contractor.

(e) Prior to commencement of any work in the Premises, Lessee and Lessee's contractors (and any subcontractors) shall obtain and provide Lessor with certificates evidencing Workers' Compensation, public liability and property damage insurance in amounts and forms and with companies satisfactory to Lessor. Each general contractor (and any subcontractor) employed on the Premises shall provide Lessor with a current certificate of insurance in effect for that contractor with a thirty day notice of cancellation or revocation clause. Insurance requirements are as follows:

(i) Comprehensive General Liability with a $1,000,000 Combined Single Limit covering the liability of Lessor and contractor for bodily injury and property damage arising as a result of the construction of the improvements and the services performed thereunder. Lessor and any Management Company shall be named as an additional insured.

(ii) Comprehensive Automobile Liability with a $1,000,000 Combined Single Limit covering Lessor and vehicles used by contractor (and any subcontractor) in connection with the construction of the improvements.

(iii) Workers' Compensation and Employer's Liability as required by law, for employees of the contractor (and any subcontractors) performing work on the Premises.

(f) The following requirements shall be incorporated as "Special Conditions" into the contract between Lessee and its contractors and a copy of the contract shall be furnished to Lessor prior to the commencement of Lessee's Work:

(i) Prior to start of Lessee's Work, Lessee's contractor shall provide Lessor with a construction schedule in "bar graph" form indicating the completion dates of all phases of Lessee's Work.

(ii) Lessee's contractor shall be responsible for the repair, replacement or clean-up of any damage done by it to other contractors' work which specifically includes accessways to the Premises which may be concurrently used by others.

(iii) Lessee's contractor shall accept the Premises prior to starting any trenching operations. Any rework of sub-base or compaction required after the contractor's initial acceptance of the Premises shall be done by Lessee's contractor, which shall include the removal from the Project of any excess dirt or debris.

(iv) Lessee's contractor shall contain its storage of materials and its operations within the Premises and such other space as it may be assigned by Lessor or Lessor's contractor. Should Lessee's contractor be assigned space outside the Premises, it shall move to such other space as Lessor or Lessor's contractor shall direct from time to time to avoid interference or delays with other work.

(v) Lessee's contractor shall clean up the construction area and surrounding exterior areas daily. All trash, demolition materials and surplus construction materials shall be stored within the Premises and promptly removed from the Premises and the Project and disposed of in an approved sanitation site.

(vi) Lessee's contractor shall provide temporary utilities, portable toilet facilities, and potable drinking water as required for its work within the Premises and shall pay to Lessor's contractor the cost of any temporary utilities and facilities provided by Lessor's contractor at Lessee's contractor's request.

(vii) Lessee's contractor shall notify Lessor or Lessor's project manager of any planned work to be done on weekends or other than normal job hours.

(viii) Lessee's contractor or subcontractors shall not post signs on any part of the Project or on the Premises.

4. COSTS.

(a) Lessee shall promptly pay any and all costs and expenses in connection with or arising out of the performance of Lessee's Work (including the costs of permits thereof) and shall furnish to Lessor evidence of such payment upon request.

(b) Except in the case of carpet replacement or repainting, Lessee shall pay Lessor an amount equal to five percent (5%) of the total hard costs of construction and installation of Lessee's Work as compensation to Lessor for review of plans, use of facilities and other miscellaneous costs of Lessor incurred as a result of such work.

5. CONTRACTOR'S BONDS. At Lessor's sole discretion, Lessor may require Lessee to obtain performance and completion bônds to insure Interior Work

6. MECHANIC'S LIENS.

(a) Lessee shall not suffer or permit to be enforced against the Premises or any part of the Project any mechanic's, materialman's, contractor's or subcontractor's lien arising out of any work of improvement, however it may arise.

(b) Lessee shall notify Lessor at least ten (10) days prior to the commencement of construction of any Lessee's Work and Lessor shall have the right to post and record a notice of nonresponsibility in conformity with applicable law. Within ten (10) days following completion of Lessee's Work, Lessee shall file a Notice of Completion and deliver to Lessor an unconditional release and waiver of lien executed by each contractor, subcontractor and materialman involved in Lessee's Work.

(c) In the event any lien is filed against the Project or any portion thereof or against Lessee's leasehold interest therein as a result of Lessee's work, Lessee shall obtain the release and/or discharge of said lien, within ten (10) days after the filing thereof. In the event Lessee fails to do so, Lessor may obtain the release and/or discharge of said lien and Lessee shall indemnify Lessor for the costs thereof, including reasonable attorney's fees, together with interest at the Applicable Interest Rate from the date of demand. Nothing herein shall prohibit Lessee from contesting the validity of any such asserted claim, provided Lessee has furnished to Lessor a lien release bond freeing the Premises from the effect of the lien claim.

7. INDEMNITY. Lessee shall indemnify, defend (with counsel satisfactory to Lessor) and hold Lessor harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers' compensation, attorney's fees and costs) based on personal injury or property damage, or otherwise (including, without limitation, contract and breach of warranty claims) arising from the performance of Lessee's Work. Lessee shall repair or replace (or, at Lessor's election, reimburse Lessor for the cost of repairing or replacing) any portion of the Building or item of Lessor's equipment or any of Lessor's real or personal property damaged, lost or destroyed in the performance of Lessee's Work.

8. BUILDING STANDARDS. All work shall conform to Lessor's established building standards and specifications. Lessee is required to make these standards part of the construction documents.

9. ROOF PENETRATIONS. If improvements penetrate the roof membrane, the penetrations will be sealed per Lessor/IRC roofing specifications and inspected by IRC to maintain roof warranty. The cost of inspection and all corrective work shall be borne by Lessee. Lessee shall use Lessor's original roofing contractor.

10. BUILDING MODIFICATIONS. Work will only be approved within the confines of a given space. Lessee will not be allowed to modify building exterior or mechanical and electrical service as provided to the building in common with other tenants.

11. ELECTRICAL WORK. All electrical work shall be approved from the unit space electrical panel only. Additional service requirements shall be secured only by direction of Lessor. Lessee shall use Lessor's original electrical contractor if available at competitive rates.

12. SCHEDULE OF WORK. Lessee shall be required to provide a schedule of all work to be performed, subject to Lessor approval. All costs to produce such schedule shall be borne solely by Lessee.

13. CLEAN UP AND DISPOSAL OF CONSTRUCTION DEBRIS. Building trash containers are provided for office generated trash only and are not to be used for disposal of construction-related materials and debris. Unapproved usage will result in a penalty assessment to the Lessee equal to the cost of an extra pick-up service as provided under the current rate schedule of regular trash removal service.

14. INSPECTION BY LANDLORD. Lessor reserves the following rights: (i) the right of inspection prior to, during and at completion of all construction and/or demolition, (ii) the right to post and record a notice of nonresponsibility in conformity with California law, and (iii) the right to order, if reasonable, a total stop to all improvements underway for non-compliance with any of the requirements hereof.

15. GENERAL PROVISIONS.

(a) If Lessor has agreed to provide an allowance toward the cost of tenant improvements (other than the initial Lessee Improvement Allowance), Lessor shall retain from such funds an amount determined by Lessor until Lessee has fully complied with the requirements hereof.

(b) All materials, work, installations and decorations of any nature whatsoever brought on or installed in the Premises before the commencement of the Term or throughout the Term shall be at Lessee's risk, and neither Lessor nor any party acting on Lessor's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever.

(c) Nothing contained herein shall make or constitute Lessee as the agent of Lessor.

Attachment 1

ITEMS TO BE FURNISHED TO LESSOR FOR EACH WORK OF IMPROVEMENT

1. Plan of Alterations for Lessor Approval.
2. Contractor(s), Address, Telephone Number, Contact Person.
3. Copy of Contractor's State and City Business License.
4. Copy of Building Permit.
5. Copy of Final Inspection and Signed Building Permit Cards.
6. Copy of Certificate of Insurance Naming The City of Laguna Hills and Essex Realty Management as Additional Insured. Insurance to include Comprehensive General Liability, Comprehensive Auto, Workers' Compensation and Employer's Liability.
7. Signed Unconditional Lien Waiver in favor of Development Corporation.
8. Schedule of Work.
9. Copy of Completion and Payment Bond.
10. Architect's License and Expiration.
11. Copy of Permit Plans.
12. Copy of As-Builts.
13. Copy of Recorded Notice of Completion.
14. Certificate of Occupancy.
15. Evidence of Insurance for All-Risk/Builder's Risk Insurance to the Amount of Improvements.

4.5 SECOND CALL FOR PROJECTS FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM (ECP) TIER 1 GRANT

THE CITY COUNCIL: (1) APPROVED THE GRANT APPLICATION FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM TIER 1 GRANT; (2) ADOPTED RESOLUTION NO. 2012-04-24-2, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING AN APPLICATION FOR FUNDS FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM TIER 1 GRANT UNDER ORANGE COUNTY LOCAL TRANSPORTATION ORDINANCE NO. 3 FOR THE LAGUNA HILLS DEBRIS GATES PROJECT;" AND (3) AUTHORIZED THE SOLE-SOURCE SELECTION OF G2 CONSTRUCTION, INC., FOR THIS WORK.

ITEMS REMOVED FROM THE CONSENT CALENDAR

4.6 AUTHORIZATION TO ADVERTISE FOR BIDS FOR THE CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-H

Council Member Kogerman removed this item from the Consent Calendar to inquire from City Attorney Simonian about her possible conflict of interest on this project, since her street was one of the streets scheduled for rehabilitation. City Attorney Simonian indicated that with this type of maintenance project, there was no conflict.

MOTION TO APPROVE THE PLANS AND SPECIFICATIONS AND AUTHORIZE THE ADVERTISEMENT FOR BIDS OF THE CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-H, BY M/COUNCIL MEMBER KOGERMAN, S/COUNCIL MEMBER BRESSETTE.
APPROVED BY A VOTE OF 5-0.

5. PLANNING AGENCY

Mayor Carruth recessed the City Council meeting and acting in the capacity of Chair, called the regular meeting of the Planning Agency of the City of Laguna Hills, California, to order at 7:13 PM.

5.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Carruth, Vice Chair Lautenschleger, Agency Member Bressette, Agency Member Kogerman, and Agency Member Songstad

5.2 PUBLIC COMMENTS

There were no Public Comments.

5.3 MINUTES

5.3.1 REGULAR MEETING, APRIL 10, 2012

MOTION TO APPROVE THE MINUTES OF THE APRIL 10, 2012, REGULAR MEETING, AS PRESENTED IN CITY COUNCIL MINUTES BEGINNING ON PAGE 3, BY M/AGENCY MEMBER SONGSTAD, S/VICE CHAIR LAUTENSCHLEGER. APPROVED BY A VOTE OF 5-0.

5.4 PLANNING AGENCY PUBLIC HEARINGS

5.4.1 ZONING TEXT AMENDMENT NO. 01-12-2163, AN ORDINANCE ADDING CHAPTER 9-93, ENTITLED "REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES," TO THE LAGUNA HILLS MUNICIPAL CODE, PROVIDING A PROCEDURE FOR GRANTING REASONABLE ACCOMMODATION IN THE CITY'S ZONING AND LAND USE REGULATIONS, POLICIES, AND PRACTICES PURSUANT TO FEDERAL AND STATE FAIR HOUSING LAWS.

The public notice for this zoning text amendment was incorrectly published as a Planning Agency item when this item is subject to review by the City Council. Therefore, staff must provide the proper public notice as a City Council agenda item, and anticipates bringing this item forward for review by the City Council at the regular meeting of May 8, 2012.

MOTION TO RECEIVE AND FILE THE REPORT, BY M/AGENCY MEMBER KOGERMAN, S/VICE CHAIR LAUTENSCHLEGER.
APPROVED BY A VOTE OF 5-0.

PLANNING AGENCY ADJOURNMENT

6. JOINT PLANNING AGENCY/CITY COUNCIL MEETING

6.1 ROLL CALL OF JOINT CITY COUNCIL/PLANNING AGENCY MEETING

Present: Mayor/Chair Carruth, Mayor Pro Tempore/Vice Chair Lautenschleger, Council Member/Agency Member Bressette, Council Member/Agency Member Kogerman, and Council Member/Agency Member Songstad

6.2 PUBLIC COMMENTS

There were no Public Comments.

CITY OF LAGUNA HILLS

AGENDA REPORT
COMMUNUTY DEVELOPMENT DEPARTMENT

ISSUE: **ZONING TEXT AMENDMENT NO. 01-12-2163, AMENDING TITLE 9 "ZONING AND SUBDIVISIONS" OF THE LAGUNA HILLS MUNICIPAL CODE TO ESTABLISH A PROCEDURE FOR PROVIDING REASONABLE ACCOMMODATION IN THE CITY'S ZONING AND LAND USE REGULATIONS, POLICIES, AND PRACTICES FOR PERSONS WITH DISABILITIES**

SUMMARY:

Under state and federal law, local governments are required to provide "reasonable accommodation" to persons with disabilities when exercising planning and zoning powers. Providing reasonable accommodation in the land use and zoning context may include a modification or exemption from land use, and zoning regulations, policies, and practices, when it is necessary to eliminate barriers to housing opportunities and to ensure the equal use and enjoyment of a dwelling by a person with a disability. The accompanying Ordinance establishes a procedure for the receipt and evaluation of a request for reasonable accommodation in accordance with state and federal laws.

BACKGROUND:

Staff has prepared this Ordinance in order to bring the City into compliance with state and federal law, and to further implement the goals of the City's General Plan. The federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act impose an affirmative duty on local governments to make reasonable accommodation in their zoning laws and other land use regulations when such accommodation "may be necessary to afford" disabled persons an "equal opportunity to use and enjoy a dwelling." (42 U.S.C. § 3604(f)(3)(B), Cal Gov't Code §§ 12927(c)(1), 12955(1).) The term "disabled persons" in this context refers to individuals with "physical or mental impairment that substantially limits one or more major life activities."

The City's General Plan Housing Element identifies that in 2000, approximately 4,266 people, or more than 14 percent of Laguna Hills residents over the age of 5, were recorded by the U.S. Census as having a disability. In an effort to promote barrier-free housing opportunities for the disabled, the Housing Element established an implementation policy (Implementation Program H-16) for developing and adopting a procedure for granting reasonable accommodation that addresses "such topics as purpose, findings, applicability, notice to the public of accommodation process, procedures, reviewing authority, required findings, and appeals." Absent a reasonable accommodation procedure, the City risks wrongfully denying a disabled person's request for relief and incurring the consequent liability for violation of the aforementioned fair housing laws. In addition, the City's Housing Element update (undertaken every 5 years) could be considered deficient when submitted for certification by the California Department of Housing and Community Development in 2013.

DISCUSSION:

In accordance with state and federal fair housing laws, the proposed Ordinance establishes a procedure whereby the City may grant reasonable accommodation to ensure the equal use and enjoyment of a residence by persons with disabilities or their representatives. A "reasonable accommodation" as defined in the Ordinance means:

"…a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces."

Requests for reasonable accommodation will vary according to the nature of the disability, but some examples include:

- Request for relief from Development Code-required covered parking spaces to allow construction of an elevator in the garage of a residence.
- Request for reduction of a front yard setback to accommodate construction of an entry ramp.
- Request for relief from setback and lot coverage requirements to construct a downstairs bedroom addition for an individual who can no longer use the stairs due to disability.

Reasonable Accommodation Procedure

As outlined in the attached Ordinance, a request for reasonable accommodation may be submitted in writing to the Community Development Department by any individual with a disability or by his or her representative. The Community Development Director is proposed to serve as the reviewing authority except in cases where the request is being made in conjunction with some other approval, permit, or entitlement that requires Planning Agency review. In this instance, the Planning Agency would serve as the reviewing authority. The reviewing authority is required to make five (5) specific findings in rendering a decision to approve, approve with conditions, or deny a reasonable accommodation request. These findings include ensuring that the request will not impose an undue financial or administrative burden to the City, will not result in a fundamental alteration in the nature of a City program or law, and will not result in a direct threat to the health and safety of other individuals or properties. Upon reaching a decision, the reviewing authority will provide a written determination to the applicant and notify them of their right to appeal. Decisions made by the Community Development Director may be appealed to the Planning Agency within thirty (30) days, and decisions of the Planning Agency are considered final.

CONCLUSION:

Adoption of a reasonable accommodation Ordinance will bring the City into compliance with the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act while implementing a General Plan Housing Element policy aimed at assisting an important segment of the Laguna Hills community—individuals with disabilities. The proposed Ordinance establishes a procedure for the City to accept and evaluate requests for reasonable accommodation from zoning laws and land use regulations in accordance with these laws.

CEQA FINDINGS:

This Ordinance is not subject to the California Environmental Quality Act because it does not meet the definition of a “project” pursuant to section 21065 of the Public Resources Code or sections 15060(c)(2), 15060(c)(3), and 15378 of the CEQA Guidelines, California Code of Regulations Title 14, Chapter 3.

RECOMMENDATION: THAT THE CITY COUNCIL: (1) CONDUCT A PUBLIC HEARING; AND (2) INTRODUCE AN ORDINANCE ENTITLED: "AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADDING CHAPTER 9-93, ENTITLED 'REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES,' TO THE LAGUNA HILLS MUNICIPAL CODE, PROVIDING A PROCEDURE FOR GRANTING REASONABLE ACCOMMODATIONS IN THE CITY'S ZONING AND LAND USE REGULATIONS, POLICIES, AND PRACTICES PURSUANT TO FEDERAL AND STATE FAIR HOUSING LAWS."

ATTACHMENTS:

- Proposed Reasonable Accommodation Ordinance.

ORDINANCE NO. ______

AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADDING CHAPTER 9-93, ENTITLED "REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES," TO THE LAGUNA HILLS MUNICIPAL CODE, PROVIDING A PROCEDURE FOR GRANTING REASONABLE ACCOMMODATIONS IN THE CITY'S ZONING AND LAND USE REGULATIONS, POLICIES, AND PRACTICES PURSUANT TO FEDERAL AND STATE FAIR HOUSING LAWS.

WHEREAS, the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act require cities to make reasonable accommodations (i.e., modifications or exemptions) in their zoning and land use regulations, policies, and practices when such accommodations are necessary to afford disabled persons an equal opportunity to use and enjoy a dwelling; and

WHEREAS, it is the purpose and intent of the City Council, through the adoption of this Ordinance, to establish procedures for the receipt and evaluation of requests for reasonable accommodation in accordance with state and federal law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. Chapter 9-93 is hereby added to Title 9 of the Laguna Hills Municipal Code, which shall read as follows:

CHAPTER 9-93

REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Sections:

9-93.010 Purpose and Intent.

It is the policy of the City of Laguna Hills to comply with the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (collectively referred hereafter as "Fair Housing Laws") to provide reasonable accommodation to disabled persons in the application of its zoning and land use regulations, policies, and practices for persons with disabilities seeking fair access to housing. The purpose of this Chapter is to establish procedures for the receipt and evaluation of requests for reasonable accommodation.

A request for reasonable accommodation may include a modification or exception to the rules, standards, and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to the housing of their choice. Requests for reasonable accommodation shall be made in the manner prescribed by Section 9-93.050 (Application for Reasonable Accommodation).

9-93.020 Definitions.

As used in this Chapter, the following items shall have meanings as set forth below:

"Director" means the Community Development Director.

"Disabled" or "disability" means any person who has a physical or mental impairment that substantially limits one or more major life activities, or as may otherwise be defined by state or federal law.

"Fundamental alteration" means a modification that alters the essential nature of a provider's operations.

"Major life activity" means those activities that are of central importance to daily life including, but not limited to, seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.

"Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus (HIV) infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

"Reasonable accommodation" means a change, exception, or adjustment to a rule, policy, practice, or procedure that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

"Reviewing authority" means the Community Development Director or the Planning Agency, as determined in Section 9-93.040.

9-93.030 Applicability.

A. A request for reasonable accommodation may be made by any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of zoning and land use regulations, policies, and practices act as a barrier to fair housing opportunities.

B. Providing reasonable accommodation in the land use and zoning context may include a modification or exemption from zoning and land use regulations, policies, and practices when it is necessary to eliminate barriers to housing opportunities.

9-93.040 Reviewing Authority.

A. The Director shall review each application for reasonable accommodation within thirty (30) days of deeming the application as complete. Pursuant to the findings set forth in section 9-93.060, the Director may approve, approve subject to conditions, or deny the request.

B. In the event that the applicant also seeks a concurrent approval, permit, or entitlement that will be reviewed by the Planning Agency, then the Planning Agency shall also act as the reviewing authority for the application for reasonable accommodation.

C. If necessary to reach a determination on the request for reasonable accommodation, the reviewing authority may request further information from the applicant consistent with the Fair Housing Laws, specifying in detail the information that is required. In the event that a request for additional information is made, the thirty (30) day period to issue a decision is stayed until the applicant responds to the request.

9-93.050 Application for Reasonable Accommodation.

A. An application for reasonable accommodation shall be submitted in writing on a form prescribed by the Community Development Director ("Director").

B. A fee shall not be required for a reasonable accommodation, but if the project requires another discretionary permit, then the prescribed fee shall be paid for the other discretionary permit(s) in compliance with the City's adopted fee schedule.

C. If the project for which the application for reasonable accommodation is being made also requires some other approval, permit or entitlement, the applicant shall file the request together with the application for such approval, permit or entitlement.

D. An application for reasonable accommodation shall include all of the following:

1. The applicant's name, address, and telephone number;
2. Documentation that the applicant is:
   a. An individual with a disability;
   b. Applying on behalf of one or more individuals with a disability; or
   c. A developer or provider of housing for one or more individuals with a disability.
3. Address of the property for which accommodation is requested;
4. The name, address, and telephone number of the property owner(s), if different from the applicant;
5. The current use of the subject property;
6. The specific basis for the claim that the applicant is considered disabled under the Fair Housing Laws;
7. A description of the accommodation requested including reference to the Zoning and Development Code provision, policy or procedure from which accommodation is sought;
8. A detailed written explanation of why the requested accommodation is necessary for the individual(s) with a disability to use and enjoy the dwelling; and
9. Any other information that the Director reasonably concludes is necessary to determine whether the findings required by §9-93.070 can be made, so long as any request for information regarding the disability of the individuals benefited complies with Fair Housing Law protections and the privacy rights of the individuals affected.

9-93.060 Public Notice.

After the Director has deemed an application for reasonable accommodation as complete, the Director or his/her designee shall provide notice of the request for reasonable accommodation as follows:

A. In the event that there is no approval, permit, or entitlement sought other than the request for reasonable accommodation, the notice shall be mailed to the owners of record of all properties that are immediately adjacent to the property that is the subject of the request.

B. In the event that the request is being made in conjunction with some other approval, permit or entitlement, the notice shall be transmitted along with the notice of the other proceeding.

9-93.070 Required Findings.

A. The written decision to approve, approve with conditions, or deny an application for reasonable accommodation shall be based upon the following findings, all of which are required for approval:

1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws;
2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling;
3. The requested accommodation will not impose an undue financial or administrative burden on the City;
4. The requested accommodation will not result in a fundamental alteration in the nature of a City program or law, including but not limited to land use or zoning; and
5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health and safety of other individuals or substantial physical damage to the property of others.

B. In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation will comply with the findings required by this section.

9-93.080 Notice of Decision.

A. The Reviewing Authority shall notify the applicant of his/her decision by mailing a written determination to the applicant. The notice of decision shall: include factual findings, conclusions, and reasons for the decision; and notify the applicant of the right to appeal the Reviewing Authority's decision pursuant to Section 9-93.110.

B. Notice of the Reviewing Authority's decision shall also be given to adjoining property owners and/or other interested persons in the same manner as provided in Section 9-93.060(A) and (B).

9-93.090 Expiration, Time Extension, and Revocation.

A. Any reasonable accommodation approved in accordance with the terms of this Chapter shall expire within twenty-four (24) months from the effective date of the approval or at an alternative time specified as a condition of approval unless:

1. A building permit has been issued and construction has commenced;
2. A certificate of occupancy has been issued;
3. The use is established; or
4. A time extension has been granted.

B. The Director may approve a time extension for a reasonable accommodation for good cause for a period or periods not to exceed three (3) years. An application for a time extension shall be made in writing to the Director no less than thirty (30) days or more than ninety (90) days prior to the expiration date.

C. Any reasonable accommodation approved in accordance with this Chapter may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.

9-93.100 Discontinuance.

A. A reasonable accommodation shall lapse if the exercise of rights granted by it is discontinued for one hundred eighty (180) consecutive days. If the disabled persons vacate the premises, the reasonable accommodation shall remain in effect only if the Director determines that (1) the modification is physically integrated into the residential structure such that it would be impractical to require the property to be returned to its previous condition, or (2) the accommodation is necessary to give another disabled individual an equal opportunity for use and enjoyment of the dwelling.

B. The Director may, at any time, request in writing the applicant or his successor-in-interest to the property to provide documentation demonstrating that the accommodation remains necessary to ensure the equal use and enjoyment of the property by a person with disabilities and/or continued compliance with any applicable conditions of approval. Failure to provide such documentation within fifteen (15) days of the date of the Director's request shall constitute grounds for discontinuance by the City of a previously approved reasonable accommodation.

9-93.110 Appeals.

The decision of the Director to approve, approve subject to conditions, or deny an application for reasonable accommodation shall be subject to appeal to the Planning Agency pursuant to the procedures set forth in Chapter 9-96 of the Municipal Code.

SECTION 2. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to section 21065 of the Public Resources Code or sections 15060(c)(2), 15060(c)(3), and 15378 of the CEQA Guidelines, California Code of Regulations Title 14, Chapter 3.

SECTION 3. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED AND ADOPTED this _____day of _________ 2012.

____

MELODY CARUTH, MAYOR

ATTEST:

____

PEGGY J. JOHNS, CITY CLERK

STATE OF CALIFORNIA)

COUNTY OF ORANGE) ss

CITY OF LAGUNA HILLS)

I, Peggy J. Johns, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 2012-x was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the 8th day of May 2012, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council held on the 22nd day of May 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

PEGGY J. JOHNS, CITY CLERK

STATE OF CALIFORNIA)

COUNTY OF ORANGE) ss AFFIDAVIT OF POSTING

CITY OF LAGUNA HILLS) AND PUBLICATION

PEGGY J. JOHNS, being first duly sworn, deposes and says:

That she is the duly appointed and qualified City Clerk of the City of Laguna Hills;

That in compliance with State Laws of the State of California, ORDINANCE NO. 2012- x, being:

AN ORDINANCE OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADDING CHAPTER 9-93, ENTITLED "REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES," TO THE LAGUNA HILLS MUNICIPAL CODE, PROVIDING A PROCEDURE FOR GRANTING REASONABLE ACCOMMODATIONS IN THE CITY'S ZONING AND LAND USE REGULATIONS, POLICIES, AND PRACTICES PURSUANT TO FEDERAL AND STATE FAIR HOUSING LAWS.

on the 11th day of May 2012 was published in summary in the Register Newspaper and on the Ist day of June 2012, was published in summary in the Saddleback Valley News; and was, in compliance with City Resolution No. 2004-05-25-2, on the 9th day of May 2012 and the 23rd day of May 2012, caused to be posted in summary in three places in the City of Laguna Hills, to wit:

Laguna Hills City Hall

Laguna Hills Community Center

La Paz Center

PEGGY J. JOHNS, CITY CLERK

Laguna Hills, California